

**DOCUMENTS NUMBERED 05428-09074**

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**→3-14-1-1 Defacing, falsifying, or destroying declarations, requests, petitions, or certificates**

Sec. 1. A person who knowingly:

(1) falsely makes or fraudulently defaces or destroys a declaration of candidacy, request for ballot placement under IC 3-8-3, certificate or petition of nomination, recount petition or cross-petition, contest petition, or certificate of candidate selection, or a part of the declaration, request, petition, or certificate;

(2) files a declaration of candidacy, request for ballot placement under IC 3-8-3, certificate or petition of nomination, recount petition or cross-petition, contest petition, or certificate of candidate selection, knowing any part thereof to be falsely made;

(3) refuses to execute a certificate of nomination or candidate selection when required by this title to do so and knowing that the candidate has been nominated or selected;

(4) if the document is listed in subdivision (1), refuses to:

(A) receive the document; or

(B) record the date and time the document was received;

when presented in accordance with this title; or

(5) suppresses a declaration of candidacy, request for ballot placement under IC 3-8-3, petition or certificate of nomination, recount petition or cross-petition, contest petition, or certificate of candidate selection, that has been duly filed, or any part of the declaration, request, petition, or certificate;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.10-1988, SEC.204.

## HISTORICAL AND STATUTORY NOTES

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P.L.5-1986, Sec.10, emerg. eff. March 4, 1986.

P.L.10-1988, Sec.204, emerg. eff. April 1, 1988, added Subsecs. (3) and (4); redesignated former Subsec. (3) as

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**→3-14-1-2 Printing, publishing or distribution of slate during primary campaign without authority**

Sec. 2. (a) A person who:

(1) prints, publishes, or distributes a slate during a primary election campaign without authority from and:

(A) over the name of an organization of voters, including the name of the organization and its officers; or

(B) if it is not an organized group of voters, over the names of at least ten (10) voters in the political subdivision in which the primary election is being held;

together with the name of the printer who printed the slate;

(2) prints on a slate during a primary election campaign the name or number of a candidate without the candidate's written consent; or

(3) prints, publishes, or distributes a slate during a primary election campaign unless at least five (5) days before it is printed and published the written consent of the voters over whose names it is published and the written consent of the candidates in whose behalf it is distributed are filed in the office of the county election board in each county where the election is held;

commits a Class A misdemeanor.

(b) As used in this section, "slate" means a sample ballot, reproduction of an official ballot, or a listing of candidates:

(1) having the names or numbers of more than one (1) candidate for nomination at a primary election; and

(2) that expresses support for more than one (1) of the candidates set forth on the ballot or list.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.463; P.L.10-1988, SEC.205; P.L.3-1997, SEC.399.

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P.L.3-1987, Sec.463, eff. Dec. 1, 1987, inserted "during a primary election campaign" in Subsecs. (a)(2) and

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**→3-14-1-3 Circulation or publication of anonymous campaign material**

Sec. 3. An individual, an organization, or a committee that circulates or publishes material in an election without the statement required under IC 3-9-3-2.5 commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.10-1988, SEC.206; P.L.5-1989, SEC.71; P.L.3-1997, SEC.400.

## HISTORICAL AND STATUTORY NOTES

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P.L.10-1988, Sec.206, emerg. eff. April 1, 1988, substituted references to an "individual, group of individuals, or committee" for a "person"; inserted "or public question"; deleted "and address" following "election without the name"; and made other nonsubstantive changes.

P.L.5-1989, Sec.71, substituted "an organization" for "group of individuals"; deleted "issues or" following "committee that"; substituted "or publishes material" for "a written or printed statement"; deleted "name of the individual, group of individuals, or committee that issued or circulated the" following "election without the"; substituted "required under IC 3-9-3-2" for "on it"; and made other nonsubstantive changes.

**1997 Legislation**

P.L.3-1997, Sec.400, emerg. eff. May 13, 1997, amended the section by deleting "concerning a candidate or public question" after "material"; and substituting "IC 3-9-3-2.5" for "IC 3-9-3-2".

**Formerly:**

IC 3-1-32-62.

Acts 1945, c. 208, s. 448.

Acts 1978, P.L.2, SEC.355.

## CROSS REFERENCES

Class A misdemeanor, penalty, see IC 35-50-3-2.

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**→3-14-1-6 Solicitation, challenge, or performance of election function by state police department civilian employee, police officer or firefighter**

Sec. 6. (a) A state police department employee or a police officer or firefighter (including a special duty, auxiliary, or volunteer police officer or firefighter) of a political subdivision who recklessly:

- (1) solicits votes or campaign funds;
- (2) challenges voters; or
- (3) performs any other election related function;

while wearing any identifying insignia or article of clothing that is part of an official uniform or while on duty commits a Class A misdemeanor.

(b) This section does not prohibit any of the following:

- (1) A state police department civilian employee from voting while on duty.
- (2) A police officer or firefighter from voting while wearing any part of an official uniform or while on duty.
- (3) An individual described in subsection (a) from consenting to a photograph (or other visual depiction) of the individual wearing any part of the individual's official uniform appearing in an advertisement in support of a candidate or political party.
- (4) An individual from serving as a pollbook holder under IC 3-6-6-36.
- (5) A police officer wearing any identifying insignia or article of clothing that is part of an official uniform or while on duty from serving as an absentee ballot courier appointed under IC 3-11.5-4-22.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.16-1987, SEC.1; P.L.12-1989, SEC.1; P.L.3-1997, SEC.401; P.L.176-1999, SEC.117.

## HISTORICAL AND STATUTORY NOTES

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P.L.16-1987, Sec.1, amended the section by inserting "state police department civilian employee or a" in the

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**→3-14-1-7 Collection, receipt or disbursement of money or property by committee without appointment of treasurer**

Sec. 7. A committee subject to IC 3-9 or any of its members that recklessly collects, receives, keeps, or disburses money or other property to promote any activity to which IC 3-9 applies without appointing and maintaining a treasurer as required by IC 3-9-1 commits a Class B misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

## HISTORICAL AND STATUTORY NOTES

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**Formerly:**

IC 3-1-30-3.

IC 3-4-2-23.

Acts 1945, c. 208, s. 368.

Acts 1965, c. 179, s. 1.

Acts 1976, P.L.6, SEC.1.

## CROSS REFERENCES

Class B misdemeanor, penalty, see IC 35-50-3-3.

## LIBRARY REFERENCES

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**→3-14-1-10 Excess contributions by corporation or labor organization**

Sec. 10. A corporation or labor organization that recklessly exceeds any of the limitations on contributions prescribed by IC 3-9-2-4 commits a Class B misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

CROSS REFERENCES

Class B misdemeanor, penalty, see IC 35-50-3-3.

RESEARCH REFERENCES

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Ind. Law Encycl. Elections § 70, Campaign Violations.

Ind. Law Encycl. Elections § 80, Enforcement; Prosecution.

Ind. Law Encycl. Elections § 81, Enforcement; Prosecution -- Testimony of or Matters Produced by Witness; Use Against Witness.

UNITED STATES SUPREME COURT

First amendment, restrictions on corporate election expenditures, see *Federal Election Com'n v. Massachusetts Citizens for Life, Inc.*, U.S.Mass.1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

I.C. 3-14-1-10, IN ST 3-14-1-10

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**→3-14-1-10.5 Acceptance of contributions in excess of permitted amounts by certain judges**

Sec. 10.5. (a) A person who recklessly violates IC 33-33-2-11 by accepting contributions that exceed the amount permitted under that section commits a Class B misdemeanor.

(b) A person described by subsection (a) is also subject to a civil penalty under IC 3-9-4-17. The county election board may assess a penalty of not more than three (3) times the amount of the contribution that exceeds the limit prescribed by IC 33-33-2-11, plus any investigative costs incurred and documented by the board.

CREDIT(S)

As added by P.L.3-1997, SEC.402. Amended by P.L.98-2004, SEC.44.

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**→3-14-1-11 Contributions in the name of another person**

Sec. 11. A person who:

(1) recklessly makes a contribution in the name of another person; or

(2) knowingly accepts a contribution made by one person in the name of another person;

commits a Class B misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-30-11.

IC 3-4-3-6.

Acts 1945, c. 208, s. 376.

Acts 1975, P.L.19, SEC.3

Acts 1976, P.L.6, SEC.1.

CROSS REFERENCES

Class B misdemeanor, penalty, see IC 35-50-3-3.

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C.J.S. Elections §§ 329, 356.

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**→3-14-1-13 Filing fraudulent reports**

Sec. 13. A person who knowingly files a report required by IC 3-9 that is fraudulent commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-30-3.

IC 3-1-30-4.

IC 3-1-30-6.

IC 3-1-30-8.

IC 3-1-30-9.

IC 3-1-30-11.

IC 3-4-6-17.

Acts 1945, c. 208, ss. 368, 369, 371, 373, 374, 376.

Acts 1949, c. 25, s. 26.

Acts 1965, c. 179, ss. 1, 3, 5.

Acts 1975, P.L.19, SECS.1, 3.

Acts 1976, P.L.6, SEC.1.

Acts 1978, P.L.2, SEC.361.

Acts 1979, P.L.5, SEC.10.

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**→3-14-1-14 Failure to file required report**

Sec. 14. A person who fails to file a report with the proper office as required by IC 3-9 commits a Class B misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.465.

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P.L.3-1987, Sec.465, eff. Dec. 1, 1987, substituted "class B misdemeanor" for "class A infraction".

**Formerly:**

IC 3-1-30-3.

IC 3-1-30-4.

IC 3-1-30-6.

IC 3-1-30-8.

IC 3-1-30-9.

IC 3-1-30-11.

IC 3-4-6-17.

IC 3-4-8-3.

Acts 1945, c. 208, ss. 368, 369, 371, 373, 374, 376.

Acts 1949, c. 25, s. 26.

Acts 1965, c. 179, ss. 2, 3, 5.

Acts 1975, P.L.19, SECS.1, 3.

Acts 1976, P.L.6, SEC.1.

Acts 1978, P.L.2, SEC.361.

Acts 1979, P.L.5, SEC.10.

Acts 1981, P.L.19, SEC.3.

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**→3-14-1-14.5 Commingling committee funds with personal funds**

Sec. 14.5. A person who recklessly violates IC 3-9-2-9(c) by commingling the funds of a committee with the personal funds of an officer, a member, or an associate of the committee commits a Class B misdemeanor.

CREDIT(S)

As added by P.L.3-1993, SEC.231.

**CROSS REFERENCES**

Criminal prosecutions, self-incrimination defense not available to witness, see IC 3-14-5-6.

Prosecuting attorney's duty to prosecute election offenses, see IC 3-14-5-4.

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Ind. Law Encycl. Elections § 81, Enforcement; Prosecution -- Testimony of or Matters Produced by Witness; Use Against Witness.

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**→3-14-1-16 Personal use of committee funds**

Sec. 16. A person who knowingly or intentionally violates IC 3-9-3-4 commits a Class A infraction.

CREDIT(S)

As added by P.L.13-1987, SEC.3.

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P.L.13-1987, Sec.3, eff. Jan. 1, 1988.

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**→ 3-14-2-1 Conspiracy to submit false application for registration or to vote illegally; paying individual to vote**

Sec. 1. A person who knowingly does any of the following commits a Class D felony:

- (1) Conspires with an individual for the purpose of encouraging the individual to submit a false application for registration.
- (2) Conspires with an individual for the purpose of encouraging the individual to vote illegally.
- (3) Pays or offers to pay an individual for doing any of the following:
  - (A) Applying for an absentee ballot.
  - (B) Casting an absentee ballot.
  - (C) Registering to vote.
  - (D) Voting.
- (4) Accepts the payment of any property for doing any of the following:
  - (A) Applying for an absentee ballot.
  - (B) Casting an absentee ballot.
  - (C) Registering to vote.
  - (D) Voting.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.103-2005, SEC.21.

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P.L.5-1986, Sec.10, emerg. eff. March 4, 1986.

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**→3-14-2-2 Fraudulent application for registration or procurement of registration**

Sec. 2. A person who, knowing the person is not a voter and will not be a voter at the next election, applies for registration or procures registration as a voter commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-50.

Acts 1945, c. 208, s. 436.

Acts 1978, P.L.2, SEC.347.

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C.J.S. Elections § 326.

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Ind. Law Encycl. Elections § 76, Vote Fraud -- Conduct Involving Registration or Filling Out of Affidavits; Taking of Registration Materials.

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**→3-14-2-2.5 Absentee ballot fraud**

Sec. 2.5. A person who does either of the following, knowing that an individual is ineligible to register to vote or to vote, commits absentee ballot fraud, a Class D felony:

- (1) Solicits the individual to complete an absentee ballot application.
- (2) Solicits the individual to submit an absentee ballot application to a county election board.

CREDIT(S)

As added by P.L.103-2005, SEC.22.

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**→3-14-2-3 Fraudulent subscription of another person's name to affidavit of registration or absentee ballot**

Sec. 3. A person who:

- (1) subscribes the name of another person to an affidavit of registration or application for an absentee ballot knowing that the application contains a false statement; or
- (2) subscribes the name of another person to an affidavit of registration or application for an absentee ballot without writing on it the person's own name and address as an attesting witness;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.103-2005, SEC.23.

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2005 Legislation

P.L.103-2005, Sec.23, amended this section by inserting "or application for an absentee ballot" in Subsecs. (1) and (2); and substituting "Class D felony" for "Class A misdemeanor" in the concluding language.

**Formerly:**

IC 3-1-32-51.

Acts 1945, c. 208, s. 437.

Acts 1978, P.L.2, SEC.348.

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**→3-14-2-4 Registering to vote more than once**

Sec. 4. A person who recklessly registers or offers to register to vote more than once commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-54.

Acts 1945, c. 208, s. 440.

Acts 1978, P.L.2, SEC.350.

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Ind. Law Enycl. Fraud § 6, Criminal Offenses.

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**→3-14-2-5 Destruction or failure to file or deliver absentee ballot application or registration affidavit or form after execution**

Sec. 5. (a) A person who recklessly destroys or fails to deliver an absentee ballot application to the proper officer after the application has been executed by another individual in accordance with IC 3-11-4 commits a Class A misdemeanor.

(b) A person who recklessly destroys or fails to file or deliver to the proper officer a registration affidavit or form of registration after the affidavit or form has been executed commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.103-2005, SEC.24.

## HISTORICAL AND STATUTORY NOTES

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2005 Legislation

P.L.103-2005, Sec.24, amended this section by adding Subsec. (a); and designating the previously undesignated language as Subsec. (b), and substituting "the affidavit or form" for "it" therein.

**Formerly:**

IC 3-1-32-53.

Acts 1945, c. 208, s. 439.

Acts 1978, P.L.2, SEC.349.

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**→3-14-2-6 Unauthorized release or removal of registration materials from circuit court office**

Sec. 6. A person who knowingly, intentionally, or recklessly releases or removes any registration materials or information contained in the computerized list maintained under IC 3-7-26.3 from the county voter registration office, except when release or removal is necessary:

- (1) to comply with IC 3-7; or
- (2) for the destruction of the materials under IC 5-15-6;

commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.12-1995, SEC.87; P.L.4-1996, SEC.87; P.L.209-2003, SEC.192; P.L.164-2006, SEC.131.

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2006 Legislation

P.L.164-2006, Sec.131, amended this section by deleting "after December 31, 2005".

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P.L.12-1995, Sec.87, emerg. eff. retroactive to Jan. 1, 1995, substituted "IC 3-7-38" for "IC 3-7-3-14".

P.L.4-1996, Sec.87, emerg. eff. March 21, 1996, deleted "including envelopes or post cards returned by the United States Postal Service under IC 3-7-38," after "registration materials" in the first paragraph.

2003 Legislation

P.L.209-2003, Sec.192, amended this section by inserting "knowingly, intentionally, or recklessly" before and "or, after December 31, 2005, information contained in the computerized list maintained under IC 3-7-26.3" after "releases or removes any registration materials"; by inserting "county voter registration" before "office"; and by deleting "of the circuit court clerk or board of registration,".

**Formerly:**

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**→3-14-2-7 Withholding information or furnishing false information to poll taker; return of false names or names of deceased persons**

Sec. 7. A person who knowingly:

- (1) upon the demand of a poll taker, withholds any information from the poll taker with regard to the qualifications of a voter or person not entitled to vote;
- (2) furnishes to a poll taker any false information with regard to the qualifications of any person for voting; or
- (3) returns to the poll taker as voters any false names or the names of any persons who are dead or are not voters;

commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-55.

IC 3-1-32-56.

Acts 1945, c. 208, ss. 441, 442.

Acts 1978, P.L.2, SECS.351, 352.

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**→3-14-2-8 Return of ineligible person, fictitious or deceased's names by poll taker**

Sec. 8. A poll taker who knowingly returns:

- (1) the name of a person who is not entitled to vote in the precinct for which the poll is taken at the next election;
- (2) a fictitious name; or
- (3) the name of a dead person;

commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

HISTORICAL AND STATUTORY NOTES

2006 Main Volume

**Formerly:**

IC 3-1-32-57.

Acts 1945, c. 208, s. 443.

Acts 1978, P.L.2, SEC.353.

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C.J.S. Elections § 327.

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**→3-14-2-9 Unregistered or unauthorized voting**

Sec. 9. A person who knowingly votes or offers to vote at an election when the person is not registered or authorized to vote commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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2006 Main Volume

**Formerly:**

IC 3-1-32-10.

Acts 1945, c. 208, s. 396.

Acts 1969, c. 222, s. 33.

Acts 1978, P.L.2, SEC.314.

**LAW REVIEW AND JOURNAL COMMENTARIES**

Corrupt practice acts. 20 Notre Dame Law. 284 (1945).

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**→3-14-2-10 Voting by ineligible persons**

Sec. 10. A person who recklessly votes at an election, unless the person is a registered voter under the requirements of IC 3-7 at the time of the election, commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**→3-14-2-11 Voting in other precincts**

Sec. 11. Except as provided by IC 3-10-10, IC 3-10-11, or IC 3-10-12, a person who knowingly votes or offers to vote in a precinct except the one in which the person is registered and resides commits a Class D felony.

## CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.466; P.L.10-1988, SEC.208; P.L.17-1993, SEC.17; P.L.12-1995, SEC.88.

## HISTORICAL AND STATUTORY NOTES

## 2006 Main Volume

P.L.3-1987, Sec.466, eff. Dec. 1, 1987, inserted "Except as provided by IC 3-7-4".

P.L.10-1988, Sec.208, emerg. eff. April 1, 1988, inserted "or IC 3-7-8-2".

P.L.17-1993, Sec.17, substituted "IC 3-7-4.5" for "IC 3-7-8-2".

P.L.12-1995, Sec.88, emerg. eff. retroactive to Jan. 1, 1995, substituted "IC 3-10-10, IC 3-10-11, or IC 3-10-12," for "IC 3-7-4 or IC 3-7-4.5".

**Formerly:**

IC 3-1-32-11.

Acts 1945, c. 208, s. 397.

Acts 1969, c. 222, s. 34.

Acts 1978, P.L.2, SEC.315.

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**→3-14-2-12 Voting or applying to vote in false name and own name**

Sec. 12. A person who:

(1) knowingly votes or makes application to vote in an election in a name other than the person's own; or

(2) having voted once at an election, knowingly applies to vote at the same election in the person's own name or any other name;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-30-11.

IC 3-4-7-4.

Acts 1945, c. 208, s. 376.

Acts 1975, P.L.19, SEC.3.

Acts 1976, P.L.6, SEC.1.

Acts 1978, P.L.2, SEC.365.

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**→3-14-2-13 Hiring or soliciting person to vote in precinct where person is not voter**

Sec. 13. A person who knowingly hires or solicits another person to go into a precinct for the purpose of voting at an election at the precinct when the person hired or solicited is not a voter in the precinct commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.103-2005, SEC.25.

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume

2005 Legislation

P.L.103-2005, Sec.25, amended this section by rewriting the contents thereof, which prior thereto read as follows:

"A person who knowingly hires or solicits another person:

"(1) to come into Indiana; or

"(2) to go from one precinct into another precinct;

"for the purpose of voting at an election when the person hired or solicited is not a voter in Indiana or the precinct commits a Class D felony."

**Formerly:**

IC 3-1-32-14.

Acts 1945, c. 208, s. 400.

Acts 1978, P.L.2, SEC.316.

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**→3-14-2-14 Precinct officer or public official allowing ineligible voters or unauthorized procedure**

Sec. 14. A precinct election officer or public official upon whom a duty is imposed by this title who knowingly:

- (1) allows a person to vote who is not entitled to vote; or
- (2) allows a person to vote by use of an unauthorized procedure;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

HISTORICAL AND STATUTORY NOTES

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**Formerly:**

IC 3-1-32-17.

Acts 1945, c. 208, s. 403.

Acts 1969, c. 222, s. 35.

Acts 1978, P.L.2, SEC.319.

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**→3-14-2-15 Unauthorized delivery of ballots**

Sec. 15. A member, an employee, or an agent of a county election board who knowingly delivers a ballot to a person except in the manner prescribed by this title commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.8-1995, SEC.65; P.L.103-2005, SEC.26.

## HISTORICAL AND STATUTORY NOTES

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P.L.8-1995, Sec.65, rewrote this section, which prior thereto read:

"A member or employee of the state election board or of a county election board who knowingly delivers a ballot to a person except in the manner prescribed by this title commits a Class D felony."

2005 Legislation

P.L.103-2005, Sec.26, amended this section by substituting ", an employee, or an agent" for "of the commission, an employee of the commission, or a member".

**Formerly:**

IC 3-1-32-21.

Acts 1945, c. 208, s. 407.

Acts 1978, P.L.2, SEC.322.

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C.J.S. Elections § 328.

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**→3-14-2-16 Ballots; fraudulent application, showing, examination, receipt, delivery, possession, or completion or signing**

Sec. 16. A person who knowingly does any of the following commits a Class D felony:

- (1) Applies for or receives a ballot in a precinct other than that precinct in which the person is entitled to vote.
- (2) Except when receiving assistance under IC 3-11-9, shows a ballot after it is marked to another person in such a way as to reveal the contents of it or the name of a candidate for whom the person has voted.
- (3) Except when offering assistance requested by a voter in accordance with IC 3-11-9, examines a ballot that a voter has prepared for voting or solicits the voter to show the ballot.
- (4) Receives from a voter a ballot prepared by the voter for voting, except:
  - (A) the inspector;
  - (B) a member of the precinct election board temporarily acting for the inspector;
  - (C) a member or an employee of a county election board (acting under the authority of the board and state law) or an absentee voter board member acting under IC 3-11-10; or
  - (D) a member of the voter's household, an individual designated as attorney in fact for the voter, or an employee of:
    - (i) the United States Postal Service; or
    - (ii) a bonded courier company;
 (acting in the individual's capacity as an employee of the United States Postal Service or a bonded courier company) when delivering an envelope containing an absentee ballot under IC 3-11-10-1.
- (5) Receives a ballot from a person other than one of the poll clerks or authorized assistant poll clerks.
- (6) Delivers a ballot to a voter to be voted, unless the person is:
  - (A) a poll clerk or authorized assistant poll clerk; or
  - (B) a member of a county election board or an absentee voter board acting under IC 3-11-10.

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(7) Delivers a ballot (other than an absentee ballot) to an inspector that is not the ballot the voter receives from the poll clerk or assistant poll clerk.

(8) Delivers an absentee ballot to a team of absentee ballot counters appointed under IC 3-11.5-4-22, a county election board, a circuit court clerk, or an absentee voting board under IC 3-11-10 that is not the ballot cast by the absentee voter.

(9) Delivers an absentee ballot prepared by the voter for voting to a county election board, except for:

(A) the inspector;

(B) a member of the precinct election board temporarily acting for the inspector;

(C) a member or an employee of a county election board (acting under the authority of the board and in accordance with state law) or an absentee voter board member acting under IC 3-11-10; or

(D) a member of the voter's household or an individual designated as attorney in fact for the voter, [or] an employee of:

(i) the United States Postal Service; or

(ii) a bonded courier company;

(acting in the individual's capacity as an employee of the United States Postal Service or a bonded courier company) when delivering an envelope containing an absentee ballot under IC 3-11-10-1.

(10) Possesses an unmarked absentee ballot on or before the date of the election for which the absentee ballot has been printed, unless the person is authorized to possess the absentee ballot under this title as any of the following:

(A) A printer, when arranging for the delivery of unmarked absentee ballots to a county election board under IC 3-11-2.

(B) A county election board member or employee (acting under the authority of the board and in accordance with state law).

(C) An absentee voter board member.

(D) An employee of:

(i) the United States Postal Service; or

(ii) a bonded courier company;

(acting in the individual's capacity as an employee of the United States Postal Service or a bonded courier company) when delivering an envelope containing an absentee ballot.

(E) An individual authorized under IC 3-11-10-24 to deliver an absentee ballot.

(F) An absentee ballot counter under IC 3-11.5.

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(G) A provisional ballot counter.

(H) A precinct election officer.

(I) The voter who applied for the absentee ballot.

(11) Completes or signs an absentee ballot application for a voter, or assists a voter in completing an absentee ballot application in violation of IC 3- 11.

## CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.467; P.L.5-1989, SEC.73; P.L.3-1993, SEC.232; P.L.19-1993, SEC.3; P.L.4-1996, SEC.88; P.L.38-1999, SEC.70; P.L.103-2005, SEC.27.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.467, eff. Dec. 1, 1987, inserted all provisions relating to assistant poll clerks.

P.L.5-1989, Sec.73, in Subsec. (4), inserted "or a member of a county election board or an absentee voter board acting under IC 3-11-10"; in Subsec. (7), inserted "(other than an absentee ballot)" substituted "that is not" for "except"; and substituted "ballot" for "one"; added Subsec. (8); and made nonsubstantive changes throughout the entire section.

P.L.3-1993, Sec.232 and P.L.19-1993, Sec.3, identically amended this section by inserting in subsec. (8) "team of absentee ballot counters appointed under IC 3-11.5-4-22".

P.L.4-1996, Sec.88, emerg. eff. March 21, 1996, designated Subsecs.(4)(A) through (4)(c); added Subsec. 4(D); and made other nonsubstantive changes.

## 1999 Legislation

P.L.38-1999, Sec.70, emerg. eff. April 23, 1999, inserted "precinct" in Subsec. (1); inserted "Except when receiving assistance under IC 3-11-9," in Subsec. (2); inserted "Except when offering assistance requested by a voter in accordance with IC 3-11-9," in Subsec. (3); designated Subsec. (6)(A); and added Subsec. (6)(B).

## 2005 Legislation

P.L.103-2005, Sec.27, amended this section by inserting "or an employee", "(acting under the authority of the board and state law)", and "member" in Subsec. (4)(C); rewriting Subsec. (4)(D), which read: "a member of the voter's household or an individual designated as attorney in fact for the voter, when delivering an envelope containing an absentee ballot under IC 34-11-10-1"; and adding Subsecs. (9) to (11).

**Formerly:**

IC 3-1-32-40.

Acts 1945, c. 208, s. 426.

Acts 1978, P.L.2, SEC.341.

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**→3-14-2-17 Marking ballot to indicate to another person how voter has voted**

Sec. 17. A voter at an election who knowingly writes or places on a ballot a name, sign, or device as a distinguishing mark by which to indicate to any other person how the voter has voted commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-27.

IC 3-1-32-30.

Acts 1945, c. 208, ss. 413, 416.

Acts 1978, P.L.2, SECS.328, 331.

**CROSS REFERENCES**

Voter instruction cards, copy of this section, see IC 3-11-3-23.

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**→3-14-2-18 Disclosure of vote**

Sec. 18. A voter who knowingly:

(1) does anything to enable any other person to see or know for what ticket, candidates, or public questions the voter has voted; or

(2) moves into a position, or does any other thing, to enable the voter to see or know for what ticket, candidates, or public questions any other voter votes;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.10-1988, SEC.209; P.L.103-2005, SEC.28; P.L.221-2005, SEC.134.

## HISTORICAL AND STATUTORY NOTES

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P.L.10-1988, Sec.209, emerg. eff. April 1, 1988, inserted "or public questions" in Subsecs. (1) and (2); and made other nonsubstantive changes.

2005 Legislation

P.L.103-2005, Sec.28, amended this section by substituting "system" for "machine" in Subsecs. (1) and (2).

P.L.221-2005, Sec.134, amended this section, as amended by P.L.103-2005, SEC.28, by deleting "on a voting system" preceding the last "or" in Subsec. (1), and at the end of Subsec. (2).

**Formerly:**

IC 3-1-32-30.

Acts 1945, c. 208, s. 416.

Acts 1978, P.L.2, SEC.331.

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**→3-14-2-19 Forgery of official ballot endorsement; printing or circulating imitation ballot**

Sec. 19. (a) A person who knowingly:

(1) forges or falsely makes the official endorsement of a ballot; or

(2) prints or circulates an imitation ballot;

commits a Class D felony.

(b) This section does not prohibit the printing or circulation of a sample ballot or a reproduction of an official ballot if the sample or reproduction complies with IC 3-9-3-2.5 and the printing or circulation does not violate IC 3-14-1-2.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.66-2003, SEC.51.

HISTORICAL AND STATUTORY NOTES

2006 Main Volume

2003 Legislation

P.L.66-2003, Sec.51, amended this section by designating the formerly undesignated language as Subsec. (a); and adding Subsec. (b).

**Formerly:**

IC 3-1-32-48.

Acts 1945, c. 208, s. 434.

Acts 1951, c. 12, s. 11.

Acts 1978, P.L.2, SEC.346.

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**→3-14-2-20 Deceptive registration of vote**

Sec. 20. A person who knowingly:

- (1) deceives a voter in registering the voter's vote under IC 3-11-8; or
- (2) registers a voter's vote in a way other than as requested by the voter;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.468.

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P.L.3-1987, Sec.468, eff. Dec. 1, 1987, deleted former Subsec. (3); substituted "Class D felony" for "class A misdemeanor; and made other nonsubstantive changes. Prior to amendment, former Subsec. (3) read:

"(3) gives information to any other person as to what ticket or candidates a voter voted;"

**Formerly:**

IC 3-2-3-3.

Acts 1982, P.L.12, SEC.3.

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C.J.S. Elections §§ 215, 329, 356.

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**→3-14-2-21 Fraudulent inducement to vote other than as intended**

Sec. 21. A person who fraudulently causes a voter at an election to vote for a person different from the one the voter intended to vote for or on a public question different from the vote the voter intended to cast commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.469; P.L.10-1988, SEC.210.

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume

P.L.3-1987, Sec.469, eff. Dec. 1, 1987, substituted "Class D felony" for "class A misdemeanor".

P.L.10-1988, Sec.210, emerg. eff. April 1, 1988, inserted "or on a public question different from the vote the voter intended to cast".

**Formerly:**

IC 3-1-32-38.

Acts 1945, c. 208, s. 424.

Acts 1978, P.L.2, SEC.339.

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**→3-14-2-22 False representation of ballot to non-English speaking voter**

Sec. 22. A person who knowingly furnishes a voter who cannot read the English language with a ballot at an election that the person represents to the voter as containing a name different from the one printed or written on it commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.470.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.470, eff. Dec. 1, 1987, substituted "ballot" for "ticket" and "Class D felony" for "Class A misdemeanor".

**Formerly:**

IC 3-1-32-37.

Acts 1945, c. 208, s. 423.

Acts 1978, P.L.2, SEC.338.

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**→3-14-2-23 Opening, destruction or unauthorized delivery of ballots by custodian of ballots**

Sec. 23. A person entrusted with the custody of ballots who knowingly:

- (1) opens a package in which the ballots are contained;
- (2) destroys a ballot; or
- (3) delivers such a package or ballot to a person not entitled to receive it;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-20.

Acts 1945, c. 208, s. 406.

Acts 1978, P.L.2, SEC.321.

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**→3-14-2-24 Removal or destruction of ballots; false entries in poll book; false tallying**

Sec. 24. A person who:

- (1) takes a ballot legally deposited out of a ballot box or out of a voting system for the purpose of destroying the ballot or substituting another ballot in its place;
- (2) destroys or misplaces a ballot with the intent to substitute another ballot for it or with the intent to prevent it from being counted; or
- (3) knowingly enters upon the pollbooks the name of a person who has not legally voted or knowingly tallies a vote for a candidate or on a public question not voted for by the ballot;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.10-1988, SEC.211; P.L.103-2005, SEC.29.

## HISTORICAL AND STATUTORY NOTES

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P.L.10-1988, Sec.211, emerg. eff. April 1, 1988, inserted "or on a public question" in subsec. (3).

2005 Legislation

P.L.103-2005, Sec.29, amended this section by rewriting Subsec. (1), which read: "takes a ballot legally deposited out of a ballot box for the purpose of destroying it or substituting another in its place".

**Formerly:**

IC 3-1-32-32.

Acts 1945, c. 208, s. 418.

Acts 1978, P.L.2, SEC.333.

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**→3-14-2-25 Marking or defacing ballots by precinct election board member or authorized election personnel**

Sec. 25. A member of a precinct election board or county election board, a person employed at the central counting headquarters, or a person charged with a duty in connection with an election or entrusted with the custody or control of a ballot either before or after voting who marks or defaces a ballot for the purpose of:

- (1) identifying the ballot (except by numbering protested ballots for future reference as provided by law); or
- (2) vitiating the ballot;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

**HISTORICAL AND STATUTORY NOTES**

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**Formerly:**

IC 3-1-32-24.

Acts 1945, c. 208, s. 410.

Acts 1978, P.L.2, SEC.325.

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**→3-14-2-26 Tampering with ballot container or contents**

Sec. 26. A person who:

- (1) during the progress of an election or within the time for preparation required under this title, knowingly breaks open or violates the seal or lock of a ballot box, envelope, container, bag, or voting system component in which ballots have been deposited;
- (2) knowingly obtains a ballot box, envelope, container, bag, or voting system component that contains ballots and cancels, withholds, or destroys a ballot;
- (3) knowingly increases or decreases the number of ballots legally deposited in a ballot box, envelope, container, bag, or voting system component; or
- (4) knowingly makes a fraudulent erasure or alteration on a tally sheet, poll book, list of voters, or election return deposited in a ballot box, envelope, bag, or voting system component;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.471; P.L.103-2005, SEC.30.

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P.L.3-1987, Sec.471, eff. Dec. 1, 1987, substituted "the time for preparation required under this title" for "one hundred eighty (180) days after it" in Subsec. (1); and inserted "container," in Subsecs. (1) through (3).

**2005 Legislation**

P.L.103-2005, Sec.30, amended this section by deleting "or" following "container" in Subsecs. (1) to (3), and following "envelope" in Subsec. (4); inserting "or voting system component" in Subsecs. (1) to (3); and adding "or voting system component" at the end of Subsec. (4).

**Formerly:**

IC 3-1-32-15.

Acts 1945, c. 208, s. 401.

Acts 1978, P.L.2, SEC.317.

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**→3-14-2-27 Causing vote to be incorrectly taken down; false statement, certificate, or return**

Sec. 27. A precinct election officer at the close of the polls, an absentee ballot counter acting under IC 3-11.5-5 or IC 3-11.5-6, or a provisional ballot counter acting under IC 3-11.7-5 who knowingly:

- (1) causes the vote to be incorrectly taken down for a candidate or public question; or
- (2) makes a false statement, certificate, or return of any kind of that vote;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.472; P.L.3-1993, SEC.233; P.L.19-1993, SEC.4; P.L.126-2002, SEC.89.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.472, eff. Dec. 1, 1987, substituted "A precinct election officer" for "An inspector or poll clerk in a precinct" in the first paragraph; and deleted "registered on a voting machine" following "vote" in Subsec. (1).

P.L.3-1993, Sec.233 and P.L.19-1993, Sec.4, amended the section by identical language by inserting "or an absentee ballot counteracting under IC 3-11.5-5 or IC 3-11.5-6, who" in the introductory paragraph.

2002 Legislation

P.L.126-2002, Sec.89, eff. Jan. 1, 2003, amended this section by deleting "or" following "polls", and inserting "or a provisional ballot counter acting under IC 3-11.7-5", in the introductory language.

**Formerly:**

IC 3-1-32-23.

Acts 1945, c. 208, s. 409.

Acts 1978, P.L.2, SEC.324.

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**→3-14-2-28 Fraudulent alteration of election return; intentional destruction of poll book or tally; fraudulent alteration of vote as returned**

Sec. 28. A person who:

- (1) with intent to defraud, alters an election return;
- (2) knowingly destroys, misplaces, or loses a poll book or tally sheet; or
- (3) with intent to defraud, alters the vote of a candidate or on a public question as returned by the county election board or its employees;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.10-1988, SEC.212.

HISTORICAL AND STATUTORY NOTES

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P.L.10-1988, Sec.212, emerg. eff. April 1, 1988, inserted "or on a public question" in Subsec. (3).

**Formerly:**

IC 3-1-32-33.

Acts 1945, c. 208, s. 419.

Acts 1978, P.L.2, SEC.334.

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**→3-14-2-29 Inspecting voting system without authorization**

Sec. 29. A person who knowingly inspects a voting system under IC 3-12-4- 18 without obtaining authorization from the state recount commission to conduct the inspection commits a Class D felony.

CREDIT(S)

As added by P.L.3-1987, SEC.473. Amended by P.L.103-2005, SEC.31.

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P.L.3-1987, Sec.473, eff. Dec. 1, 1987.

2005 Legislation

P.L.103-2005, Sec.31, amended this section by deleting "voting machine or electronic" following "inspects a".

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**→3-14-2-30 Voting at multiple town conventions**

Sec. 30. A person who knowingly votes at a town convention in violation of IC 3-8-5-11(c) commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.167-2001, SEC.9.

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**→3-14-3-1.1 False, fictitious, or fraudulent registration applications or ballots**

Sec. 1.1. A person who knowingly does any of the following commits a Class D felony:

(1) Procures or submits voter registration applications known by the person to be materially false, fictitious, or fraudulent.

(2) Procures, casts, or tabulates ballots known by the person to be materially false, fictitious, or fraudulent.

CREDIT(S)

As added by P.L.103-2005, SEC.32.

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**→3-14-3-2 Failure to cast or return ballot in authorized manner**

Sec. 2. A person who, having procured an official ballot, knowingly fails to cast or return it in the prescribed manner commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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P.L.5-1986, Sec.10, emerg. eff. March 4, 1986.

**Formerly:**

IC 3-1-22-16.

Acts 1945, c. 208, s. 211.

Acts 1978, P.L.2, SEC.306.

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**→3-14-3-3 Interference with watcher's duties**

Sec. 3. A person who knowingly:

- (1) interferes with a watcher;
- (2) prevents a watcher from performing the watcher's duties;
- (3) otherwise violates:
  - (A) IC 3-6-8-3;
  - (B) IC 3-6-8-4;
  - (C) IC 3-6-8-5;
  - (D) IC 3-6-8-6;
  - (E) IC 3-6-9; or
  - (F) IC 3-6-10; or
- (4) violates IC 3-11-13-44(d);

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.5-1989, SEC.74; P.L.2-1998, SEC.9; P.L.221-2005, SEC.135.

## HISTORICAL AND STATUTORY NOTES

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P.L.5-1989, Sec.74, inserted Subsecs. (3)(A) through (3)(F); added Subsec. (4); and made a nonsubstantive change.

1998 Legislation

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**→3-14-3-4 Obstruction of, interference with, or injury of election officer or voter**

Sec. 4. (a) A person who:

- (1) knowingly obstructs or interferes with an election officer in the discharge of the officer's duty; or
- (2) knowingly obstructs or interferes with a voter within the chute;

commits a Class D felony.

(b) A person who knowingly injures an election officer or a voter:

- (1) in the exercise of the officer's or voter's rights or duties; or
- (2) because the officer or voter has exercised the officer's or voter's rights or duties;

commits a Class D felony.

(c) A person called as a witness to testify against another for a violation of this section is a competent witness to prove the offense even though the person may have been a party to the violation. The person shall be compelled to testify as other witnesses. However, the person's evidence may not be used against the person in a prosecution growing out of matters about which the person testifies, and the person is not liable to indictment or information for the offense.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.103-2005, SEC.33.

## HISTORICAL AND STATUTORY NOTES

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2005 Legislation

P.L.103-2005, Sec.33, amended this section by deleting "fifty (50) feet of" following "within", and substituting "chute" for "polls", in Subsec. (a)(2); inserting present Subsec. (b); and redesignating former Subsec. (b) as present Subsec. (c), and dividing the former first sentence therein into the present first two sentences.

**Formerly:**

IC 3-1-32-19.

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**→3-14-3-5 Tampering with voting system**

Sec. 5. A precinct election officer who, with the intent to cause or permit a ballot card voting system or an electronic voting system to fail to correctly register all votes cast, tampers with or disarranges the system or any part of it commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.474; P.L.221-2005, SEC.136.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.474, eff. Dec. 1, 1987, substituted "A precinct election officer" for "An inspector or poll clerk in a precinct"; inserted "ballot card voting system, or electronic voting system" and "system or"; and made other nonsubstantive changes.

## 2005 Legislation

P.L.221-2005, Sec.136, amended this section by deleting all references to voting machines; and making related nonsubstantive changes.

**Formerly:**

IC 3-1-32-22.

Acts 1945, c. 208, s. 408.

Acts 1978, P.L.2, SEC.323.

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**→3-14-3-6 Allowing inaccurately adjusted voting system to be used**

Sec. 6. A precinct election officer who permits a ballot card voting system or an electronic voting system to be used for voting at an election, with knowledge of the fact that the system is not in order or not perfectly set and adjusted so that it will correctly register all votes cast, commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.475; P.L.221-2005, SEC.137.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.475, eff. Dec. 1, 1987, substituted "A precinct election officer" for "An inspector or poll clerk in a precinct"; and inserted "ballot card voting system, or electronic voting system" and "or system".

## 2005 Legislation

P.L.221-2005, Sec.137, amended this section by deleting all references to voting machines; and making related nonsubstantive changes.

## Formerly:

IC 3-1-32-22.

Acts 1945, c. 208, s. 408.

Acts 1978, P.L.2, SEC.323.

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**→3-14-3-7 Removal, change, or mutilation of voting system for purpose of deceiving voter**

Sec. 7. An inspector or poll clerk in a precinct who, for the purpose of:

- (1) deceiving a voter;
- (2) causing it to be doubtful for what ticket, candidate, or public question a vote is cast; or
- (3) causing it to appear that votes cast for one (1) ticket, candidate, or public question were cast for another ticket, candidate, or public question;

removes, changes, or mutilates a voting system or any part of a voting system commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.103-2005, SEC.34.

## HISTORICAL AND STATUTORY NOTES

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2005 Legislation

P.L.103-2005, Sec.34, amended this section by inserting "(1)" in Subsec. (3); and rewriting the concluding language, which read: "removes, changes, or mutilates a ballot label on a voting machine or any part thereof commits a Class D felony".

**Formerly:**

IC 3-1-32-22.

Acts 1945, c. 208, s. 408.

Acts 1978, P.L.2, SEC.323.

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**→3-14-3-8 Damaging, disarranging, or tampering with voting system**

Sec. 8. A person other than a precinct election officer who knowingly, before or during an election:

- (1) damages, disarranges, or tampers with a ballot card system or an electronic voting system; or
- (2) damages a ballot label placed or to be placed on the electronic voting system, or any other appliance used in connection with the ballot card voting system or electronic voting system;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.476; P.L.221-2005, SEC.138.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.476, eff. Dec. 1, 1987, inserted "precinct" before "election officer" in the first paragraph; deleted "and after the ballot label has been placed on a voting machine" from the end of the first paragraph; added provisions relating to ballot card systems and electronic voting systems in Subsecs. (1) and (2); and made other nonsubstantive changes.

## 2005 Legislation

P.L.221-2005, Sec.138, amended this section by deleting all references to voting machines; and making related nonsubstantive changes.

**Formerly:**

IC 3-1-32-31.

Acts 1945, c. 208, s. 417.

Acts 1978, P.L.2, SEC.332.

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**→3-14-3-9 Failure to receive vote of legal voter**

Sec. 9. A person who knowingly fails to receive the vote of a legal voter at an election commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.477.

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P.L.3-1987, Sec.477, eff. Dec. 1, 1987, substituted "Class D felony" for "Class A misdemeanor".

**Formerly:**

IC 3-1-32-34.

Acts 1945, c. 208, s. 420.

Acts 1978, P.L.2, SEC.335.

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**3-14-3-10 Removal, defacing or destruction of supplies, instruction cards from voting booth; removal or destruction of voting booth**

Sec. 10. A person who during an election recklessly:

- (1) removes or destroys any of the supplies or other conveniences placed in the voting booths or delivered to the voter for the purpose of enabling a voter to prepare a ballot;
- (2) removes or defaces the cards printed for the instruction of the voters; or
- (3) removes or destroys a voting booth, railing, or other convenience provided for the election;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.478.

HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.478, eff. Dec. 1, 1987, substituted "Class D felony" for "Class A misdemeanor".

**Formerly:**

IC 3-1-32-39.

Acts 1945, c. 208, s. 425.

Acts 1978, P.L.2, SEC.340.

CROSS REFERENCES

Voter instruction cards, copy of this section, see IC 3-11-3-23.

LIBRARY REFERENCES

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Elections 317.

Westlaw Topic No. 144.

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**→3-14-3-11 Tampering with marking device, ballot or record or equipment; interference with operation or secrecy of voting**

Sec. 11. A person who recklessly:

- (1) tampers with or damages a marking device, ballot, or other record or equipment used in an election;
- (2) interferes with the correct operation of such a device or equipment; or
- (3) interferes with the secrecy of voting;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

- IC 3-2-4-10.
- Acts 1965, c. 281, s. 10.
- Acts 1967, c. 319, s. 10.
- Acts 1978, P.L.2, SEC.358.
- P.L.14-1985, SEC.13.

**LIBRARY REFERENCES**

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- C.J.S. Elections §§ 215, 329, 356.

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**→3-14-3-12 Leaving poll with ballot or ballot marking device**

Sec. 12. A voter who recklessly attempts to leave the polls with a ballot, the pencil, or other marking device used in marking ballots in the voter's possession commits a Class A misdemeanor. A voter who attempts to leave the polls with a ballot, pencil, or other marking device in the voter's possession shall be arrested at once on demand of any member of the precinct election board.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.479.

HISTORICAL AND STATUTORY NOTES

2006 Main Volume

P.L.3-1987, Sec.479, eff. Dec. 1, 1987, inserted "or other marking device" twice; and made other nonsubstantive changes.

RESEARCH REFERENCES

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Ind. Law Encycl. Elections § 74, Interference With Free and Equal Elections -- Removal, Destruction, Interference With Proper Use, or Unauthorized Possession Of, Election Supplies, Devices or Equipment.

I.C. 3-14-3-12, IN ST 3-14-3-12

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**→3-14-3-13 Removal of ballot or marking device from polls; possession outside polls**

Sec. 13. A person who during an election knowingly:

- (1) removes a ballot, pencil, or other marking device from the polls; or
- (2) possesses outside the polls a ballot, pencil, or other marking device either genuine or counterfeit;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.480.

**HISTORICAL AND STATUTORY NOTES**

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P.L.3-1987, Sec.480, eff. Dec. 1, 1987, inserted "or other marking device" in Subsecs. (1) and (2); and made other nonsubstantive changes.

**Formerly:**

IC 3-1-32-45.

Acts 1945, c. 208, s. 431.

Acts 1978, P.L.2, SEC.343.

**CROSS REFERENCES**

Voter instruction cards, copy of this section, see IC 3-11-3-23.

**RESEARCH REFERENCES**

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**Encyclopedias**

Ind. Law Encycl. Elections § 74, Interference With Free and Equal Elections -- Removal, Destruction, Interference With Proper Use, or Unauthorized Possession Of, Election Supplies, Devices or Equipment.

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**→3-14-3-14 Printers; unauthorized printing or delivery of ballots**

Sec. 14. A printer of the ballots for an election, or person employed in printing the ballots, who knowingly:

- (1) delivers a ballot to a person other than the co-directors or authorized representative of the election division or a county election board for which the ballots are being printed;
- (2) prints a ballot in any form other than the one prescribed by law; or
- (3) prints a ballot containing any names, spellings, or arrangements other than as authorized by the commission or a county election board;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1997, SEC.403.

## HISTORICAL AND STATUTORY NOTES

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**1997 Legislation**

P.L.3-1997, Sec.403, emerg. eff. retroactive to Jan. 1, 1997, amended the section by substituting "the co-directors or authorized representative of the election division" for "a member of the state election board" in Subsec. (1); and substituting "commission" for "state election board" in Subsec. (3).

**Formerly:**

IC 3-1-32-46.

Acts 1945, c. 208, s. 432.

Acts 1978, P.L.2, SEC.344.

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**→3-14-3-15 Unauthorized entries at polls**

Sec. 15. A person not authorized by this title who recklessly:

(1) enters the polls;

(2) enters within the railing leading from the challenge window or door to the entrance of the polls without having been passed by the challengers or having been sworn in; or

(3) remains within the polls or within the chute in violation of IC 3-11-8- 15 or IC 3-11-8-16;

commits a Class A misdemeanor.

## CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1997, SEC.404; P.L.14-2004, SEC.176, eff. Mar. 16, 2004.

## HISTORICAL AND STATUTORY NOTES

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**1997 Legislation**

P.L.3-1997, Sec.404, amended the section by inserting "the polls or within", "entrance to the", and "in violation of IC 3-11-8-15 or IC 3-11- 8-16", in Subsec. (3).

**2004 Legislation**

P.L.14-2004, Sec.176, emerg. eff. Mar. 16, 2004.

**Formerly:**

IC 3-1-32-47.

Acts 1945, c. 208, s. 433.

Acts 1978, P.L.2, SEC.345.

## CROSS REFERENCES

Voter instruction cards, copy of this section, see IC 3-11-3-23.

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**→3-14-3-16 Electioneering**

Sec. 16. (a) As used in this section, "electioneering" includes expressing support or opposition to any candidate or political party or expressing approval or disapproval of any public question in any manner that could reasonably be expected to convey that support or opposition to another individual. The term does not include expressing support or opposition to a candidate or a political party or expressing approval or disapproval of a public question in:

- (1) material mailed to a voter; or
  - (2) a telephone or an electronic communication with a voter.
- (b) A person who knowingly does any electioneering:
- (1) on election day within:
    - (A) the polls; or
    - (B) the chute;
  - (2) within an area in the office of the circuit court clerk or a satellite office of the circuit court clerk established under IC 3-11-10-26.3 used by an absentee voter board to permit an individual to cast an absentee ballot; or
  - (3) except for a voter who is:
    - (A) the person's spouse;
    - (B) an incapacitated person (as defined in IC 29-3-1-7.5) for whom the person has been appointed the guardian (as defined in IC 29-3-1-6); or
    - (C) a member of the person's household;
- in the presence of a voter whom the person knows possesses an absentee ballot provided to the voter in accordance with Indiana law;

commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1997, SEC.405; P.L.66-2003, SEC.52; P.L.14-2004, SEC.177, eff. Mar. 16, 2004; P.L.103-2005, SEC.35; P.L.164-2006, SEC.132, eff. Mar. 24, 2006.

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**→3-14-3-17 Inducement of votes by board member or precinct election officer prohibited**

Sec. 17. A member of a precinct election board, a precinct election officer, or a member of an absentee voter board who knowingly induces or persuades a voter to vote for a candidate or for or against a public question while acting as a board member or precinct election officer commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.481; P.L.10-1988, SEC.213; P.L.3-1997, SEC.406.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.481, eff. Dec. 1, 1987, substituted "Class D felony" for "Class A misdemeanor".

P.L.10-1988, Sec.213, emerg. eff. April 1, 1988, inserted "or for or against a public question".

**1997 Legislation**

P.L.3-1997, Sec.406, amended the section by inserting "a precinct election officer, or a member of an absentee voter board" and "while acting as a board member or precinct election officer".

**Formerly:**

IC 3-1-32-35.

Acts 1945, c. 208, s. 421.

Acts 1978, P.L.2, SEC.336.

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C.J.S. Elections § 327.

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**→3-14-3-18 Actions to unlawfully influence voter or candidate**

Sec. 18. (a) As used in this section, "candidate" includes an individual whom the person knows is considering becoming a candidate.

(b) A person who, for the purpose of influencing a voter or candidate, does any of the following commits a Class D felony:

- (1) Seeks to enforce the payment of a debt by force or threat of force.
- (2) Ejects or threatens to eject the voter or candidate from a house the voter or candidate occupies.
- (3) Begins a criminal prosecution.
- (4) Damages the business or trade of the voter or candidate.
- (5) Communicates a threat to commit a forcible felony (as defined in IC 35- 41-1-11) against a voter or candidate with the intent that the voter or candidate:
  - (A) engage in conduct against the voter's or candidate's will; or
  - (B) be placed in fear of retaliation for a prior lawful act as a voter or candidate.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.176-1999, SEC.118; P.L.103-2005, SEC.36.

## HISTORICAL AND STATUTORY NOTES

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**1999 Legislation**

P.L.176-1999, Sec.118, amended the section by adding Subsec. (a) and inserting "or candidate" throughout Subsec. (b).

**2005 Legislation**

P.L.103-2005, Sec.36, amended this section by adding ", does any of the following commits a Class D felony" at the end of the introductory language of Subsec. (b); deleting "or" at the end of Subsec. (b)(3); adding Subsec.

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**→3-14-3-19 Inducing votes by gift or offer to compensate**

Sec. 19. A person who, for the purpose of inducing or procuring another person to:

(1) apply for or cast an absentee ballot; or

(2) vote or refrain from voting for or against a candidate or for or against a public question at an election or political convention;

gives, offers, or promises to any person any money or other property commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.482; P.L.103-2005, SEC.37.

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume

P.L.3-1987, Sec.482, eff. Dec. 1, 1987, substituted "Class D felony" for "Class A misdemeanor".

2005 Legislation

P.L.103-2005, Sec.37, amended this section by rewriting the contents thereof, which read: "A person who, for the purpose of inducing or procuring another person to vote or refrain from voting for or against a candidate or for or against a public question at an election or political convention, gives, offers, or promises to any person any money or other property commits a Class D felony".

**Formerly:**

IC 3-1-30-11.

IC 3-1-32-1.

IC 3-1-32-4 to 3-1-32-8.

IC 3-4-7-1.

Acts 1945, c. 208, ss. 376, 387, 390 to 394.

Acts 1975, P.L.19, SEC.3.

Acts 1976, P.L.6, SEC.1.

Acts 1978, P.L.2, SEC.362.

## LAW REVIEW AND JOURNAL COMMENTARIES

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**→3-14-3-20 Acceptance or solicitation of compensation to induce or procure votes**

Sec. 20. A person who, for the purpose of inducing or procuring a voter to:

- (1) apply for or cast an absentee ballot; or
- (2) vote or refrain from voting for or against a candidate or for or against a public question at an election or political convention;

receives, accepts, requests, or solicits from any person any money or other property commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.483; P.L.103-2005, SEC.38.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.483, eff. Dec. 1, 1987, substituted "Class D felony" for "Class A misdemeanor".

## 2005 Legislation

P.L.103-2005, Sec.38, amended this section by rewriting the contents thereof, which read: "A person who, for the purpose of inducing or procuring a voter to vote or refrain from voting for or against a candidate or for or against a public question at an election or political convention, receives, accepts, requests, or solicits from any person any money or other property commits a Class D felony".

**Formerly:**

IC 3-1-30-11.

IC 3-1-32-2.

IC 3-1-32-5.

IC 3-4-7-2.

Acts 1945, c. 208, ss. 376, 388, 391.

Acts 1975, P.L.19, SEC.3.

Acts 1976, P.L.6, SEC.1.

Acts 1978, P.L.2, SEC.363.

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**→3-14-3-20.5 False or fraudulent absentee ballot applications or voter registration applications**

Sec. 20.5. (a) This section does not apply to activity subject to 18 U.S.C. 1341.

(b) An individual who knowingly:

(1) conspires to obtain property the individual would be entitled to receive as compensation for serving as an elected official by securing false or fraudulent absentee ballot applications or voter registration applications; and

(2) for the purpose of executing the conspiracy:

(A) causes the applications to be sent or delivered by a private or commercial carrier operating entirely within Indiana; or

(B) takes or receives from the private or commercial carrier the false or fraudulent applications, or causes the applications to be delivered by the carrier to another person;

commits a Class D felony.

CREDIT(S)

As added by P.L.103-2005, SEC.39.

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Elections ↻312.

Westlaw Topic No. 144.

C.J.S. Elections § 326.

I.C. 3-14-3-20.5, IN ST 3-14-3-20.5

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**→3-14-3-21 Influencing political opinions or actions of employees in the workplace**

Sec. 21. A person who:

(1) pays employees the salary or wages due in pay envelopes upon which there is printed or in which there is enclosed a political motto, device, or argument containing threats intended or calculated to influence the political opinions or actions of the employees; or

(2) exhibits in the workplace of the person's employees a handbill or placard containing a threat, notice, or information that, if a particular ticket, candidate, or public question is elected, approved, or defeated:

(A) work in the person's place or establishment will cease in whole or in part;

(B) the person's establishment will be closed; or

(C) the wages of the employees will be reduced;

or that is otherwise intended or calculated to influence the political opinions or actions of the employees;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.484; P.L.10-1988, SEC.214.

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume

P.L.3-1987, Sec.484, eff. Dec. 1, 1987, deleted "within ninety (90) days of an election" from the beginning of Subsec. (2); and substituted "Class D felony" for "Class B misdemeanor".

P.L.10-1988, Sec.214, emerg. eff. April 1, 1988, inserted "or public question" and "approved," in the first paragraph in Subsec. (2); and made a nonsubstantive change.

## Formerly:

IC 3-1-30-11.

IC 3-4-7-3.

Acts 1945, c. 208, s. 376.

Acts 1975, P.L.19, SEC.3.

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**→3-14-3-21.5 Voter intimidation**

Sec. 21.5. A person who knowingly or intentionally intimidates, threatens, or coerces an individual for:

- (1) voting or attempting to vote;
- (2) urging or aiding another individual to vote or attempt to vote; or
- (3) exercising any power or duty under this title concerning registration or voting;

commits voter intimidation, a Class D felony.

CREDIT(S)

As added by P.L.103-2005, SEC.40.

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2006 Main Volume

Elections ↪320.

Westlaw Topic No. 144.

C.J.S. Elections §§ 333, 334(2).

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**→3-14-3-23 Poll list maintenance violations**

Sec. 23. A proprietor, a manager, or an association of co-owners who violates IC 3-6-11-5 or IC 3-6-11-7 commits a Class C infraction.

CREDIT(S)

As added by P.L.7-1990, SEC.51.

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Ind. Law Encycl. Elections § 71, Interference With Free and Equal Elections.

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**→3-14-3-24 Poll list use violations**

Sec. 24. An organization that violates IC 3-6-11-7.5 commits a Class C infraction.

CREDIT(S)

As added by P.L.7-1990, SEC.52.

LIBRARY REFERENCES

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C.J.S. Elections §§ 324, 355(2).

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**→3-14-4-1 Unlawfully serving as precinct election board member**

Sec. 1. A person who knowingly serves as a member of a precinct election board in violation of IC 3-6-6 commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.486.

**HISTORICAL AND STATUTORY NOTES**

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P.L.5-1986, Sec.10, emerg. eff. March 4, 1986.

P.L.3-1987, Sec.486, eff. Dec. 1, 1987, substituted "Class D felony" for "Class A misdemeanor".

**Formerly:**

IC 3-1-5-1.

Acts 1945, c. 208, s. 25.

Acts 1951, c. 19, s. 1.

Acts 1965, c. 261, s. 3.

Acts 1969, c. 222, s. 4.

Acts 1978, P.L.2, SEC.301.

P.L.7-1985, SEC.1.

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C.J.S. Elections § 327.

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**→3-14-4-2 Inspectors; negligent or knowing failure to appear at election board's office**

Sec. 2. An inspector who negligently or knowingly fails to appear at the county election board's office in person or by representative as required by IC 3-11-3 commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.487.

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume

P.L.3-1987, Sec.487, eff. Dec. 1, 1987, substituted "Class D felony" for "Class A misdemeanor".

**Formerly:**

IC 3-1-32-16.

Acts 1945, c. 208, s. 402.

Acts 1978, P.L.2, SEC.318.

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**→3-14-4-3 Omission in performance of required duties**

Sec. 3. A precinct election officer or public official upon whom a duty is imposed by this title who knowingly omits to perform the duty commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-17.

Acts 1945, c. 208, s. 403.

Acts 1969, c. 222, s. 35.

Acts 1978, P.L.2, SEC.319.

**LIBRARY REFERENCES**

2006 Main Volume

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Westlaw Topic No. 144.

C.J.S. Elections § 327.

**RESEARCH REFERENCES**

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**Encyclopedias**

Ind. Law Encycl. Elections § 79, Procedural Violations by Election Officers.

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**→3-14-4-3.5 Voter registration information violations**

Sec. 3.5. A circuit court clerk, a member of a board of registration, a county official, or another person responsible for maintaining computerized voter registration information who recklessly fails to comply with IC 3-7- 26.3 more than thirty (30) days after being required to perform a duty under IC 3-7-26.3 commits a Class B misdemeanor.

CREDIT(S)

As added by P.L.3-1993, SEC.234. Amended by P.L.12-1995, SEC.89; P.L.3-1995, SEC.135; P.L.209-2003, SEC.193; P.L.164-2006, SEC.133.

## HISTORICAL AND STATUTORY NOTES

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2006 Legislation

P.L.164-2006, Sec.133, amended this section by deleting Subsec. (a) and the first sentence in Subsec. (b).

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P.L.3-1995, Sec.135, emerg. eff. retroactive to Jan. 1, 1995, rewrote the section. Prior to amendment, the section read:

"A circuit court clerk, member of a board of registration, or county official responsible for maintaining computerized voter registration information who recklessly fails to comply with IC 3-7-7.5 (until its repeal January 1, 1995) or IC 3-7-26 (after December 31, 1994) more than thirty (30) days after being required to perform a duty under IC 3-7-7.5 (until its repeal January 1, 1995) or IC 3-7-26 (after December 31, 1994) commits a Class B misdemeanor."

P.L.12-1995, Sec.89, emerg. eff. retroactive to Jan. 1, 1995 added "(until its repeal January 1, 1995) or IC 3-7-26 (after December 31, 1994)" twice and deleted "not" after "IC 3-7-75".

2003 Legislation

P.L.209-2003, Sec.193, amended this section by inserting "(a) This subsection applies before January 1, 2006."; and by adding Subsec. (b).

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**→3-14-4-4 Allowing observance of voter preparing ballot**

Sec. 4. A member of a precinct election board who recklessly allows a booth or compartment in which a voter is preparing a ballot to be used:

- (1) without a screen; or
- (2) with a screen arranged so as not to shield the preparation of the ballot from observation;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.488.

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P.L.3-1987, Sec.488, eff. Dec. 1, 1987, substituted "Class D felony" for "Class A misdemeanor".

**Formerly:**

IC 3-1-23-17.

Acts 1945, c. 208, s. 256.

Acts 1947, c. 120, s. 31 1/2.

Acts 1969, c. 222, s. 30.

Acts 1978, P.L.2, SEC.309.

Acts 1979, P.L.4, SEC.5.

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**→3-14-4-6 Deposit of ballots not initialed or ballots externally defaced**

Sec. 6. An inspector, or person acting in the inspector's behalf, who knowingly deposits:

- (1) a ballot upon which the initials of the poll clerks or authorized assistant poll clerks do not appear; or
- (2) a ballot on which appears externally a distinguishing mark or defacement;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.490.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.490, eff. Dec. 1, 1987, inserted "or authorized assistant poll clerks" in Subsec. (1); and substituted "Class D felony" for "Class A misdemeanor".

**Formerly:**

IC 3-1-32-26.

Acts 1945, c. 208, s. 412.

Acts 1978, P.L.2, SEC.327.

## LIBRARY REFERENCES

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**→3-14-4-7 Disclosure of how voter voted or information regarding appearance of ballot voted**

Sec. 7. A member of a precinct election board or a person otherwise entitled to the inspection of the ballots who knowingly:

- (1) reveals to another person how a voter has voted; or
- (2) gives information concerning the appearance of any ballot voted;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-28.

Acts 1945, c. 208, s. 414.

Acts 1978, P.L.2, SEC.329.

**CROSS REFERENCES**

Reading of this section to precinct election board, see IC 3-11-8-14.

**LIBRARY REFERENCES**

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**→3-14-4-8 Opening or marking ballot or ascertaining how voter voted**

Sec. 8. A member of a precinct election board, an absentee ballot counter appointed under IC 3-11.5-4-22, or a provisional ballot counter appointed under IC 3-11.7-3 who knowingly:

- (1) opens or marks, by folding or otherwise, a ballot presented by a voter, except as provided by law; or
- (2) tries to find out how the voter voted before the ballot is deposited in the ballot box or cast on a ballot card voting system or an electronic voting system or counted by the absentee ballot counter;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.491; P.L.3-1993, SEC.235 and P.L.19-1993, SEC.5; P.L.126-2002, SEC.90; P.L.221-2005, SEC.139.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.491, eff. Dec. 1, 1987, rewrote Subsec. (2); and substituted "Class D felony" for "Class A misdemeanor". Prior to amendment, Subsec. (2) read:

"(2) tries to find out the names on a ballot before the ballot is deposited in the ballot box;"

P.L.3-1993, Sec.235 and P.L.19-1993, Sec.5, amended the section by identical language to make the provisions applicable to absentee ballot counters.

## 2002 Legislation

P.L.126-2002, Sec.90, eff. Jan. 1, 2003, amended this section by deleting "or" following "board", and inserting "or a provisional ballot counter acting under IC 3-11.7-3", in the introductory language.

## 2005 Legislation

P.L.221-2005, Sec.139, amended this section by deleting all references to voting machines; and making related nonsubstantive changes.

## Formerly:

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**→3-14-4-9 Disclosure of votes or electioneering**

Sec. 9. An election officer who knowingly:

(1) discloses to a person the name of a candidate for whom a voter has voted or how a voter voted on a public question; or

(2) does any electioneering on election day;

commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.10-1988, SEC.215; P.L.66-2003, SEC.53.

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P.L.10-1988, Sec.215, emerg. eff. April 1, 1988, inserted "or how a voter voted on a public question" in Subsec. (1).

2003 Legislation

P.L.66-2003, Sec.53, amended this section by substituting "Class A misdemeanor" for "Class D felony" in the concluding language.

**Formerly:**

IC 3-1-32-40.

Acts 1945, c. 208, s. 426.

Acts 1978, P.L.2, SEC.341.

## CROSS REFERENCES

Voter instruction cards, copy of this section, see IC 3-11-3-23.

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**→3-14-4-10 Provision of information concerning absentee vote count before closing of polls**

Sec. 10. A person who knowingly violates:

- (1) IC 3-11.5-5;
- (2) IC 3-11.5-6;
- (3) IC 3-12-2-1;
- (4) IC 3-12-3-14; or
- (5) IC 3-12-3.5-7;

by providing any other person with information concerning the number of votes a candidate received for an office or cast to approve or reject a public question on absentee ballots counted under IC 3-11.5-5, IC 3-11.5-6, or IC 3-12 before the closing of the polls commits a Class D felony.

CREDIT(S)

As added by P.L.3-1993, SEC.236 and P.L.19-1993, SEC.6. Amended by P.L.3-1995, SEC.136; P.L.221-2005, SEC.140.

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P.L.3-1993, Sec.236 and P.L.19-1993, Sec.6, added the section by identical language.

P.L.3-1995, Sec.136, emerg. eff. May 10, 1995, amended the section by designating Subsecs. (1) and (2); adding Subsecs. (3) through (6); adding "or IC 3-12" in the concluding paragraph; and making other nonsubstantive changes.

## 2005 Legislation

P.L.221-2005, Sec.140, amended this section by deleting former Subsec. (4), which read: "IC 3-12-2.5-9"; and redesignating former Subsecs. (5) and (6) as present Subsecs. (4) and (5).

## CROSS REFERENCES

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**→3-14-5-1 Affidavit against illegal voter**

Sec. 1. (a) This section applies during an election whenever a voter makes an affidavit before the inspector in a precinct that a person who has voted is an illegal voter in the precinct. This section does not apply to an affidavit executed by an individual who:

- (1) is subject to the requirements set forth in IC 3-7-33-4.5;
- (2) is challenged solely as a result of the individual's inability or refusal to comply with IC 3-7-33-4.5; and
- (3) subsequently complies with IC 3-7-33-4.5 before the close of the polls on election day.

(b) Immediately after the close of the polls the inspector shall deliver the affidavit to the county election board for delivery by the prosecuting attorney for the county to the grand jury under section 2 of this chapter. The prosecuting attorney for the county shall:

- (1) proceed as if the affidavit had been made before the prosecuting attorney; and
- (2) ensure that the grand jury notifies the NVRA official under section 2 of this chapter if a violation of NVRA appears to have occurred.

## CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.12-1995, SEC.90; P.L.2-1996, SEC.207; P.L.3-1997, SEC.407; P.L.230-2005, SEC.66.

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P.L.5-1986, Sec.10, emerg. eff. March 4, 1986.

P.L.12-1995, Sec.90, emerg. eff. retroactive to Jan. 1, 1995, designated the subsections; deleted "a primary, general, or municipal" after "during" in Subsec. (a); added Subsec. (b)(2); and made other nonsubstantive changes.

P.L.2-1996, Sec.207, emerg. eff. March 10, 1996, substituted "NVRA official" for "executive director of the state election board" in Subsec. (b)(2).

**1997 Legislation**

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**→3-14-5-2 Affidavits; packaging, sealing, endorsing and delivery to grand jury; inquiry by grand jury**

Sec. 2. (a) Each precinct election board shall, at the close of the polls, place all affidavits prescribed by this title for use on election day to determine the eligibility of a precinct election officer (or a person who wishes to cast a ballot) in a strong paper bag or envelope and securely seal it. Each member shall endorse that member's name on the back of the bag or envelope.

(b) The inspector and judge of the opposite political party shall deliver the sealed bag or envelope to the county election board. The county election board shall do the following:

- (1) Remove the affidavits from the bag or envelope.
- (2) Mail a copy of each affidavit to the secretary of state.
- (3) Replace the affidavits within the bag or envelope.
- (4) Reseal the bag or envelope with the endorsement of the name of each county election board member on the back of the bag or envelope.
- (5) Carefully preserve the resealed bag or envelope and deliver it, with the county election board's seal unbroken, to the foreman of the grand jury when next in session.

(c) The grand jury shall inquire into the truth or falsity of the affidavits, and the court having jurisdiction over the grand jury shall specially charge the jury as to its duties under this section.

(d) The grand jury shall file a report of the result of its inquiry with:

- (1) the court; and
- (2) the NVRA official if a violation of NVRA appears to have occurred.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.12-1995, SEC.91; P.L.2-1996, SEC.208; P.L.3-1997, SEC.408; P.L.230-2005, SEC.67.

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**→3-14-5-3 Duty to report violations to prosecuting attorney and violator; presentation to grand jury**

Sec. 3. (a) This section does not apply to a violation of NVRA or IC 3- 7.

(b) The commission and each county election board shall report a violation of this title as a felony or misdemeanor to the appropriate prosecuting attorney and the alleged violator.

(c) The commission and boards may have the report transmitted and presented to the grand jury of the county in which the violation was committed at its first session after making the report and at subsequent sessions that may be required. The commission and boards shall furnish the grand jury any evidence at their command necessary in the investigation and prosecution of the violation.

**CREDIT(S)**

As added by P.L.5-1986, SEC.10. Amended by P.L.12-1995, SEC.92; P.L.2-1996, SEC.209; P.L.81-2005, SEC.31, eff. April 25, 2005.

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P.L.12-1995, Sec.92, emerg. eff. retroactive to Jan. 1, 1995, added Subsec. (a); designated Subsecs. (b) and (c); substituted "this title as a felony or misdemeanor" for "law" in Subsec. (b); and deleted ", the attorney general," after "prosecuting attorney" in Subsec. (b).

P.L.2-1996, Sec.209, emerg. eff. March 10, 1996, amended the section by substituting "commission" for "state election board" in Subsec. (b); and by inserting "commission and" twice in Subsec. (c).

**2005 Legislation**

P.L.81-2005, Sec.31, emerg. eff. April 25, 2005, amended this section by deleting "(after December 31, 1994)" at the end of Subsec. (a).

**Formerly:**

IC 3-4-5-13.

Acts 1976, P.L.6, SEC.1.

**CROSS REFERENCES**

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**→3-14-5-4 Prosecution of violators**

Sec. 4. In addition to the duties prescribed by IC 33-39, the prosecuting attorney of each circuit shall prosecute each resident of the circuit who the prosecutor believes has violated IC 3-14-1-7, IC 3-14-1-10, IC 3-14-1- 13, IC 3-14-1-14, or IC 3-14-1-14.5 in any circuit of the state.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1995, SEC.137; P.L.3-1997, SEC.409; P.L.98-2004, SEC.45.

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P.L.3-1995, Sec.137, amended the section by deleting "IC 3-14-1-8", "IC 3-14-1-9", "IC 3-14-1-12", and "IC 3-14-1-15", and adding "IC 3-14-1-14.5".

**1997 Legislation**

P.L.3-1997, Sec.409, emerg. eff. May 13, 1997, deleted "IC 3-14-1-4" from the sequence of IC section citations..

**LIBRARY REFERENCES**

2006 Main Volume

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**RESEARCH REFERENCES**

2006 Electronic Update

**Encyclopedias**

Ind. Law Encycl. Elections § 80, Enforcement; Prosecution.

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**→3-14-5-5 Indictment or information; allegations**

Sec. 5. When an election offense is committed, an indictment or information for the offense is sufficient if it alleges that the election was authorized by law without stating the names of the officers holding the election, the candidates voted for, or the offices filled at the election.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-66.

Acts 1945, c. 208, s. 452.

**LIBRARY REFERENCES**

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C.J.S. Elections § 339.

**RESEARCH REFERENCES**

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**→3-14-5-6 Criminal prosecutions; self-incrimination defense not available to witness**

Sec. 6. In a criminal prosecution for violation of IC 3-14-1-7, IC 3-14-1-10, IC 3-14-1-13, IC 3-14-1-14, or IC 3-14-1-14.5, a witness, except the person who is accused and on trial, may not be excused from answering a question or producing a book, paper, or other thing on the ground that the witness' answer or the thing to be produced may tend to incriminate the witness or render the witness liable to a penalty. However, the witness' answer or the thing produced by the witness may not be used in a proceeding against the witness, except in a prosecution for perjury in so testifying.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1995, SEC.138; P.L.3-1997, SEC.410.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1995, Sec.138, amended the section by deleting "IC 3-14-1-8", "IC 3-14-1-9", "IC 3-14-1-12", and "IC 3-14-1-15", and adding "IC 3-14-1-14.5".

**1997 Legislation**

P.L.3-1997, Sec.410, emerg. eff. May 13, 1997, deleted "IC 3-14-1-4" from the sequence of IC section citations..

**Formerly:**

IC 3-1-30-14.

IC 3-1-30-15.

IC 3-1-32-3.

IC 3-4-7-7.

Acts 1945, c. 208, ss. 379, 380, 389.

Acts 1976, P.L.6, SEC.1.

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**→3-14-5-7 Informants; immunity**

Sec. 7. If a person who has given or received money or other property to or from another person for the purpose of influencing any voter's vote at an election informs upon and testifies against the person receiving or giving the money in a criminal prosecution, the person informing and testifying may not be prosecuted in connection with the transaction.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-9.

Acts 1945, c. 208, s. 395.

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**RESEARCH REFERENCES**

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Ind. Law Encycl. Elections § 81, Enforcement; Prosecution -- Testimony of or Matters Produced by Witness; Use Against Witness.

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**→3-14-5-8 Employment of persons convicted of vote fraud; reemployment; injunctions and civil penalties**

Sec. 8. (a) As used in this section, "governmental entity" refers to any of the following:

- (1) A city.
- (2) A town.
- (3) A school corporation.
- (4) An agency of a governmental entity referred to in any of subdivisions (1) through (3).

(b) As used in this section, "date of conviction" refers to the date when:

- (1) in a jury trial, a jury publicly announces a verdict against a person for a felony or Class A misdemeanor;
- (2) in a bench trial, the court publicly announces a verdict against a person for a felony or Class A misdemeanor;  
or
- (3) in a guilty plea hearing, a person pleads guilty or nolo contendere to a felony or Class A misdemeanor.

(c) A person who is convicted under IC 3-14-2 of a felony or Class A misdemeanor that relates to an election for an office for a governmental entity shall not:

- (1) continue employment with;
- (2) obtain future employment with;
- (3) contract with; or
- (4) be a subcontractor under a contract with;

any governmental entity for at least twenty (20) years after the date of conviction.

(d) For at least twenty (20) years after the person's date of conviction, a governmental entity may not:

- (1) employ;
- (2) offer employment to;

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(3) contract with; or

(4) maintain a contractual relationship when a subcontractor is;

a person who is convicted under IC 3-14-2 of a felony or Class A misdemeanor that relates to an election for an office for any governmental entity.

(e) If:

(1) a person was employed by a governmental entity;

(2) the person was convicted under IC 3-14-2 of a felony or Class A misdemeanor relating to an election for an office for a governmental entity;

(3) the person's employment with the governmental entity was discontinued under subsection (c) or (d); and

(4) the person's conviction is reversed, vacated, or set aside;

the governmental entity shall reemploy the person in the same position the person held before the person's conviction or in another position equivalent in benefits, pay, and working conditions to the position the person held before the person's conviction, and the person is entitled to receive any salary or other remuneration that the person would have received if the person's employment had not been discontinued under subsection (c) or (d).

(f) The attorney general may petition a court with jurisdiction for an injunction against a person who violates subsection (c) or a governmental entity that violates subsection (d).

(g) The attorney general may petition a court with jurisdiction to impose a civil penalty of not more than one thousand dollars (\$1,000) on a person who violates subsection (c).

CREDIT(S)

As added by P.L.164-2006, SEC.134.

I.C. 3-14-5-8, IN ST 3-14-5-8

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**→3-14-6-1.1 Grant of request for voter information to be used in prohibited manner; violations**

Sec. 1.1. (a) A person who grants a request for voter registration information under IC 3-7-26.3 or IC 3-7-27 with knowledge that the information will be used in a manner prohibited by IC 3-7-26.3 or IC 3-7-27 commits a Class B infraction.

(b) A person who has previously received a judgment for committing an infraction under this section and knowingly, intentionally, or recklessly violates this section a second time commits a Class D felony.

CREDIT(S)

As added by P.L.209-2003, SEC.195. Amended by P.L.164-2006, SEC.135.

## HISTORICAL AND STATUTORY NOTES

2006 Electronic Update

2006 Legislation

P.L.164-2006, Sec.135, amended this section by deleting Subsec. (a); and redesignating former Subsecs. (b) and (c) as present Subsecs. (a) and (b).

**Formerly:**

IC 3-14-6-1.

P.L.13-1992, SEC.4.

P.L.8-1995, SEC.66.

P.L.12-1995, SEC.93.

P.L.2-1996, SEC.210.

P.L.3-1997, SEC.411.

P.L.209-2003, SEC.194.

## LIBRARY REFERENCES

2006 Main Volume

Elections ↩314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

I.C. 3-14-6-1.1, IN ST 3-14-6-1.1

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**→3-14-6-2 Use of voter registration information for solicitation; infraction; misdemeanor**

Sec. 2. (a) This section does not apply to:

- (1) political activities; or
- (2) political fundraising activities.

(b) A person who uses voter registration information obtained under IC 3-7- 26.3 or IC 3-7-27 to solicit the sale of merchandise, goods, services, or subscriptions commits a Class B infraction.

(c) The court shall:

- (1) keep a record; and
- (2) send a copy of the record to the prosecuting attorney of the county in which the infraction proceeding was tried;

of a judgment for an infraction proceeding tried under this section.

(d) A person who:

- (1) has previously received a judgment for committing an infraction under this section; and
- (2) knowingly or intentionally uses voter registration information in violation of this section;

commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.13-1992, SEC.4. Amended by P.L.12-1995, SEC.94; P.L.3-1997, SEC.412; P.L.209-2003, SEC.196; P.L.164-2006, SEC.136.

## HISTORICAL AND STATUTORY NOTES

2006 Electronic Update

2006 Legislation

P.L.164-2006, Sec.136, amended this section by deleting "IC 3-7-26" and "(after December 31, 2005)," from Subsec. (b).

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HAWAII REVISED STATUTES ANNOTATED  
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CHAPTER 19. ELECTION OFFENSE.  
**§ 19-1 Classes of offenses.**

Except as otherwise provided, offenses against the election laws contained in this title are divided into two classes: "election frauds" and "misdemeanors".

(L 1970, c 26, pt of § 2)

H R S § 19-1, HI ST § 19-1

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**§ 19-3 Election frauds.**

The following persons shall be deemed guilty of an election fraud:

(1) Every person who, directly or indirectly, personally or through another, gives, procures, or lends, or agrees or offers to give, procure, or lend, or who endeavors to procure, any money or office or place of employment or valuable consideration to or for any elector, or to or for any person for an elector, or to or for any person in order to induce any elector to vote or refrain from voting, or to vote or refrain from voting for any particular person or party, or who does any such act on account of any person having voted or refrained from voting for any particular person at any election;

(2) Every person who advances or pays, or causes to be paid, any money to, or to the use of, any other person, with the intent that the money, or any part thereof, shall be expended in bribery at any election, or for any purpose connected with or incidental to any election; or who knowingly pays or causes to be paid any money to any person in the discharge or repayment of any money wholly or partly expended in bribery at any election, or for any purpose connected with or incidental to any election;

(3) Every elector who, before, during or after any election, directly or indirectly, personally or through another, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place, or employment for oneself or any other person for voting or agreeing to vote, or for refraining to vote or agreeing to refrain from voting, or for voting or refraining to vote for any particular person or party;

(4) Every person who, directly or indirectly, personally or through another, makes use of, or threatens to make use of, any force, violence, or restraint; or inflicts or threatens to inflict any injury, damage, or loss in any manner, or in any way practices intimidation upon or against any person in order to induce or compel the person to vote or refrain from voting, or to vote or refrain from voting for any particular person or party, at any election, or on account of the person having voted or refrained from voting, or voted or refrained from voting for any particular person or party; or who by abduction, distress, or any device or contrivance impedes, prevents, or otherwise interferes with the free exercise of the elective franchise;

(5) Every person who, at any election, votes or attempts to vote in the name of any other person, living or dead, or in some fictitious name, or who, having once

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voted, votes or attempts to vote again, or knowingly gives or attempts to give more than one ballot for the same office at one time of voting;

(6) Every person who, before or during an election, knowingly publishes a false statement of the withdrawal of any candidate at the election;

(7) Every person who induces or procures any person to withdraw from being a candidate at an election in consideration of any payment or gift or valuable consideration; or of any threat; and every candidate who withdraws from being a candidate in pursuance of such inducement or procurement;

(8) Every public officer by law required to do or perform any act or thing with reference to any of the provisions in any law concerning elections who wilfully fails, neglects, or refuses to do or perform the same, or who is guilty of any wilful violation of any of the provisions thereof;

(9) Any person wilfully tampering or attempting to tamper with, disarrange, deface, or impair in any manner whatsoever, or destroy any voting machine while the same is in use at any election, or who, after the machine is locked in order to preserve the registration or record of any election made by the same, tampers or attempts to tamper with any voting machine; and

(10) Every person who, directly or indirectly, personally or through another, wilfully designs, alters, accesses, or programs any electronic voting system to cause the system to inaccurately record, tally, or report votes cast on the electronic voting system.

(L 1970, c 26, pt of § 2; am imp L 1984, c 90, § 1; am L 1989, c 88, § 2; am L 2005, c 200, § 2)

#### NOTES, REFERENCES, AND ANNOTATIONS

Cross references. --

As to voting by absentee voter at polls, see § 15-11.

#### NOTES TO DECISIONS

Constitutionality of clause in paragraph (8). --

Former clause in paragraph (8), which read "or who wilfully performs it in such a way as to hinder the objects thereof", was unconstitutionally vague, in violation of the due process clause of Haw. Const., Art. I, § 5; the remainder of the subsection was not invalidated since the other clauses were separable from the unconstitutional clause. *State v. ██████████*, 67 Haw. 398, 688 P.2d 1152, 1984 Haw. LEXIS 130 (1984).

State was not required to seek federal approval of amendments to election fraud and registration statutes under the Federal Voting Rights Act of 1965, where the pertinent provisions had not been altered in substance. *State v. ██████████*, 68 Haw. 516, 722 P.2d 453, 1986 Haw. LEXIS 94 (1986).

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**§ 19-3.5 Voter fraud.**

The following persons shall be guilty of a class C felony:

- (1) Any person who knowingly registers another person to vote when that person is not entitled to register to vote;
- (2) Any person who knowingly votes when the person is not entitled to vote;
- (3) Any person who knowingly takes an oath in this title prescribed or authorized by law and willfully makes any false statement of fact while under oath therein; or
- (4) Any person who willfully makes a false answer to any question asked of the person while under oath in this title prescribed or authorized by law.

(L 1990, c 115, § 2)

"Knowingly." --

Immigration judge erred when he ordered an alien to be removed pursuant to 8 U.S.C.S. § 1227(a)(6)(A), based upon a finding that the alien had knowingly committed voter fraud in violation of HRS § 19-3.5(2); the alien did not have the requisite mens rea to commit voter fraud under § 19-3.5(2) because, although she knowingly voted, she did not know at the time she voted that she was ineligible to do so. McDonald v. Gonzales, 400 F.3d 684, 2005 U.S. App. LEXIS 3498 (2005).

H R S § 19-3.5, HI ST § 19-3.5

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**§ 19-4 Penalties; disqualification for, removal from office; reports of convictions to chief election officer.**

Every person found guilty of an election fraud shall be fined not less than \$100 nor more than \$1,000, or imprisoned at hard labor not more than two years, or both. Besides the punishment, the person shall be disqualified from voting and from being elected to, holding or occupying any office, elective or appointive. If the person so convicted holds any office, either elective or appointive, at the time of the conviction, the office shall at once and without mention in the sentence or other proceeding be vacated by the conviction. The judge before whom the conviction is had shall immediately transmit to the chief election officer and to the respective county clerks the name of the person, the offense of which the person has been convicted and the sentence of the court.

(L 1970, c 26, pt of § 2; am L 1970, c 188, § 39; am imp L 1984, c 90, § 1)

H R S § 19-4, HI ST § 19-4

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**§ 19-6 Misdemeanors.**

The following persons shall be guilty of a misdemeanor:

(1) Any person who offers any bribe or makes any promise of gain, or with knowledge of the same permits any person to offer any bribe or make any promise of gain for the person's benefit to any voter to induce the voter to sign a nomination paper, and any person who accepts any bribe or promise of gain of any kind as consideration for signing the same, whether the bribe or promise of gain be offered or accepted before or after the signing;

(2) Any person who wilfully tears down or destroys or defaces any election proclamation or any poster or notice or list of voters or visual aids or facsimile ballot, issued or posted by authority of law;

(3) Any person printing or duplicating or causing to be printed or duplicated any ballot, conforming as to the size, weight, shape, thickness, or color to the official ballot so that it could be cast or counted as an official ballot in an election;

(4) Every person who is disorderly or creates a disturbance whereby any meeting of the precinct officials or the board of registration of voters during an election is disturbed or interfered with; or whereby any person who intends to be lawfully present at any meeting or election is prevented from attending; or who causes any disturbance at any election; and every person assisting or aiding or abetting any disturbance;

(5) Every person who, either in person or through another, in any manner breaks up or prevents, or endeavors to break up or prevent, the holding of any meeting of the board of registration of voters, or in any manner breaks up or prevents, or endeavors to break up or prevent, the holding of any election;

(6) Any person, other than those designated by section 11-132, who remains or loiters within the area set aside for voting as set forth in section 11- 132 during the time appointed for voting;

(7) Any person, including candidates, carrying on any campaign activities within the area described in section 11-132 during the period of time starting one hour before the polling place opens and ending when the polling place closes for the purpose of influencing votes. Campaign activities shall include the following:

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(A) Any distribution, circulation, carrying, holding, posting, or staking of campaign cards, pamphlets, posters and other literature;

(B) The use of public address systems and other public communication media;

(C) The use of motor caravans or parades; and

(D) The use of entertainment troupes or the free distribution of goods and services;

(8) Any person who opens a return envelope containing an absentee ballot voted under chapter 15 other than those authorized to do so under chapter 15;

(9) Any unauthorized person found in possession of any voting machine or keys thereof;

(10) Every person who wilfully violates or fails to obey any of the provisions of law, punishment for which is not otherwise in this chapter specially provided for.

(L 1970, c 26, pt of § 2; am L 1973, c 217, § 8; am L 1974, c 34, § 5(b); am L 1975, c 36, § 6 and c 146, § 2(b); am L 1976, c 106, § 5; am L 1980, c 264, § 7; am L 1989, c 121, § 2; am L 1990, c 115, § 3)

#### NOTES, REFERENCES, AND ANNOTATIONS

Cross references. --

As to tampering with absentee ballot box or opening it before time prescribed, see § 15-8. As to violation of procedure for counting absentee ballots, see § 15-10. As to holding or display of moveable sign within right-of-way boundaries of public highway or sidewalk or adjacent to highway for political campaign purposes, see § 291C-77.

#### NOTES TO DECISIONS

Where criminal statute, as this section, fails to proscribe specifically the alleged offense, it cannot be said that the defendants are in violation of the statute. *Coray v. Ariyoshi*, 54 Haw. 254, 506 P.2d 13, 1973 Haw. LEXIS 185 (1973).

Where poll watcher is person authorized to be in the precinct in question and where his action therein is not specifically proscribed, it cannot be said that he is in violation of § 11-132 and this section. *Coray v. Ariyoshi*, 54 Haw. 254, 506 P.2d 13, 1973 Haw. LEXIS 185 (1973).

Use of poll watchers information beyond 1000 foot perimeter. --

In the absence of constitutional objections, what is done beyond the 1000 feet perimeter with the information recorded by the poll watchers is a matter strictly for the legislature. *Coray v. Ariyoshi*, 54 Haw. 254, 506 P.2d 13, 1973 Haw. LEXIS 185 (1973). Cited in *State v. Park*, 55 Haw. 610, 525 P.2d 586, 1974 Haw. LEXIS 137 (1974); *State v. Good Guys for Fasi*, 56 Haw. 88, 528 P.2d 811, 1974 Haw. LEXIS 91

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Ga. Code Ann., § 21-2-560

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▪ Article 15. Miscellaneous Offenses (Refs &amp; Annos)

**→ § 21-2-560. False statements**

Except as otherwise provided in Code Section 21-2-565, any person who shall make a false statement under oath or affirmation regarding any material matter or thing relating to any subject being investigated, heard, determined, or acted upon by any public official, in accordance with this chapter, shall be guilty of a misdemeanor.

Laws 1894, p. 115, § 13; Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Penal Code 1895, § 625; Penal Code 1910, § 660; Code 1933, § 34-9901; Code 1933, § 34-1901.

**CROSS REFERENCES**

False swearing, see § 16-10-71.

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections ↪ 318.

Westlaw Key Number Search: 144k318.

C.J.S. Elections § 331.

**RESEARCH REFERENCES****Treatises and Practice Aids**

Molnar Georgia Criminal Law - Crimes and Punishments § 30-1, In General.

Molnar Georgia Criminal Law - Crimes and Punishments § 30-1, In General.

Ga. Code Ann., § 21-2-560, GA ST § 21-2-560

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Ga. Code Ann., § 21-2-561

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▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-561. False registration**

Any person who:

- (1) Registers as an elector knowing that such elector does not possess the qualifications required by law;
- (2) Registers as an elector under any other name than the elector's own name; or
- (3) Knowingly gives false information when registering as an elector

shall be guilty of a felony.

Laws 1894, p. 115, § 13; Laws 1964, Ex. Sess., p. 26, § 1; Laws 1994, p. 1443, § 11; Laws 1998, p. 295, § 1.

Formerly Penal Code 1895, § 625; Penal Code 1910, § 660; Code 1933, § 34- 9901; Code 1933, § 34-1902.

**LIBRARY REFERENCES**

Elections ↪312.

Westlaw Key Number Search: 144k312.

C.J.S. Elections § 326.

Ga. Code Ann., § 21-2-561, GA ST § 21-2-561

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■ Article 15. Miscellaneous Offenses (Refs &amp; Annos)

**→§ 21-2-562. Insertion and alteration of entries in documents; removal; refusal to deliver**

(a) Any person who willfully:

(1) Inserts or permits to be inserted any fictitious name, false figure, false statement, or other fraudulent entry on or in any registration card, electors list, voter's certificate, affidavit, tally paper, general or duplicate return sheet, statement, certificate, oath, voucher, account, ballot or ballot card, or other record or document authorized or required to be made, used, signed, returned, or preserved for any public purpose in connection with any primary or election;

(2) Alters materially or intentionally destroys any entry which has been lawfully made therein; or

(3) Takes or removes any book, affidavit, return, account, ballot or ballot card, or other document or record from the custody of any person having lawful charge thereof, in order to prevent the same from being used or inspected or copied as required or permitted by this chapter

shall be guilty of a felony.

(b) Any person who willfully neglects or refuses, within the time and in the manner required by this chapter, to deliver any such document described in subsection (a) of this Code section into the custody of the officers who are required by this chapter to use or keep the same shall be guilty of a misdemeanor.

Laws 1958, p. 269, § 46; Laws 1964, Ex. Sess., p. 26, § 1; Laws 1977, p. 313, § 2; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1905.

## CROSS REFERENCES

Fraud, generally, see § 23-2-50 et seq.

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

## LIBRARY REFERENCES

Elections ↪ 317, 318.

Westlaw Key Number Searches: 144k317; 144k318.

C.J.S. Elections §§ 329, 331.

## RESEARCH REFERENCES

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Ga. Code Ann., § 21-2-563

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     Chapter 2. Elections and Primaries Generally (Refs & Annos)  
     Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-563. False signatures and statements in nomination petitions**

Any person who knowingly and willfully:

- (1) Signs any nomination petition without having the qualifications prescribed by this chapter;
- (2) Sets any false statement opposite the signature on a nomination petition;
- (3) Signs more nomination petitions than permitted by this chapter;
- (4) Makes a false statement in any affidavit required by this chapter to be appended to or to accompany a nomination petition;
- (5) Signs any name not his or her own to any nomination petition; or
- (6) Materially alters any nomination petition without the consent of the signers

shall be guilty of a felony.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, §§ 34-1908, 34-1909.

**LIBRARY REFERENCES**

Elections ↻317, 318.  
 Westlaw Key Number Searches: 144k317; 144k318.  
 C.J.S. Elections §§ 329, 331.

Ga. Code Ann., § 21-2-563, GA ST § 21-2-563

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Ga. Code Ann., § 21-2-564

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▣ Article 15. Miscellaneous Offenses (Refs &amp; Annos)

**→§ 21-2-564. Nomination petitions; certificates and papers; destruction; fraudulent filing; suppression**

Any person who willfully makes any false nomination certificate or defaces or destroys any nomination petition, nomination certificate, or nomination paper, or letter of withdrawal, knowing the same, or any part thereof, to be made falsely, or suppresses any nomination petition, nomination certificate, or nomination paper, or any part thereof, which has been duly filed shall be guilty of a felony.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1910.

## LIBRARY REFERENCES

Elections ↪ 317, 318.

Westlaw Key Number Searches: 144k317; 144k318.

C.J.S. Elections §§ 329, 331.

Ga. Code Ann., § 21-2-564, GA ST § 21-2-564

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Ga. Code Ann., § 21-2-565

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▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-565. False statement in connection with notices of candidacy and qualifying for party nomination**

(a) Any person knowingly making any false statement in connection with filing a notice of candidacy under Code Section 21-2-132 or in connection with qualifying as a candidate for party nomination under Code Section 21-2-153 commits the offense of false swearing.

(b) The district attorney of any judicial circuit or of the county in which all or the greater portion of any municipality is situated shall furnish all investigative personnel and facilities to the Secretary of State, the superintendent, or political party, as the case may be, as needed to determine the accuracy and correctness of all facts set forth in the affidavits filed pursuant to Code Sections 21-2-132 and 21-2-153 and shall commence prosecution of any person when it appears that a violation of this Code section has occurred.

(c) Where proper venue of any such prosecution would be in another county, the district attorney whose office conducted the investigation shall forward all evidence and other data to the district attorney of the county where venue is proper; and prosecution shall be commenced by such official.

Laws 1974, p. 522, § 1; Laws 1976, p. 205, § 2; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1901.1.

CROSS REFERENCES

False swearing, see § 16-10-71.

LIBRARY REFERENCES

Elections ↩ 318.

Westlaw Key Number Search: 144k318.

C.J.S. Elections § 331.

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Ga. Code Ann., § 21-2-566

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\* Article 15. Miscellaneous Offenses (Refs &amp; Annos)

**→ § 21-2-566. Interference with primaries and elections**

Any person who:

- (1) Willfully prevents or attempts to prevent any poll officer from holding any primary or election under this chapter;
- (2) Uses or threatens violence to any poll officer or interrupts or improperly interferes with the execution of his or her duty;
- (3) Willfully blocks or attempts to block the avenue to the door of any polling place;
- (4) Uses or threatens violence to any elector to prevent him or her from voting;
- (5) Willfully prepares or presents to any poll officer a fraudulent voter's certificate not signed by the elector whose certificate it purports to be;
- (6) Knowingly deposits fraudulent ballots in the ballot box;
- (7) Knowingly registers fraudulent votes upon any voting machine; or
- (8) Willfully tampers with any electors list, voter's certificate, numbered list of voters, ballot box, voting machine, direct recording electronic (DRE) equipment, or tabulating machine

shall be guilty of a felony.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1985, p. 206, § 1; Laws 1998, p. 295, § 1; Laws 2003, Act 209, § 61, eff. July 1, 2003.

Formerly Code 1933, § 34-1924.

**HISTORICAL AND STATUTORY NOTES**

The 2003 amendment by Act 209, in par. (8), substituted "direct recording electronic (DRE) equipment" for "vote recorder".

**LIBRARY REFERENCES**

Elections ↻319.

Westlaw Key Number Search: 144k319.

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Ga. Code Ann., § 21-2-567

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▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→§ 21-2-567. Intimidation of electors**

Any person who uses or threatens to use force and violence, or in any other manner intimidates any other person, to:

(1) Vote or refrain from voting at any primary or election, or to vote or refrain from voting for or against any particular candidate or question submitted to electors at such primary or election; or

(2) Place or refrain from placing his or her name upon a register of electors

shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1934.

**CROSS REFERENCES**

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections ↪320.

Westlaw Key Number Search: 144k320.

C.J.S. Elections § 333.

Ga. Code Ann., § 21-2-567, GA ST § 21-2-567

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Ga. Code Ann., § 21-2-568

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Title 21. Elections

▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-568. Giving unlawful assistance in voting**

Any person who:

- (1) Goes into the voting compartment or voting machine booth while another is voting or marks the ballot or ballot card or registers the vote for another, except in strict accordance with this chapter;
- (2) Interferes with any elector marking his or her ballot or ballot card or registering his or her vote;
- (3) Attempts to induce any elector before depositing his or her ballot or ballot card to show how he or she marks or has marked his or her ballot or ballot card;
- (4) While giving lawful assistance to another, attempts to influence the vote of the elector whom he or she is assisting or marks a ballot or ballot card or registers a vote in any other way than that requested by the voter whom he or she is assisting; or
- (5) Discloses to anyone how another elector voted, except when required to do so in any legal proceeding

shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1989, p. 1090, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1926.

CROSS REFERENCES

Conduct of voters, campaigners, and others at polling places generally, see § 21-2-413.

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

LIBRARY REFERENCES

Elections ↪319.

Westlaw Key Number Search: 144k319.

C.J.S. Elections § 330.

RESEARCH REFERENCES

Forms

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Ga. Code Ann., § 21-2-569

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▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

→ § 21-2-569. Interfering with poll officers

Any person, including any poll officer, who willfully prevents any poll officer from performing the duties imposed on him or her by this chapter shall be guilty of a felony.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1906.

LIBRARY REFERENCES

Elections ↪ 319.

Westlaw Key Number Search: 144k319.

C.J.S. Elections § 330.

Ga. Code Ann., § 21-2-569, GA ST § 21-2-569

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Ga. Code Ann., § 21-2-570

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Title 21. Elections

▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-570. Giving or receiving, money or gifts for purpose of registering as voter, voting, or voting for particular candidate**

Any person who gives or receives, offers to give or receive, or participates in the giving or receiving of money or gifts for the purpose of registering as a voter, voting, or voting for a particular candidate in any primary or election shall be guilty of a felony.

Laws 1840, Cobb's 1851 Digest, p. 819; Laws 1880-81, p. 129, § 1; Laws 1904, p. 97, § 1; Laws 1905, p. 111, § 1; Laws 1906, p. 46, § 1; Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1; Laws 1999, p. 52, § 18.

Formerly Code 1863, § 4443; Code 1868, § 4485; Code 1873, § 4569; Code 1882, § 4569; Penal Code 1895, § 629; Penal Code 1910, §§ 665, 675; Code 1933, §§ 34-9907, 34-9926; Code 1933, § 34-1933.

**CROSS REFERENCES**

Public officers and employees, selling office or dividing fees, see § 45-11- 2.

**LIBRARY REFERENCES**

Elections ↪ 316.

Westlaw Key Number Search: 144k316.

C.J.S. Elections § 332.

**NOTES OF DECISIONS**

**Admissibility of evidence 3**

**Jury instructions 4**

**Sufficiency of indictment 2**

**Validity 1**

**1. Validity**

Statute proscribing buying or selling of votes was not void on its face for vagueness and overbreadth. Code, § 34-1933; U.S.C.A.Const. Amends. 1, 14. King v. State, 1979, 244 Ga. 536, 261 S.E.2d 333. Elections ↪ 311

**2. Sufficiency of indictment**

Acts 1905, p. 111, making it a misdemeanor to buy or sell, or offer to buy or sell, or in any way be concerned with buying or selling, a vote in a primary election, does not confine the offense to the buying of a registered vote; and hence an indictment thereunder was not defective because failing to allege that the person whose vote was bought

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Ga. Code Ann., § 21-2-571

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**→ § 21-2-571. Unlawful voting**

Any person who votes or attempts to vote at any primary or election, knowing that such person does not possess all the qualifications of an elector at such primary or election, as required by law, or who votes or attempts to vote at any primary in violation of Code Section 21-2-223 or who knowingly gives false information to poll officers in an attempt to vote in any primary or election shall be guilty of a felony.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1994, p. 1443, § 12; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1929.

**LIBRARY REFERENCES**

Elections ↪ 313, 318.

Westlaw Key Number Searches: 144k313; 144k318.

C.J.S. Elections §§ 325, 331.

Ga. Code Ann., § 21-2-571, GA ST § 21-2-571

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Ga. Code Ann., § 21-2-572

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▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-572. Repeat voting at primaries and elections**

Any person who votes in more than one precinct in the same primary or election or otherwise fraudulently votes more than once at the same primary or election shall be guilty of a felony.

Laws 1833, Cobb's 1851 Digest, p. 819; Laws 1840, Cobb's 1851 Digest, p. 819; Laws 1964, Ex. Sess., p. 26, § 1; Laws 1982, p. 1512, § 5; Laws 1998, p. 295, § 1.

Formerly Code 1863, § 4442; Code 1868, § 4484; Code 1873, § 4568; Code 1882, § 4568; Penal Code 1895, § 627; Penal Code 1910, § 663; Code 1933, § 34-9904; Code 1933, § 34-1930.

**LIBRARY REFERENCES**

Elections ↪313.

Westlaw Key Number Searches: 144k313.

C.J.S. Elections § 325.

Ga. Code Ann., § 21-2-572, GA ST § 21-2-572

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Ga. Code Ann., § 21-2-573

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▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-573. Unlawful absentee voting**

Any person who votes or attempts to vote by absentee ballot at any primary or election under Article 10 of this chapter and who is not qualified to vote shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1932.

**CROSS REFERENCES**

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections ↻317.

Westlaw Key Number Search: 144k317.

C.J.S. Elections § 329.

**RESEARCH REFERENCES**

**Forms**

5 Brown Georgia Pleading, Prac. & Legal Forms Anno. § 21-2-384 Form 2, Form 2 Oath of Person Assisting Absentee Elector (Statutory Form).

5 Brown Georgia Pleading, Prac. & Legal Forms Anno. § 21-2-384 Form 2, Form 2. Oath of Person Assisting Absentee Elector (Statutory Form).

Ga. Code Ann., § 21-2-573, GA ST § 21-2-573

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Ga. Code Ann., § 21-2-574

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▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-574. Unlawful possession of ballots**

Any person, other than an officer charged by law with the care of ballots or ballot cards or a person entrusted by any such officer with the care of the same for a purpose required by law, who has in his or her possession outside the polling place any official ballot or ballot card shall be guilty of a felony.

Laws 1949, p. 1291, § 2A; Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1912.

**LIBRARY REFERENCES**

Elections ↪317.

Westlaw Key Number Search: 144k317.

C.J.S. Elections § 329.

Ga. Code Ann., § 21-2-574, GA ST § 21-2-574

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Ga. Code Ann., § 21-2-575

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▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

→ § 21-2-575. Counterfeit and facsimile ballots, ballot cards or ballot labels

(a) Any person who makes, constructs, or has in his or her possession any counterfeit of an official ballot, ballot card, or ballot label shall be guilty of a felony.

(b) This Code section shall not be applied to facsimile ballots printed and published as an aid to electors in any newspaper generally and regularly circulated within this state, so long as such facsimile ballot is at least 25 percent larger or smaller than the official ballot of which it is a facsimile. This Code section shall not be applied to any sample or facsimile ballots or ballot labels obtained under Code Section 21-2-400. Nothing in this Code section shall be so construed as to prohibit the procurement and distribution of reprints of the said newspaper printings; nor shall it be so construed as to prohibit the preparation and distribution by election officials of facsimile ballots and ballot labels or portions thereof, provided that they are of a different color and at least 25 percent larger or smaller than the official ballots or ballot labels.

(c) Nothing in this Code section shall be so construed as to prohibit any person from procuring and distributing reprints or portions of reprints of any sample or facsimile ballots or ballot labels as provided in Code Section 21-2-400, provided such reprints or portions of reprints are of a different color and at least 25 percent larger or smaller than the official ballots or ballot labels.

Laws 1949, p. 1291, § 2A; Laws 1964, Ex. Sess., p. 26, § 1; Laws 1969, p. 329, § 25; Laws 1980, p. 1256, § 8; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1913.

LIBRARY REFERENCES

Elections ↪317.

Westlaw Key Number Search: 144k317.

C.J.S. Elections § 329.

Ga. Code Ann., § 21-2-575, GA ST § 21-2-575

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Ga. Code Ann., § 21-2-576

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▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-576. Destroying or delaying delivery of ballots**

Any person who willfully destroys or defaces any ballot or ballot card or willfully delays the delivery of any ballots or ballot cards shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1914.

**CROSS REFERENCES**

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections ↪317.

Westlaw Key Number Search: 144k317.

C.J.S. Elections § 329.

Ga. Code Ann., § 21-2-576, GA ST § 21-2-576

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Ga. Code Ann., § 21-2-577

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▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-577. Removing ballots**

Any person removing any ballot from any book of official ballots, except in the manner provided by this chapter, shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1931.

**CROSS REFERENCES**

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections ↪317.

Westlaw Key Number Search: 144k317.

C.J.S. Elections § 329.

Ga. Code Ann., § 21-2-577, GA ST § 21-2-577

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Ga. Code Ann., § 21-2-578

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▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-578. Prying into ballots and ballot cards**

Any person who, before any ballot or ballot card is deposited in the ballot box as provided by this chapter, willfully unfolds, opens, or pries into any such ballot or ballot card with the intent to discover the manner in which the same has been marked shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1923.

**CROSS REFERENCES**

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections ↪317.

Westlaw Key Number Search: 144k317.

C.J.S. Elections § 329.

Ga. Code Ann., § 21-2-578, GA ST § 21-2-578

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Ga. Code Ann., § 21-2-579

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▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-579. Receiving unlawful assistance in voting**

Any voter at any primary or election who:

- (1) Allows his or her ballot, ballot card, or the face of the voting machine used by him or her to be seen by any person with the apparent intention of letting it be known for a fraudulent purpose how he or she is about to vote;
- (2) Casts or attempts to cast any other than the official ballot or ballot card which has been given to him or her by the proper poll officer, or advises or procures another to do so;
- (3) Without having made the affirmation under oath or declaration required by Code Section 21-2-409, or when the disability which he or she declared at the time of registration no longer exists, permits another to accompany him or her into the voting compartment or voting machine booth or to mark his or her ballot or to register his or her vote on the voting machine or direct recording electronic (DRE) equipment; or.
- (4) States falsely to any poll officer that because of his or her inability to read the English language or because of blindness, near-blindness, or other physical disability he or she cannot mark the ballot or ballot card or operate the voting machine without assistance

shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1989, p. 911, § 2; Laws 1998, p. 295, § 1; Laws 2003, Act 209, § 62, eff. July 1, 2003.

Formerly Code 1933, § 34-1925.

**HISTORICAL AND STATUTORY NOTES**

The 2003 amendment by Act 209, in par. (3), deleted "ballot card or" preceding "to register his or her vote" and substituted "direct recording electronic (DRE) equipment" for "vote recorder".

**CROSS REFERENCES**

Fraud, generally, see § 23-2-50 et seq.

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections ↪ 317, 318.

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Ga. Code Ann., § 21-2-580

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    ☐ Chapter 2. Elections and Primaries Generally (Refs & Annos)  
        ☐ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-580. Tampering with voting machines**

Any person who:

- (1) Unlawfully opens, tampers with, or damages any voting machine to be used or being used at any primary or election;
- (2) Willfully prepares a voting machine for use in a primary or election in improper order for voting; or
- (3) Prevents or attempts to prevent the correct operation of such machine

shall be guilty of a felony.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1915.

**LIBRARY REFERENCES**

Elections ↪317.  
Westlaw Key Number Search: 144k317.  
C.J.S. Elections § 329.

Ga. Code Ann., § 21-2-580, GA ST § 21-2-580

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Ga. Code Ann., § 21-2-581

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▣ Article 15. Miscellaneous Offenses (Refs & Annos)

→ § 21-2-581. Unauthorized possession of voting machine key

Any unauthorized person who makes or knowingly has in his or her possession a key to a voting machine to be used or being used in any primary or election shall be guilty of a felony.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1916.

LIBRARY REFERENCES

Elections ↪317.

Westlaw Key Number Search: 144k317.

C.J.S. Elections § 329.

Ga. Code Ann., § 21-2-581, GA ST § 21-2-581

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Ga. Code Ann., § 21-2-582

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**→ § 21-2-582. Tampering with vote recorders or tabulating machines**

Any person who tampers with or damages any direct recording electronic (DRE) equipment or tabulating computer or device to be used or being used at or in connection with any primary or election or who prevents or attempts to prevent the correct operation of any direct recording electronic (DRE) equipment or tabulating computer or device shall be guilty of a felony.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1; Laws 2003, Act 209, § 63, eff. July 1, 2003.

Formerly Code 1933, § 34-1917.

**HISTORICAL AND STATUTORY NOTES**

The 2003 amendment by Act 209 substituted "direct recording electronic (DRE) equipment" or "vote recorder" and "computer or device" for "machine".

**LIBRARY REFERENCES**

Elections ↻317.

Westlaw Key Number Search: 144k317.

C.J.S. Elections § 329.

**RESEARCH REFERENCES**

**Forms**

5 Brown Georgia Pleading, Prac. & Legal Forms Anno. § 21-2-582 Form 1, Form 1 Tampering With Vote Recorders.

5 Brown Georgia Pleading, Prac. & Legal Forms Anno. § 21-2-582 Form 1, Form 1. Tampering With Vote Recorders.

5 Brown Georgia Pleading, Prac. & Legal Forms Anno. § 21-2-582 Form 2, Form 2 Preventing the Correct Operation of Vote Recorders.

5 Brown Georgia Pleading, Prac. & Legal Forms Anno. § 21-2-582 Form 2, Form 2. Preventing the Correct Operation of Vote Recorders.

Ga. Code Ann., § 21-2-582, GA ST § 21-2-582

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Ga. Code Ann., § 21-2-582.1

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**→ § 21-2-582.1. Altering, modifying, or changing voting equipment**

(a) For the purposes of this Code section, the term "voting equipment" shall mean a voting machine, tabulating machine, optical scanning voting system, or direct recording electronic voting system.

(b) Any person or entity, including but not limited to a manufacturer or seller of voting equipment, who alters, modifies, or changes any aspect of such voting equipment without prior approval of the Secretary of State is guilty of a felony.

Laws 2001, p. 230, § 17; Laws 2003, Act 209, § 64, eff. July 1, 2003.

**HISTORICAL AND STATUTORY NOTES**

The 2003 amendment by Act 209, in subsec. (a), deleted "vote recorder," following "voting machine," and substituted "recording electronic voting system" for "electronic recording voting system".

**LIBRARY REFERENCES**

Elections ↻317.

Westlaw Key Number Search: 144k317.

C.J.S. Elections § 329.

Ga. Code Ann., § 21-2-582.1, GA ST § 21-2-582.1

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Ga. Code Ann., § 21-2-583

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**→ § 21-2-583. Destroying, defacing or removing notices, et cetera**

Any person who:

- (1) Prior to any primary or election, willfully defaces, removes, or destroys any notice or list of candidates posted in accordance with this chapter;
- (2) During any primary or election, willfully defaces, tears down, removes, or destroys any card of instructions, notice of penalties, or diagram printed or posted for the instruction of electors; or
- (3) During any primary or election, willfully removes or destroys any of the supplies or conveniences furnished to any polling place in order to enable electors to vote or the poll officers to perform their duties

shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1918.

**CROSS REFERENCES**

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

- Elections ↪317.
- Westlaw Key Number Search: 144k317.
- C.J.S. Elections § 329.

Ga. Code Ann., § 21-2-583, GA ST § 21-2-583

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Ga. Code Ann., § 21-2-584

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▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→§ 21-2-584. Refusal to administer oath; acting without being sworn**

If any manager refuses or willfully fails to administer the oath to the poll officer in the manner required by this chapter, or if any poll officer shall knowingly act without being first duly sworn, or if any such person shall sign the written form of oath without being duly sworn, or if any manager or any other person authorized to administer oaths shall certify that any such person was sworn when he or she was not, he or she shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1907.

CROSS REFERENCES

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

LIBRARY REFERENCES

Elections ↪314.

Westlaw Key Number Search: 144k314.

C.J.S. Elections § 327.

Ga. Code Ann., § 21-2-584, GA ST § 21-2-584

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Ga. Code Ann., § 21-2-585

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**→ § 21-2-585. Refusal to permit inspection of papers; destruction or removal; superintendents**

(a) Any superintendent or employee of his or her office who willfully refuses to permit the public inspection or copying, in accordance with this chapter, of any general or duplicate return sheet, tally paper, affidavit, petition, certificate, paper, account, contract, report, or any other document or record in his or her custody, or who willfully removes any such document or record from his or her office during said period, or who permits the same to be removed, except pursuant to the direction of any competent authority, shall be guilty of a misdemeanor.

(b) Any superintendent or employee of his or her office who willfully destroys or alters, or permits to be destroyed or altered, any document described in subsection (a) of this Code section during the period for which the same is required to be kept shall be guilty of a felony.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1904.

## CROSS REFERENCES

Primary and election records to be open to public, see § 21-2-72.

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

## LIBRARY REFERENCES

Elections ↻314.

Westlaw Key Number Search: 144k314.

C.J.S. Elections § 327.

Ga. Code Ann., § 21-2-585, GA ST § 21-2-585

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Ga. Code Ann., § 21-2-586

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**→§ 21-2-586. Refusal to permit inspection of papers; destruction or removal; Secretary of State**

(a) If the Secretary of State or any employee of his or her office willfully refuses to permit the public inspection or copying, in accordance with this chapter, of any return, petition, certificate, paper, account, contract, report, or any other document or record in his or her custody, except when in use, or willfully removes any such document or record from his or her office during such period or permits the same to be removed, except pursuant to the direction of competent authority, the Secretary of State or employee of his or her office shall be guilty of a misdemeanor.

(b) If the Secretary of State or any employee of his or her office willfully destroys, alters, or permits to be destroyed or altered any document described in subsection (a) of this Code section during the period for which the same is required to be kept in his or her office, the Secretary of State or employee of his or her office shall be guilty of a felony.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1903.

**CROSS REFERENCES**

Inspection of public records, generally, see § 50-18-70 et seq.

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

Secretary of state, opening of election records to members of public, see § 21-2-51.

Superintendents, primary and election records to be open to public, see § 21-2-72.

**LIBRARY REFERENCES**

Elections ↪314.

Westlaw Key Number Search: 144k314.

C.J.S. Elections § 327.

Ga. Code Ann., § 21-2-586, GA ST § 21-2-586

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Ga. Code Ann., § 21-2-587

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▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-587. Frauds by poll officers**

Any poll officer who willfully:

- (1) Makes a false return of the votes cast at any primary or election;
- (2) Deposits fraudulent ballots or ballot cards in the ballot box or certifies as correct a false return of ballots or ballot cards;
- (3) Registers fraudulent votes upon any voting machine or certifies as correct a return of fraudulent votes cast upon any voting machine;
- (4) Makes any false entries in the electors list;
- (5) Destroys or alters any ballot, ballot card, voter's certificate, or electors list;
- (6) Tampers with any voting machine, direct recording electronic (DRE) equipment, or tabulating computer or device;
- (7) Prepares or files any false voter's certificate not prepared by or for an elector actually voting at such primary or election; or
- (8) Fails to return to the officials prescribed by this chapter, following any primary or election, any keys of a voting machine, ballot box, general or duplicate return sheet, tally paper, oaths of poll officers, affidavits of electors and others, record of assisted voters, numbered list of voters, electors list, voter's certificate, spoiled and canceled ballots or ballot cards, ballots or ballot cards deposited, written, or affixed in or upon a voting machine, DRE memory cards, or any certificate or any other paper or record required to be returned under this chapter

shall be guilty of a felony.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1985, p. 206, § 1; Laws 1998, p. 295, § 1; Laws 2003, Act 209, § 65, eff. July 1, 2003.

Formerly Code 1863, § 1238; Code 1868, § 1319; Code 1873, § 1292; Code 1882, § 1292; Civil Code 1895, § 74; Civil Code 1910, § 84; Code 1933, § 34-1501; Code 1933, § 34-1921.

**HISTORICAL AND STATUTORY NOTES**

The 2003 amendment by Act 209, in par. (6), substituted "direct recording electronic (DRE) equipment, or tabulating computer or device" for "vote recorder, or tabulating machine"; and, in par. (8), substituted "DRE

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Ga. Code Ann., § 21-2-588

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**→ § 21-2-588. Count and return of votes**

Any poll officer who counts any votes before the close of the polls or before the last person has voted, whichever occurs later in time, on the day of any primary or election shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1939.

**LIBRARY REFERENCES**

Elections ↪ 314.

Westlaw Key Number Search: 144k314.  
C.J.S. Elections § 327.

Ga. Code Ann., § 21-2-588, GA ST § 21-2-588

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Ga. Code Ann., § 21-2-589

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**→ § 21-2-589. Omissions by poll officers**

Any poll officer who willfully:

- (1) Fails to file the voter's certificate of any elector actually voting at any primary or election;
- (2) Fails to record voting information as required by this chapter; or
- (3) Fails to insert in the numbered list of voters the name of any person actually voting

shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1922.

**LIBRARY REFERENCES**

Elections ↪314.

Westlaw Key Number Search: 144k314.

C.J.S. Elections § 327.

Ga. Code Ann., § 21-2-589, GA ST § 21-2-589

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Ga. Code Ann., § 21-2-590

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**→ § 21-2-590. Poll officers permitting unregistered persons to vote; refusing to permit qualified electors to vote; permitting unauthorized assistance of elector**

Any poll officer who:

- (1) Permits any unregistered person to vote at any primary or election, knowing such person is unregistered;
- (2) Permits any person registered as an elector to vote, knowing that such person is not qualified to vote, whether or not such person has been challenged;
- (3) Refuses to permit any duly registered and qualified person to vote at any primary or election, with the knowledge that such person is entitled to vote; or
- (4) Renders assistance to an elector in voting in violation of Code Section 21-2-409, or knowingly permits another person to render such assistance in violation of Code Section 21-2-409

shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1920.

## CROSS REFERENCES

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

## LIBRARY REFERENCES

Elections ↻314.

Westlaw Key Number Search: 144k314.

C.J.S. Elections § 327.

## NOTES OF DECISIONS

**Rejection of qualified votes 1**

## 1. Rejection of qualified votes

In an action to recover for the forfeiture provided for in Act May 31, 1870, § 4, 16 Stat. 141, "An act to enforce the

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Ga. Code Ann., § 21-2-591

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**→ § 21-2-591. Poll officers permitting unlawful assistance**

Any poll officer who permits a voter to be accompanied by another into the voting compartment or voting machine booth when such poll officer knows that the disability which the voter declared at the time of registration no longer exists or that the disability which the voter declared at the time of voting did not exist shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1927.

**CROSS REFERENCES**

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections ↩314.

Westlaw Key Number Search: 144k314.

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Ga. Code Ann., § 21-2-592

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**→§ 21-2-592. Failure to keep and return record of assisted voters**

Any poll officer who willfully fails to keep a record, as required by Code Section 21-2-409, of the name of each voter who received assistance, the exact disability of any assisted voter which makes the assistance necessary, and the name of each person rendering assistance to a voter shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1928.

**CROSS REFERENCES**

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections ↪144.

Westlaw Key Number Search: 144k144.

C.J.S. Elections §§ 108, 135.

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Ga. Code Ann., § 21-2-593

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<sup>Ⓜ</sup> Chapter 2. Elections and Primaries Generally (Refs & Annos)        <sup>Ⓜ</sup> Article 15. Miscellaneous Offenses (Refs & Annos)**→ § 21-2-593. Law enforcement officer; failure to quell disturbances at polls; hindering or delaying poll officers and others**

Any law enforcement officer who:

- (1) Willfully neglects or refuses to clear an avenue to the door of any polling place which is obstructed in such a way as to prevent electors from entering, when called upon to do so by any poll officer or elector of the precinct;
- (2) Willfully neglects or refuses to maintain order and quell any disturbance if such arises at any polling place upon the day of any primary or election, when called upon to do so by any poll officer or elector of the precinct; or
- (3) Willfully hinders or delays, or attempts to hinder or delay, any poll officer in the performance of any duty under this chapter

shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1982, p. 1512, § 5; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1919.

**CROSS REFERENCES**

Law enforcement officers and agencies, generally, see § 35-1-1 et seq.

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections ↻144.

Westlaw Key Number Search: 144k144.

C.J.S. Elections §§ 108, 135.

Ga. Code Ann., § 21-2-593, GA ST § 21-2-593

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**→ § 21-2-594. Offenses by printers of ballots**

Any printer employed to print any official ballots or ballot cards for use in a primary or election, or any person engaged in printing the same, who:

(1) Appropriates to himself or herself or gives or delivers, or knowingly permits to be taken, any of said ballots or ballot cards by any unauthorized person; or

(2) Willfully and knowingly prints, or causes to be printed, any official ballot or ballot cards in any form other than that prescribed by the appropriate officials or with any other names or printing, or with the names spelled otherwise than as directed by such officials or the names or printing thereon arranged in any other way than that authorized and directed by this chapter

shall be guilty of a felony.

Laws 1922, p. 97, § 6; Laws 1964, Ex. Sess., p. 26, § 1; Laws 1983, p. 140, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, §§ 34-1907, 34-9917; Code 1933, § 34-1911.

**LIBRARY REFERENCES**

Elections ↪317.

Westlaw Key Number Search: 144k317.

C.J.S. Elections § 329.

Ga. Code Ann., § 21-2-594, GA ST § 21-2-594

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**→ § 21-2-596. Failure to perform duty**

Any public officer or any officer of a political party or body on whom a duty is laid by this chapter who willfully neglects or refuses to perform his or her duty shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1935.

## CROSS REFERENCES

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

## LIBRARY REFERENCES

Elections ↻314.

Westlaw Key Number Search: 144k314.

C.J.S. Elections § 327.

## NOTES OF DECISIONS

**Advertisement of additional registration places 1**

## 1. Advertisement of additional registration places

Statute requiring advertisement of additional registration places is capable of enforcement by disenfranchisement of voters in appropriate cases, mandamus or injunction against registrars as to future registration and criminal prosecution of responsible public officers where it is willfully abrogated. Code, §§ 34-610(c), 34-1935. *Malone v. Tison*, 1981, 248 Ga. 209, 282 S.E.2d 84. Elections ↻ 57; Elections ↻ 115; Injunction ↻ 80; Mandamus ↻ 74(2)

Ga. Code Ann., § 21-2-596, GA ST § 21-2-596

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▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-597. Hindering or delaying performance of duty**

Any person who intentionally interferes with, hinders, or delays or attempts to interfere with, hinder, or delay any other person in the performance of any act or duty authorized or imposed by this chapter shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1936.

**CROSS REFERENCES**

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections ↪ 319.

Westlaw Key Number Search: 144k319.

C.J.S. Elections § 330.

Ga. Code Ann., § 21-2-597, GA ST § 21-2-597

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Ga. Code Ann., § 21-2-598

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▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→§ 21-2-598. Punishment for misdemeanors**

Except as otherwise provided by law, any person who violates any provision of this chapter shall be guilty of a misdemeanor.

Laws 1998, p. 295, § 1.

**CROSS REFERENCES**

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections ↪312, 313, 314, 316, 317, 318, 319.

Westlaw Key Number Searches: 144k312; 144k313; 144k314; 144k316; 144k317; 144k318; 144k319.

C.J.S. Elections §§ 325 to 327, 329 to 332.

Ga. Code Ann., § 21-2-598, GA ST § 21-2-598

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## → § 21-2-599. Punishment for felonies

Any person convicted of a misdemeanor under this chapter shall be subject to any one or more of the following, in the discretion of the trial judge:

- (1) A fine of not less than \$100.00 nor more than \$1,000.00;
- (2) A sentence of confinement in the county jail or other place of imprisonment for a period not to exceed six months; or
- (3) A sentence of confinement in a county correctional institution or other appropriate institution under the jurisdiction of the Department of Corrections not to exceed 12 months.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1977, p. 1053, § 11; Laws 1985, p. 283, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1941; Code 1981, § 21-2-598.

## LIBRARY REFERENCES

Elections ↻323, 332.

Westlaw Key Number Searches: 144k323; 144k332.

C.J.S. Elections §§ 353, 355.

Ga. Code Ann., § 21-2-599, GA ST § 21-2-599

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Ga. Code Ann., § 21-2-600

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**→ § 21-2-600. Use of list of electors for commercial purposes**

Any person convicted of a felony under this chapter shall be punished by a fine not to exceed \$10,000.00 or imprisonment of not less than one year nor more than ten years, or both, in the discretion of the trial court, or may be punished as for a misdemeanor in the discretion of the trial court.

Laws 1964 Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1; Laws 1998, p. 1231, §§ 19, 42.

Formerly Code 1933, § 34-1940; Code 1981, § 21-2-599.

**CROSS REFERENCES**

Felony punishable by ten years imprisonment or less, imposition of misdemeanor punishment, see § 17-10-5.

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

Repeat felony offenders, punishment and eligibility for parole, see § 17-10-7.

**LIBRARY REFERENCES**

Elections ↪ 323, 332.

Westlaw Key Number Searches: 144k323; 144k332.

C.J.S. Elections §§ 353, 355.

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▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-601. Soliciting persons to register to vote**

Any person who intentionally uses the list of electors provided for in Code Section 21-2-225 for commercial purposes shall be guilty of a misdemeanor.

Laws 1990, p. 143, § 7; Laws 1994, p. 1443, § 13; Laws 1998, p. 295, § 1.

Formerly Code 1981, § 21-2-600.

**CROSS REFERENCES**

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections ↪317.

Westlaw Key Number Search: 144k317.

C.J.S. Elections § 329.

Ga. Code Ann., § 21-2-601, GA ST § 21-2-601

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Ga. Code Ann., § 21-2-602

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**→ § 21-2-602. Compensation for soliciting persons to register to vote based upon number of persons registered**

It shall be illegal to receive, accept, offer, or provide compensation for soliciting persons to register to vote based upon the number of persons registered and any person who knowingly receives, accepts, offers, or provides such compensation on such basis shall be guilty of a misdemeanor.

Laws 1994, p. 1443, § 14; Laws 1998, p. 295, § 1.

Formerly Code 1981, § 21-2-600.

**CROSS REFERENCES**

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections ↪317.

Westlaw Key Number Search: 144k317.

C.J.S. Elections § 329.

Ga. Code Ann., § 21-2-602, GA ST § 21-2-602

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Ga. Code Ann., § 21-2-603

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**→ § 21-2-603. Conspiracy to commit election fraud; violations**

A person commits the offense of conspiracy to commit election fraud when he or she conspires or agrees with another to commit a violation of this chapter. The crime shall be complete when the conspiracy or agreement is effected and an overt act in furtherance thereof has been committed, regardless of whether the violation of this chapter is consummated. A person convicted of the offense of conspiracy to commit election fraud involving a violation of this chapter which is a felony shall be punished by imprisonment for not less than one year nor more than one-half the maximum period of time for which he or she could have been sentenced if he or she had been convicted of the crime conspired to have been committed, by one-half the maximum fine to which he or she could have been subjected if he or she had been convicted of such crime, or both. A person convicted of the offense of conspiracy to commit election fraud involving a violation of this chapter which is a misdemeanor shall be punished as for a misdemeanor.

Laws 2005, Act 53, § 65, eff. July 1, 2005.

Ga. Code Ann., § 21-2-603, GA ST § 21-2-603

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15 Del.C. § 2301

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Title 15. Elections

Part II. Registration of Voters

Chapter 23. Penal and Enforcement Provisions

**→§ 2301. Neglect of duty; corrupt or fraudulent conduct; penalty**

Whoever, being a member of a department, is guilty of any wilful neglect of any duty imposed by this title or of any corrupt or fraudulent conduct or practice in the execution of such duty shall be fined not more than \$200 or imprisoned not more than 2 years or both.

45 Laws 1945, ch. 144, § 8; 45 Laws 1945, ch. 148, § 8; 45 Laws 1945, ch. 149, § 8.

CROSS REFERENCES

Voter registration, constitutional provision, see Del. Const. Art. 5, § 4.

Voting, registration, and elections, see Del. Const. Art. 5, § 1 et seq.

LIBRARY REFERENCES

Elections 314.

Westlaw Key Number Search: 144k314.

C.J.S. Elections § 327.

15 Del.C. § 2301, DE ST TI 15 § 2301

Current through 75 Laws 2006, ch. 441.

Revisions to Acts from the Second Regular Session 143rd General Assembly made by the Delaware Code Revisors were unavailable at time of publication.

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West's Delaware Code Annotated Currentness

Title 15. Elections

Part II. Registration of Voters

Chapter 23. Penal and Enforcement Provisions

**→§ 2302. Wrongful registration; assault; riot; breach of peace; penalty**

Whoever causes or attempts to cause himself or herself to be registered in: (1) The name of any other person living or dead or under any fictitious name; or (2) any election district in this State, knowing that he or she has not the right to be registered; or (3) whoever, knowing himself or herself to be registered in any election district in this State, causes or attempts to cause himself or herself to be registered in any other election district in this State without having first caused his or her record to be removed from the Election District Record in which his or her original permanent registration record may have been previously entered; or (4) whoever, knowing himself or herself to be disqualified as a voter at the next following general election, causes or attempts to cause himself or herself to be entered in the Election District Record in any election district in this State as a registered voter therein or unlawfully interferes with any registrar, alternate registrar or assistant registrar in the discharge of his or her duties under this title; or (5) whoever makes any assault or commits any assault and battery or incites or creates any riot or breach of the peace at or near to any place of registration in this State during the sitting of any registration officers; shall be fined not less than \$50 or more than \$200 or imprisoned not less than 30 days or more than 2 years or both.

19 Laws 1891, ch. 38, § 21; 21 Laws 1898, ch. 36, § 24; 34 Laws 1925, ch. 106, § 1; 50 Laws 1955, ch. 170, § 1; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## CROSS REFERENCES

Assault and related offenses, see 11 Del.C. § 601 et seq.

Disorderly conduct, see 11 Del.C. § 1301.

Riot, generally, see 11 Del.C. § 1302.

## LIBRARY REFERENCES

Elections ↪312, 319.

Westlaw Key Number Searches: 144k312; 144k319.

C.J.S. Elections §§ 326, 330.

## NOTES OF DECISIONS

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→§ 2303. Registration records; fraudulent entries; alterations, obliterations or omissions; loss; destruction; mutilation; secretion; false copies; penalty

(a) Whoever, being a registrar, alternate registrar or assistant registrar:

(1) Fraudulently enters or permits to be entered in any registration record the name of any person as a registered voter who is not entitled to be entered therein as a registered voter; or

(2) Fraudulently refuses or omits to register or fraudulently misspells in any registration record in his or her charge the name of any person entitled under this title to have his or her name entered in such registration records; or

(3) Fraudulently removes from any Election District Record in his or her charge the original permanent registration record of any person entered therein; or

(4) Makes any entry in any registration record, except at the time and in the manner in this title provided; or

(5) Does anything which is by this title forbidden to do; or

(6) Whoever, being a registrar, alternate registrar or assistant registrar, inspector or judge of election:

a. Loses any registration records which may be in his or her charge or custody; or

b. Willfully destroys, mutilates, defaces, falsifies or fraudulently removes or secretes any registration record; or

c. Knowingly makes any false entry in or false copy of any registration record or any part thereof; or

d. Fraudulently makes any entry, erasure or alteration in any registration record;

shall be deemed to have knowingly and willfully violated his or her official duty and shall be fined in such amount or imprisoned for such term or both as the court in its discretion may determine.

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**→§ 2304. Alcoholic liquor in registration places; penalty**

Whoever, during the sitting of the registration officers in any election district in this State, brings, takes, orders or sends into, or attempts to bring, take or send into, any place of registration any alcoholic liquor, or, at any such time or place, drinks or partakes of any such liquor, shall be fined not more than \$100 or imprisoned not more than 90 days, or both.

19 Laws 1891, ch. 39, § 32; 21 Laws 1898, ch. 36, § 22; 34 Laws 1925, ch. 106, § 1.

## LIBRARY REFERENCES

Intoxicating Liquors ↪139.

Westlaw Key Number Search: 223k139.

C.J.S. Intoxicating Liquors §§ 323, 361 to 364, 366 to 368.

15 Del.C. § 2304, DE ST TI 15 § 2304

Current through 75 Laws 2006, ch. 441.

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**→§ 2305. Intimidation of registration officers; penalty**

If any person, firm, corporation or employer existing or doing business in this State hinders, coerces or intimidates or attempts to hinder, coerce or intimidate any person who has been appointed a registration officer under the laws of this State from qualifying and performing such person's duties as such by threats of depriving such person of employment or occupation, absolutely or contingently, directly or indirectly, shall be liable to a penalty of \$500, recoverable by the Attorney General by civil action in any court of competent jurisdiction in the name of the State, and for the use and benefit of this State.

In any trial under this section the acts of any officer of a corporation, so far as they affect an employee or servant of such corporation, shall be taken and held to be the acts of the corporation, whether special or general authority as to such acts from the corporation is shown or not.

Nothing contained in this section shall be construed to relieve any officer of a corporation from individual liability under this section.

45 Laws 1945, ch. 144, § 24; 45 Laws 1945, ch. 148, § 24; 45 Laws 1945, ch. 149, § 24; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## LIBRARY REFERENCES

Elections ↪320.

Westlaw Key Number Search: 144k320.

C.J.S. Elections §§ 333, 334(2).

15 Del.C. § 2305, DE ST TI 15 § 2305

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**→§ 2306. Notice to Attorney General of violations of registration laws**

Each department shall notify the Attorney General of all violations of the registration laws.

45 Laws 1945, ch. 144, § 9; 45 Laws 1945, ch. 148, § 9; 45 Laws 1945, ch. 149, § 9; 49 Laws 1953, ch. 4, § 5.

15 Del.C. § 2306, DE ST TI 15 § 2306

Current through 75 Laws 2006, ch. 441.

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**→§ 2307. Unauthorized entering of registration area; interference with registration; penalty**

(a) Whoever, not being a registration officer or other department of elections personnel, enters the prohibited registration area, as stipulated in § 2011 of this title, during the hours of registration other than to register to vote shall be fined not less than \$100 nor more than \$1,000 or imprisoned not less than 30 days nor more than 2 years, or both.

(b) Whoever enters the prohibited registration area, as stipulated in § 2011 of this title, during the hours of registration for the purpose of interfering with the registration officers in the discharge of their duties or whoever attempts to molest, disturb or prevent the registration officers or any of those seeking to register from proceeding regularly with registration, shall be fined not less than \$500 nor more than \$1,000 or imprisoned not less than 90 days nor more than 3 years, or both.

58 Laws 1972, ch. 401, § 3.

## LIBRARY REFERENCES

Elections ↪319.

Westlaw Key Number Search: 144k319.

C.J.S. Elections § 330.

15 Del.C. § 2307, DE ST TI 15 § 2307

Current through 75 Laws 2006, ch. 441.

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**→§ 5101. Jurisdiction of Court**

The Superior Court shall have exclusive, original jurisdiction of offenses under this title and no prosecution for the violation of any section of this title shall be brought in any other court.

## CROSS REFERENCES

Election offenses, constitutional provisions, see Del. Const. Art. 5, §§ 7 to 9

Enumeration of election offenses, effect, see Del. Const. Art. 5, § 9.

Voting, registration, and elections, see Del. Const. Art. 5, § 1 et seq.

## LIBRARY REFERENCES

Elections  325.

Westlaw Key Number Search: 144k325.

## RESEARCH REFERENCES

**Encyclopedias**

15 Am. Jur. Trials 1, Unfair Election Campaign Practices.

15 Del.C. § 5101, DE ST TI 15 § 5101

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**→§ 5102. Prosecution by Attorney General; duty to report violations**

(a) The Attorney General shall immediately prosecute to final judgment all complaints which may be made of a violation of this title.

(b) Each department of election and all election officers shall notify the Attorney General of all violations of this title.

19 Laws 1891, ch. 39, § 53; 45 Laws 1945, ch. 144, § 9; 45 Laws 1945, ch. 148, § 9; 45 Laws 1945, ch. 149, § 9; 49 Laws 1953, ch. 4, § 5.

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Elections and political activities, Federal crimes and offenses, see 18 USCA § 591 et seq.

15 Del.C. § 5102, DE ST TI 15 § 5102

Current through 75 Laws 2006, ch. 441.

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**→§ 5103. Irregularities or defects in election as a defense**

Irregularities or defects in the mode of noticing, canvassing, polling or conducting any election shall not be a defense to a prosecution for any violation of this title.

19 Laws 1891, ch. 39, § 51.

LIBRARY REFERENCES

Elections ↪321.

Westlaw Key Number Search: 144k321.

15 Del.C. § 5103, DE ST TI 15 § 5103

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**→§ 5104. Honest belief as a defense**

Upon any prosecution for procuring, offering or casting an illegal vote, the accused may give in evidence any fact tending to show that he or she honestly believed upon good reason that the vote complained of was a lawful one.

19 Laws 1891, ch. 39, § 52; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

**LIBRARY REFERENCES**

Elections ↪321.

Westlaw Key Number Search: 144k321.

15 Del.C. § 5104, DE ST TI 15 § 5104

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**→§ 5105. Application to school elections**

The provisions of this chapter shall additionally be applicable to any local school elections held under Title 14.

67 Laws 1990, ch. 243, § 10.

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**In general 1**

## 1. In general

The Cape Henlopen School District did not violate any criminal statutes when it offered a free pizza party for the school with the documented highest percentage of students whose parents voted in a district referendum. Nor did an alleged \$5000 donation to Cape that paid for Cape's support of the referendum violate Delaware's Campaign Finance Act. Title 15, including, 15 Del. C. § 5105 criminalizes specified conduct by or toward election officers. No allegations regarding the conduct of or toward election officers arose in Cape Henlopen. A civil cause would be possible pursuant to 15 Del. C. § 5162 if the voter can allege that a person attempted to control the exercise of his or her right to vote. Because this statute creates a civil claim rather than a criminal offense, the Attorney General has no jurisdiction to enforce its provisions. Op.Atty.Gen 06-IB04, (March 23, 2006) 2006 WL 1242015

15 Del.C. § 5105, DE ST TI 15 § 5105

Current through 75 Laws 2006, ch. 441.

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**→§ 5112. Refusal of inspector or judge of election to serve; penalty**

Whoever, having been appointed an inspector or judge of election in any election district, refuses to serve shall be fined \$50.

21 Laws 1898, ch. 38, § 11.

LIBRARY REFERENCES

Elections ↪314.  
 Westlaw Key Number Search: 144k314.  
 C.J.S. Elections § 327.

15 Del.C. § 5112, DE ST TI 15 § 5112

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**→§ 5113. Refusal of clerk of election to qualify or serve; penalty**

Whoever, having been appointed a clerk of election, refuses to qualify or having qualified fails or refuses to perform any of the duties of his or her office shall be fined not less than \$50 nor more than \$100.

28 Laws 1915, ch. 92; 37 Laws 1931, ch. 120; 42 Laws 1939, ch. 115, § 13; 45 Laws 1945, ch. 148, § 29; 45 Laws 1945, ch. 149, § 29; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections ↪314.

Westlaw Key Number Search: 144k314.

C.J.S. Elections § 327.

15 Del.C. § 5113, DE ST TI 15 § 5113

Current through 75 Laws 2006, ch. 441.

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**→§ 5114. Improper conduct of printer of ballots and ballot envelopes;  
 penalty.**

If the printer of the ballot or envelope or any person employed in printing the same:

(1) Knowingly gives or delivers or knowingly permits to be taken any ballots or envelopes by any person other than the department of elections for whom such ballots and envelopes are being printed; or

(2) Prints or causes or permits to be printed any ballot or envelope in any other form than the one prescribed by this title or with any other names thereon than those authorized by the department of elections or with the names spelled or the names or devices thereon arranged in any other way than that authorized and directed by the department of elections,

he or she shall be fined not less than \$100 nor more than \$500 or imprisoned not less than 1 nor more than 5 years, or both.

19 Laws 1891, ch. 37, § 10; 27 Laws 1913, ch. 65; 58 Laws 1971, ch. 148, § 119; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections ↪309.  
 Westlaw Key Number Search: 144k309.  
 C.J.S. Elections §§ 324, 355(2).

15 Del.C. § 5114, DE ST TI 15 § 5114 .

Current through 75 Laws 2006, ch. 441.  
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**→§ 5115. Improper use of ballot or envelope; penalty**

Whoever:

- (1) Forges or falsely makes the official endorsement of any ballot or envelope; or
- (2) Prints or causes to be printed any imitation ballot or envelope or circulates the same; or
- (3) Conspires with other persons or induces or attempts to induce any other person to do any of such acts, whether or not any of such acts are committed or attempted to be committed,

shall be fined not less than \$100 nor more than \$500 or may be imprisoned not more than 5 years.

19 Laws 1891, ch. 37, § 30; 27 Laws 1913, ch. 65, § 27.

## LIBRARY REFERENCES

Elections ↪309.

Westlaw Key Number Search: 144k309.

C.J.S. Elections §§ 324, 355(2).

15 Del.C. § 5115, DE ST TI 15 § 5115

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**→§ 5116. Tampering with voting machines; penalties**

Whoever before the opening of the election registers any vote on a voting machine or at any time tampers with, disarranges, defaces, impairs in any manner or destroys a voting machine or any part thereof, including the ballots on its face, shall be fined not less than \$300 nor more than \$500 and may be imprisoned not less than 1 nor more than 2 years.

19 Laws 1891, ch. 37, § 13; 27 Laws 1913, ch. 65, § 11; 49 Laws 1953, ch. 18, § 2; 58 Laws 1971, ch. 148, § 120.

LIBRARY REFERENCES

Elections ↪314.  
Westlaw Key Number Search: 144k314.  
C.J.S. Elections § 327.

15 Del.C. § 5116, DE ST TI 15 § 5116

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**→§ 5117. Unauthorized entering of voting room; penalties**

(a) Whoever does not meet the qualifications of § 4933 of this title, and enters the voting room on the day of election other than to vote, shall be fined not less than \$100 nor more than \$1,000 or imprisoned not less than 30 days nor more than 2 years, or both.

(b) Whoever enters the voting room on the day of election for the purpose of disrupting the election shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned not less than 1 year nor more than 5 years.

21 Laws 1898, ch. 38, § 15; 57 Laws 1969, ch. 181, § 71.

## LIBRARY REFERENCES

Elections ↪319.

Westlaw Key Number Search: 144k319.

C.J.S. Elections § 330.

15 Del.C. § 5117, DE ST TI 15 § 5117

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**→§ 5118. Interference with election; penalties**

(a) Whoever:

(1) Enters or attempts to enter the voting room before the hour of opening the polls on the day of election or at the time of opening the election, or at any time during the day of the election and before the hour of closing the election for the purpose of interfering with the election officers in the discharge of their duties as such or for any purpose; or

(2) Attempts to molest, disturb or prevent the election officers from proceeding regularly with any general or special election; or

(3) Takes charge or attempts to take charge of any voting room or place where the election is held within the time mentioned in this subsection for the purpose of preventing or delaying an election or for any other purpose on election day;

shall be fined not less than \$500 nor more than \$1,000, and imprisoned not more than 3 years.

(b) Whoever, not in this title authorized so to do, enters or attempts to enter the election room or within the railing leading to the entrance of the election room, or remains within 30 feet of the polling place, contrary to this title, shall be fined not more than \$200.

(c) Whoever resists a challenger appointed pursuant to §§ 3164 and 4934 of this title or a special officer appointed pursuant to § 4935 of this title shall be fined not more than \$100 or imprisoned not more than one year.

19 Laws 1891, ch. 37, §§ 2, 17, 33; 19 Laws 1891, ch. 39, § 14; 20 Laws 1897, ch. 396, §§ 3, 6; 21 Laws 1898, ch. 38, § 16; 26 Laws 1911, ch. 49; 27 Laws 1913, ch. 65, §§ 2, 15, 30; 58 Laws 1971, ch. 148, § 121.

LIBRARY REFERENCES

Elections ↪319.  
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 C.J.S. Elections § 330.

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**→§ 5119. Feigning a physical disability to obtain assistance in voting;  
penalty**

(a) Whoever, being an elector, feigns a physical defect or disability in order to be permitted to bring into the election room or voting booth another person, shall be fined \$100 and shall be imprisoned not more than 2 years.

(b) Whoever, being an elector selected to assist any person by reason of such person's physical defects, reveals how such elector has voted or what persons were voted for by such elector on any ballot or gives any information concerning the appearance of any ballot voted, shall be fined \$100 and imprisoned not less than 1 nor more than 3 years.

20 Laws 1897, ch. 396, § 1; 27 Laws 1913, ch. 65, § 20; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## CROSS REFERENCES

Assistance for disabled voters, see 15 Del.C. § 4943.

## LIBRARY REFERENCES

Elections ↪318.

Westlaw Key Number Search: 144k318.

C.J.S. Elections § 331.

15 Del.C. § 5119, DE ST TI 15 § 5119

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**→§ 5120. Secreting person in election room; penalty**

Whoever, other than the election officers, secretes or attempts to secrete himself or herself in any part of the polling room during the hours of the election for any purpose whatsoever, shall be fined not less than \$100 and may be imprisoned not more than 1 year.

20 Laws 1897, ch. 396, § 12; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

**LIBRARY REFERENCES**

Elections ↪309.

Westlaw Key Number Search: 144k309.

C.J.S. Elections §§ 324, 355(2).

15 Del.C. § 5120, DE ST TI 15 § 5120

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**§ 5121. Removal or destruction of election supplies or equipment or voting machines; penalty**

(a) Whoever, during the general election:

- (1) Removes or destroys any of the supplies or other conveniences placed in the booths or delivered to the voter for the purpose of enabling the voter to prepare his or her ballot; or
- (2) Removes, tears down or defaces the cards printed for the instruction of the voters; or
- (3) Destroys or removes any booth, railing or other conveniences provided for such election; or
- (4) Tampers with, disarranges, defaces or impairs in any manner the use of or destroys any voting machine or the ballots on the face of a voting machine;

shall be imprisoned not less than 6 months nor more than 1 year.

(b) Whoever induces or attempts to induce any person to commit any of the acts described in subsection (a) of this section, whether or not any such acts are committed or attempted to be committed shall be imprisoned not less than 6 months nor more than 1 year.

19 Laws 1891, ch. 37, § 36; 27 Laws 1913, ch. 65, § 33; 49 Laws 1953, ch. 18, § 4; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## LIBRARY REFERENCES

Elections ↪319.

Westlaw Key Number Search: 144k319.

C.J.S. Elections § 330.

15 Del.C. § 5121, DE ST TI 15 § 5121

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**→§ 5122. Disclosures by election officers; penalty**

Whoever, being an election officer:

- (1) Reveals to any person how any elector has voted or what persons were voted for by any elector on any ballot; or
- (2) Gives any information concerning the appearance of any ballot voted or envelope used;

shall be fined not more than \$500 and imprisoned not less than 2 nor more than 5 years.

20 Laws 1897, ch. 396, § 11; 27 Laws 1913, ch. 396, § 11; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections ↪314.  
 Westlaw Key Number Search: 144k314.  
 C.J.S. Elections § 327.

15 Del.C. § 5122, DE ST TI 15 § 5122

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**→§ 5123. Intimidation, persuasion or bribery by election officer; penalty**

Whoever, being an election officer:

(1) In any manner attempts to influence, persuade, intimidate, bribe or coerce any voter in the marking of the voter's ballot, or in the making of the choice of the persons for whom the voter votes; or

(2) Discloses the manner in which any person has voted;

shall be deemed to have knowingly and wilfully violated his or her official duty, shall be guilty of wilful and deliberate perjury, and, in addition to the penalties and disabilities annexed to such crime, be fined not more than \$500 and may be imprisoned not more than 2 years.

19 Laws 1891, ch. 37, § 25; 27 Laws 1913, ch. 65, § 22; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

CROSS REFERENCES

Bribery, see 11 Del.C. § 1201 et seq.

Reading of election law prior to opening of polls, see 15 Del.C. § 4903.

LIBRARY REFERENCES

Elections ↪314.

Westlaw Key Number Search: 144k314.

C.J.S. Elections § 327.

15 Del.C. § 5123, DE ST TI 15 § 5123

Current through 75 Laws 2006, ch. 441.

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**→§ 5124. Inducing the making of distinguishing mark on ballot; penalty**

Whoever induces or attempts to induce any elector to write, paste or otherwise place on his or her ballot the name of any person, or any sign or device of any kind, as a distinguishing mark by which to indicate to any other person how such elector has voted; or whoever enters into or attempts to form any agreement or conspiracy with any other person to induce or attempt to induce any elector to so place any distinguishing mark or name on his or her ballot, whether or not such act be committed or attempted to be committed; shall be imprisoned not more than 2 years.

19 Laws 1891, ch. 37, § 34; 27 Laws 1913, ch. 65, § 31; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

CROSS REFERENCES

Reading of election law prior to opening of polls, see 15 Del.C. § 4903.

LIBRARY REFERENCES

Elections ↪313.  
 Westlaw Key Number Search: 144k313.  
 C.J.S. Elections § 325.

15 Del.C. § 5124, DE ST TI 15 § 5124

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**→§ 5125. Inducing election officers to violate election laws; penalty**

Whoever induces or attempts to induce any election officers to violate any of the provisions of this title whether or not such election officers violate or attempt to violate any of such provisions shall be imprisoned not more than 5 years.

27 Laws 1913, ch. 65, § 32.

CROSS REFERENCES

Reading of election law prior to opening of polls, see 15 Del.C. § 4903.

LIBRARY REFERENCES

Elections ↪309.

Westlaw Key Number Search: 144k309.

C.J.S. Elections §§ 324, 355(2).

15 Del.C. § 5125, DE ST TI 15 § 5125

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**→§ 5126. Violations by officials; penalty**

Whoever, being a clerk of the peace, an official, or other individual as designated in this title, willfully violates this title in the performance of any duty imposed upon him or her for the violation of which no other punishment is provided by law, shall be fined not less than \$300 nor more than \$500 and may be imprisoned not more than 3 years.

20 Laws 1897, ch. 396, § 13; 27 Laws 1913, ch. 65, § 28; 57 Laws 1969, ch. 181, § 73; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## LIBRARY REFERENCES

Elections ↪314.

Westlaw Key Number Search: 144k314.

C.J.S. Elections § 327.

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**In general 1**

## 1. In general

The primary election law (20 Del. Laws [1897] p. 375, c. 393) provides that every election officer or person having the custody of any document or evidence of any description directed by the act to be made, filed, or preserved, who is guilty of stealing, willfully destroying, mutilating, or defacing, falsifying, or fraudulently removing or secreting the same, shall be guilty of a misdemeanor. Held, that ballots cast at a primary election were "papers or evidence" required to be preserved and delivered to the sheriff by section 29, p. 391, so that the destruction, mutilation, etc., thereof would constitute an offense. State v. Tyre, 1907, 6 Penne. 343, 22 Del. 343, 67 A. 199. Elections ↪ 314

Under 19 Del. Laws, c. 39, § 40, making it a crime for an election inspector to permit any alteration of election documents in his custody, an inspector is guilty who is so careless in caring for them that he thereby enables some one else to make such alteration. State v. Brand, 1897, 16 Del. 459, 43 A. 263. Elections ↪ 314

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**→§ 5127. Bribery of person expecting to be election or registration officer; penalty**

Whoever bribes or attempts to bribe anyone expecting to hold any official position under the election or registration laws of this State, either as registrar, inspector, judge or otherwise, by giving money or the promise of money, office or the promise of office or position either under the state or federal government, to perform any service for any political party in this State or to favor any candidate for political office shall be fined not more than \$1,000 and may be imprisoned not more than 6 months.

19 Laws 1893, ch. 575.

CROSS REFERENCES

Bribery, see 11 Del.C. § 1201 et seq.

LIBRARY REFERENCES

Elections ↪316.  
Westlaw Key Number Search: 144k316.  
C.J.S. Elections § 332.

15 Del.C. § 5127, DE ST TI 15 § 5127

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**→§ 5128. Fraudulent voting; penalty**

Whoever, at any general or special election:

- (1) Falsely personates any elector or other person and votes or attempts or offers to vote in or upon the name of such elector or other person; or
- (2) Votes or attempts to vote in or upon the name of any other person whether living or dead or in or upon any false, assumed or fictitious name; or
- (3) Knowingly, willfully or fraudulently votes more than once for any candidate at any election for the same office; or
- (4) Votes or attempts or offers to vote in any election district without having a lawful right to vote therein, or to vote more than once or to vote in more than 1 election district; or
- (5) Having once voted, votes or attempts or offers to vote again; or
- (6) Fraudulently delivers or offers to an election officer more than a single ballot; or
- (7) Knowingly, willfully or fraudulently does any unlawful act to secure an opportunity for himself or herself or for any other person to vote,

shall be fined not less than \$50 or more than \$200, or imprisoned not less than 30 days or more than 2 years, or both.

19 Laws 1891, ch. 39, § 34; 50 Laws 1955, ch. 174, § 1; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## LIBRARY REFERENCES

Elections ↪318.

Westlaw Key Number Search: 144k318.

C.J.S. Elections § 331.

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**→§ 5129. False entries by clerk of election**

Whoever, being a clerk of election or other election officer performing the duty of such clerk:

- (1) Willfully keeps a false poll list; or
- (2) Knowingly inserts in his or her poll list any false statement, or any name, statement, check, letter or mark, except as provided by law,

shall be deemed to have knowingly and wilfully violated his or her official duty.

19 Laws 1891, ch. 39, § 35; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

CROSS REFERENCES

Official misconduct, generally, see 11 Del.C. § 1211.

LIBRARY REFERENCES

Elections ↪314.  
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 C.J.S. Elections § 327.

15 Del.C. § 5129, DE ST TI 15 § 5129

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**→§ 5130. Failure of election officer to perform duties**

Whoever, being an election officer, willfully:

- (1) Excludes any vote duly tendered, knowing that the person offering the same is lawfully entitled to vote at such election; or
- (2) Receives a vote from any person who has been duly challenged in relation to such person's right to vote at such election without exacting from such person such oath or other proof of qualification as may be required by law; or
- (3) Omits to challenge any person offering to vote whom he or she knows or suspects not to be entitled to vote and who has not been challenged by any other person;

shall be deemed to have violated his official duty.

19 Laws 1891, ch. 39, § 36; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

CROSS REFERENCES

Official misconduct, generally, see 11 Del.C. § 1211.

LIBRARY REFERENCES

Elections ↪314.  
 Westlaw Key Number Search: 144k314.  
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15 Del.C. § 5130, DE ST TI 15 § 5130

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**→§ 5131. False count or certification by election officer**

Whoever, being an election officer, willfully:

- (1) Makes any false count of votes cast at any election, or makes, signs, publishes or delivers any false return of such election or any false certificate or statement of the result of such election, knowing the same to be false; or
- (2) Defaces, destroys or conceals any statement or certificate entrusted to his or her care or custody

shall be deemed to have knowingly and wilfully violated his or her official duty.

19 Laws 1891, ch. 39, § 37; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections ↪314.  
 Westlaw Key Number Search: 144k314.  
 C.J.S. Elections § 327.

15 Del.C. § 5131, DE ST TI 15 § 5131

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**→§ 5132. Fraudulent deposit or alteration of ballots or entering voting machine booth or casting vote; penalty**

(a) Whoever, being an election officer, at any election:

(1) Knowingly and willfully puts or causes to be put any ballot or ballots or other paper having the semblance thereof into any box used at such election for the reception of votes; or

(2) Knowingly and willfully causes or permits any ballot to be in the ballot box at the opening of the polls and before voting shall have commenced; or

(3) Knowingly or willfully or fraudulently puts any ballot or other paper having the semblance thereof into any ballot box unless the same is offered by an elector and the elector's name has been found and checked upon the Election District Record; or

(4) Fraudulently before, during or after the reading and count of the ballot, in any manner changes, substitutes or alters any ballot; or

(5) Removes any ballot or semblance thereof from, or adds any ballot or semblance thereof to, the ballots found in any such ballot box upon the closing of the polls; or

(6) Knowingly and willfully causes or permits any vote to be registered on a voting machine, unless the vote is cast by an elector whose name has been found and checked upon the books of registered voters and who has not previously voted, or knowingly or willfully enters or permits anyone to enter a voting machine booth, unless the person is an elector whose name has been found or checked upon the books of registered voters and who has not previously voted or is an election officer or member or employee of the department of elections whose entrance into the voting machine booth is required by the provisions of this title,

shall be deemed to have knowingly and wilfully violated his or her official duty.

(b) Whoever, not being an election officer, does or causes to be done any of the acts, matters or things mentioned in subsection (a) of this section, shall be fined not more than \$200 or imprisoned not more than 2 years, or both.

19 Laws 1891, ch. 39, § 38; 49 Laws 1953, ch. 18, § 3; 50 Laws 1955, ch. 174, § 2;

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**→§ 5133. Wilful neglect of duty by election officers**

Whoever, being an election officer of whom any duty is required in this title, is guilty of any wilful neglect of such duty or of any corrupt or fraudulent conduct or practice in the execution of the same shall be deemed to have knowingly and wilfully violated his or her official duty.

19 Laws 1891, ch. 39, § 39; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections ↪314.

Westlaw Key Number Search: 144k314.  
C.J.S. Elections § 327.

15 Del.C. § 5133, DE ST TI 15 § 5133

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**→§ 5134. Stealing, destroying or secreting records; penalty**

(a) Whoever, being an election officer having the custody of any registration records, or copy thereof, oath, return of votes, certificate, poll list or any paper, document, or evidence of any description, in this title directed to be made, filed or preserved:

(1) Steals, wilfully destroys, mutilates, defaces, falsifies, or fraudulently removes or secretes the whole or any part thereof; or

(2) Fraudulently makes any entry, erasure, or alteration therein, except as allowed and directed by this title; or

(3) Permits any other person to do so,

shall be deemed to have knowingly and wilfully violated his or her official duty.

(b) Whoever, not being an election officer and having such custody, does or commits any of the acts, matters or things mentioned in subsection (a) of this section, or whoever, not being an election officer, advises, procures or abets the commission of any of the acts mentioned in this section shall, for each such offense, be fined not more than \$200 or imprisoned not more than 2 years, or both.

19 Laws 1891, ch. 39, §§ 40, 41; 50 Laws 1955, ch. 174, § 3; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## LIBRARY REFERENCES

Elections ↪314.

Westlaw Key Number Search: 144k314.

C.J.S. Elections § 327.

15 Del.C. § 5134, DE ST TI 15 § 5134

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**→§ 5135. Perjury; subornation of perjury**

(a) Whoever is convicted of wilful false swearing or affirming in taking any oath or affirmation prescribed by or upon any examination provided for in this title is guilty of perjury.

(b) Whoever willfully or corruptly instigates, advises, induces or procures any person to swear or affirm falsely, or attempts or offers so to do, is guilty of subornation of perjury, and shall suffer the punishment directed by law in cases of perjury.

19 Laws 1891, ch. 39, §§ 42, 43.

CROSS REFERENCES

Perjury and related offenses, see 11 Del.C. § 1221 et seq.

Perjury, constitutional provision, see Del. Const. Art. 5, § 3.

LIBRARY REFERENCES

Elections ↪309.  
Westlaw Key Number Search: 144k309.  
C.J.S. Elections §§ 324, 355(2).

15 Del.C. § 5135, DE ST TI 15 § 5135

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**→§ 5136. Tampering with ballots or deceiving voters; penalty**

Whoever:

(1) Fraudulently changes or alters the ballot of any elector, or substitutes 1 ballot for another, or fraudulently furnishes any elector with a ballot containing more than the proper number of names; or

(2) Intentionally practices any fraud upon any elector to induce the elector to deposit a ballot as his or her vote and to have the same thrown out and not counted, or to have the same counted for a person or candidate other than the person or candidate for whom such elector intended to vote; or

(3) Otherwise defrauds the elector of the elector's vote,

shall be fined not more than \$200 or imprisoned not more than 2 years, or both.

19 Laws 1891, ch. 39, § 44; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections ↪318.

Westlaw Key Number Search: 144k318.

C.J.S. Elections § 331.

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**→§ 5137. Disobeying election officers; penalty**

Whoever willfully disobeys any lawful command of any election officer, given in the execution of such officer's duty as such at any election, shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

19 Laws 1891, ch. 39, § 45; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections ↪309.  
Westlaw Key Number Search: 144k309.

C.J.S. Elections §§ 324, 355(2).

15 Del.C. § 5137, DE ST TI 15 § 5137

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**→§ 5138. Breach of peace or violence on election day; penalty**

Whoever on any day of election or during the reading and counting of the votes cast thereat causes any breach of the peace or uses any violence or threats of violence whereby any such election or reading and counting of ballots is impeded or hindered or whereby the lawful proceedings of election officers or challengers at such election are interfered with shall be fined not more than \$200 or imprisoned not more than 2 years, or both.

19 Laws 1891, ch. 39, § 46.

CROSS REFERENCES

Criminal mischief, see 11 Del.C. § 811.

Disorderly conduct, see 11 Del.C. § 1301.

LIBRARY REFERENCES

Elections ↪320.

Westlaw Key Number Search: 144k320.

C.J.S. Elections §§ 333, 334(2).

15 Del.C. § 5138, DE ST TI 15 § 5138

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**→§ 5139. Interference with election officer or challenger; penalty**

Whoever:

(1) Knowingly or wilfully obstructs, hinders, assaults or by bribery, solicitation or otherwise interferes with any election officer or challenger in the performance of any duty required of him or her or which he or she may by law be authorized or permitted to perform; or

(2) By any means before mentioned or otherwise unlawfully on the day of election hinders or prevents any election officer or challenger in his or her free attendance and presence at the place of election in the election district in which he or she is appointed to serve, or in his or her full and free access and egress to and from any such place of election, or molests, interferes with, removes or ejects from any such place of election any such election officer or challenger, or unlawfully threatens or attempts or offers so to do,

shall be fined not more than \$200 or imprisoned not more than 2 years, or both.

19 Laws 1891, ch. 39, § 47; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## LIBRARY REFERENCES

Elections ↪319.

Westlaw Key Number Search: 144k319.

C.J.S. Elections § 330.

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**In general 1**

## 1. In general

The offense, defined by Const. art. 5, § 7, of causing or attempting to cause any officer of election to violate his official duty, is not one of an attempt to commit a particular crime, but is a distinct substantive offense. State v. Burris, 1916, 6 Boyce 166, 29 Del. 166, 97 A. 427. Elections ↪ 319

15 Del.C. § 5139, DE ST TI 15 § 5139

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**→§ 5140. Failure of inspector to preserve order**

Whoever, being an inspector of election, wilfully neglects or when called on wilfully declines to exercise the powers conferred on him or her to preserve order shall be deemed to have knowingly and wilfully violated his or her official duty.

19 Laws 1891, ch. 39, § 48; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections  314.

Westlaw Key Number Search: 144k314.  
C.J.S. Elections § 327.

15 Del.C. § 5140, DE ST TI 15 § 5140

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**→§ 5141. Stealing or destroying ballot box, ballot, poll list; penalty**

Whoever, not being an election officer:

- (1) Steals or willfully breaks or destroys any ballot box used or intended to be used at any election; or
- (2) Willfully or fraudulently conceals, secretes or removes any ballot box from the custody of the election officers; or
- (3) Alters, defaces, injures, destroys or conceals any ballot or envelope which has been deposited in any ballot box at such election or any poll list used or intended to be used at such election or any report, return, certificate or other evidence in this title required or provided for;

shall, for each such offense, be fined not more than \$200 or imprisoned not more than 2 years, or both.

19 Laws 1891, ch. 39, § 49; 27 Laws 1913, ch. 65.

## LIBRARY REFERENCES

Elections ☞ 309.

Westlaw Key Number Search: 144k309.

C.J.S. Elections §§ 324, 355(2).

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**In general 1**

## 1. In general

Under an indictment charging defendant with having destroyed ballots, where the evidence is purely circumstantial, in order to convict the jury should be satisfied from the proof that the ballots could have disappeared in no other reasonable way than by the destruction alleged. State v. Mundy, 1895, 16 Del. 429, 43 A. 260. Elections ☞ 329

An indictment alleging that defendant "did then and there unlawfully destroy

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**→§ 5142. Requiring unauthorized oath; penalty**

Whoever, being an election officer or other person, administers or causes to be administered to any legal voter any oath or affirmation not authorized by the Constitution or laws of this State for that purpose as a prerequisite or condition of voting at any election, except when such oath or affirmation is administered in order to satisfy such election officer or other person that such vote is a legal vote according to the Constitution and laws of this State, shall for each such offense be fined not less than \$500 nor more than \$1,000 and imprisoned 10 days.

12 Laws 1861-1865, ch. 326, § 3.

## LIBRARY REFERENCES

Elections ↪314.

Westlaw Key Number Search: 144k314.

C.J.S. Elections § 327.

15 Del.C. § 5142, DE ST TI 15 § 5142

Current through 75 Laws 2006, ch. 441.

Revisions to Acts from the Second Regular Session 143rd General Assembly made by the Delaware Code Revisors were unavailable at time of publication.

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DE ST TI 15 § 5143

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15 Del.C. § 5143

West's Delaware Code Annotated Currentness  
 Title 15. Elections  
 Part IV. General Elections  
 Chapter 51. Criminal Offenses  
 Subchapter II. Particular Offenses

**→§ 5143. Candidate for General Assembly not to make written pledge;  
 penalty**

(a) No candidate for State Senator or Representative in the General Assembly shall make any written pledge to give or withhold his or her vote on any proposed law or legislation, nor shall any other person seek to influence any such candidate in the candidate's attitude upon any proposed law or legislation by offer or promise of a vote or votes or of any support at any primary or election.

(b) Whoever violates subsection (a) of this section shall be fined not less than \$50 nor more than \$1,000, or imprisoned not less than 1 month nor more than 2 years, or both.

29 Laws 1917, ch. 112; 30 Laws 1919, ch. 105; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections k311.1.  
 Westlaw Key Number Search: 144k311.1.  
 C.J.S. Elections § 324.

15 Del.C. § 5143, DE ST TI 15 § 5143

Current through 75 Laws 2006, ch. 441.  
 Revisions to Acts from the Second Regular Session 143rd General Assembly made by the Delaware Code Revisors were unavailable at time of publication.

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DE ST TI 15 § 5144

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15 Del.C. § 5144

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Title 15. Elections

Part IV. General Elections

Chapter 51. Criminal Offenses

Subchapter II. Particular Offenses

**→§ 5144. Unauthorized release of absentee vote information; penalty**

(a) Any person who knowingly or intentionally releases, transfers, distributes, or otherwise permits or facilitates the distribution of information relating to the number of absentee votes cast in favor or against any particular candidate or measure prior to the close of the polls on the day of an election at which absentee votes were cast and counted is guilty of the unauthorized release of absentee vote information in the first degree and shall be fined not less than \$300 nor more than \$500 and may be imprisoned not less than 1 nor more than 2 years.

(b) Any person who recklessly releases, transfers, distributes, or otherwise permits or facilitates the distribution of information relating to the number of absentee votes cast in favor or against any particular candidate or measure prior to the close of the polls on the day of an election at which absentee votes were cast and counted is guilty of the unauthorized release of absentee vote information in the second degree and shall be fined not more than \$200 and may be imprisoned not more than 1 year.

75 Laws 2005, ch. 149, § 3, eff. July 12, 2005.

## HISTORICAL AND STATUTORY NOTES

75 Laws 2005, ch. 149, § 4, eff. July 12, 2005, provides:

"This Act shall become effective upon its enactment into law. Not later than 6 months following the enactment of this Act into law, the Attorney General, the State Election Commissioner, and the departments of elections for each county shall each promulgate those regulations which are necessary to implement their respective responsibilities under this Act."

15 Del.C. § 5144, DE ST TI 15 § 5144

Current through 75 Laws 2006, ch. 441.

Revisions to Acts from the Second Regular Session 143rd General Assembly made by the Delaware Code Revisors were unavailable at time of publication.

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DE ST TI 15 § 5161

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15 Del.C. § 5161

**C**

West's Delaware Code Annotated Currentness

Title 15. Elections

Part IV. General Elections

▣ Chapter 51. Criminal Offenses

▣ Subchapter III. Offenses Carrying Civil Liability

**→§ 5161. Intimidation of election officers; penalty**

If any person, firm, corporation or employer existing or doing business in this State, hinders, coerces or intimidates or attempts to hinder, coerce or intimidate any person who has been appointed an election officer under the laws of this State from qualifying and performing such person's duties as such by threats of depriving such person of employment or occupation, absolutely or contingently, directly or indirectly, shall be liable to a penalty of \$500, recoverable by the Attorney General by civil action in any court of competent jurisdiction in the name of the State, and for the use and benefit of this State.

45 Laws 1945, ch. 144, § 24; 45 Laws 1945, ch. 148, § 24; 45 Laws 1945, ch. 149, § 24; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## CROSS REFERENCES

Election offenses, constitutional provisions, see Del. Const. Art. 5, §§ 7 to 9

Voting, registration, and elections, see Del. Const. Art. 5, § 1 et seq.

## LIBRARY REFERENCES

Elections ↪320.

Westlaw Key Number Search: 144k320.

C.J.S. Elections §§ 333, 334(2).

## RESEARCH REFERENCES

**Treatises and Practice Aids**

**Termination of Employment § 10:25, Miscellaneous.**

15 Del.C. § 5161, DE ST TI 15 § 5161

Current through 75 Laws 2006, ch. 441.

Revisions to Acts from the Second Regular Session 143rd General Assembly made by the Delaware Code Revisors were unavailable at time of publication.

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DE ST TI 15 § 5162

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15 Del.C. § 5162

**C**

West's Delaware Code Annotated Currentness

Title 15. Elections

Part IV. General Elections

^ Chapter 51. Criminal Offenses

^ Subchapter III. Offenses Carrying Civil Liability

**→§ 5162. Intimidation of electors; penalty**

If any person, or corporation existing or doing business in this State, hinders, controls, coerces or intimidates or attempts to hinder, control, coerce or intimidate any qualified elector of this State from or in the exercise of the elector's right to vote at any general, special or municipal election held under the laws of this State, by means of bribery or by threats of depriving such elector of employment or occupation, absolutely or contingently, directly or indirectly, every elector so aggrieved may, in a civil action brought for that purpose, sue for and recover from the person or corporation so offending the sum of \$500.

16 Laws 1881, ch. 329, §§ 1, 2; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## LIBRARY REFERENCES

Elections ↪320.

Westlaw Key Number Search: 144k320.

C.J.S. Elections §§ 333, 334(2).

## RESEARCH REFERENCES

**Treatises and Practice Aids****Employment Law § 5.11, Defenses.****Termination of Employment § 10:25, Miscellaneous.**

## NOTES OF DECISIONS

**In general 1**

## 1. In general

The Cape Henlopen School District did not violate any criminal statutes when it offered a free pizza party for the school with the documented highest percentage of students whose parents voted in a district referendum. Nor did an alleged \$5000 donation to Cape that paid for Cape's support of the referendum violate Delaware's

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15 Del.C. § 5163

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Title 15. Elections

Part IV. General Elections

Chapter 51. Criminal Offenses

Subchapter III. Offenses Carrying Civil Liability

**→§ 5163. Liability of corporation or officers**

In any trial under § 5161 or 5162 of this title, the acts of any officer of a corporation, insofar as they affect or concern an employee or servant of such corporation, shall be taken and held to be the acts of the corporation, whether general or special authority as to such acts from the corporation is shown or not.

Nothing contained in § 5161 or 5162 of this title or in this section shall be construed to relieve any officer of a corporation from individual liability under such sections.

16 Laws 1881, ch. 329, §§ 1, 2; 45 Laws 1945, ch. 147, § 24; 45 Laws 1945, ch. 148, § 24; 45 Laws 1945, ch. 149, § 24.

## LIBRARY REFERENCES

Elections ↪322.

Westlaw Key Number Search: 144k322.

C.J.S. Elections § 336.

15 Del.C. § 5163, DE ST TI 15 § 5163

Current through 75 Laws 2006, ch. 441.

Revisions to Acts from the Second Regular Session 143rd General Assembly made by the Delaware Code Revisors were unavailable at time of publication.

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15 Del.C. § 5164

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Title 15. Elections

Part IV. General Elections

Chapter 51. Criminal Offenses

Subchapter III. Offenses Carrying Civil Liability

**→ § 5164. Liability of stakeholder for paying election bet**

If any stakeholder, or person with whom any money or thing, laid as a wager or bet on the result of any election, or on the election or defeat of any candidate or person voted for thereat, shall be deposited, shall at any time either before or after such bet shall have been decided, pay over or deliver to either or both of the persons betting the same, or to any other person by the order or for the use of them, or either of them, the money or thing so illegally betted, every such stakeholder or depository shall forfeit and pay to any person who will sue for the same, double the amount of such wager or bet or double the value of the thing betted.

Either of the persons betting shall be competent witnesses against the stakeholder.

## LIBRARY REFERENCES

Elections 315.

Westlaw Key Number Search: 144k315.

C.J.S. Elections § 328.

## RESEARCH REFERENCES

**Encyclopedias**

15 Am. Jur. Trials 1, Unfair Election Campaign Practices.

15 Del.C. § 5164, DE ST TI 15 § 5164

Current through 75 Laws 2006, ch. 441.

Revisions to Acts from the Second Regular Session 143rd General Assembly made by the Delaware Code Revisors were unavailable at time of publication.

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DC ST § 1-1001.12

Formerly cited as DC ST 1981 § 1-1316

District of Columbia Official Code 2001 Edition Currentness  
Division I. Government of District.  
Title 1. Government Organization. (Refs & Annos)  
Chapter 10. Elections. (Refs & Annos)  
Subchapter 1. Regulation of Elections.

→ § 1-1001.12. Interference with registration and voting.

No one shall interfere with the registration or voting of another person, except as it may be reasonably necessary in the performance of a duty imposed by law.

CREDIT(S)

(Aug. 12, 1955, 69 Stat. 703, ch. 862, § 12.)

HISTORICAL AND STATUTORY NOTES

**Prior Codifications**

1981 Ed., § 1-1316.

1973 Ed., § 1-1112.

LIBRARY REFERENCES

**Key Numbers**

Elections ↔ 319.

Westlaw Topic No. 144.

**Encyclopedias**

C.J.S. Elections § 330.

DC CODE § 1-1001.12

Current through September 18, 2006

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DC ST § 1-1001.14

**C**

Formerly cited as DC ST 1981 § 1-1318

District of Columbia Official Code 2001 Edition Currentness

Division I. Government of District.

Title 1. Government Organization. (Refs &amp; Annos)

Chapter 10. Elections. (Refs &amp; Annos)

Subchapter I. Regulation of Elections.

**→ § 1-1001.14. Corrupt election practices.**

(a) Any person who shall register, or attempt to register, or vote or attempt to vote under the provisions of this subchapter and make any false representations as to his or her qualifications for registering or voting or for holding elective office, or be guilty of violating § 1-1001.07(d)(2)(D), § 1-1001.09, § 1-1001.12, or § 1-1001.13 or be guilty of bribery or intimidation of any voter at an election, or being registered, shall vote or attempt to vote more than once in any election so held, or shall purloin or secrete any of the votes cast in an election, or attempt to vote in an election held by a political party other than that to which he or she has declared himself or herself to be affiliated, or, if employed in the counting of votes in any election held pursuant to this subchapter, knowingly make a false report in regard thereto, and every candidate, person, or official of any political committee who shall knowingly make any expenditure or contribution in violation of Chapter 11 of this title, shall, upon conviction, be fined not more than \$10,000 or be imprisoned not more than 5 years, or both.

(b)(1) Any person who signs an initiative, referendum or recall petition with any other than his or her own name, or who signs a petition for an initiative, referendum or recall measure, knowing that he or she is not a registered qualified elector in the District of Columbia, or who makes a false statement as to his or her residency on any such petition, shall upon conviction be fined not more than \$10,000 or be imprisoned not more than 1 year, or both.

(2) Any public officer, involved in any part of the election process, who willfully violates any of the provisions of § 1-1001.16 or § 1-1001.17, shall be fined not more than \$10,000 or be imprisoned not more than 1 year, or both.

(3) Any person who: (A) For any consideration, compensation, gratuity, reward or thing of value or promise thereof, signs or promises to sign or declines to sign, or promises not to sign any initiative, referendum, or recall petition; or (B) pays or offers or promises to pay, or gives or offers or promises to give any consideration, compensation, gratuity, reward, or thing of value to any person to induce him or her to sign or not to sign, his or her signatures upon any initiative, referendum, or recall petition, or to vote for or against, or to abstain from voting on, any initiative, referendum, or recall measure; or (C) by any other corrupt means or practice, or by threats or intimidation, interferes with, or attempts to interfere with, the right of any qualified registered elector to sign or not to sign any initiative, referendum, or recall petition, or to vote for or against, or to abstain from voting on any initiative, referendum, or recall measure; or (D) makes any false statement to the Board concerning any initiative, referendum, or recall petition, or the signatures appended thereto shall be fined not more than \$10,000 or be imprisoned not more than 1 year, or both.

(4) Any proposer or circulator of an initiative, referendum, or recall petition who willfully violates any provision of §§ 1-1001.16 and 1-1001.17 shall, upon conviction thereof, be subject to a fine of not more than \$10,000 or to imprisonment of not more than 6 months, or both. Each occurrence of a violation of §§ 1-1001.16 and 1-1001.17

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## DC ST § 1-1001.14

shall constitute a separate offense. Violations of §§ 1-1001.16 and 1-1001.17 shall be prosecuted in the name of the District of Columbia by the Corporation Counsel of the District of Columbia.

(c) The provisions of this section shall be supplemental to, and not in derogation of, any penalties under other laws of the District of Columbia.

## CREDIT(S)

(Aug. 12, 1955, 69 Stat. 704, ch. 862, § 14; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 1(24); Sept. 22, 1970, 84 Stat. 854, Pub. L. 91-405, title II, § 205(k); Dec. 16, 1975, D.C. Law 1-37, § 2(8), 22 DCR 3430; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; June 7, 1979, D.C. Law 3-1, § 2(b), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 2(i), (n), (o), (q), 29 DCR 458; Sept. 22, 1994, D.C. Law 10-173, § 2(f), 41 DCR 5154; July 25, 1995, D.C. Law 11-30, § 2(d), 42 DCR 1547.)

## HISTORICAL AND STATUTORY NOTES

**Prior Codifications**

1981 Ed., § 1-1318.

1973 Ed., § 1-1114.

**Legislative History of Laws**

For legislative history of D.C. Law 1-37, see Historical and Statutory Notes following § 1-1001.05.

For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1001.02.

For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1001.01.

For legislative history of D.C. Law 3-1, see Historical and Statutory Notes following § 1-1001.02.

For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

For legislative history of D.C. Law 10-173, see Historical and Statutory Notes following § 1-1001.02.

For legislative history of D.C. Law 11-30, see Historical and Statutory Notes following § 1-1001.02.

## CROSS REFERENCES

Election campaigns, lobbying, and conflicts of interest, violation of laws, prosecutions, see § 1-1107.01.

**Section References**

This section is referred to in §§ 1-1001.02, and 1-1001.07.

## LIBRARY REFERENCES

**Key Numbers**

Elections ↪ 312, 313, 316 to 320, 323.  
Westlaw Topic No. 144.

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DC ST § 1-1001.15

**C**

Formerly cited as DC ST 1981 § 1-1319

District of Columbia Official Code 2001 Edition Currentness

Division I. Government of District.

Title 1. Government Organization. (Refs &amp; Annos)

Chapter 10. Elections. (Refs &amp; Annos)

Subchapter I. Regulation of Elections.

**→ § 1-1001.15. Candidacy for more than 1 office prohibited; multiple nominations; candidacy of officeholder for another office restricted.**

(a) No person shall be a candidate for more than 1 office on the Board of Education or the Council or Mayor in any election for the members of the Board of Education or the Council or Mayor, and no person shall be a candidate for more than 1 office on the Council or for the Mayor in any primary election. If a person is nominated for more than 1 such office, he or she shall, within 3 days after the Board has sent him notice that he or she has been so nominated, designate in writing the office for which he or she wishes to run, in which case he or she will be deemed to have withdrawn all other nominations. In the event that such person fails within such 3-day period to file such a designation with the Board, all such nominations of such person shall be deemed withdrawn.

(b) Notwithstanding the provisions of subsection (a) of this section, a person holding the office of Mayor, Delegate, Chairman or member of the Council, or member of the Board of Education shall, while holding such office, be eligible as a candidate for any other of such offices in any primary or general election. In the event that said person is elected in a general election to the office for which he or she is a candidate, that person shall, within 24 hours of the date that the Board certifies said person's election, pursuant to subsection (a)(11) of § 1-1001.05, either resign from the office that person currently holds or shall decline to accept the office for which he or she was a candidate. In the event that said person elects to resign, said resignation shall be effective not later than 24 hours before the date upon which that person would assume the office to which he or she has been elected.

CREDIT(S)

(Aug. 12, 1955, 69 Stat. 704, ch. 862, § 15; as added Apr. 22, 1968, 82 Stat. 106, Pub. L. 90-292, § 4(9); Dec. 24, 1973, 87 Stat. 835, Pub. L. 93-198, title VII, § 751(9), (10); Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 2(j), (o), (q), 29 DCR 458; Mar. 14, 1985, D.C. Law 5-159, § 22, 32 DCR 30.)

## HISTORICAL AND STATUTORY NOTES

**Prior Codifications**

1981 Ed., § 1-1319.

1973 Ed., § 1-1115.

**Legislative History of Laws**

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West's F.S.A. § 104.011

C

Effective: [See Text Amendments]

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

## →104.011. False swearing; submission of false voter registration information

(1) A person who willfully swears or affirms falsely to any oath or affirmation, or willfully procures another person to swear or affirm falsely to an oath or affirmation, in connection with or arising out of voting or elections commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who willfully submits any false voter registration information commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

## CREDIT(S)

Laws 1868, c. 1637, subc. 12 § 1; Rev.St.1892, § 2786; Gen.St.1906, § 3828; Rev.Gen.St.1920, § 5891; Comp.Gen.Laws 1927, § 8154; Laws 1931, c. 14715, § 15; Comp.Gen.Laws Supp.1936, § 8202 (6); Fla.St.1949, §§ 103.15, 875.14; Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 19; Laws 1977, c. 77-175, § 33. Amended by Laws 1994, c. 94-224, § 38, eff. Jan. 1, 1995; Laws 1997, c. 97-13, § 31, eff. Jan. 1, 1998.

## CROSS REFERENCES

Qualification and registration of electors, applications, signature and oath, see § 97.053.

Perjury, see § 837.011 et seq.

Uniform statewide voter registration application, see § 97.052.

Uniform statewide voter registration application, signature of applicant, see § 97.052.

## LAW REVIEW AND JOURNAL COMMENTARIES

History of corrupt practices acts. J. V. Keen, 9 Fla.L.J. 297 (1935).

## LIBRARY REFERENCES

## 2002 Main Volume

Elections ↪318, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 331, 353.

## RESEARCH REFERENCES

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West's F.S.A. § 104.012

C

Effective: [See Text Amendments]

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.012. Consideration for registration; interference with registration; soliciting registrations for compensation; alteration of registration application**

(1) Any person who gives anything of value that is redeemable in cash to any person in consideration for his or her becoming a registered voter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This section shall not be interpreted, however, to exclude such services as transportation to the place of registration or baby-sitting in connection with the absence of an elector from home for registering.

(2) A person who by bribery, menace, threat, or other corruption, directly or indirectly, influences, deceives, or deters or attempts to influence, deceive, or deter any person in the free exercise of that person's right to register to vote at any time, upon the first conviction, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and, upon any subsequent conviction, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person may not solicit or pay another person to solicit voter registrations for compensation that is based upon the number of registrations obtained. A person who violates the provisions of this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who alters the voter registration application of any other person, without the other person's knowledge and consent, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## CREDIT(S)

Laws 1963, c. 63-198, § 1; Laws 1971, c. 71-136, § 20; Laws 1977, c. 77-175, § 33. Amended by Laws 1994, c. 94-224, § 39, eff. Jan. 1, 1995; Laws 1995, c. 95-147, § 1394, eff. July 10, 1995; Laws 1997, c. 97-13, § 32, eff. Jan. 1, 1998; Laws 1998, c. 98-129, § 23, eff. July 1, 1998.

## CROSS REFERENCES

Registration to vote, see § 97.041 et seq.

## LIBRARY REFERENCES

2002 Main Volume

Elections ↻316, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 332, 353.

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West's F.S.A. § 104.013

**C****Effective: January 01, 2006**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.013. Unauthorized use, possession, or destruction of voter information card**

- (1) It is unlawful for any person knowingly to have in his or her possession any blank, forged, stolen, fictitious, counterfeit, or unlawfully issued voter information card unless possession by such person has been duly authorized by the supervisor.
- (2) It is unlawful for any person to barter, trade, sell, or give away a voter information card unless said person has been duly authorized to issue a voter information card.
- (3) It is unlawful for any person willfully to destroy or deface the information card of a duly registered voter.
- (4) Any person who violates any of the provisions of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**CREDIT(S)**

Laws 1976, c. 76-49, § 1; Laws 1977, c. 77-174, § 1; Laws 1977, c. 77-175, § 34; Laws 1991, c. 91-224, § 3. Amended by Laws 1994, c. 94-224, § 40, eff. Jan. 1, 1995; Laws 1995, c. 95-147, § 1395, eff. July 10, 1995; Laws 1998, c. 98-129, § 24, eff. July 1, 1998; Laws 2005, c. 2005-278, § 44, eff. Jan. 1, 2006.

**HISTORICAL AND STATUTORY NOTES****Amendment Notes:**

Laws 2005, c. 2005-278, § 44, substituted references to voter information cards for references to voter registration identification cards throughout.

**CROSS REFERENCES**

Registration identification card, see § 97.071.

**LIBRARY REFERENCES****2002 Main Volume**

Elections ↻312, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 326, 353.

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West's F.S.A. § 104.031

**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

\* Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.031. False declaration to secure assistance in preparing ballot**

Any person who makes a false declaration for assistance in voting, or in the preparation of his or her ballot, in any election is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**CREDIT(S)**

Laws 1895, c. 4328, § 49; Gen.St.1906, § 3829; Rev.Gen.St.1920, § 5892; Comp.Gen.Laws 1927, § 8156; Fla.St.1949, § 99.31; Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 22; Laws 1977, c. 77-175, § 35; Laws 1991, c. 91-224, § 4. Amended by Laws 1995, c. 95-147, § 613, eff. July 10, 1995.

**CROSS REFERENCES**

Assistance in casting ballot, see § 101.051.

False swearing to qualifications, see § 104.011.

**LIBRARY REFERENCES****2002 Main Volume**

Elections ↪318, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 331, 353.

**RESEARCH REFERENCES****Encyclopedias**

FL Jur. 2d Elections § 190, False Swearing or Declaration.

West's F. S. A. § 104.031, FL ST § 104.031

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second Regular Session of the Nineteenth Legislature

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West's F.S.A. § 104.041

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**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.041. Fraud in connection with casting vote**

Any person perpetrating or attempting to perpetrate or aid in the perpetration of any fraud in connection with any vote cast, to be cast, or attempted to be cast, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## CREDIT(S)

Laws 1943, c. 22014, § 4; Laws 1949, c. 25385, § 1; Fla.St.1949, § 101.14; Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 23; Laws 1977, c. 77-175, § 35.

## HISTORICAL AND STATUTORY NOTES

**Amendment Notes:**

Former § 101.14 was repealed and a new § 101.14 substituted by Laws 1949, c. 25385, § 1. The new § 101.14, was revised and renumbered as this section by Laws 1951, c. 26870, § 8.

## LIBRARY REFERENCES

## 2002 Main Volume

Elections ↪ 318, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 331, 353.

## RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 203, Undue Influence on Election Process; Threats; Fraud; Bribery.

West's F. S. A. § 104.041, FL ST § 104.041

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second Regular Session of the Nineteenth Legislature

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West's F.S.A. § 104.045

**C****Effective: January 01, 2006**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→ 104.045. Vote selling**

Any person who:

(1) Corruptly offers to vote for or against, or to refrain from voting for or against, any candidate in any election in return for pecuniary or other benefit; or

(2) Accepts a pecuniary or other benefit in exchange for a promise to vote for or against, or to refrain from voting for or against, any candidate in any election,

is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 1981, c. 81-107, § 1. Amended by Laws 1998, c. 98-129, § 25, eff. July 1, 1998; Laws 2005, c. 2005-278, § 31, eff. Jan. 1, 2006.

## LIBRARY REFERENCES

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Elections ↪ 332.

Westlaw Topic No. 144.

C.J.S. Elections § 353.

## RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 201, Offenses in Connection With Voting.

West's F. S. A. § 104.045, FL ST § 104.045

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second Regular Session of the Nineteenth Legislature

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West's F.S.A. § 104.047

C

Effective: January 01, 2006

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.047. Absentee ballots and voting; violations**

(1) Except as provided in s. 101.62 or s. 101.655, any person who requests an absentee ballot on behalf of an elector is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who marks or designates a choice on the ballot of another person, except as provided in s. 101.051, s. 101.655, or s. 101.661, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Added by Laws 1998, c. 98-129, § 26, eff. July 1, 1998. Amended by Laws 1999, c. 99-2, § 34, eff. June 29, 1999 ; Laws 2001, c. 2001-40, § 57, eff. Jan. 1, 2002; Laws 2005, c. 2005-278, § 54, eff. Jan. 1, 2006.

## LIBRARY REFERENCES

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Elections ↪ 132, 317.

Westlaw Topic No. 144.

C.J.S. Elections §§ 101, 329.

## RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 202, Offenses in Connection With Voting -- Illegal Voting.

FL Jur. 2d Elections § 204, Theft, Destruction, Alteration, or Wrongful Possession or Handling, of Ballots and Election Equipment and Records.

## NOTES OF DECISIONS

**Violations 1**

## 1. Violations

Violations of the election code by election officials will not necessarily invalidate the votes of innocent electors. *Jacobs v. Seminole County Canvassing Bd.*, 773 So.2d 519 (2000). Elections ↪ 227(1)

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West's F.S.A. § 104.051

**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.051. Violations; neglect of duty; corrupt practices**

- (1) Any official who willfully violates any of the provisions of this election code shall be excluded from the polls. Any election official who is excluded shall be replaced as provided in this code.
- (2) Any official who willfully refuses or willfully neglects to perform his or her duties as prescribed by this election code is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
- (3) Any official who performs his or her duty as prescribed by this election code fraudulently or corruptly is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (4) Any supervisor, deputy supervisor, or election employee who attempts to influence or interfere with any elector voting a ballot commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**CREDIT(S)**

Laws 1847, c. 71, § 7; Rev.St.1892, § 205; Laws 1895, c. 4328, §§ 30, 57, 62; Laws 1897, c. 4537, § 10; Laws 1899, c. 4699, § 3; Gen.St.1906, §§ 215, 289, 3819, 3824, 3825; Laws 1909, c. 5929, § 17; Rev.Gen.St.1920, §§ 259, 385, 5880, 5886, 5888; Comp.Gen.Laws 1927, §§ 315, 450, 8143, 8149, 8151; Laws 1931, c. 14715, § 16; Comp.Gen.Laws Supp.1936, § 8151(1); Laws 1937, c. 18407, § 4; Comp.Gen.Laws Supp.1940, § 7476; Laws 1943, c. 22018, §§ 3-E, 4, 7, 8, 11; Fla.St.1949, §§ 99.13, 100.37, 100.46, 100.47, 103.16, 105.02, 875.08, 875.10, 875.11; Laws 1951, c. 26870, § 8; Laws 1953, c. 28156, § 42; Laws 1971, c. 71-136, § 24; Laws 1977, c. 77-175, § 35; Laws 1990, c. 90-315, § 21. Amended by Laws 1995, c. 95-147, § 614, eff. July 10, 1995; Laws 1998, c. 98-129, § 27, eff. July 1, 1998.

**CROSS REFERENCES**

Duties of supervisor of elections, failure to administer voter registration database, see § 98.0977.

Electors and elections, registration list maintenance programs, see § 98.065.

Electors and elections, registration office, officers and procedures, other registration list maintenance activities, see § 98.075.

False declaration to secure assistance in preparing ballot, penalty, see § 104.031.

False swearing to elector's qualifications, penalty, see § 104.011.

**LAW REVIEW AND JOURNAL COMMENTARIES**

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West's F.S.A. § 104.0515

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Effective: [See Text Amendments]

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.0515. Voting rights; deprivation of, or interference with, prohibited; penalty**

(1) All citizens of this state who are otherwise qualified by law to vote at any election by the people in this state or in any district, county, city, town, municipality, school district, or other subdivision of this state shall be entitled and allowed to vote at all such elections without distinction according to race, color, or previous condition of servitude, notwithstanding any law, ordinance, regulation, custom, or usage to the contrary.

(2) No person acting under color of law shall:

(a) In determining whether any individual is qualified under law to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under law to other individuals within the same political subdivision who have been found to be qualified to vote; or

(b) Deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under law to vote in such election. This paragraph shall apply to absentee ballots only if there is a pattern or history of discrimination on the basis of race, color, or previous condition of servitude in regard to absentee ballots.

(3) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or not to vote as that person may choose, or for the purpose of causing such other person to vote for, or not vote for, any candidate for any office at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

(4) No voting qualification or prerequisite to voting, and no standard, practice, or procedure, shall be imposed or applied by any political subdivision of this state to deny or abridge the right of any citizen to vote on account of race or color.

(5) Any person who violates the provisions of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## CREDIT(S)

Laws 1982, c. 82-59, § 1; Laws 1983, c. 83-217, § 26; Laws 1991, c. 91-224, § 5. Amended by Laws 1995, c. 95-147, § 615, eff. July 10, 1995; Laws 1998, c. 98-129, § 28, eff. July 1, 1998.

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West's F.S.A. § 104.061

**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.061. Corruptly influencing voting**

(1) Whoever by bribery, menace, threat, or other corruption whatsoever, either directly or indirectly, attempts to influence, deceive, or deter any elector in voting or interferes with him or her in the free exercise of the elector's right to vote at any election commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 for the first conviction, and a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any subsequent conviction.

(2) No person shall directly or indirectly give or promise anything of value to another intending thereby to buy that person's or another's vote or to corruptly influence that person or another in casting his or her vote. Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, this subsection shall not apply to the serving of food to be consumed at a political rally or meeting or to any item of nominal value which is used as a political advertisement, including a campaign message designed to be worn by a person.

**CREDIT(S)**

Laws 1868, c. 1637, subc. 12, § 3; Rev.St.1892, § 2783; Laws 1895, c. 4328, § 50; Gen.St.1906, §§ 3814, 3826; Laws 1909, c. 5929, § 15; Laws 1913, c. 6470, §§ 1, 3, 6 to 8; Rev.Gen.St.1920, §§ 5874, 5889, 5908, 5918, 5921 to 5923; Comp.Gen.Laws 1927, §§ 8137, 8152, 8172, 8182, 8185 to 8187; Laws 1939, c. 19617, § 1; Comp.Gen.Laws 1940, Supp.1940, § 8182; Laws 1941, c. 20934, § 1; Laws 1945, c. 22858, § 7; Fla.St.1949, §§ 102.61, 875.02, 875.12, 875.27, 875.34, 875.35, 875.36; Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 1; Laws 1971, c. 71-136, § 25; Laws 1977, c. 77- 175, § 35; Laws 1979, c. 79-400, § 51; Laws 1981, c. 81-304, § 21; Laws 1990, c. 90-315, § 22. Amended by Laws 1995, c. 95-147, § 616, eff. July 10, 1995; Laws 1998, c. 98-129, § 29, eff. July 1, 1998.

**CROSS REFERENCES**

Consideration for registration, see § 104.012.

**LAW REVIEW AND JOURNAL COMMENTARIES**

Campaign finance law. 28 U.Fla.L.Rev. 458 (1976).

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West's F.S.A. § 104.0615

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West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

→ **104.0615. Voter intimidation or suppression prohibited; criminal penalties**

- (1) This section may be cited as the "Voter Protection Act."
- (2) A person may not directly or indirectly use or threaten to use force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel an individual to:
- (a) Vote or refrain from voting;
  - (b) Vote or refrain from voting for any particular individual or ballot measure;
  - (c) Refrain from registering to vote; or
  - (d) Refrain from acting as a legally authorized election official or poll watcher.
- (3) A person may not knowingly use false information to:
- (a) Challenge an individual's right to vote;
  - (b) Induce or attempt to induce an individual to refrain from voting or registering to vote; or
  - (c) Induce or attempt to induce an individual to refrain from acting as a legally authorized election official or poll watcher.
- (4) A person may not knowingly destroy, mutilate, or deface a voter registration form or election ballot or obstruct or delay the delivery of a voter registration form or election ballot.
- (5) A person who violates subsection (2), subsection (3), or subsection (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Added by Laws 2005, c. 2005-277, § 76, eff. July 1, 2005.

## HISTORICAL AND STATUTORY NOTES

## Amendment Notes:

Laws 2005, c. 2005-277, § 78, provides:

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West's F.S.A. § 104.0616

**Effective: January 01, 2006**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→104.0616. Absentee ballots and voting; violations**

Any person who provides or offers to provide, and any person who accepts, a pecuniary or other benefit in exchange for distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing absentee ballots, with intent to alter, change, modify, or erase any vote on the absentee ballot, except as provided in ss. 101.6105-101.695, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 2005, c. 2005-278, § 53, eff. Jan. 1, 2006.

West's F. S. A. § 104.0616, FL ST § 104.0616

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West's F.S.A. § 104.071

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Effective: [See Text Amendments]

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.071. Remuneration by candidate for services, support, etc.; penalty**

(1) It is unlawful for any person supporting a candidate, or for any candidate, in order to aid or promote the nomination or election of such candidate in any election, directly or indirectly to:

(a) Promise to appoint another person, promise to secure or aid in securing appointment, nomination or election of another person to any public or private position, or to any position of honor, trust, or emolument, except one who has publicly announced or defined what his or her choice or purpose in relation to any election in which he or she may be called to take part, if elected.

(b) Give, or promise to give, pay, or loan, any money or other thing of value to the owner, editor, publisher, or agent, of any communication media, as well as newspapers, to advocate or oppose, through such media, any candidate for nomination in any election or any candidate for election, and no such owner, editor, or agent shall give, solicit, or accept such payment or reward. It shall likewise be unlawful for any owner, editor, publisher, or agent of any poll-taking or poll-publishing concern to advocate or oppose through such poll any candidate for nomination in any election or any candidate for election in return for the giving or promising to give, pay, or loan any money or other thing of value to said owner, editor, publisher, or agent of any poll-taking or poll-publishing concern.

(c) Give, pay, expend, or contribute any money or thing of value for the furtherance of the candidacy of any other candidate.

(d) Furnish, give, or deliver to another person any money or other thing of value for any purpose prohibited by the election laws.

This subsection shall not prohibit a candidate from furnishing complimentary tickets to the candidate's campaign fund raiser to other candidates.

(2) A candidate may give his or her own personal or business funds to another candidate, so long as the contribution is not given in exchange for a promise or expectation that the recipient will directly or indirectly do anything to aid or promote the candidacy of the contributor which the recipient would not have otherwise done.

(3) Any person who violates any provision of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, and from and after conviction shall be disqualified to hold office.

CREDIT(S)

Laws 1913, c. 6469, § 60; Laws 1913, c. 6470, §§ 5, 6, 11, 14, 15; Rev.Gen.St.1920, §§ 5916, 5920, 5921, 5926, 5929, 5930; Comp.Gen.Laws 1927, §§ 8180, 8184, 8185, 8190, 8193, 8194; Fla.St.1949, §§ 875.31, 875.33,

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West's F.S.A. § 104.081

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Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.081. Threats of employers to control votes of employees**

It is unlawful for any person having one or more persons in his or her service as employees to discharge or threaten to discharge any employee in his or her service for voting or not voting in any election, state, county, or municipal, for any candidate or measure submitted to a vote of the people. Any person who violates the provisions of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 27; Laws 1977, c. 77-175, § 35. Amended by Laws 1995, c. 95-147, § 618, eff. July 10, 1995; Laws 1998, c. 98-129, § 30, eff. July 1, 1998.

## HISTORICAL AND STATUTORY NOTES

**Prior Laws:**

Fla.St.1949, §§ 875.22, 875.23.

Comp.Gen.Laws 1927, §§ 8165, 8166.

Rev.Gen.St.1920, §§ 5901, 5902.

Gen.St.1906, §§ 3839, 3840.

Laws 1901, c. 5016, §§ 1, 2, 3.

## LAW REVIEW AND JOURNAL COMMENTARIES

History of corrupt practices acts. J. V. Keen, 9 Fla.L.J. 297 (1935).

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Westlaw Topic No. 144.

C.J.S. Elections §§ 333, 353.

## RESEARCH REFERENCES

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West's F.S.A. § 104.091

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Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→ 104.091. Aiding, abetting, advising, or conspiring in violation of the code**

(1) Any person who knowingly aids, abets, or advises the violation of this code shall be punished in like manner as the principal offender.

(2) Any person who agrees, conspires, combines, or confederates with another person to commit a violation of this code shall be punished as if he or she had committed the violation.

(3) Any person who knows of a felony violation of this code and gives any aid to the offender who has violated this code, with intent that the offender avoid or escape detection, arrest, trial, or punishment, shall be punished as if he or she had committed the violation. This subsection does not prohibit a member of The Florida Bar from giving legal advice to a client.

**CREDIT(S)**

Laws 1951, c. 26870, § 8; Laws 1967, c. 67-164, § 1; Laws 1971, c. 71-136, § 28; Laws 1977, c. 77-175, § 35. Amended by Laws 2002, c. 2002-214, § 1, eff. Oct. 1, 2002.

**HISTORICAL AND STATUTORY NOTES****Amendment Notes:**

Laws 2002, c. 2002-214, § 1 rewrote the section, which formerly read:

"Any person who shall knowingly aid, abet or advise the violation of this code shall be punished in like manner as the principal offender."

**Prior Laws:**

Fla.St.1949, §§ 875.19 to 875.21.

Comp.Gen.Laws 1927, §§ 8162 to 8164.

Rev.Gen.St.1920, §§ 5898 to 5900.

Gen.St.1906, §§ 3836 to 3838.

Laws 1897, c. 4538, §§ 1, 2, 4, 5.

**CROSS REFERENCES**

Contribution limits, see § 106.08.

**LAW REVIEW AND JOURNAL COMMENTARIES**

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West's F.S.A. § 104.101

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Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→104.101. Failure to assist officers at polls**

Any person summoned by the sheriff or deputy sheriff who fails or refuses to assist him or her in maintaining the peace at the polls is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

CREDIT(S)

Laws 1889, c. 3879, § 27; Rev.St.1892, § 181; Laws 1895, c. 4328, § 58; Gen.St.1906, § 3834; Rev.Gen.St.1920, § 5896; Comp.Gen.Laws 1927, § 8160; Fla.St.1949, § 99.40; Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 29; Laws 1977, c. 77-175, § 35. Amended by Laws 1995, c. 95-147, § 619, eff. July 10, 1995.

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C.J.S. Elections §§ 327, 353.

West's F. S. A. § 104.101, FL ST § 104.101

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West's F.S.A. § 104.11

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West's Florida Statutes Annotated Currentness  
 Title IX. Electors and Elections (Chapters 97-109)  
 Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→104.11. Neglect of duty by sheriff or other officer**

Any sheriff, deputy sheriff, or other officer who willfully neglects or willfully refuses to perform his or her duties relating to elections is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 30; Laws 1977, c. 77-175, § 35. Amended by Laws 1995, c. 95-147, § 620, eff. July 10, 1995.

## HISTORICAL AND STATUTORY NOTES

**Prior Laws:**

Fla.St.1949, § 875.07.  
 Comp.Gen.Laws 1927, § 8142.  
 Rev.Gen.St.1920, § 5879.  
 Gen.St.1906, § 3818.  
 Laws 1895, c. 4328, § 58.

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 C.J.S. Elections §§ 327, 353.

West's F. S. A. § 104.11, FL ST § 104.11

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West's F.S.A. § 104.13

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West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.13. Intermingling ballots**

Whoever willfully places any ballot in the ballot box except as properly voted by electors, or willfully intermingles any other ballots which have not been duly received during the election with the ballots which are voted by the electors, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 3; Laws 1971, c. 71-136, § 32; Laws 1977, c. 77-175, § 35.

## HISTORICAL AND STATUTORY NOTES

**Prior Laws:**

Fla.St.1949, § 875.13.

Comp.Gen.Laws 1927, § 8153.

Rev.Gen.St.1920, § 5890.

Gen.St.1906, § 3827.

Rev.St.1892, § 2785.

Laws 1868, c. 1637, subc. 12, § 7.

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Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353.

## RESEARCH REFERENCES

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West's F. S. A. § 104.13, FL ST § 104.13

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**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.15. Unqualified electors willfully voting**

Whoever, knowing he or she is not a qualified elector, willfully votes at any election is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## CREDIT(S)

Laws 1881, c. 3278, § 1; Rev.St.1892, § 2787; Gen.St.1906, § 3830; Laws 1909, c. 5929, § 14; Rev.Gen.St.1920, §§ 5893, 5907; Comp.Gen.Laws 1927, §§ 8157, 8171; Laws 1949, c. 25365, § 1; Fla.St.1949, §§ 875.15, 875.26; Prior Laws:: Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 5; Laws 1971, c. 71-136, § 34; Laws 1977, c. 77-175, § 35. Amended by Laws 1995, c. 95- 147, § 621, eff. July 10, 1995.

## CROSS REFERENCES

Qualifications to register or vote, see § 97.041.

## LIBRARY REFERENCES

2002 Main Volume

Elections ↪313, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 325, 353.

## RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 202, Offenses in Connection With Voting -- Illegal Voting.

## NOTES OF DECISIONS

**Construction and application 1**  
**Evidence 4**  
**Special or local laws 3**  
**Validity of elections 2**

1. Construction and application

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West's F.S.A. § 104.16

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Effective: [See Text Amendments]

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

☐ Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.16: Voting fraudulent ballot**

Any elector who knowingly votes or attempts to vote a fraudulent ballot, or any person who knowingly solicits, or attempts, to vote a fraudulent ballot, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## CREDIT(S)

Laws 1895, c. 4328, § 36; Gen.Stat.1906, § 221; Laws 1913, c. 6469, § 42; Rev.Gen.St.1920, §§ 266, 346, 5911; Comp.Gen.Laws 1927, §§ 322, 403, 8175; Laws 1937, c. 17898, § 6; Laws 1937, c. 17901, § 3; Laws 1949, c. 25187, § 6; Laws 1949, c. 25386, § 4; Fla.St.1949, §§ 99.20, 102.41; Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 6; Laws 1971, c. 71-136, § 35; Laws 1977, c. 77-175, § 35.

## LIBRARY REFERENCES

2002 Main Volume

Elections ⇐38, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 76-77, 353.

## RESEARCH REFERENCES

## Encyclopedias

FL Jur. 2d Elections § 202, Offenses in Connection With Voting -- Illegal Voting.

West's F. S. A. § 104.16, FL ST § 104.16

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second Regular Session of the Nineteenth Legislature

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West's F.S.A. § 104.17

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West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.17. Voting in person after casting absentee ballot**

Any person who willfully votes or attempts to vote both in person and by absentee ballot at any election is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 1943, c. 22014, § 1; Laws 1949, c. 25385, § 1; Fla.St.1949, § 101.11; Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 7; Laws 1971, c. 71-136, § 36; Laws 1977, c. 77-175, § 35.

## HISTORICAL AND STATUTORY NOTES

Former § 101.11 derived from Laws 1943, c. 22014, § 1 was repealed and a new § 101.11 substituted by Laws 1949, c. 25385, § 1. This new § 101.11 was subsequently revised and renumbered as this section by Laws 1951, c. 26870, § 8.

## CROSS REFERENCES

Voting in person, return of absentee ballot, see § 101.69.

## LIBRARY REFERENCES

2002 Main Volume

Elections ⇐313, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 325, 353.

## RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 202, Offenses in Connection With Voting -- Illegal Voting.

West's F. S. A. § 104.17, FL ST § 104.17

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second Regular Session of the Nineteenth Legislature

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West's F.S.A. § 104.18

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West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.18. Casting more than one ballot at any election**

Whoever willfully votes more than one ballot at any election is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 8; Laws 1971, c. 71-136, § 37; Laws 1977, c. 77-175, § 35.

**HISTORICAL AND STATUTORY NOTES****Prior Laws:**

Fla.St.1949, §§ 875.15 to 875.17.

Laws 1949, c. 25365, §§ 1 to 3.

Comp.Gen.Laws 1927, §§ 8157, 8158, 8176.

Rev.Gen.St.1920, §§ 5893, 5894, 5912.

Laws 1913, c. 6469, § 56.

Gen.St.1906, §§ 3830, 3831.

Rev.St.1892, §§ 2787, 2788.

Laws 1881, c. 3278, § 1.

Laws 1868, c. 1637, subc. 12, § 6.

**LIBRARY REFERENCES**

2002 Main Volume

Elections ↪313, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 325, 353.

**RESEARCH REFERENCES****Encyclopedias**

FL Jur. 2d Elections § 202, Offenses in Connection With Voting -- Illegal Voting.

**NOTES OF DECISIONS****Validity of elections 1**

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West's F.S.A. § 104.185

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Effective: [See Text Amendments]

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

§ Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.185. Petitions; knowingly signing more than once; signing another person's name or a fictitious name**

(1) A person who knowingly signs a petition or petitions for a candidate, a minor political party, or an issue more than one time commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who signs another person's name or a fictitious name to any petition to secure ballot position for a candidate, a minor political party, or an issue commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

CREDIT(S)

Laws 1977, c. 77-178, § 1; Laws 1991, c. 91-224, § 6. Amended by Laws 1997, c. 97-13, § 23, eff. Jan. 1, 1998.

LIBRARY REFERENCES

2002 Main Volume

Elections ↻317, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353.

RESEARCH REFERENCES

Encyclopedias

FL Jur. 2d Elections § 201, Offenses in Connection With Voting.

West's F. S. A. § 104.185, FL ST § 104.185

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second Regular Session of the Nineteenth Legislature

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West's F.S.A. § 104.19

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West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.19. Using stickers or rubber stamps or carrying certain items in voting booth; penalty**

(1)(a) It is unlawful for any person casting a ballot at any election to use stickers or rubber stamps or to carry into a voting booth any mechanical device, paper, or memorandum which might be used to affect adversely the normal election process.

(b) In casting a write-in ballot, the elector shall cast the same in his or her own handwriting or in the handwriting of an authorized person aiding him or her.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

## CREDIT(S)

Laws 1949, c. 25187, § 7; Fla.St.1949, § 99.201; Laws 1951, c. 26870, § 8; Laws 1970, c. 70-136, § 1; Laws 1971, c. 71-136, § 39; Laws 1977, c. 77- 175, § 35; Laws 1981, c. 81-105, § 16. Amended by Laws 1995, c. 95-147, § 622, eff. July 10, 1995.

## CROSS REFERENCES

Assistance in casting ballot, see § 101.051.

## LIBRARY REFERENCES

2002 Main Volume

Elections ↪317, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 329, 353.

## RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 201, Offenses in Connection With Voting.

## NOTES OF DECISIONS

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West's F.S.A. § 104.20

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West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

☐ Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.20. Ballot not to be seen, and other offenses**

Any elector who, except as provided by law, allows his or her ballot to be seen by any person; takes or removes, or attempts to take or remove, any ballot from the polling place before the close of the polls; places any mark on his or her ballot by which it may be identified; endeavors to induce any elector to show how he or she voted; aids or attempts to aid any elector unlawfully; or prints or procures to be printed, or has in his or her possession, any copies of any ballot prepared to be voted is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**CREDIT(S)**

Laws 1895, c. 4328, § 55; Laws 1897, c. 4536, § 2; Gen.St.1906, § 3835; Rev.Gen.St.1920, § 5897; Comp.Gen.Laws 1927, § 8161; Fla.St.1949, § 99.34; Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 40; Laws 1977, c. 77-175, § 35. Amended by Laws 1995, c. 95-147, § 623, eff. July 10, 1995; Laws 2002, c. 2002-281, § 19.

**HISTORICAL AND STATUTORY NOTES****Amendment Notes:**

Laws 2002, c. 2002-281, § 22, provides:

"Except as otherwise expressly provided in this act, this act shall take effect one year after the legislature adopts the general appropriations act specifically appropriating to the Department of State, for distribution to the counties, \$8.7 million or such other amounts as it determines and appropriates for the specific purpose of funding this act." [Line item 2871I of the 2004- 2005 General Appropriations Act appropriates \$11.6 million for distribution to the counties for one disability-compliant machine per polling place. For purposes of the effect of Laws 2002, c. 2002-281, one year after adoption of this appropriation would be July 1, 2005.]

**CROSS REFERENCES**

Assistance in casting ballot, see § 101.051.

Secret voting, see § 101.041.

Time allowed in voting booth, see § 101.51.

**LIBRARY REFERENCES**

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West's F.S.A. § 104.21

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West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

▣ Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→ 104.21. Changing electors' ballots**

Whoever fraudulently changes or attempts to change the vote or ballot of any elector, by which actions such elector is prevented from voting such ballot or from voting such ballot as the elector intended, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 10; Laws 1971, c. 71-136, § 41; Laws 1977, c. 77-175, § 35. Amended by Laws 1995, c. 95-147, § 624, eff. July 10, 1995.

## HISTORICAL AND STATUTORY NOTES

**Prior Laws:**

Fla.St.1949, §§ 99.34, 875.03.  
 Comp.Gen.Laws 1927, § 8138.  
 Rev.Gen.St.1920, § 5875.  
 Gen.St.1906, § 3815.  
 Rev.St.1892, § 2784.  
 Laws 1868, c. 1637, subc. 12, § 5.

## LIBRARY REFERENCES

2002 Main Volume

Elections ↻317, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 329, 353.

## RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 204, Theft, Destruction, Alteration, or Wrongful Possession or Handling, of Ballots and Election Equipment and Records.

## NOTES OF DECISIONS

**Construction and application 1**

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West's F.S.A. § 104.22

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West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

▪ Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.22. Stealing and destroying records, etc., of election**

Any person who is guilty of stealing, willfully and wrongfully breaking, destroying, mutilating, defacing, or unlawfully moving or securing and detaining the whole or any part of any ballot box or any record tally sheet or copy thereof, returns, or any other paper or document provided for, or who fraudulently makes any entry or alteration therein except as provided by law, or who permits any other person so to do, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 11; Laws 1971, c. 71-136, § 42; Laws 1977, c. 77-175, § 35.

## HISTORICAL AND STATUTORY NOTES

**Prior Laws:**

Fla.St.1949, §§ 875.13, 875.28, 875.29.  
 Comp.Gen.Laws 1927, §§ 8153, 8173, 8174.  
 Rev.Gen.St.1920, §§ 5890, 5909, 5910.  
 Laws 1909, c. 5929, §§ 18, 19.  
 Gen.St.1906, § 3827.  
 Rev.St.1892, § 2785.  
 Laws 1868, c. 1637, subc. 12, § 7.

## LIBRARY REFERENCES

2002 Main Volume

Elections ↪317, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 329, 353.

## RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 203, Undue Influence on Election Process; Threats; Fraud; Bribery.

FL Jur. 2d Elections § 204, Theft, Destruction, Alteration, or Wrongful Possession or Handling, of Ballots and

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West's F.S.A. § 104.23

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Effective: [See Text Amendments]

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.23. Disclosing how elector votes**

Any election official or person assisting any elector who willfully discloses how any elector voted, except upon trial in court, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 12; Laws 1971, c. 71-136, § 43; Laws 1977, c. 77-175, § 35.

HISTORICAL AND STATUTORY NOTES

**Prior Laws:**

Fla.St.1949, § 875.04.

Comp.Gen.Laws 1927, § 8139.

Rev.Gen.St.1920, § 5876.

Gen.St.1906, § 3816.

Laws 1895, c. 4328, § 51.

CROSS REFERENCES

Secret voting, see § 101.041.

LIBRARY REFERENCES

2002 Main Volume

Elections ↪314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 199, Offenses of Officials Connected With Elections.

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West's F.S.A. § 104.24

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West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

☐ Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→ 104.24. Penalty for assuming name**

A person may not, in connection with any part of the election process, fraudulently call himself or herself, or fraudulently pass by, any other name than the name by which the person is registered or fraudulently use the name of another in voting. Any person who violates this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## CREDIT(S)

Laws 1913, c. 6469, § 57; Rev.Gen.St.1920, §§ 360, 5913; Comp.Gen.Laws 1927, §§ 417, 8177; Laws 1943, c. 22014, § 4; Laws 1949, c. 25385, § 1; Fla.St.1949, §§ 101.14, 102.53; Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 13; Laws 1971, c. 71-136, § 44; Laws 1977, c. 77-175, § 35. Amended by Laws 1995, c. 95-147, § 625, eff. July 10, 1995; Laws 1998, c. 98-129, § 31, eff. July 1, 1998.

## HISTORICAL AND STATUTORY NOTES

Former § 101.14, derived from Laws 1943, c. 22014, § 4, was repealed and a new § 101.14 was substituted by Laws 1949, c. 25385, § 1.

## LIBRARY REFERENCES

## 2002 Main Volume

Elections ↪ 312, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 326, 353.

## RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 201, Offenses in Connection With Voting.

## NOTES OF DECISIONS

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West's F.S.A. § 104.26

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West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

## → 104.26. Penalty for destroying ballot or booth, etc.

Any person who wrongfully, during or before an election, removes, tears down, destroys, or defaces any ballot, booth, compartment, or other convenience provided for the purpose of enabling the elector to prepare his or her ballot, or any card for the instruction of the voter, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

CREDIT(S)

Laws 1895, c. 4328, § 41; Gen.St.1906, § 3812; Rev.Gen.St.1920, § 5873; Comp.Gen.Laws 1927, § 8136; Fla.St.1949, § 875.01. Amended by Laws 1995, c. 95-147, § 626, eff. July 10, 1995.

## HISTORICAL AND STATUTORY NOTES

## Prior Laws:

Fla.St.1949, § 875.01.  
 Comp.Gen.Laws 1927, § 8136.  
 Rev.Gen.St.1920, § 5873.  
 Gen.St.1906, § 3812.  
 Laws 1895, c. 4328, § 41.

## LIBRARY REFERENCES

2002 Main Volume

Elections ↻317, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 329, 353.

## RESEARCH REFERENCES

## Encyclopedias

FL Jur. 2d Elections § 204, Theft, Destruction, Alteration, or Wrongful Possession or Handling, of Ballots and Election Equipment and Records.

West's F. S. A. § 104.26, FL ST § 104.26

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West's F.S.A. § 104.271

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West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→ 104.271. False or malicious charges against, or false statements about, opposing candidates; penalty**

(1) Any candidate who, in a primary election or other election, willfully charges an opposing candidate participating in such election with a violation of any provision of this code, which charge is known by the candidate making such charge to be false or malicious, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083 and, in addition, after conviction shall be disqualified to hold office.

(2) Any candidate who, in a primary election or other election, with actual malice makes or causes to be made any statement about an opposing candidate which is false is guilty of a violation of this code. An aggrieved candidate may file a complaint with the Florida Elections Commission pursuant to s. 106.25. The commission shall adopt rules to provide an expedited hearing of complaints filed under this subsection. Notwithstanding any other provision of law, the commission shall assess a civil penalty of up to \$5,000 against any candidate found in violation of this subsection, which shall be deposited to the account of the General Revenue Fund of the state.

## CREDIT(S)

Laws 1953, c. 28156, § 44; Laws 1971, c. 71-136, § 48; Laws 1977, c. 77-104, § 27; Laws 1977, c. 77-175, § 35; Laws 1985, c. 85-210, § 1. Amended by Laws 1995, c. 95-147, § 627, eff. July 10, 1995; Laws 1997, c. 97-13, § 44, eff. Jan. 1, 1998.

## LAW REVIEW AND JOURNAL COMMENTARIES

Executive suspension and removal of public officers under the 1968 Florida Constitution. William M. Barr and Frederick B. Karl, 23 U.Fla.L.Rev. 635 (1971).

## LIBRARY REFERENCES

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Elections ↻318, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 331, 353.

## RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 191, False Swearing or Declaration -- False or Malicious Charges Against, or False Statements About, Opposing Candidates.

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West's F.S.A. § 104.29

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Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.29. Inspectors refusing to allow watchers while ballots are counted**

The inspectors or other election officials shall, at all times while the ballots are being counted, allow as many as three persons near to them to see whether the ballots are being correctly read and called and the votes correctly tallied, and any official who denies this privilege or interferes therewith is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 51; Laws 1977, c. 77-175, § 35; Laws 1979, c. 79-400, § 53.

## HISTORICAL AND STATUTORY NOTES

**Prior Laws:**

Fla.St.1949, § 875.05.

Comp.Gen.Laws 1927, § 8140.

Rev.Gen.St.1920, § 5877.

Laws 1915, c. 6873, § 1.

## CROSS REFERENCES

Tabulation of vote where voting machine used, procedure, see § 101.54.

## LIBRARY REFERENCES

2002 Main Volume

Elections ↪314, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 353.

## RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 199, Offenses of Officials Connected With Elections.

## NOTES OF DECISIONS

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West's F.S.A. § 104.30

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West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→ 104.30. Voting system; unlawful possession; tampering**

(1) Any unauthorized person who unlawfully has possession of any voting system, components, or key thereof is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who tampers or attempts to tamper with or destroy any voting system or equipment with the intention of interfering with the election process or the results thereof is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## CREDIT(S)

Laws 1929, c. 13893, § 26; Comp.Gen.Laws Supp.1936, § 8202(1); Fla.St.1949, § 100.28; Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 17; Laws 1971, c. 71-136, § 52; Laws 1977, c. 77-175, § 35. Amended by Laws 2001, c. 2001-40, § 29, eff. Jan. 1, 2002.

## CROSS REFERENCES

Disposition of voting machine keys following election, see § 101.38.

Locking voting machine following election, see § 101.56.

## LIBRARY REFERENCES

2002 Main Volume

Elections ↪ 317, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353.

## RESEARCH REFERENCES

## Encyclopedias

FL Jur. 2d Elections § 204, Theft, Destruction, Alteration, or Wrongful Possession or Handling, of Ballots and Election Equipment and Records.

West's F. S. A. § 104.30, FL ST § 104.30

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second

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West's F.S.A. § 104.31

C

Effective: October 01, 2006

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→ 104.31. Political activities of state, county, and municipal officers and employees**

(1) No officer or employee of the state, or of any county or municipality thereof, except as hereinafter exempted from provisions hereof, shall:

(a) Use his or her official authority or influence for the purpose of interfering with an election or a nomination of office or coercing or influencing another person's vote or affecting the result thereof.

(b) Directly or indirectly coerce or attempt to coerce, command, or advise any other officer or employee to pay, lend, or contribute any part of his or her salary, or any money, or anything else of value to any party, committee, organization, agency, or person for political purposes. Nothing in this paragraph or in any county or municipal charter or ordinance shall prohibit an employee from suggesting to another employee in a noncoercive manner that he or she may voluntarily contribute to a fund which is administered by a party, committee, organization, agency, person, labor union or other employee organization for political purposes.

(c) Directly or indirectly coerce or attempt to coerce, command, and advise any such officer or employee as to where he or she might purchase commodities or to interfere in any other way with the personal right of said officer or employee.

The provisions of this section shall not be construed so as to prevent any person from becoming a candidate for and actively campaigning for any elective office in this state. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. The provisions of paragraph (a) shall not be construed so as to limit the political activity in a general, special, primary, bond, referendum, or other election of any kind or nature, of elected officials or candidates for public office in the state or of any county or municipality thereof; and the provisions of paragraph (a) shall not be construed so as to limit the political activity in general or special elections of the officials appointed as the heads or directors of state administrative agencies, boards, commissions, or committees or of the members of state boards, commissions, or committees, whether they be salaried, nonsalaried, or reimbursed for expense. In the event of a dual capacity of any member of a state board, commission, or committee, any restrictive provisions applicable to either capacity shall apply. The provisions of paragraph (a) shall not be construed so as to limit the political activity in a general, special, primary, bond, referendum, or other election of any kind or nature of the Governor, the elected members of the Governor's Cabinet, or the members of the Legislature. The provisions of paragraphs (b) and (c) shall apply to all officers and employees of the state or of any county or municipality thereof, whether elected, appointed, or otherwise employed, or whether the activity shall be in connection with a primary, general, special, bond, referendum, or other election of any kind or nature.

(2) An employee of the state or any political subdivision may not participate in any political campaign for an elective office while on duty.

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West's F.S.A. § 104.32

C

Effective: [See Text Amendments]

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

## → 104.32. Supervisor of elections; delivery of books to successor

Any supervisor of elections who willfully fails or refuses promptly to comply with the demand of his or her successor for the delivery of registration books, papers, and blanks connected with his or her office is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

## CREDIT(S)

Laws 1889, c. 3879, § 8; Rev.St.1892, § 2779; Laws 1895, c. 4328, § 9; Gen.St.1906, § 3820; Rev.Gen.St.1920, § 5881; Comp.Gen.Laws 1927, § 8144; Fla.St.1949, § 98.21; Laws 1951, c. 26870, § 8; Laws 1965, c. 65-60, § 2; Laws 1971, c. 71-136, § 54; Laws 1977, c. 77-175, § 35. Amended by Laws 1995, c. 95-147, § 629, eff. July 10, 1995.

## LIBRARY REFERENCES

2002 Main Volume

Elections ↪ 314, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 353.

## RESEARCH REFERENCES

## Encyclopedias

FL Jur. 2d Elections § 199, Offenses of Officials Connected With Elections.

West's F. S. A. § 104.32, FL ST § 104.32

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second Regular Session of the Nineteenth Legislature

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West's F.S.A. § 104.39

**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.39. Witnesses as to violations**

Any person who violates any provision of this code shall be a competent witness against any other person so violating and may be compelled to attend and testify as any other person. The testimony given shall not be used in any prosecution or criminal proceeding against the person so testifying, except in a prosecution for perjury.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1977, c. 77-175, § 35.

## HISTORICAL AND STATUTORY NOTES

**Prior Laws:**

Fla.St.1949, § 875.32.

Comp.Gen.Laws 1927, § 8181.

Rev.Gen.St.1920, § 5917.

Laws 1913, c. 6469, § 61.

## CROSS REFERENCES

Persons not excused from testifying on ground testimony might incriminate, see § 914.04.

Prohibition against self-incrimination, see Const. Art. 1, § 9.

## LIBRARY REFERENCES

## 2002 Main Volume

Witnesses ↪35.

Westlaw Topic No. 410.

C.J.S. Federal Civil Procedure § 521.

C.J.S. Witnesses § 49.

## RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 188, by Florida Elections Commission -- Witnesses; Immunity from Prosecution.

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West's F.S.A. § 104.41

**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

■ Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.41. Violations not otherwise provided for**

Any violation of this code not otherwise provided for is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 61; Laws 1977, c. 77-175, § 35.

## LIBRARY REFERENCES

2002 Main Volume

Elections ↪317, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353.

## NOTES OF DECISIONS

**In general 1**

## 1. In general

Public officials, authorized by law, as well as the several candidates and the electorate, may report alleged violations of the Florida Election Code to an appropriate prosecuting attorney, who, upon subsequent investigation may take appropriate action as the Election Code and the authority of his office may authorize. Op.Atty.Gen., 072-331, Sept. 28, 1972.

The Florida Election Code imposes specific duties upon the supervisor of elections and other public officials, but enforcement of the election laws for which criminal sanctions are imposed lies with the appropriate prosecuting attorneys of the several counties and the determination of guilt in such cases rests with the judiciary. Op.Atty.Gen., 072-331, Sept. 28, 1972.

West's F. S. A. § 104.41, FL ST § 104.41

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second Regular Session of the Nineteenth Legislature

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West's F.S.A. § 104.42

**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

■ Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→ 104.42. Fraudulent registration and illegal voting; investigation**

(1) The supervisor of elections is authorized to investigate fraudulent registrations and illegal voting and to report his or her findings to the local state attorney and the Florida Elections Commission.

(2) The board of county commissioners in any county may appropriate funds to the supervisor of elections for the purpose of investigating fraudulent registrations and illegal voting.

CREDIT(S)

Laws 1937, c. 17899, §§ 12, 14; Comp.Gen.Laws Supp.1940, § 369(4); Fla.St.1949, § 100.40; Laws 1951, c. 26870, § 8; Laws 1977, c. 77-175, § 35. Amended by Laws 1998, c. 98-129, § 32, eff. July 1, 1998.

CROSS REFERENCES

County annual budget, see § 129.01 et seq.

LIBRARY REFERENCES

2002 Main Volume

Elections k324.1.  
Westlaw Topic No. 144.  
C.J.S. Elections § 337.

NOTES OF DECISIONS

**In general 1****1. In general**

A board of county commissioners may amend an existing county budget, or adopt a supplemental county budget, so as to provide funds for the purpose of investigating fraudulent registrations and illegal voting, when no such funds, or an insufficient amount, were appropriated for such purposes. Op.Atty.Gen., 064-73, June 15, 1964.

West's F. S. A. § 104.42, FL ST § 104.42

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West's F.S.A. § 104.43

**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

☐ Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.43. Grand juries; special investigation**

The grand jury in any circuit shall, upon the request of any candidate or qualified voter, make a special investigation when it convenes during a campaign preceding any election day to determine whether there is any violation of the provisions of this code, and shall return indictments when sufficient ground is found.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1977, c. 77-175, § 35.

**HISTORICAL AND STATUTORY NOTES****Prior Laws:**

Fla.St.1949, § 875.45.

Com.Gen.Laws 1927, § 8196.

Rev.Gen.St.1920, § 5932.

Laws 1913, c. 6470, § 17.

**LAW REVIEW AND JOURNAL COMMENTARIES**

The Florida jury process. S. O. Kanner and John E. Smith, 15 U.Fla.L.Rev. 1 (1962).

**LIBRARY REFERENCES**

2002 Main Volume

Grand Jury ☞25.

Westlaw Topic No. 193.

C.J.S. Grand Juries §§ 10, 76, 78, 80-81, 83-84.

**RESEARCH REFERENCES****Encyclopedias**

FL Jur. 2d Juries § 288, Initiation of Inquiry.

West's F. S. A. § 104.43, FL ST § 104.43

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second

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West's Ann.Cal.Elec.Code § 18000

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 1. General Provisions

## → § 18000. Scope of division

This division applies to all elections.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18000, enacted by Stats.1961, c. 23, § 18000, derived from Elec.C.1939, § 7700; Pol.C. § 1266a, added by Stats.1927, c. 236, § 1, providing for establishment of election return centers, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former §§ 12013, 12056, 15281, 29000, enacted by Stats.1961, c. 23, pp. 755, 758, 796, 869, §§ 12013, 12056, 15281, 29000.

Former § 29100, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, §§ 4963, 5010, 6601, 11500 (Stats.1939, c. 26, pp. 203, 205, 239, 310); Stats.1923, c. 96, p. 192, § 24; Pen.C. § 64 1/2, added by Stats.1899, c. 52, p. 59, § 1; Stats.1899, c. 120, p. 153, § 1.

## LAW REVIEW AND JOURNAL COMMENTARIES

Penal provisions of Elections Code and municipal referendum and initiative elections. (1965) 5 Santa Clara Law. 187.

## LIBRARY REFERENCES

2003 Main Volume

Elections ↪311.  
 Westlaw Topic No. 144.

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West's Ann.Cal.Elec.Code § 18001

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 1. General Provisions

**→ § 18001. General fine**

Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding one thousand dollars (\$1,000) in cases of misdemeanors or ten thousand dollars (\$10,000) in cases of felonies, in addition to the imprisonment prescribed.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

#### HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Amendment of this section by Initiative Measure (Prop. 52, Art. 4, § 4) was rejected at the Nov. 5, 2002 election.

Former § 18001, enacted by Stats.1961, c. 23, § 18001, derived from Elec.C.1939, § 7701; Pol.C. § 1266a, added by Stats.1927, c. 236, § 1, relating to precincts served by election return centers, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29001, enacted by Stats.1961, c. 23, p. 869, § 29001.

Former § 29101, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11501 (Stats.1939, c. 26, p. 310); Pen.C. § 61.

#### CROSS REFERENCES

Felony, definition and penalties, see Penal Code §§ 17, 18.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

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West's Ann.Cal.Elec.Code § 18002

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**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 1. General Provisions

**→ § 18002. Failure to perform or violation of duty; general penalty**

Every person charged with the performance of any duty under any law of this state relating to elections, who willfully neglects or refuses to perform it, or who, in his or her official capacity, knowingly and fraudulently acts in contravention or violation of any of those laws, is, unless a different punishment is prescribed by this code, punishable by fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the state prison for 16 months or two or three years, or by both.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18002, enacted by Stats.1961, c. 23, § 18002, derived from Elec.C.1939, § 7702; Pol.C. § 1266a, added by Stats.1927, c. 236, § 1, providing for changing election return center locations and precinct groupings, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29002, enacted by Stats.1961, c. 23, p. 869, § 29002.

Former § 29102, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11502 (Stats.1939, c. 26, p. 310); Pen.C. § 41.

**CROSS REFERENCES**

Ballots, see Elections Code § 18400 et seq.

Felony, infraction, definition and penalties, see Penal Code §§ 17, 18.

Misdemeanor, infraction, offense and punishment, see Penal Code §§ 17, 19.

Precinct boards, composition and qualifications, generally, see Elections Code § 12300 et seq.

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West's Ann.Cal.Elec.Code § 18100

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

## →§ 18100. Violations; imprisonment

(a) Every person who willfully causes, procures, or allows himself or herself or any other person to be registered as a voter, knowing that he or she or that other person is not entitled to registration, is punishable by imprisonment in the state prison for 16 months or two or three years, or in a county jail for not more than one year.

(b) Every person who knowingly and willfully signs, or causes or procures the signing of, an affidavit of registration of a nonexistent person, and who mails or delivers, or causes or procures the mailing or delivery of, that affidavit to a county elections official is guilty of a crime punishable by imprisonment in the state prison for 16 months or two or three years, or in a county jail for not more than one year. For purposes of this subdivision, "nonexistent person" includes, but is not limited to, deceased persons, animals, and inanimate objects.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 220, enacted by Stats.1961, c. 23, p. 589, § 220.

Former § 29200, added by Stats.1976, c. 1192, § 15, amended by Stats.1979, c. 1032, § 1.

Elec.C.1939, § 139 (Stat.1939, c. 26, p. 58).

Pen.C. § 42, amended by Stats.1901, c. 158, p. 436, § 6; Stats.1905, c. 479, p. 639, § 1.

Pen.C. § 42a, added by Stats.1905, c. 479, p. 639, § 2.

CROSS REFERENCES

Contests, grounds for election contests, see Elections Code § 16100.

County, City, defined for purposes of this Code, see Elections Code § 310.

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West's Ann.Cal.Elec.Code § 18101

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

**→§ 18101. Willful registration of fictitious person or person not requesting registration; violations; imprisonment**

Every person who knowingly and willfully completes, or causes or procures the completion of, in whole or in part, an affidavit of registration or a voter registration card, with the intent to cause the registration or reregistration as a voter of a fictitious person or of any person who has not requested registration or reregistration as a voter, is guilty of a crime punishable by imprisonment in the state prison for 16 months or two or three years, or in a county jail for not more than one year.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29200.5, added by Stats.1985, c. 894, § 1.

## CROSS REFERENCES

Affidavit of registration, contents, see Elections Code § 2150.

County, City, defined for purposes of this Code, see Elections Code § 310.

Duties of county clerk and deputies with respect to affidavits, see Elections Code § 2135 et seq.

Election Day Voter Registration Act of 2002, election day registration and voting, see Elections Code § 2170 et seq.

Felony, infraction, definition and penalties, see Penal Code §§ 17, 18.

Form of affidavit of registration, see Elections Code § 2157.

Misdemeanor, infraction, offense and punishment, see Penal Code §§ 17, 19.

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West's Ann.Cal.Elec.Code § 18102

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

→ § 18102. Deputy or registration elections official; violations; imprisonment

Any deputy elections official or registration elections official who knowingly registers a nonexistent person, knowingly registers a person under a false name or address, or knowingly registers a person who is ineligible to register is punishable by imprisonment in the state prison for 16 months or two or three years or in county jail for not more than one year.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 284, enacted by Stats.1961, c. 23, p. 593, § 284, amended by Stats.1970, c. 726, p. 1354, § 1; Stats.1975, c. 704, § 33.

Former § 29201, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 184 (Stats.1939, c. 26, p. 59).

Elec.C.1939, § 184, added as part of Pol.C. § 1095a by Stats.1911, Ex.Sess., c. 58, § 1, amended by Stats.1931, p. LXXXIII, § 1; Stats.1931, c. 320, § 2, amended to be Elec.C.1939 § 184, by Stats.1939, c. 27, § 3.

Pol.C. § 1095, amended by Stats.1899, c. 53, p. 61, § 1; Stats.1903, c. 222, p. 257, § 1; Stats.1911, c. 437, p. 889, § 1.

## CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Deputies and clerks, report for failure to comply, see Elections Code §§ 2140, 18104.

Duties of county clerk and deputies with respect to affidavits, see Elections Code § 2135 et seq.

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West's Ann.Cal.Elec.Code § 18103

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

**→§ 18103. Interference with transfer of completed affidavits of registration; unauthorized retention or denial of right to return registration cards; misdemeanor**

Any person who knowingly or negligently (a) interferes with the prompt transfer of a completed affidavit of registration to the county elections official, (b) retains a voter's completed registration card, without the voter's authorization, for more than three days, excluding Saturdays, Sundays, and state holidays, or after the close of registration, or (c) denies a voter the right to return to the county elections official the voter's own completed registration card, is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 313, added by Stats.1975, c. 704, § 40.5.

Former § 313, added by Stats.1961, c. 23, p. 595, § 313.

Former § 29202, added by Stats.1976, c. 1192, § 15, amended by Stats.1977, c. 999, § 5; Stats.1977, c. 1116, § 11; Stats.1989, c. 983, § 12; Stats.1990, c. 239, § 1.

Elec.C.1939, § 223 (added by Stats.1939, c. 26, p. 61, amended by Stats.1949, c. 1432, p. 2492, § 2.

Pol.C. § 1096a, added by Stats.1917, c. 708, p. 1335, § 2, amended by Stats.1929, c. 749, p. 1420, § 4.

## CROSS REFERENCES

Computation of time, first and last days, holidays, see Civil Code § 10; Code of Civil Procedure § 12 et seq.; Government Code § 6800 et seq.

Computation of time, time for performance of any act provided for or required by this code, holiday as last day for performance of act, see Elections Code § 15.

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West's Ann.Cal.Elec.Code § 18104

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

**→ § 18104. Deputy registrars; failure to return affidavits of registration; misdemeanor; report; civil or criminal action**

Any deputy registrar of voters having charge of affidavits of registration is guilty of a misdemeanor who knowingly neglects or refuses to return affidavits of registration as provided in Article 3 (commencing with Section 2135) of Chapter 2 of Division 2. The county elections official shall report to the district attorney of the county, under oath, the names of any deputies who have failed to return the affidavits. The district attorney shall take appropriate civil or criminal action.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former §§ 284, 285, enacted by Stats.1961, c. 23, p. 593, §§ 284, 285, amended by Stats.1970, c. 726, p. 1354, § 1; Stats.1975, c. 704, § 33.

Former § 29203, added by Stats.1976, c. 1192, § 20, amended by Stats.1988, c. 669, § 6.

Elec.C.1939, §§ 184, 185, 186 (Stats.1939, c. 26, p. 59).

Elec.C.1939, §§ 184, 185 and 186, added as part of Pol.C. § 1095a by Stats.1911, Ex.Sess., c. 58, § 1, amended by Stats.1931, p. LXXXIII, § 1; Stats.1931, c. 320, § 2, amended to be Elec.C.1939, §§ 184, 185 and 186 by Stats.1939, c. 27, § 3.

Pol.C. § 1095 amended by Stats.1899, c. 53, p. 61, § 1; Stats.1903, c. 222, p. 257, § 1; Stats.1911, c. 437, p. 889, § 1.

## CROSS REFERENCES

Close of registration, see Elections Code § 2107.

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West's Ann.Cal.Elec.Code § 18105

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

**→ § 18105. Affidavit of registration or voter registration card; statement in support or opposition of candidates by other than registrant; misdemeanor**

No affidavit of registration or voter registration card shall contain, and no person other than the registrant shall write on or affix thereto, or cause to be written on or affixed thereto, any statement urging or indicating support or opposition to any candidate or measure.

Any person who violates this section is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

#### HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29203.7, added by Stats.1985, c. 346, § 1.

#### CROSS REFERENCES

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Measure, defined for purposes of this Code, see Elections Code § 329.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Voter, defined for purposes of this Code, see Elections Code § 359.

Voter registration, affidavit of registration, see Elections Code § 2102.

Voter registration cards, distribution and restrictions, see Elections Code § 2158.

Voter registration cards, return of voter registration cards, see Elections Code § 2138.

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West's Ann.Cal.Elec.Code § 18106

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 2. Voter Registration (Refs &amp; Annos)

**→ § 18106. Tampering with party affiliation declaration**

Every person is punishable by imprisonment in the state prison for 16 months or two or three years or in the county jail for not more than one year who, without the specific consent of the affiant, willfully and with the intent to affect the affiant's voting rights, causes, procures, or allows the completion, alteration, or defacement of the affiant's party affiliation declaration contained in an executed, or partially executed, affidavit of registration pursuant to subdivision (h) of Section 2150 and Section 2151.

This section shall not apply to a county elections official carrying out his or her official duties.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29204, added by Stats.1979, c. 565, § 1.

## CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Elections official, defined for purposes of this Code, see Elections Code § 320.

Elections officials, failure to perform or violation of duty relating to elections, general penalty, see Elections Code § 18002.

Fair campaign practices, generally, see Elections Code § 20400.

Fair campaign practices, Code of Fair Campaign Practices, see Elections Code § 20440.

Felony, infraction, definition and penalties, see Penal Code §§ 17, 18.

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West's Ann.Cal.Elec.Code § 18107

**C****Effective: [See Text Amendments]**

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 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

**→ § 18107. Voter registration cards; distribution; violations; infraction**

Every person who willfully violates Section 2158 is guilty of an infraction, punishable by a fine not to exceed two hundred dollars (\$200).

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29205, added by Stats.1981, c. 551, § 2.

## CROSS REFERENCES

Felony, infraction, definition and penalties, see Penal Code §§ 17, 18.

Voter registration cards, distribution and restrictions, see Elections Code § 2158.

Voter registration cards, return of voter registration cards, see Elections Code § 2138.

Voter registration, confidentiality of voter registration information, restrictions on disclosure of information, see Government Code § 6254.4.

Voter registration, generally, see Elections Code § 2100 et seq.

## LIBRARY REFERENCES

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Elections ↻309.  
 Westlaw Topic No. 144.  
 C.J.S. Elections § 324, 355(2).

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West's Ann.Cal.Elec.Code § 18107.5

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Effective: January 01, 2003

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

**→§ 18107.5. Electronic submission of absentee ballot application for another registered voter; violation; offense; penalty**

Every person who willfully violates subdivision (c) of Section 3008 is guilty of an infraction, punishable by a fine not to exceed two hundred dollars (\$200) per application.

CREDIT(S)

(Added by Stats.2002, c. 753 (A.B.2277), § 6.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Sections 1 and 7 of Stats.2002, c. 753 (A.B.2277), provide:

"SECTION 1. The Legislature hereby finds and declares the following:

"(a) It is the policy of this state that all election laws and procedures are established and construed to assist the elector in the exercise of his or her right to vote. It is the further policy of the state that this goal be accomplished in an economical manner that prevents fraud and encourages electors to vote.

"(b) California's system of elections can be improved by the use of current and emerging technologies to increase voter participation.

"(c) Greater electoral participation may be achieved by allowing all voters to submit absentee ballot requests electronically.

"(d) It is the intent of the Legislature that the electronic application process for an absent voter's ballot utilize current Internet technology security.

"(e) It is the intent of the Legislature to provide voters with a web page secure Internet format that is completed manually by the voter and submitted over the Internet as a single, secure document."

"SEC. 7. The Secretary of State shall report to the Legislature, within one year of the first statewide election following implementation of this act, on the impact, if any, of permitting electronic application for absentee ballots, including the impact of the electronic applications on voter participation."

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West's Ann.Cal.Elec.Code § 18108

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

~~→ § 18108. Registration assistance for consideration; failure to comply with statutory requirements; misdemeanor; penalties; exemptions~~

(a) Except as provided in subdivision (c), any person who receives money or other valuable consideration to assist another to register to vote by receiving the completed affidavit of registration from the elector, and fails to comply with Section 2159, is guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months or when the failure to comply is found to be willful, not exceeding one year, or both.

(b) Any person who receives money or other valuable consideration to assist another to register to vote by receiving the completed affidavit of registration from the elector, upon a third or subsequent conviction, on charges brought and separately tried, for failure to comply with Section 2159 shall be punished by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the county jail not to exceed one year, or both.

(c) This section shall not apply to any public agency or its employees that is designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), when an elector asks for assistance to register to vote during the course and scope of the agency's normal business.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.1995, c. 946 (A.B.1532), § 2; Stats.1997, c. 456 (S.B.1077), § 4.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

The 1995 amendment rewrote the section, which had read:

"Any person who, in exchange for money or other valuable consideration, assists another to register to vote by receiving the completed affidavit of registration from the elector, and fails to provide the information required by Section 2159, is guilty of a misdemeanor."

Stats.1997, c. 456, in subd. (a) substituted "subdivision (c)" for "subdivision (d)" following "as provided in" and deleted "subdivision (a) of" following "fails to comply with"; and in subd. (b) deleted "subdivision (a) of"

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West's Ann.Cal.Elec.Code § 18108.5

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**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

**→ § 18108.5. Affidavit records; notice of noncomplying affidavits; failure to comply with statutory requirements; offense; penalties; exemptions**

- (a) Any person, company, or other organization that agrees to pay money or other valuable consideration, whether on a per-affidavit basis or otherwise, to any person who assists another person to register to vote by receiving the completed affidavit of registration who fails to comply with Section 2159.5, is guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months or when the failure to comply is found to be willful, not exceeding one year, or both.
- (b) Any person, company, or other organization that agrees to pay money or other valuable consideration, whether on a per-affidavit basis or otherwise, to any person who assists another person to register to vote by receiving the completed affidavit of registration, upon a third or subsequent conviction, on charges brought and separately tried, for failure to comply with Section 2159.5 shall be punished by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the county jail not to exceed one year, or both.
- (c) An elections official shall notify any person, company, or other organization that agrees to pay money or other valuable consideration, whether on a per-affidavit basis or otherwise, to any person who assists another person to register to vote by receiving the completed affidavit of registration, that three or more affidavits of registration submitted by a person who assisted another to register to vote do not comply with Sections 18100, 18101, 18103, or 18106. The elections official may forward a copy of each of the noncomplying affidavits of registration to the district attorney, who may make a determination whether probable cause exists to believe that a violation of law has occurred.
- (d) This section shall not apply to any public agency or its employees that is designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), when an elector asks for assistance to register to vote during the course and scope of the agency's normal business.

CREDIT(S)

(Added by Stats.1997, c. 456 (S.B.1077), § 5.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

**Derivation:** Former § 2159, enacted by Stats.1994, c. 920, § 2, amended by Stats.1995, c. 946, § 1.

CROSS REFERENCES

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West's Ann.Cal.Elec.Code § 18109



**Effective: [See Text Amendments]**

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Elections Code (Refs & Annos)  
Division 18. Penal Provisions (Refs & Annos)  
Chapter 2. Voter Registration (Refs & Annos)

**→ § 18109: Misuse of voter registration information; violation**

(a) It is a misdemeanor for any person in possession of information obtained pursuant to Article 5 (commencing with Section 2180) of Chapter 2 of Division 2, or Section 6254.4 of the Government Code, knowingly to use or permit the use of all or any part of that information for any purpose other than as permitted by law.

(b) It is a misdemeanor for any person knowingly to acquire possession or use of voter registration information referred to in subdivision (a) without first complying with Section 2188.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29207, added by Stats.1992, c. 2, § 4.

Former § 29207, added by Stats.1987, c. 1458, § 1458.

**CROSS REFERENCES**

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Voter, defined for purposes of this Code, see Elections Code § 359.

Voter registration, confidentiality of voter registration information, restrictions on disclosure of information, see Government Code § 6254.4.

Voter registration, generally, see Elections Code § 2100 et seq.

**LAW REVIEW AND JOURNAL COMMENTARIES**

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West's Ann.Cal.Elec.Code § 18110

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

**→§ 18110: Disclosure of home address or telephone number on voter registration card; violations**

(a) For purposes of this section, "home address" means only street address and does not include an individual's city or post office address.

(b) Any person or public entity who, in violation of Section 2194, discloses the home address or telephone number listed on a voter registration card of any of the following individuals is guilty of a misdemeanor:

(1) An active or retired peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(2) An employee of a city police department or a county sheriff's office.

(3) The spouse or children of the individuals specified in paragraphs (1) and (2) who live with those individuals.

(c) Any person or public entity, who in violation of Section 2194, discloses the home address or telephone number listed on a voter registration card of any individual specified in paragraph (1), (2), or (3) of subdivision (b), and that violation results in bodily injury to any of those individuals, is guilty of a felony.

CREDIT(S)

(Added by Stats.1994, c. 1207 (S.B.1518), § 9)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Section 15 of Stats.1994, c. 1207 (S.B.1518), provides:

"Section 9 of this bill shall become operative only if both this bill and SB 1547 [Stats.1994, c. 920] are chaptered, in which case Section 10 of this bill shall not become operative."

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Felony, definition and penalties, see Penal Code §§ 17, 18.

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West's Ann.Cal.Elec.Code § 18200

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Effective: [See Text Amendments]

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 Chapter 3. Nomination of Candidates (Refs & Annos)

**→ § 18200. Subscription of false names to petitions; felony; imprisonment**

Every person who subscribes to any nomination petition a fictitious name, or who intentionally subscribes thereto the name of another, or who causes another to subscribe a fictitious name to a nomination petition, is guilty of a felony and is punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18200, enacted by Stats.1961, c. 23, § 18200, part of a group of sections derived from Elec.C.1939, §§ 7800 et seq., 7840 et seq., as amended and Pol.C. §§ 1361, 1362, 1364 as amended, providing for liberal construction of the chapter, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29221, enacted by Stats.1961, c. 23, p. 874, § 29221.

Former § 29300, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11649 (Stats.1939, c. 26, p. 315, amended by Stats.1959, c. 96, p. 1950, § 2).

Pen.C. § 472a, added by Stats.1915, c. 43, p. 51, § 1.

## CROSS REFERENCES

Felony defined, see Penal Code § 17.

Subscription defined, see Government Code § 16.

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West's Ann.Cal.Elec.Code § 18201

C

Effective: [See Text Amendments]

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 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 3. Nomination of Candidates (Refs & Annos)

**→ § 18201. Nomination papers; false making, defacement or destruction; penalty**

Any person who falsely makes or fraudulently defaces or destroys all or any part of a nomination paper, is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the state prison for 16 months or two or three years or by both the fine and imprisonment.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18201, added by Stats.1961, c. 794, amended by Stats.1963, c. 414, § 7; Stats.1970, c. 1387, § 1, relating to processing and counting absentee ballots, was repealed by Stats.1975, c. 1203, § 8. The section was derived from former § 18201, enacted by Stats.1961, c. 23, § 18201, and was part of a group of sections derived from Elec.C.1939, §§ 7800 et seq., 7840 et seq., as amended and Pol.C. §§ 1361, 1362, 1364 as amended.

Former § 18201, enacted by Stats.1961, c. 23, § 18201, relating to the count and canvass of absentee ballots, was repealed by Stat.1961, c. 794.

**Derivation:** Former § 7103, enacted by Stats.1961, c. 23, § 698, § 7103.

Former § 29301, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 3203 (Stats.1939, c. 26, p. 167).

Pol.C. § 1213, added by Stats.1891, c. 130, p. 178, § 32.

## CROSS REFERENCES

Filing false paper forbidden, see Elections Code § 18203.

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West's Ann.Cal.Elec.Code § 18202

**C**

**Effective: [See Text Amendments]**

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 Chapter 3. Nomination of Candidates (Refs & Annos)

**→ § 18202. Failure to properly file nomination papers or declaration of candidacy; misdemeanor**

Every person acting on behalf of a candidate is guilty of a misdemeanor who deliberately fails to file at the proper time and in the proper place any nomination paper or declaration of candidacy in his or her possession that is entitled to be filed under this code.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18202, enacted by Stats.1961, c. 23, § 18202, part of a group of sections derived from Elec.C.1939, §§ 7800 et seq., 7840 et seq., as amended and Pol.C. §§ 1361, 1362, 1364 as amended, relating to appointment of canvassing boards, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 7102, enacted by Stats.1961, c. 23, p. 698, § 7102.

Former § 29302, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 3202 (Stats.1939, c. 26, p. 166); Stats.1913, c. 690, p. 1412, § 32.

**CROSS REFERENCES**

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Filing of nomination papers, direct primary, see Elections Code § 8100 et seq.

Filing of nomination papers, independent nominations, see Elections Code § 8403.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Nominations, direct primary, form of nomination documents, see Elections Code § 8041.

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West's Ann.Cal.Elec.Code § 18203

**C**

**Effective: [See Text Amendments]**

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 Chapter 3. Nomination of Candidates (Refs & Annos)

**→ § 18203. False nomination papers or declaration of candidacy; filing or submission; penalty**

Any person who files or submits for filing a nomination paper or declaration of candidacy knowing that it or any part of it has been made falsely is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the state prison for 16 months or two or three years or by both the fine and imprisonment.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18203, enacted by Stats.1961, c. 23, § 18203, part of a group of sections derived from Elec.C.1939, §§ 7800 et seq., 7840 et seq., and 7880, as amended and Pol.C. §§ 1361, 1362, and 1364, as amended, relating to composition and duties of canvassing boards, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 7104, enacted by Stats.1961, c. 23, p. 698, § 7104.

Former § 29303, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 3204 (Stats.1939, c. 26, p. 167).

Pol.C. § 1213, added by Stats.1891, c. 130, p. 178, § 32.

**CROSS REFERENCES**

Falsification and fraudulent destruction, see Elections Code § 18201.

Filing of papers, direct primary, see Elections Code § 8100 et seq.

Filing of papers, independent nominations, see Elections Code § 8403.

Local, special, vacancy, and consolidated elections, declaration of candidacy form, acknowledgement, see

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West's Ann.Cal.Elec.Code § 18204

**C**

**Effective: [See Text Amendments]**

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 Chapter 3. Nomination of Candidates (Refs & Annos)

**→ § 18204. Suppression of nomination papers or declarations of candidacy; penalty**

Any person who willfully suppresses all or any part of a nomination paper or declaration of candidacy either before or after filing is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the state prison for 16 months or two or three years or by both the fine and imprisonment.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18204, enacted by Stats.1961, c. 23, § 18204, part of a group of sections derived from Elec.C.1939, §§ 7800 et seq., 7840 et seq., as amended and Pol.C. §§ 1361, 1362, 1364 as amended, providing for compensation of canvassing boards, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 7105, enacted by Stats.1961, c. 23, p. 698, § 7105.

Former § 29304, added by Stats.1979, c. 565, § 1.

Elec.C.1939, § 3205 (Stats.1939, c. 26, p. 167); Pol.C. § 1213, added by Stats.1891, c. 130, p. 178, § 32.

**CROSS REFERENCES**

Filing of papers, direct primary, see Elections Code § 8100 et seq.

Filing of papers, independent nominations, see Elections Code § 8403.

**LIBRARY REFERENCES**

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Elections ↩ 309, 323, 332.

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West's Ann.Cal.Elec.Code § 18205

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Effective: [See Text Amendments]

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 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 3. Nomination of Candidates (Refs & Annos)

**→ § 18205. Payment of consideration to induce a person not to become or to withdraw as a candidate; imprisonment**

A person shall not directly or through any other person advance, pay, solicit, or receive or cause to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office. Violation of this section shall be punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18205, enacted by Stats.1961, c. 23, § 18205, amended by Stats.1961, c. 65, part of a group of sections derived from Elec.C.1939, §§ 7800 et seq., 7840 et seq., as amended and Pol.C. §§ 1361, 1362, 1364 as amended, relating to the law applicable to the canvass of votes and disposition of challenges, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 12011, enacted by Stats.1961, c. 23, p. 755, § 12011.

Former § 29305, added by Stats.1976, c. 1192, § 15, amended by Stats.1977, c. 1112, § 1.

Elec.C.1939, § 4961 (Stats.1939, c. 26, p. 203).

Pen.C. § 54b, added by Stats.1905, c. 479, p. 642, § 11.

## CROSS REFERENCES

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Withdrawal of candidates, see Elections Code § 8800 et seq.

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West's Ann.Cal.Elec.Code § 18301

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Effective: [See Text Amendments]

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Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 4. Election Campaigns (Refs &amp; Annos)

Article 1. Campaign Literature (Refs &amp; Annos)

**→ § 18301. Simulated ballot or sample ballot; printing or duplication; statement, official seal or insignia violations; misdemeanor**

In addition to any other penalty, any person who prints or otherwise duplicates, or causes to be printed or duplicated, a simulated ballot or simulated sample ballot that does not contain the statement required by Section 20009 or that uses an official seal or insignia in violation thereof, is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 12059, added by Stats.1974, c. 681, p. 1547, § 2.

Former § 29414, added by Stats.1976, c. 1192, § 15.

## CROSS REFERENCES

Ballot, defined for purposes of this Code, see Elections Code § 301.

Ballots, sample ballots, and voter pamphlets, generally, see Elections Code § 13000 et seq.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

## LIBRARY REFERENCES

2003 Main Volume

Elections ↻309.

Westlaw Topic No. 144.

C.J.S. Elections § 324, 355(2).

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West's Ann.Cal.Elec.Code § 18302

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

▣ Chapter 4. Election Campaigns (Refs &amp; Annos)

▣ Article 1. Campaign Literature (Refs &amp; Annos)

→ § 18302. False precinct information

Every person is guilty of a misdemeanor who knowingly causes to be mailed or distributed, or knowingly mails or distributes, literature to any voter that includes a designation of the voter's precinct polling place other than a precinct polling place listed for that voter in an official precinct polling list that constituted the latest official precinct polling list at sometime not more than 30 days prior to the mailing or distribution.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29182, added by Stats.1973, c. 638, p. 1239, § 1.

Former § 29415, added by Stats.1976, c. 1192, § 15.

CROSS REFERENCES

Computation of time, first and last days, holidays, see Civil Code § 10; Code of Civil Procedure § 12 et seq.; Government Code § 6800 et seq.

Computation of time, time for performance of any act provided for or required by this code, holiday as last day for performance of act, see Elections Code § 15.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Voter, defined for purposes of this Code, see Elections Code § 359.

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West's Ann.Cal.Elec.Code § 18303

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 4. Election Campaigns (Refs & Annos)  
 Article 1. Campaign Literature (Refs & Annos)

**→ § 18303. Mass mailing; penal provisions**

Every person who violates Section 84305 of the Government Code relating to mass mailing is subject to the penal provisions set forth in Chapter 11 (commencing with Section 91000) of Title 9 of the Government Code.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29416, added by Stats.1976, c. 1192, § 15.

## CROSS REFERENCES

Mass mailings, civil liability for violations, exception, see Government Code § 91005.5.

Mass mailings, defined, see Government Code § 82041.5.

Mass mailings, requirements, see Government Code § 84305.

## LIBRARY REFERENCES

2003 Main Volume

Elections 309.  
 Westlaw Topic No. 144.  
 C.J.S. Elections § 324, 355(2).

## RESEARCH REFERENCES

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West's Ann.Cal.Elec.Code § 18304

C

Effective: January 01, 2004

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

▣ Chapter 4. Election Campaigns (Refs &amp; Annos)

▣ Article 1. Campaign Literature (Refs &amp; Annos)

**→ § 18304. Reproduction or facsimile of seal of county or seal of local government agency in campaign literature or mass mailing with intent to deceive voters; offense**

(a) Any person who uses or allows to be used any reproduction or facsimile of the seal of the county or the seal of a local government agency in any campaign literature or mass mailing, as defined in Section 82041.5 of the Government Code, with intent to deceive the voters, is guilty of a misdemeanor.

(b) For purposes of this section, the use of a reproduction or facsimile of a seal in a manner that creates a misleading, erroneous, or false impression that the document is authorized by a public official is evidence of intent to deceive.

(c) For purposes of this section, the term "local government agency" means a school district, special or other district, or any other board, commission, or agency of local jurisdiction.

CREDIT(S)

(Added by Stats.2003, c. 380 (A.B.255), § 1.)

HISTORICAL AND STATUTORY NOTES

2006 Electronic Update

2003 Legislation

Section 3 of Stats.2003, c. 380 (A.B.255), provides:

"SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution."

**Derivation:** Former Government Code § 25004.5, added by Stats.2001, c. 387 (A.B.706), § 2.

CROSS REFERENCES

Deceit, obligations imposed by law,

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West's Ann.Cal.Elec.Code § 18310

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 4. Election Campaigns (Refs &amp; Annos)

Article 2. Political Party Caucuses (Refs &amp; Annos)

**→§ 18310. Consideration for voting or agreeing to vote for or against nominees or candidates; penalty**

A person shall not directly or through any other person pay or receive any money or other valuable consideration before, during, or after an election in order to reward any person or as a reward for voting for or against or agreeing to vote for or against the election or endorsement of any other person as the nominee or candidate of any caucus, convention, organized assemblage of delegates, or other body representing or claiming to represent a political party, candidate, or principle, or any club, society, or association. A violation of this section shall be punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former §§ 12002, 12010, enacted by Stats.1961, c. 23, pp. 754, 755, §§ 12002, 12010.

Former § 29420, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, §§ 4960, 12002 (Stats.1939, c. 26, pp. 201, 203, § 4652).

Pen.C. §§ 54a, 54b, added Stats.1905, c. 479, pp. 641, 642, §§ 10, 11.

CROSS REFERENCES

American Independent party, political party organization and central committee elections, generally, see Elections Code § 7500 et seq.

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Democratic party, political party organization and central committee elections, generally, see Elections

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West's Ann.Cal.Elec.Code § 18311

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West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 4. Election Campaigns (Refs &amp; Annos)

Article 2. Political Party Caucuses (Refs &amp; Annos)

**→ § 18311. Bribes; giving or receiving; penalty**

Every person is punishable by imprisonment in the state prison for 16 months or two or three years who:

(a) Gives or offers a bribe to any officer or member of any political convention, committee, or political gathering of any kind, held for the purpose of nominating candidates for offices of honor, trust, or profit in this state, with intent to influence the person to whom the bribe is given or offered to be more favorable to one candidate than another.

(b) Being a member of any of the bodies mentioned in this section receives or offers to receive any bribe described in subdivision (a).

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29160, enacted by Stats.1961, c. 23, p. 871, § 29160, amended by Stats.1976, c. 1139, § 30.

Former § 29421, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11600 (Stats.1939, c. 26, p. 312, amended by Stats.1939, c. 1095, p. 3026).

Pen.C. § 57, amended by Stats.1901, c. 158, p. 440, § 19; Stats.1905, c. 479, p. 643, § 13.

Stats.1850, c. 99, p. 239, § 84, amended by Stats.1863, c. 408, p. 645, § 1; Stats.1850, c. 99, p. 239, § 85; Stats.1850, c. 99, p. 239, § 86, amended by Stats.1863, c. 408, p. 646, § 2.

## CROSS REFERENCES

American Independent party, political party organization and central committee elections, generally, see

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West's Ann.Cal.Elec.Code § 18320

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Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 4. Election Campaigns (Refs &amp; Annos)

Article 3. Deceptive Online Activities (Refs &amp; Annos)

→§ 18320. Short title; political cyberfraud; definitions

(a) This act shall be known and may be cited as the "California Political Cyberfraud Abatement Act."

(b) It is unlawful for a person, with intent to mislead, deceive, or defraud, to commit an act of political cyberfraud.

(c) As used in this section:

(1) "Political cyberfraud" means a knowing and willful act concerning a political Web site that is committed with the intent to deny a person access to a political Web site, deny a person the opportunity to register a domain name for a political Web site, or cause a person reasonably to believe that a political Web site has been posted by a person other than the person who posted the Web site, and would cause a reasonable person, after reading the Web site, to believe the site actually represents the views of the proponent or opponent of a ballot measure. Political cyberfraud includes, but is not limited to, any of the following acts:

(A) Intentionally diverting or redirecting access to a political Web site to another person's Web site by the use of a similar domain name, meta-tags, or other electronic measures.

(B) Intentionally preventing or denying exit from a political Web site by the use of frames, hyperlinks, mousetrapping, popup screens, or other electronic measures.

(C) Registering a domain name that is similar to another domain name for a political Web site.

(D) Intentionally preventing the use of a domain name for a political Web site by registering and holding the domain name or by reselling it to another with the intent of preventing its use, or both.

(2) "Domain name" means any alphanumeric designation that is registered with or assigned by any domain name registrar, domain name registry, or other domain registration authority as part of an electronic address on the Internet.

(3) "Political Web site" means a Web site that urges or appears to urge the support or opposition of a ballot measure.

CREDIT(S)

(Added by Stats.2003, c. 277 (A.B.277), § 5.)

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West's Ann.Cal.Elec.Code § 18321

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West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 4. Election Campaigns (Refs & Annos)  
 Article 3. Deceptive Online Activities (Refs & Annos)

**→§ 18321. Application to domain name registrar, registry, or registration authority**

This article does not apply to a domain name registrar, registry, or registration authority.

CREDIT(S)

(Added by Stats.2003, c. 277 (A.B.277), § 5.)

HISTORICAL AND STATUTORY NOTES

2006 Electronic Update

2001 Legislation

Former § 18321, added by Stats.2001, c. 927 (S.B.412), § 3, relating to application of article to domain name registrar, registry or registration authority, was repealed by the terms of § 18324 pursuant to Stats.2001, c. 927 (S.B.412), § 3, operative Jan. 1, 2003. See this section.

2003 Legislation

Legislative findings and declarations and severability provisions relating to Stats.2003, c. 277 (A.B.277), see Historical and Statutory Notes under Business and Professions Code § 17526.

**Derivation:** Former § 18321, added by Stats.2001, c. 927 (S.B.412), § 3.

RESEARCH REFERENCES

**Encyclopedias**

CA Jur. 3d Elections § 316, Generally; Application; Remedy; Jurisdiction.

West's Ann. Cal. Elec. Code § 18321, CA ELEC § 18321

Current through Ch. 910 of 2006 Reg.Sess. urgency legislation and all propositions which will appear on the ballot at the Nov. 7, 2006 election

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West's Ann.Cal.Elec.Code § 18322

**C**

**Effective: January 01, 2004**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 4. Election Campaigns (Refs & Annos)  
 Article 3. Deceptive Online Activities (Refs & Annos)

**→ § 18322. Transfer of domain name as remedy**

In addition to any other remedies available under law, a court may order the transfer of a domain name as part of the relief awarded for a violation of this article.

CREDIT(S)

(Added by Stats.2003, c. 277 (A.B.277), § 5.)

**HISTORICAL AND STATUTORY NOTES**

2006 Electronic Update

2001 Legislation

Former § 18322, added by Stats.2001, c. 927 (S.B.412), § 3, relating to violations, was repealed by the terms of § 18324 pursuant to Stats.2001, c. 927 (S.B.412), § 3, operative Jan. 1, 2003.

2003 Legislation

Legislative findings and declarations and severability provisions relating to Stats.2003, c. 277 (A.B.277), see Historical and Statutory Notes under Business and Professions Code § 17526.

**RESEARCH REFERENCES**

**Encyclopedias**

CA Jur. 3d Elections § 316, Generally; Application; Remedy; Jurisdiction.

**Treatises and Practice Aids**

2 Witkin Cal. Crim. L. 3d Crimes Against Gov't Auth. § 141, Wrongs Against Voters.

West's Ann. Cal. Elec. Code § 18322, CA ELEC § 18322

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West's Ann.Cal.Elec.Code § 18323

**C****Effective: January 01, 2004**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 4. Election Campaigns (Refs & Annos)  
 Article 3. Deceptive Online Activities (Refs & Annos)

**→ § 18323. Jurisdiction**

Jurisdiction for actions brought pursuant to this article shall be in accordance with Section 410.10 of the Code of Civil Procedure.

CREDIT(S)

(Added by Stats.2003, c. 277 (A.B.277), § 5.)

**HISTORICAL AND STATUTORY NOTES**

2006 Electronic Update

2001 Legislation

Former § 18323, added by Stats.2001, c. 927 (S.B.412), § 3, relating to jurisdiction, was repealed by the terms of § 18324 pursuant to Stats.2001, c. 927 (S.B.412), § 3, operative Jan. 1, 2003. See this section.

2003 Legislation

Legislative findings and declarations and severability provisions relating to Stats.2003, c. 277 (A.B.277), see Historical and Statutory Notes under Business and Professions Code § 17526.

**Derivation:** Former § 18323, added by Stats.2001, c. 927 (S.B.412), § 3.

West's Ann. Cal. Elec. Code § 18323, CA ELEC § 18323

Current through Ch. 910 of 2006 Reg.Sess. urgency legislation and all propositions which will appear on the ballot at the Nov. 7, 2006 election

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West's Ann.Cal.Elec.Code § 18340

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West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 4. Election Campaigns (Refs &amp; Annos)

Article 4. Political Meetings

**→ § 18340: Prevention of electors from assembling; misdemeanor**

Every person who, by threats, intimidations, or unlawful violence, willfully hinders or prevents electors from assembling in public meetings for the consideration of public questions is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 12046, enacted by Stats.1961, c. 23, p. 756, § 12046.

Former § 29440, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 5004 (Stats.1939, c. 26, p. 204).

Pen.C. § 58.

## CROSS REFERENCES

Disqualification for bribery, see Const. Art. 7, § 8.

Disturbance of public assembly or meeting, see Penal Code § 403.

Electors, defined for purposes of this Code, see Elections Code § 321.

Intimidation of voters, see Elections Code § 18540 et seq.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

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West's Ann.Cal.Elec.Code § 18350

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 4. Election Campaigns (Refs &amp; Annos)

Article 5. Misrepresentation by Candidates (Refs &amp; Annos)

→ § 18350. Implication that candidate is incumbent or acting in capacity of public officer; misdemeanor; injunction

Every person is guilty of a misdemeanor who, with intent to mislead the voters in connection with his or her campaign for nomination or election to a public office or in connection with the campaign of another person for nomination or election to a public office, does either of the following acts:

(a) Assume, pretend, or imply, by his or her statements or conduct, that he or she is the incumbent of a public office when that is not the case.

(b) Assume, pretend, or imply, by his or her statements or conduct, that he or she is or has been acting in the capacity of a public officer when that is not the case.

Any violation of this section may be enjoined in a civil action brought by any candidate for the public office involved.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 12051, enacted by Stats.1961, c. 23, p. 758, § 12051.

Former § 29450, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 5006.5 (added by Stats.1959, c. 335, p. 2258, § 1).

CROSS REFERENCES

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

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West's Ann.Cal.Elec.Code § 18351

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Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 4. Election Campaigns (Refs &amp; Annos)

Article 5. Misrepresentation by Candidates (Refs &amp; Annos)

**→§ 18351. Candidates' statements; false statement of material fact with intent to mislead; punishment**

Any candidate in an election or incumbent in a recall election who knowingly makes a false statement of a material fact in a candidate's statement, prepared pursuant to Section 11327 or 13307, with the intent to mislead the voters in connection with his or her campaign for nomination or election to a nonpartisan office is punishable by a fine not to exceed one thousand dollars (\$1,000).

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29451, added by Stats.1982, c. 57, § 1.

CROSS REFERENCES

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Election, defined for purposes of this Code, see Elections Code § 318.

Nonpartisan office, defined for purposes of this Code, see Elections Code § 334.

Recall elections, generally, see Const. Art. 2, § 13; Elections Code § 11000 et seq.

Tie vote, primary election nominations, nonpartisan candidates, see Elections Code § 8141.

Voter, defined for purposes of this Code, see Elections Code § 359.

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West's Ann.Cal.Elec.Code § 18360

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Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 4. Election Campaigns (Refs &amp; Annos)

Article 6. Solicitation of Funds (Refs &amp; Annos)

→ § 18360. Solicitation without required consent; violations; misdemeanor

Any person who violates Section 20201 is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Derivation: Former § 12302, enacted by Stats.1961, c. 23, p. 759, § 12302.

Former § 29460, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 5302 (added by Stats.1941, c. 576, p. 1960, § 12).

CROSS REFERENCES

Campaign funds, solicitation of funds, requirements, see Elections Code § 20200 et seq.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

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2003 Main Volume

Elections ↩317.

Westlaw Topic No. 144.

C.J.S. Elections § 216(1), 329, 356.

RESEARCH REFERENCES

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West's Ann.Cal.Elec.Code § 18361

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 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 4. Election Campaigns (Refs & Annos)  
 Article 6. Solicitation of Funds (Refs & Annos)

~~→§ 18361. Solicitation not authorized by candidate or committee; use of name; notice; misdemeanor.~~

Upon the complaint of the affected candidate or committee, any person who violates Section 20202 or 20203 is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29462, added by Stats.1979, c. 872, § 4.

## CROSS REFERENCES

Campaign funds, solicitation of funds, requirements, see Elections Code § 20200 et seq.

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Committee, defined for purposes of this Code, see Elections Code § 309.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

## LIBRARY REFERENCES

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Elections ↪317.  
 Westlaw Topic No. 144.  
 C.J.S. Elections § 216(1), 329, 356.

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West's Ann.Cal.Elec.Code § 18370

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 4. Election Campaigns (Refs &amp; Annos)

Article 7. Electioneering (Refs &amp; Annos)

**→ § 18370. Electioneering where voters may be casting votes; misdemeanor**

No person, on election day, or at any time that a voter may be casting a ballot, shall, within 100 feet of a polling place or an elections official's office:

- (a) Circulate an initiative, referendum, recall, or nomination petition or any other petition.
- (b) Solicit a vote or speak to a voter on the subject of marking his or her ballot.
- (c) Place a sign relating to voters' qualifications or speak to a voter on the subject of his or her qualifications except as provided in Section 14240.
- (d) Do any electioneering.

As used in this section, "100 feet of a polling place or an elections official's office" means a distance 100 feet from the room or rooms in which voters are signing the roster and casting ballots.

Any person who violates any of the provisions of this section is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.1998, c. 554 (S.B.7), § 3.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Stats.1998, c. 554, made the section applicable to acts at any time that a voter may be casting a ballot and acts in proximity to an elections official's office.

**Derivation:** Former §§ 45, 14211, 14212, 14240, 14434, enacted by Stats.1961, c. 23, pp. 584, 762, 763, 771, §§ 45, 14211, 14212, 14240, 14434, amended by Stats.1961, c. 56, p. 997, § 3; Stats.1963, c. 1560, p. 3143, § 1; Stats.1965, c. 1908, p. 4417, § 1; Stats.1967, c. 208, p. 1334, § 1; Stats.1971, c. 1219, p. 2366, § 1; Stats.1971, c. 1760, p. 3807, § 2; Stats.1975, c. 544, § 1; Stats.1975, c. 704, § 72.

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West's Ann.Cal.Elec.Code § 18371

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West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 4. Election Campaigns (Refs &amp; Annos)

Article 7. Electioneering (Refs &amp; Annos)

→§ 18371. Absentee voters; solicitation in the residence on the immediate presence of absentee voter; misdemeanor

(a) No candidate or representative of a candidate, and no proponent, opponent, or representative of a proponent or opponent, of an initiative, referendum, or recall measure, or of a charter amendment, shall solicit the vote of an absentee voter, or do any electioneering, while in the residence or in the immediate presence of the voter, and during the time he or she knows the absentee voter is voting.

(b) Any person who knowingly violates this section is guilty of a misdemeanor.

(c) This section shall not be construed to conflict with any provision of the federal Voting Rights Act of 1965, as amended, nor to preclude electioneering by mail or telephone or in public places, except as prohibited by Section 18370, or by any other provision of law.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Derivation: Former § 29473, added by Stats.1988, c. 1329, § 2.

CROSS REFERENCES

Absentee voting, applications and voting procedures, generally, see Elections Code § 3000 et seq.

Absent voter ballots, corruption of the voting process, penal provisions, see Elections Code § 18576 et seq.

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Initiative, referendum or recall petition, persons entitled to circulate, see Elections Code § 102.

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West's Ann.Cal.Elec.Code § 18380

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 4. Election Campaigns (Refs &amp; Annos)

Article 8. Vandalism at Polling Places

→§ 18380. Violations; misdemeanor

(a) No person, during any election, shall do any of the following:

- (1) Remove or destroy any of the supplies or other conveniences placed in the voting booths or compartments for the purpose of enabling the voter to prepare his or her ballot.
- (2) Remove, tear down, or deface the cards printed for the instruction of voters.
- (3) Remove, tear, mark or otherwise deface any voter index with the intent to falsify or prevent others from readily ascertaining the name, address, or political affiliation of any voter, or the fact that a voter has or has not voted.
- (4) Remove, tear down, or deface the signs identifying the location of a polling place or identifying areas within 100 feet of a polling place.

(b) Any person who violates any of the provisions of this section is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former §§ 14011, 14012, 14201, enacted by Stats.1961, c. 23, p. 761, §§ 14011, 14012, 14204, amended by Stats.1971, c. 294, p. 606, § 1.

Former § 29480, added by Stats.1976, c. 1192, § 15, amended by Stats.1989, c. 310, § 1.

Elec.C.1939, §§ 5512, 5513, 5554 (Stats.1939, c. 26, pp. 208, 209).

Pol.C. §§ 1150, 1214, added by Stats.1891, c. 130, p. 178, § 32, amended by Stats.1933, c. 397, p. 1024, § 2.

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West's Ann.Cal.Elec.Code § 18390

**C****Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 4. Election Campaigns (Refs &amp; Annos)

Article 9. Misuse of State Publications

**→ § 18390. State agencies and departments; misuse of publications**

No agency or department of the state may use its publications to advise state employees of any constitutional officer's choice of candidates for public office or for recommending positions on specific ballot propositions not related to the functions of that agency or department.

For purposes of this section "publications" means any written or printed matter including, but not limited to, agency or department memorandums or directives, but shall not include legislative newsletters or state ballot pamphlets.

Any state officer who violates this section is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29490, added by Stats.1977, c. 1, § 6.5.

## CROSS REFERENCES

Ballot, defined for purposes of this Code, see Elections Code § 301.

Ballot pamphlet, Political Reform Act of 1974, generally, see Government Code § 88001 et seq.

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

## LIBRARY REFERENCES

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West's Ann.Cal.Elec.Code § 18400

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 5. Ballots (Refs & Annos)

**→ § 18400. Use or furnishing of imitation ballot paper or punchcards; penalties**

Any person who makes, uses, keeps, or furnishes to others, any paper or punchcards watermarked or overprinted in imitation of ballot paper or punchcards is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the state prison for 16 months, two or three years, or by both the fine and imprisonment.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18400, enacted by Stats.1961, c. 23, § 18400, relating to application of the article, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 10003, enacted by Stats.1961, c. 23, p. 712, § 10003, amended by Stats.1969, c. 913, p. 1817, § 3.

Former § 29183, added by Stats.1975, c. 1203, § 9.

Former § 29500, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 3703 (Stats.1939, c. 26, p. 167).

Pol.C. § 1213, added by Stats.1891, c. 130, p. 178, § 32.

## CROSS REFERENCES

Ballot, defined for purposes of this Code, see Elections Code § 301.

Ballots, printing specifications, see Elections Code § 13200 et seq.

Felony, infraction, definition and penalties, see Penal Code §§ 17, 18.

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West's Ann.Cal.Elec.Code § 18401

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 5. Ballots (Refs & Annos)

**→§ 18401. Printing or circulation of nonconforming ballots**

Every person who prints any ballot not in conformity with Chapter 2 (commencing with Section 13100) of Division 13, or who circulates or gives to another any ballot, knowing at the time that the ballot does not conform to Chapter 2 (commencing with Section 13100) of Division 13, is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18401, enacted by Stats.1961, c. 23, § 18401, amended by Stats.1963, c. 1979, § 1; Stats.1967, c. 140, § 1, relating to meetings of the election board and canvassing the returns, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29181, enacted by Stats.1961, c. 23, p. 872, § 29181.

Former § 29501, added by Stats.1976, c. 1192, § 15, amended by Stats.1976, c. 1438, § 23.2.

Elec.C.1939, § 11621 (Stats.1939, c. 26, p. 313).

Pen.C. § 62, added by Code Am.1873-74, c. 379, p. 456, § 1, amended by Stats.1901, c. 158, p. 441, § 22; Stats.1905, c. 479, p. 645, § 16.

## CROSS REFERENCES

Ballot, defined for purposes of this Code, see Elections Code § 301.

Misdemeanor, punishment, see Penal Code § 19.

Misdemeanor defined, see Penal Code § 17.

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West's Ann.Cal.Elec.Code § 18402

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 5. Ballots (Refs & Annos)

→ § 18402. Knowing distribution of unauthorized application for absent voter's ballot

Any individual, group, or organization that knowingly distributes any application for an absent voter's ballot that does not conform to Chapter 1 (commencing with Section 3000) of Division 3 is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18402, enacted by Stats.1961, c. 23, § 18402, providing that the board of supervisor need not be in session during the time of canvass, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29505, added by Stats.1987, c. 466, § 1, amended by Stats.1990, c. 1121 (A.B.3795), § 3.

## CROSS REFERENCES

Absent voter, special absentee voter, defined for purposes of this Code, see Elections Code § 300.

Ballot, defined for purposes of this Code, see Elections Code § 301.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Voter, defined for purposes of this Code, see Elections Code § 359.

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West's Ann.Cal.Elec.Code § 18403

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 5. Ballots (Refs & Annos)

**→ § 18403. Receipt or examination of, or solicitation of voter to show voted ballot; penalty**

Any person other than an elections official or a member of the precinct board who receives a voted ballot from a voter or who examines or solicits the voter to show his or her voted ballot is punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment. This section shall not apply to persons returning an absentee ballot pursuant to Sections 3017 and 3021 or persons assisting a voter pursuant to Section 14282.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18403, enacted by Stats.1961, c. 23, § 18403, relating to postponement of the canvass, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 14248, added by Stats.1976, c. 220, § 6.

Former § 14422, enacted by Stats.1961, c. 23, p. 769, § 14422.

Former § 29506, added by Stats.1989, c. 310, § 2.

Elec.C.1939, § 5720 (Stats.1939, c. 26, p. 216).

Pol.C. § 1215, added by Stats.1891, c. 130, p. 178, § 32, amended by Stats.1913, c. 641, p. 1172, § 1.

## CROSS REFERENCES

Ballot, defined for purposes of this Code, see Elections Code § 301.

County, City, defined for purposes of this Code, see Elections Code § 310.

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West's Ann.Cal.Elec.Code § 18500

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 1. General Provisions

→ § 18500. Fraud; casting of votes; felony; imprisonment

Any person who commits fraud or attempts to commit fraud, and any person who aids or abets fraud or attempts to aid or abet fraud, in connection with any vote cast, to be cast, or attempted to be cast, is guilty of a felony, punishable by imprisonment for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18500, enacted by Stats.1961, c. 23, § 18500, relating to application of the article, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 14690, enacted by Stats.1961, c. 23, p. 779, § 14690, amended by Stats.1975, c. 1203, § 3.1.

Former § 14720, added by Stats.1975, c. 1203, § 3.4, amended by Stats.1976, c. 1139, § 21.

Former § 29610, added by Stats.1976, c. 1192, § 15, amended by Stats.1977, c. 1112, § 2.

Elec.C.1939, § 5950 (Stats.1939, c. 26, p. 225).

Pol.C. § 1363, added by Stats.1923, c. 283, p. 592, § 1.

## CROSS REFERENCES

Aiding and abetting, generally, see Penal Code § 30 et seq.

Contests, grounds for election contests, see Elections Code § 16100.

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West's Ann.Cal.Elec.Code § 18501

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 1. General Provisions

**→ § 18501. Public officials; aiding illegal casting of votes; fraud; disqualification from holding office in state; imprisonment**

Any public official who knowingly violates any of the provisions of this chapter, and thereby aids in any way the illegal casting or attempting to cast a vote, or who connives to nullify any of the provisions of this chapter in order that fraud may be perpetrated, shall forever be disqualified from holding office in this state and upon conviction shall be sentenced to a state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18501, enacted by Stats.1961, c. 23, § 18501, providing for public recounts, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 14692, enacted by Stats.1961, c. 23, p. 780, § 14692.

Former § 14722, added by Stats.1975, c. 1203, § 3.4, amended by Stats.1976, c. 1139, § 22.

Former § 29611, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 5952 (Stats.1939, c. 26, p. 225).

Pol.C. § 1363, added by Stats.1923, c. 283, p. 592, § 1.

## CROSS REFERENCES

Aiding and abetting, generally, see Penal Code § 30 et seq.

Bribe to procure election or appointment, disqualification and exclusion from office, see Const. Art. 7, § 8.

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West's Ann.Cal.Elec.Code § 18502

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**Effective: [See Text Amendments]**

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 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 6. Corruption of the Voting Process (Refs & Annos)  
 Article 1. General Provisions

**→ § 18502. Interference with officers or voters; imprisonment**

Any person who in any manner interferes with the officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election, as to prevent the election or canvass from being fairly held and lawfully conducted, is punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18502, enacted by Stats.1961, c. 23, § 18502, requiring that a copy of the resolution ordering a recount be posted, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former §§ 17092, 17093, enacted by Stats.1961, c. 23, p. 809, §§ 17092, 17093.

Former § 29004, added by Stats.1975, c. 1203, § 16.

Former § 29612, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, §§ 7072, 7073 (Stats.1939, c. 26, p. 243, amended by Stats.1951, c. 761, p. 2023, § 1).

Pen.C. § 45, amended by Stats.1901, c. 158, p. 436, § 8; Stats.1905, c. 479, p. 639, § 3.

## CROSS REFERENCES

Canvass, recount and tie vote procedures, semifinal official canvass and official canvass, generally, see Elections Code § 15000 et seq.

Contests, grounds for election contests, see Elections Code § 16100.

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West's Ann.Cal.Elec.Code § 18520

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 6. Corruption of the Voting Process (Refs & Annos)  
 Article 2. Corruption of Voters (Refs & Annos)

**→ § 18520. Offer or promise of office, place or employment; to induce other to vote or refrain from voting; penalties**

A person shall not directly or through another person give, offer, or promise any office, place, or employment, or promise to procure or endeavor to procure any office, place, or employment to or for any voter, or to or for any other person, in order to induce that voter at any election to:

- (a) Refrain from voting.
- (b) Vote for any particular person.
- (c) Refrain from voting for any particular person.

A violation of any of the provisions of this section shall be punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 12004, enacted by Stats.1961, c. 23, p. 754, § 12004.

Former § 29304, added by Stats.1976, c. 224, § 10.

Former § 29620, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 4954 (Stats.1939, c. 26, p. 202).

Pen.C. § 54b, added by Stats.1905, c. 479, p. 642, § 11.

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West's Ann.Cal.Elec.Code § 18521

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 2. Corruption of Voters (Refs &amp; Annos)

**→§ 18521. Gift or other consideration to induce person to vote or refrain from voting; penalties**

A person shall not directly or through any other person receive, agree, or contract for, before, during or after an election, any money, gift, loan, or other valuable consideration, office, place, or employment for himself or any other person because he or any other person:

- (a) Voted, agreed to vote, refrained from voting, or agreed to refrain from voting for any particular person or measure.
- (b) Remained away from the polls.
- (c) Refrained or agreed to refrain from voting.
- (d) Induced any other person to:
  - (1) Remain away from the polls.
  - (2) Refrain from voting.
  - (3) Vote or refrain from voting for any particular person or measure.

Any person violating this section is punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former §§ 12000, 12001, enacted by Stats.1961, c. 23, pp. 753, 754, §§ 12000, 12001.

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West's Ann.Cal.Elec.Code § 18522

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**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 6. Corruption of the Voting Process (Refs & Annos)

Article 2. Corruption of Voters (Refs & Annos)

**→ § 18522. Payment or offer to pay, lend or contribute to induce person to vote or refrain from voting.**

Neither a person nor a controlled committee shall directly or through any other person or controlled committee pay, lend, or contribute, or offer or promise to pay, lend, or contribute, any money or other valuable consideration to or for any voter or to or for any other person to:

(a) Induce any voter to:

(1) Refrain from voting at any election.

(2) Vote or refrain from voting at an election for any particular person or measure.

(3) Remain away from the polls at an election.

(b) Reward any voter for having:

(1) Refrained from voting.

(2) Voted for any particular person or measure.

(3) Refrained from voting for any particular person or measure.

(4) Remained away from the polls at an election.

Any person or candidate violating this section is punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2; Stats.1994, c. 818 (S.B.1384), § 1.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections

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West's Ann.Cal.Elec.Code § 18523

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

▣ Article 2. Corruption of Voters (Refs &amp; Annos)

**→§ 18523. Bribery; payment of consideration with intent to bribe; penalties**

A person shall not directly or through any other person advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that it, or any part thereof, shall be used in bribery at any election, or knowingly pay or cause to be paid any money or other valuable thing to any person in discharge or repayment of any money, wholly or in part, expended in bribery at any election.

Any person violating this section is punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 12007, added by Stats.1961, c. 23, p. 755, § 12007.

Former § 29623, added by Stats.1976, c. 1192, § 15, amended by Stats.1981, c. 714, § 117.

Elec.C.1939, § 4957 (Stats.1939, c. 26, p. 202).

Pen.C. § 54b, added by Stats.1905, c. 479, p. 642, § 11.

## CROSS REFERENCES

Bribery and corruption, see Penal Code § 92 et seq.

Bribe to procure election or appointment, disqualification and exclusion from office, see Const. Art. 7, § 8.

Disqualification from office, see Government Code § 1020 et seq.

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West's Ann.Cal.Elec.Code § 18524

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**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)

▣ Article 2. Corruption of Voters (Refs & Annos)

**→§ 18524. Boarding, lodging or maintaining persons with intent to secure vote or to induce voting**

A person shall not directly or through any other person advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that it, or any part thereof, will be used for boarding, lodging, or maintaining a person at any place or domicile in any election precinct, ward, or district, with intent to secure the vote of that person or to induce that person to vote for any particular person or measure.

Any person violating this section is punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 12008, enacted by Stats.1961, c. 23, p. 755, § 12008.

Former § 29624, added by Stats.1976, c. 1192, § 15, amended by Stats.1977, c. 1112, § 5.

Elec.C.1939, § 4958 (Stats.1939, c. 26, p. 203).

Pen.C. § 54b, added by Stats.1905, c. 479, p. 642, § 11.

**CROSS REFERENCES**

Determination of residence, see Elections Code § 349.

Election, defined for purposes of this Code, see Elections Code § 318.

Measure, defined for purposes of this Code, see Elections Code § 329.

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West's Ann.Cal.Elec.Code § 18540

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness

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Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 3. Intimidation of Voters (Refs &amp; Annos)

→§ 18540. Use of force, violence, tactic of coercion or intimidation; penalties

(a) Every person who makes use of or threatens to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment in the state prison for 16 months or two or three years.

(b) Every person who hires or arranges for any other person to make use of or threaten to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former §§ 29130 to 21932, enacted by Stats.1961, c. 23, p. 870, §§ 29130 to 29132.

Former § 29630, added by Stats.1976, c. 1192, § 15, amended by Stats.1977, c. 1112, § 6; Stats.1989, c. 310, § 3.

Elec.C.1939, §§ 11580 to 11582 (Stats.1939, c. 26, pp. 311, 312, amended by Stats.1943, c. 578, p. 2151, § 11).

Pen.C. §§ 53, 59, amended by Stats.1893, c. 11, p. 7, § 1; Stats.1901, c. 158, p. 441, § 21; Stats.1905, c. 479, p. 644, § 15.

## CROSS REFERENCES

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West's Ann.Cal.Elec.Code § 18541

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Effective: January 01, 2005

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Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 3. Intimidation of Voters (Refs &amp; Annos)

**→ § 18541. Prohibited activities in proximity of polling place relating to the intent of dissuading others from voting; penalties**

(a) No person shall, with the intent of dissuading another person from voting, within 100 feet of a polling place, do any of the following:

(1) Solicit a vote or speak to a voter on the subject of marking his or her ballot.

(2) Place a sign relating to voters' qualifications or speak to a voter on the subject of his or her qualifications except as provided in Section 14240.

(3) Photograph, videotape, or otherwise record a voter entering or exiting a polling place.

(b) Any violation of this section is punishable by imprisonment in a county jail for not more than 12 months, or in the state prison. Any person who conspires to violate this section is guilty of a felony.

(c) For purposes of this section, 100 feet means a distance of 100 feet from the room or rooms in which voters are signing the roster and casting ballots.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.2003, c. 390 (A.B.915), § 1; Stats.2004, c. 183 (A.B.3082), § 92.)

## HISTORICAL AND STATUTORY NOTES

2006 Electronic Update

2003 Legislation

Stats.2003, c. 390 (A.B.915), in subd. (a), added par. (3).

2004 Legislation

Stats.2004, c. 183 (A.B.3082), made nonsubstantive changes to maintain the code.

Subordination of legislation by Stats.2004, c. 183 (A.B.3082), to other 2004 legislation, see Historical and

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West's Ann.Cal.Elec.Code § 18542

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▣ Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

▣ Article 3. Intimidation of Voters (Refs &amp; Annos)

## →§ 18542. Political material in pay envelopes

Every employer, whether a corporation or natural person, or any other person who employs, is guilty of a misdemeanor if, in paying his or her employees the salary or wages due them, encloses their pay in pay envelopes upon which or in which there is written or printed the name of any candidate or any political mottoes, devices, or arguments containing threats, express or implied, intended or calculated to influence the political opinions or actions of the employees.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29134, enacted by Stats.1961, c. 23, p. 871, § 29134.

Former § 29631, added by Stats.1976, c. 1192, § 15, amended by Stats.1977, c. 1112, § 7.

Elec.C.1939, § 11584 (Stats.1939, c. 26, p. 312).

Pen.C. § 59, amended by Stats.1901, c. 158, p. 441, § 21; Stats.1905, c. 479, p. 644, § 15.

## CROSS REFERENCES

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Interference with political activities of employees, see Labor Code § 1101 et seq.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

## LAW REVIEW AND JOURNAL COMMENTARIES

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West's Ann.Cal.Elec.Code § 18543

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Effective: [See Text Amendments]

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**→ § 18543. Challenging right to vote without probable cause; conspiracies; penalty**

(a) Every person who knowingly challenges a person's right to vote without probable cause or on fraudulent or spurious grounds, or who engages in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voters from voting or to delay the process of voting, or who fraudulently advises any person that he or she is not eligible to vote or is not registered to vote when in fact that person is eligible or is registered, or who violates Section 14240, is punishable by imprisonment in the county jail for not more than 12 months or in the state prison.

(b) Every person who conspires to violate subdivision (a) is guilty of a felony.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29137, added by Stats.1965, c. 1908, p. 4420, § 11.

Former § 29632, added by Stats.1976, c. 1192, § 15, amended by Stats.1989, c. 415, § 2.

## CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Felony, definition and penalties, see Penal Code §§ 17, 18.

Voter, defined for purposes of this Code, see Elections Code § 359.

Voters, challenging a voter, election day procedures, see Elections Code § 14240 et seq.

## LIBRARY REFERENCES

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West's Ann.Cal.Elec.Code § 18544

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Effective: [See Text Amendments]

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Article 3. Intimidation of Voters (Refs &amp; Annos)

**→ § 18544. Persons in possession of a firearm or uniformed peace officers or security guards stationed near polling place without authorization; penalty; application**

(a) Any person in possession of a firearm or any uniformed peace officer, private guard, or security personnel or any person who is wearing a uniform of a peace officer, guard, or security personnel, who is stationed in the immediate vicinity of, or posted at, a polling place without written authorization of the appropriate city or county elections official is punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment.

(b) This section shall not apply to any of the following:

- (1) An unarmed uniformed guard or security personnel who is at the polling place to cast his or her vote.
- (2) A peace officer who is conducting official business in the course of his or her public employment or who is at the polling place to cast his or her vote.
- (3) A private guard or security personnel hired or arranged for by a city or county elections official.
- (4) A private guard or security personnel hired or arranged for by the owner or manager of the facility or property in which the polling place is located if the guard or security personnel is not hired or arranged solely for the day on which an election is held.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29634, added by Stats.1989, c. 310, § 3.5.

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West's Ann.Cal.Elec.Code § 18545

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Article 3. Intimidation of Voters (Refs &amp; Annos)

**→§ 18545. Hiring or arranging for another in possession of firearm or uniformed peace officer or security guard to be stationed near polling place; penalty**

Any person who hires or arranges for any other person in possession of a firearm or any uniformed peace officer, private guard, or security personnel or any person who is wearing a uniform of a peace officer, guard, or security personnel, to be stationed in the immediate vicinity of, or posted at, a polling place without written authorization of the appropriate elections official is punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment. This section shall not apply to the owner or manager of the facility or property in which the polling place is located if the private guard or security personnel is not hired or arranged solely for the day on which the election is held.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29635, added by Stats.1989, c. 310, § 4.

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Elections official, defined for purposes of this Code, see Elections Code § 320.

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Elections ↪320.

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West's Ann.Cal.Elec.Code § 18546

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Elections Code (Refs & Annos)  
Division 18. Penal Provisions (Refs & Annos)  
Chapter 6. Corruption of the Voting Process (Refs & Annos)  
Article 3. Intimidation of Voters (Refs & Annos)

→ § 18546. Elections official; immediate vicinity

As used in this article:

- (a) "Elections official" means the county elections official, registrar of voters, or city clerk.
- (b) "Immediate vicinity" means the area within a distance of 100 feet from the room or rooms in which the voters are signing the roster and casting ballots.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.2002, c. 221 (S.B.1019), § 22.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Stats.2002, c. 221 (S.B.1019) repeals obsolete provisions and revises references to the county clerk and the registrar of voters to, instead, refer to, as appropriate, the clerk of the board of supervisors, the county elections official, the clerk of the legislative body, or the appropriate financial officer or other designated official in a county; and revises certain obsolete provisions relating to special district elections.

Derivation: Former § 29636, added by Stats.1989, c. 310, § 5.

CROSS REFERENCES

- Ballot, defined for purposes of this Code, see Elections Code § 301.
- Clerk, defined for purposes of this Code, see Elections Code § 307.
- County, City, defined for purposes of this Code, see Elections Code § 310.
- Elections official, defined for purposes of this Code, see Elections Code § 320.
- Voter, defined for purposes of this Code, see Elections Code § 359.

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West's Ann.Cal.Elec.Code § 18560

**C****Effective: [See Text Amendments]**

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▪ Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

▪ Article 4. Corruption of Voting (Refs &amp; Annos)

**→ § 18560. Fraudulent voting; crime**

Every person is guilty of a crime punishable by imprisonment in the state prison for 16 months or two or three years, or in county jail not exceeding one year, who:

- (a) Not being entitled to vote at an election, fraudulently votes or fraudulently attempts to vote at that election.
- (b) Being entitled to vote at an election, votes more than once, attempts to vote more than once, or knowingly hands in two or more ballots folded together at that election.
- (c) Impersonates or attempts to impersonate a voter at an election.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18560, added by Stats.1961, c. 1672, defining constitutional office, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former §§ 14403, 14421, 17090, 17091, 29430, enacted by Stats.1961, c. 23, pp. 767, 769, 809, 876, §§ 14403, 14421, 17090, 17091, 29430, amended by Stats.1976, c. 220, § 15; Stats.1976, c. 1139, § 46.

Former § 29640, added by 1976, c. 1192, § 15, amended by Stats.1977, c. 1205, § 80.

Elec.C.1939, §§ 5701, 5719, 7070, 7071, 11700 (Stats.1939, c. 26, pp. 215, 217, 243, 316).

Pen.C. § 45, amended Stats.1901, c. 158, p. 436, §§ 8, 9; Stats.1905, c. 479, p. 639, §§ 3, 4.

**CROSS REFERENCES**

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West's Ann.Cal.Elec.Code § 18560

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Article 4. Corruption of Voting (Refs &amp; Annos)

**→§ 18560. Fraudulent voting; crime**

Every person is guilty of a crime punishable by imprisonment in the state prison for 16 months or two or three years, or in county jail not exceeding one year, who:

- (a) Not being entitled to vote at an election, fraudulently votes or fraudulently attempts to vote at that election.
- (b) Being entitled to vote at an election, votes more than once, attempts to vote more than once, or knowingly hands in two or more ballots folded together at that election.
- (c) Impersonates or attempts to impersonate a voter at an election.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18560, added by Stats.1961, c. 1672, defining constitutional office, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former §§ 14403, 14421, 17090, 17091, 29430, enacted by Stats.1961, c. 23, pp. 767, 769, 809, 876, §§ 14403, 14421, 17090, 17091, 29430, amended by Stats.1976, c. 220, § 15; Stats.1976, c. 1139, § 46.

Former § 29640, added by 1976, c. 1192, § 15, amended by Stats.1977, c. 1205, § 80.

Elec.C.1939, §§ 5701, 5719, 7070, 7071, 11700 (Stats.1939, c. 26, pp. 215, 217, 243, 316).

Pen.C. § 45, amended Stats.1901, c. 158, p. 436, §§ 8, 9; Stats.1905, c. 479, p. 639, §§ 3, 4.

## CROSS REFERENCES

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West's Ann.Cal.Elec.Code § 18561

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**→§ 18561. Procuring or advising vote of unqualified persons; aiding or abetting offenses**

Every person is punishable by imprisonment in the state prison for 16 months or two or three years who:

(a) Procures, assists, counsels, or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote.

(b) Aids or abets in the commission of any of the offenses mentioned in Section 18560.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18561, added by Stats.1961, c. 1672, relating to procedures for filing a declaration requesting a recount, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29431, enacted by Stats.1961, c. 23, p. 876, § 29431, amended by Stats.1976, c. 1139, § 47.

Former § 29641, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11701 (Stats.1939, c. 26, p. 316).

Pen.C. § 47, amended by Stats.1901, c. 158, p. 437, § 10; Stats.1905, c. 479, p. 640, § 5.

## CROSS REFERENCES

Aiding and abetting, generally, see Penal Code § 30 et seq.

Deceiving voter into voting different from his intention, see Elections Code § 18573.

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West's Ann.Cal.Elec.Code § 18561.1



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**→§ 18561.1. Rejected**

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Addition of a section of this number by Initiative Measure (Prop. 52, Art. 4, § 5), relating to conspiracy to commit fraud, was rejected at the Nov. 5, 2002 election.

West's Ann. Cal. Elec. Code § 18561.1, CA ELEC § 18561.1

Current through Ch. 910 of 2006 Reg.Sess. urgency legislation and all propositions appearing on the Nov. 7, 2006 ballot

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West's Ann.Cal.Elec.Code § 18562

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**Effective: [See Text Amendments]**

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Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 4. Corruption of Voting (Refs &amp; Annos)

**→ § 18562. Precinct board members; ballot violations; misdemeanor**

Every member of a precinct board is guilty of a misdemeanor who, prior to putting the ballot of a voter in the ballot box, commits any of the following:

- (a) Attempts to find out any name on the ballot.
- (b) Opens or suffers to be opened or examined the folded ballot of any voter which has been handed in.
- (c) Makes or places any mark or device on any folded ballot with a view to ascertaining the name of any person for whom the voter has voted.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18562, added by Stats.1961, c. 1672, relating to procedures for public recounts, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 14431, enacted by Stats.1961, c. 23, p. 770, § 14431.

Former § 29643, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 5729 (Stats.1939, c. 26, p. 218).

Pen.C. § 49, amended by Stats.1901, c. 158, p. 437, § 11; Stats.1905, c. 479, p. 640, § 6.

## CROSS REFERENCES

Aiding or abetting offense, see Elections Code § 18569.

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West's Ann.Cal.Elec.Code § 18563

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▣ Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

▣ Article 4. Corruption of Voting (Refs &amp; Annos)

**→ § 18563. Precinct board members; disclosure of vote without consent; misdemeanor**

Every member of a precinct board is guilty of a misdemeanor who, without the consent of a voter, discloses the name of any candidate the board member has discovered in his capacity as a member of the board to have been voted for by the voter.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18563, added by Stats.1961, c. 1672, relating to deposits to cover the costs of a recount, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former §§ 14431, 14433, enacted by Stats.1961, c. 23, pp. 770, 771, §§ 14431, 14433.

Former § 29644, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, §§ 5729, 5731 (Stats.1939, c. 26, pp. 218, 219).

Pol.C. § 49, amended by Stats.1901, c. 158, p. 437, § 11; Stats.1905, c. 479, p. 640, § 6.

Pol.C. § 1215, added by Stats.1891, c. 130, p. 178, § 32, amended by Stats.1913, c. 641, p. 1172, § 1.

## CROSS REFERENCES

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Precinct board, defined for purposes of this Code, see Elections Code § 339.

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West's Ann.Cal.Elec.Code § 18564

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Article 4. Corruption of Voting (Refs &amp; Annos)

**→§ 18564. Tampering with or damaging voting machines; interference with secrecy of voting; unauthorized making or possession of keys; willful substitution of forged source codes**

Any person is guilty of a felony, punishable by imprisonment in a state prison for two, three, or four years who, before or during an election:

- (a) Tampers with, interferes with, or attempts to interfere with, the correct operation of, or willfully damages in order to prevent the use of, any voting machine, voting device, voting system, vote tabulating device, or ballot tally software program source codes.
- (b) Interferes or attempts to interfere with the secrecy of voting or ballot tally software program source codes.
- (c) Knowingly, and without authorization, makes or has in his or her possession a key to a voting machine that has been adopted and will be used in elections in this state.
- (d) Willfully substitutes or attempts to substitute forged or counterfeit ballot tally software program source codes.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18564, added by Stats.1961, c. 1672, relating to results of recounts, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 15280, enacted by Stats.1961, c. 23, p. 795, § 15280.

Former § 29645, added by Stats.1976, c. 1192, § 15, amended by Stats.1979, c. 532, § 1; Stats.1989, c. 235, § 2.

Elec.C.1939, § 6600 (Stats.1939, c. 26, p. 239); Stats.1923, c. 96, pp. 191, 192, §§ 21, 24.

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West's Ann.Cal.Elec.Code § 18564.5

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Article 4. Corruption of Voting (Refs &amp; Annos)

**→§ 18564.5. Civil action for offenses**

(a) The Secretary of State, Attorney General, and any local elections official in the county in which the act occurs, may bring a civil action against an individual, business, or other legal entity that commits any of the following acts before, during, or after an election:

- (1) Tamper, interfere, or attempts to interfere with the correct operation of, or willfully damages in order to prevent the use of, any voting machine, voting device, voting system, vote tabulating device, or ballot tally software.
- (2) Interferes or attempts to interfere with the secrecy of voting or interferes or attempts to interfere with ballot tally software program source codes.
- (3) Knowingly, and without authorization, gains access to or provides another person or persons with access to a voting machine for the purpose of committing one of the acts specified by this section.
- (4) Willfully substitutes or attempts to substitute forged, counterfeit, or malicious ballot tally software program source codes.
- (5) Knowingly, and without authorization, inserts or causes the insertion of uncertified hardware, software, or firmware, for whatever purpose, into any voting machine, voting device, voting system, vote tabulating device, or ballot tally software.
- (6) Fails to notify the Secretary of State prior to any change in hardware, software, or firmware to a voting machine, voting device, voting system, or vote tabulating device, certified or conditionally certified for use in this state.

(b) A civil action may be brought pursuant to this section for a civil penalty not to exceed fifty thousand dollars (\$50,000) for each act and for injunctive relief, if appropriate.

CREDIT(S)

(Added by Stats.2004, c. 813 (S.B.1376), § 3.)

HISTORICAL AND STATUTORY NOTES

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West's Ann.Cal.Elec.Code § 18565

**C****Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

▣ Article 4. Corruption of Voting (Refs &amp; Annos)

**→ § 18565. Aiding and abetting offenses; penalty**

Any person who aids or abets in the commission of any of the offenses described in Section 18564 is punishable by imprisonment in the county jail for a period of six months or in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18565, added by Stats.1961, c. 1672, relating to termination of recounts, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29645.1, added by Stats.1989, c. 235, § 3.

## CROSS REFERENCES

Aiding and abetting, generally, see Penal Code § 30 et seq.

County, City, defined for purposes of this Code, see Elections Code § 310.

## LIBRARY REFERENCES

2003 Main Volume

Elections ↻309, 322.

Westlaw Topic No. 144.

C.J.S. Elections § 324, 336, 355(2).

## RESEARCH REFERENCES

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West's Ann.Cal.Elec.Code § 18566

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 4. Corruption of Voting (Refs &amp; Annos)

**→ § 18566. Forging or counterfeiting election returns**

Every person is punishable by imprisonment in the state prison for two, three, or four years who:

- (a) Forges or counterfeits returns of an election purported to have been held at a precinct where no election was in fact held.
- (b) Willfully substitutes forged or counterfeit returns of election in the place of true returns for a precinct where an election was actually held.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29100, enacted by Stats.1961, c. 23, p. 869, § 29100, amended by Stats.1976, c. 1139, § 26.

Former § 29646, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11550 (Stats.1939, c. 26, p. 310).

Pen.C. § 50, amended by Stats.1901, c. 158, p. 437, § 13; Stats.1905, c. 479, p. 641, § 8.

## CROSS REFERENCES

Forgery and counterfeiting, crime and punishment, generally, see Penal Code § 470 et seq.

Forgery, see Penal Code § 470 et seq.

## LIBRARY REFERENCES

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West's Ann.Cal.Elec.Code § 18567

**C****Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 4. Corruption of Voting (Refs &amp; Annos)

**→§ 18567. Altering returns**

Every person who willfully adds to or subtracts from the votes actually cast at an election, in any official or unofficial returns, or who alters the returns, is punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29101, enacted by Stats.1961, c. 23, p. 869, § 29101, amended by Stats.1976, c. 1139, § 27.

Former § 29647, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11551 (Stats.1939, c. 26, p. 311).

Pen.C. § 51, amended by Stats.1901, c. 158, p. 438, § 14; Stats.1905, c. 479, p. 641, § 9.

CROSS REFERENCES

Election, defined for purposes of this Code, see Elections Code § 318.

LIBRARY REFERENCES

2003 Main Volume

Elections ↪317, 332.

Westlaw Topic No. 144.

C.J.S. Elections § 216(1), 329, 353, 356.

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West's Ann.Cal.Elec.Code § 18568

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 4. Corruption of Voting (Refs &amp; Annos)

**→§18568. Offenses at the polls; penalties**

Every person is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the state prison for 16 months or two or three years, or by both the fine and imprisonment, who:

- (a) Aids in changing or destroying any poll list or official ballot.
- (b) Aids in wrongfully placing any ballots in the ballot container or in taking any therefrom.
- (c) Adds or attempts to add any ballots to those legally polled at any election by fraudulently putting them into the ballot container, either before or after the ballots therein have been counted.
- (d) Adds to or mixes with, or attempts to add to or mix with, the ballots polled, any other ballots, while they are being counted or canvassed or at any other time, with intent to change the result of the election, or allows another to do so, when in his or her power to prevent it.
- (e) Carries away or destroys, attempts to carry away or destroy, or knowingly allows another to carry away or destroy, any poll list, ballot container, or ballots lawfully polled or who willfully detains, mutilates, or destroys any election returns.
- (f) Removes any unvoted ballots from the polling place before the completion of the ballot count.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former §§ 14435, 29103, enacted by Stats.1961, c. 23, p. 771, §§ 14435, 29103, amended by Stats.1975, c. 1203, § 17.

Former § 29649, added by Stats.1976, c. 1192, § 15.

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West's Ann.Cal.Elec.Code § 18569

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 4. Corruption of Voting (Refs &amp; Annos)

**→§ 18569. Aiding or abetting offenses**

Every person who aids or abets in the commission of any of the offenses mentioned in Section 18566, 18567, or 18568 is punishable by imprisonment in the county jail for the period of six months or in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29102, enacted by Stats.1961, c. 23, p. 870, § 29102, amended by Stats.1976, c. 1139, § 28.

Former § 29648, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11552 (Stats.1939, c. 26, p. 311).

Pen.C. § 52, amended by Code Am. 1873-74, c. 614, p. 423, § 4.

## CROSS REFERENCES

Accessories to crimes, see Penal Code §§ 32, 33.

Aiding and abetting, generally, see Penal Code § 30 et seq.

County, City, defined for purposes of this Code, see Elections Code § 310.

## LIBRARY REFERENCES

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West's Ann.Cal.Elec.Code § 18570

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 4. Corruption of Voting (Refs &amp; Annos)

**→ § 18570. Voting results; offenses; misdemeanor**

Every person is guilty of a misdemeanor who does any one of the following:

- (a) Removes or defaces any posted copy of the results of votes cast within the period of 48 hours from the official time fixed for the closing of the polls.
- (b) Delays delivery of or changes the copy of the result of votes cast that is to be delivered to the city or county elections official.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former §§ 17094, 22931, enacted by Stats.1961, c. 23, pp. 809, 851, §§ 17094, 22931.

Former § 29104, added by Stats.1975, c. 1203, § 18.

Former § 29650, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, §§ 7074, 9915 (Stats.1939, c. 26, pp. 289, 243, amended by Stats.1939, c. 587, p. 1992).

Pol.C. § 1261, amended by Code Am.1873-74, c. 610, p. 29, § 51; Stats.1899, c. 53, p. 63, § 1; Stats.1899, c. 67, p. 83, § 1; Stats.1901, c. 11, p. 5, § 1; Stats.1923, c. 382, p. 774, § 1; Stats.1929, c. 749, p. 1425, § 11; Stats.1931, c. 250, p. 431, § 4; Stats.1933, c. 155, p. 606, § 1.

Stats.1919, c. 477, p. 935, § 30.

## CROSS REFERENCES

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West's Ann.Cal.Elec.Code § 18571

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)

▣ Article 4. Corruption of Voting (Refs & Annos)

**→§ 18571. Counting board members; failure to obey lawful orders**

Any person acting on any counting board who refuses to obey any lawful order of the county elections official or his or her deputy is guilty of a misdemeanor, unless he or she is by his or her refusal guilty of a higher crime under the laws of this state.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 17721, enacted by Stats.1961, c. 23, p. 815, § 17721.

Former § 29105, added by Stats.1975, c. 1203, § 19.

Former § 29651, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 7641 (Stats.1939, c. 26, p. 250).

Pol.C. § 1252, added by Stats.1921, c. 651, p. 1098, § 1.

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Elections official, defined for purposes of this Code, see Elections Code § 320.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

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West's Ann.Cal.Elec.Code § 18572

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Effective: [See Text Amendments]

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Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

▣ Article 4. Corruption of Voting (Refs &amp; Annos)

**→ § 18572. Counting board members; liabilities and penalties**

Each counting board and its members are subject to the liabilities and penalties to which precinct boards or their members are subject where the votes and returns are counted at the precincts where they were polled.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 17722, enacted by Stats.1961, c. 23, p. 815, § 17722.

Former § 29106, added by Stats.1975, c. 1203, § 20.

Former § 29652, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 7642 (Stats.1939, c. 26, p. 250).

Pol.C. § 1252a, added by Stats.1921, c. 651, p. 1098, § 1.

## CROSS REFERENCES

Precinct board, defined for purposes of this Code, see Elections Code § 339.

Precinct boards, composition and qualifications, generally, see Elections Code § 12300 et seq.

Precinct boards, violation of obligations, penal provisions, see Elections Code § 18700 et seq.

## LIBRARY REFERENCES

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West's Ann.Cal.Elec.Code § 18573

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 4. Corruption of Voting (Refs &amp; Annos)

**→§ 18573. Deceiving voter unable to read; causing voter to vote for different person than intended through fraud; felony**

Every person is guilty of a felony punishable by imprisonment in the state prison for 16 months or two or three years who furnishes any voter wishing to vote, who cannot read, with a ballot, informing or giving that voter to understand that it contains a name written or printed thereon different from the name which is written or printed thereon, or defrauds any voter at any election by deceiving and causing him or her to vote for a different person for any office than he or she intended or desired to vote for.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29180, enacted by Stats.1961, c. 23, p. 872, § 29180.

Former § 29653, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11620 (Stats.1939, c. 26, p. 313).

Pen.C. § 53, amended by Stats.1893, c. 11, p. 7, § 1.

## CROSS REFERENCES

Ballot, defined for purposes of this Code, see Elections Code § 301.

Felony defined, see Penal Code § 17.

Intimidation of voters, see Elections Code § 18540 et seq.

Voter, defined for purposes of this Code, see Elections Code § 359.

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West's Ann.Cal.Elec.Code § 18574

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Effective: [See Text Amendments]

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Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

▣ Article 4. Corruption of Voting (Refs &amp; Annos)

**→§ 18574. Refusal of person required to be sworn or to answer questions; misdemeanor**

Every person who, after being required by the precinct board at an election, refuses to be sworn or, being sworn, refuses to answer any pertinent questions propounded by the board touching the right of another to vote, is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29432, enacted by Stats.1961, c. 23, p. 876, § 29432.

Former § 29654, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11702 (Stats.1939, c. 26, p. 316).

Pen.C. § 43, amended by Code Am.1873-74, c. 614, p. 423, § 3.

## CROSS REFERENCES

Election, defined for purposes of this Code, see Elections Code § 318.

Misdemeanor defined, see Penal Code § 17.

Precinct board, defined for purposes of this Code, see Elections Code § 339.

Precinct boards, composition and qualifications, generally, see Elections Code § 12300 et seq.

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West's Ann.Cal.Elec.Code § 18575

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Effective: [See Text Amendments]

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Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

▣ Article 4. Corruption of Voting (Refs &amp; Annos)

**→§ 18575. Unlawfully acting as election officers; acting in unauthorized capacity; felony**

Every person is guilty of a felony, and on conviction shall be punished by imprisonment in the state prison for two, three or four years, who at any election:

(a) Without first having been appointed and qualified, acts as an election officer.

(b) Not being an election officer, performs or discharges any of the duties of an election officer in regard to the handling, counting, or canvassing of any ballots.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29400, enacted by Stats.1961, c. 23, p. 876, § 29400.

Former § 29655, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11680 (Stats.1939, c. 26, p. 316).

Pen.C. § 40, added by Stats.1895, c. 79, p. 74, § 1.

## CROSS REFERENCES

Ballot, defined for purposes of this Code, see Elections Code § 301.

Election, defined for purposes of this Code, see Elections Code § 318.

Felony defined, see Penal Code § 17.

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West's Ann.Cal.Elec.Code § 18576

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Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

▣ Article 4. Corruption of Voting (Refs &amp; Annos)

**→§ 18576. Absent voter ballot; willful interference with delivery, retention beyond time limits or denial of right to return completed ballot; misdemeanor**

Any person who willfully (a) interferes with the prompt delivery of a completed absent voter ballot application, (b) retains a completed absent voter ballot application, without the voter's authorization, for more than three days excluding weekends and state holidays, or by the deadline for return of absent voters' ballot applications, whichever is earlier, or (c) denies an applicant the right to return his or her own completed absent voter ballot application to the local elections official having jurisdiction over the election, is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29656, added by Stats.1987, c. 466, § 3.

## CROSS REFERENCES

Absentee voting, applications and voting procedures, generally, see Elections Code § 3000 et seq.

Absent voter, special absentee voter, defined for purposes of this Code, see Elections Code § 300.

Ballot, defined for purposes of this Code, see Elections Code § 301.

Computation of time, first and last days, holidays, see Civil Code § 10; Code of Civil Procedure § 12 et seq.; Government Code § 6800 et seq.

Computation of time, time for performance of any act provided for or required by this code, holiday as last day for performance of act, see Elections Code § 15.

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West's Ann.Cal.Elec.Code § 18577

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Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 4. Corruption of Voting (Refs &amp; Annos)

**→§ 18577. Willful interference or cause of interference with return to local elections official by person in charge of completed absent voter ballot**

Any person having charge of a completed absent voter ballot who willfully interferes or causes interference with its return to the local elections official having jurisdiction over the election is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding ten thousand dollars (\$10,000), or by both.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.2001, c. 922 (A.B.1520), § 6.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Stats.2001, c. 922 (A.B.1520), added "punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding ten thousand dollars (\$10,000), or by both".

Legislative findings and declarations relating to Stats.2001, c. 922 (A.B.1520), see Historical and Statutory Notes under Elections Code § 100.5.

Governor Davis issued the following signing message regarding Stats.2001, c. 922 (A.B.1520):

"I am signing Assembly Bill 1520, which allows any voter to apply for permanent absentee voter status.

"This bill is a recognition that California's busy lifestyles should not be an impediment to their participation in the electoral process."

Sincerely,

GRAY DAVIS

**Derivation:** Former § 29657, added by Stats.1987, c. 466, § 4.

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West's Ann.Cal.Elec.Code § 18578

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Effective: [See Text Amendments]

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Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 4. Corruption of Voting (Refs &amp; Annos)

## →§ 18578. Absent voter ballot; fraudulent signature

Any person who applies for, or who votes or attempts to vote, an absent voter's ballot by fraudulently signing the name of a fictitious person, or of a regularly qualified voter, or of a person who is not qualified to vote, is guilty of a felony punishable by imprisonment in the state prison for 16 months or two or three years, or by fine not exceeding one thousand dollars (\$1,000) or by both the fine and imprisonment.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 14721, added by Stats.1975, c. 1203, § 3.4, derived from former § 14691, Stats.1961, c. 23, p. 780, § 14691.

Former § 29658, added as § 29642 by Stats.1976, c. 1192, § 15, amended by Stats.1977, c. 1112, § 8, renumbered § 29658 and amended by Stats.1987, c. 466, § 2.

Elec.C.1939, § 5951 (Stats.1939, c. 26, p. 225).

Pol.C. § 1363, added by Stats.1923, c. 283, p. 592, § 1.

CROSS REFERENCES

Absent voter, special absentee voter, defined for purposes of this Code, see Elections Code § 300.

Ballot, defined for purposes of this Code, see Elections Code § 301.

Felony, definition and penalties, see Penal Code §§ 17, 18.

Voter, defined for purposes of this Code, see Elections Code § 359.

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West's Ann.Cal.Elec.Code § 18600

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs &amp; Annos)

Article 1. Improper Signature-Gathering Tactics (Refs &amp; Annos)

**→ § 18600. Misrepresentation or false statement concerning petitions**

Every person is guilty of a misdemeanor who:

(a) Circulating, as principal or agent, or having charge or control of the circulation of, or obtaining signatures to, any state or local initiative, referendum or recall petition, intentionally misrepresents or intentionally makes any false statement concerning the contents, purport or effect of the petition to any person who signs, or who desires to sign, or who is requested to sign, or who makes inquiries with reference to it, or to whom it is presented for his or her signature.

(b) Willfully and knowingly circulates, publishes, or exhibits any false statement or misrepresentation concerning the contents, purport or effect of any state or local initiative, referendum, or recall petition for the purpose of obtaining any signature to, or persuading or influencing any person to sign, that petition.

(c) Circulating, as principal or agent, or having charge or control of the circulation of, or obtaining signatures to, any state or local initiative, intentionally makes any false statement in response to any inquiry by any voter as to whether he or she is a paid signature gatherer or a volunteer.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18600, added by Stats.1968, c. 79, p. 236, § 3, amended by Stats.1975, c. 1147, § 1, derived from former § 17073, added by Stats.1961, c. 23, p. 808, § 17073, relating to the counting of write-in votes, was repealed by Stats.1975, c. 1203, § 8. See Elections Code § 17100.

**Derivation:** Former §§ 29214, 29215, enacted by Stats.1961, c. 23, pp. 872, 873, §§ 29214, 29215, amended by Stats.1976, c. 1139, §§ 31, 32.

Former §§ 29286, 29287, added by Stats.1963, c. 1105, p. 2564, § 1.

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West's Ann.Cal.Elec.Code § 18601

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Effective: [See Text Amendments]

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Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs &amp; Annos)

Article 1. Improper Signature-Gathering Tactics (Refs &amp; Annos)

**→ § 18601. Refusal to show text of measure or petition; misdemeanor**

Any person working for the proponent or proponents of an initiative or referendum measure or recall petition who refuses to allow a prospective signer to read the measure or petition is guilty of a misdemeanor.

An arrest or conviction pursuant to this section shall not invalidate or otherwise affect the validity of any signature obtained by the person arrested or convicted.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

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Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18601 added by Stats.1968, c. 79, p. 236, § 3, requiring a declaration by write-in candidate, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29228, added by Stats.1973, c. 1196, p. 2532, § 2.

Former § 29254, added by Stats.1973, c. 525, § 1.

Former § 29721, added by Stats.1976, c. 1192, § 15.

## CROSS REFERENCES

Initiative and referendum, generally, see Const. Art. 2, §§ 8 to 11; Const. Art. 4, § 1; Elections Code § 9000 et seq.

Initiative, referendum or recall petition, persons entitled to circulate, see Elections Code § 102.

Measure, defined for purposes of this Code, see Elections Code § 329.

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West's Ann.Cal.Elec.Code § 18602

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**Effective: [See Text Amendments]**

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▣ Chapter 7. Initiative, Referendum, and Recall (Refs &amp; Annos)

▣ Article 1. Improper Signature-Gathering Tactics (Refs &amp; Annos)

**→§ 18602. Obscuring summary of initiative or referendum measure; misdemeanor**

Any person working for the proponent or proponents of a statewide initiative or referendum measure who covers or otherwise obscures the summary of the measure prepared by the Attorney General from the view of a prospective signer is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18602, added by Stats.1968, c. 79, p. 236, § 3, amended by Stats.1970, c. 559, p. 1134, § 1; Stats.1975, c. 1045, § 1, relating to the filing of declaration by write-in candidate, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29229, added by Stats.1973, c. 1196, p. 2532, § 3.

Former § 29722, added by Stats.1976, c. 1192, § 15.

## CROSS REFERENCES

Attorney General, powers and duties, see Government Code § 12510 et seq.

Measure, defined for purposes of this Code, see Elections Code § 329.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Proponent or proponents of an initiative or referendum measure, defined for purposes of this Code, see Elections Code § 342.

## LIBRARY REFERENCES

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West's Ann.Cal.Elec.Code § 18603

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Effective: [See Text Amendments]

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Article 1. Improper Signature-Gathering Tactics (Refs &amp; Annos)

**→ § 18603. Payment for signatures; offense**

Every person who offers or gives money or other valuable consideration to another in exchange for his or her signature on a state, county, municipal, or district initiative, referendum, or recall petition is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.1996, c. 714 (S.B.1853), § 26.)

## HISTORICAL AND STATUTORY NOTES

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Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

The 1996 amendment inserted ", referendum, or recall".

Former § 18603, added by Stats.1968, c. 79, p. 236, § 3, amended by Stats.1974, c. 454, p. 1075, § 2; Stats.1975, c. 1045, § 2, stating the requirements for tabulation of write-in votes, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29723, added by Stats.1987, c. 523, § 1.

## CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

## LIBRARY REFERENCES

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West's Ann.Cal.Elec.Code § 18610

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Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 2. False or Ineligible Signatures on Petition (Refs & Annos)

**→§ 18610. Solicitation of circulators to affix or permit false or forged signatures; penalty**

Every person who solicits any circulator to affix to any initiative, referendum, or recall petition any false or forged signature, or to cause or permit a false or forged signature to be affixed, is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29253, enacted by Stats.1961, c. 23, p. 875, § 29253.

Former § 29730, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11663 (added by Stats.1959, c. 96, p. 1950, § 1).

CROSS REFERENCES

Forgery, see Penal Code § 470.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Misdemeanor defined, see Penal Code § 17.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

LIBRARY REFERENCES

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Officers and Public Employees k70.7.

Statutes ↵327, 367.

Westlaw Topic Nos. 283, 361.

C.J.S. Statutes § 140-142.

RESEARCH REFERENCES

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West's Ann.Cal.Elec.Code § 18611

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Effective: [See Text Amendments]

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Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs &amp; Annos)

Article 2. False or Ineligible Signatures on Petition (Refs &amp; Annos)

**→§ 18611. Circulation with false, forged or fictitious names; penalties**

Every person is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment, who circulates or causes to be circulated any initiative, referendum, or recall petition, knowing it to contain false, forged, or fictitious names.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29217, enacted by Stats.1961, c. 23, p. 873, § 29217, amended by Stats.1976, c. 1139, § 34.

Former § 29731, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11645 (Stats.1939, c. 26, p. 315 amended by Stats.1957, c. 139, p. 738, § 12).

Pen.C. § 64b, subd. 4, added by Stats.1915, c. 49, p. 55, § 1.

## CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Forgery defined, see Penal Code § 470.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Recall petition, generally, see Elections Code § 11040 et seq.

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Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 2. False or Ineligible Signatures on Petition (Refs & Annos)

**→§ 18612. Signing more than once or while disqualified; penalty**

Every person is guilty of a misdemeanor who knowingly signs his or her own name more than once to any initiative, referendum, or recall petition, or signs his or her name to that petition knowing himself or herself at the time of signing not to be qualified to sign it.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

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Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29220, enacted by Stats.1961, c. 23, p. 873, § 29220, amended by Stats.1976, c. 1139, § 37.

Former § 29732, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11648 (Stats.1939, c. 26, p. 315, amended by Stats.1957, c. 139, p. 738, § 15).

Pen.C. § 64b, subs. 7, 8, added by Stats.1915, c. 49, p. 55, § 1.

CROSS REFERENCES

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Initiative, referendum or recall petition, persons entitled to circulate, see Elections Code § 102.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Recall petition, generally, see Elections Code § 11040 et seq.

LIBRARY REFERENCES

2003 Main Volume

Officers and Public Employees k70.7.

Statutes ↔327, 367.

Westlaw Topic Nos. 283, 361.

C.J.S. Statutes § 140-142.

RESEARCH REFERENCES

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West's Ann.Cal.Elec.Code § 18613

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Elections Code (Refs & Annos)

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^Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

^Article 2. False or Ineligible Signatures on Petition (Refs & Annos)

➔**§ 18613. Fictitious names or signing name of another; penalty**

Every person who subscribes to any initiative, referendum, or recall petition a fictitious name, or who subscribes thereto the name of another, or who causes another to subscribe such a name to that petition, is guilty of a felony and is punishable by imprisonment in the state prison for two, three, or four years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

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Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29221, enacted by Stats.1961, c. 23, p. 874, § 29221, amended by Stats.1976, c. 1139, § 38.

Former § 29733, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11649 (Stats.1939, c. 26, p. 315, amended by Stats.1959, c. 96, p. 1950, § 2).

Pen.C. § 472a, added by Stats.1915, c. 43, p. 51, § 1.

CROSS REFERENCES

Felony, definition and penalties, see Penal Code §§ 17, 18.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Recall petition, generally, see Elections Code § 11040 et seq.

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Statutes ↵327, 367.

Westlaw Topic Nos. 283, 361.

C.J.S. Statutes § 140-142.

RESEARCH REFERENCES

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West's Ann.Cal.Elec.Code § 18614

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^Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

^Article 2. False or Ineligible Signatures on Petition (Refs & Annos)

→**§ 18614. Filing with false signatures; penalties**

Every person is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment, who files in the office of the elections official or other officer designated by law to receive the filing, any initiative, referendum, or recall petition to which is attached, appended or subscribed any signature which the person filing the petition knows to be false or fraudulent or not the genuine signature of the person whose name it purports to be.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29216, enacted by Stats.1961, c. 23, p. 873, § 29216, amended by Stats.1976, c. 1139, § 33.

Former § 29734, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11644 (Stats.1939, c. 26, p. 314, amended by Stats.1957, c. 139, p. 737, § 11).

Pen.C. § 64b, subd. 3, added by Stats.1915, c. 49, p. 55, § 1.

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Elections official, defined for purposes of this Code, see Elections Code § 320.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

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Officers and Public Employees k70.7.

Statutes ↔327, 367.

Westlaw Topic Nos. 283, 361.

C.J.S. Statutes § 140-142.

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West's Ann.Cal.Elec.Code § 18620

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^Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

^Article 3. Improper Payments to Prevent Petition Circulation and Filing (Refs & Annos)

➔**§ 18620. Soliciting or obtaining money or thing of value for inducing proponents to abandon petitions**

Every person who seeks, solicits, bargains for, or obtains any money, thing of value, or advantage of or from any person, firm, or corporation for the purpose or represented purpose of fraudulently inducing, persuading, or seeking the proponent or proponents of any initiative or referendum measure or recall petition to (a) abandon the measure or petition, (b) fail, neglect, or refuse to file in the office of the elections official or other officer designated by law, within the time required by law, the initiative or referendum measure or recall petition after securing the number of signatures required to qualify the measure or petition, (c) stop the circulation of the initiative or referendum measure or recall petition, or (d) perform any act that will prevent or aid in preventing the initiative or referendum measure or recall petition from qualifying as an initiative or referendum measure, or the recall petition from resulting in a recall election, is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29222, enacted by Stats.1961, c. 23, p. 874, § 29222, amended by Stats.1976, c. 1139, § 39.

Former § 29740, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11650 (added by Stats.1941, c. 1279, p. 3225, § 1.9, amended by Stats.1957, c. 139, p. 738, § 16).

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Elections official, defined for purposes of this Code, see Elections Code § 320.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Measure, defined for purposes of this Code, see Elections Code § 329.

Proponent or proponents of an initiative or referendum measure, defined for purposes of this Code, see Elections Code § 342.

Proponent or proponents of a recall petition, defined for purposes of this Code, see Elections Code § 343.

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West's Ann.Cal.Elec.Code § 18621

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Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 3. Improper Payments to Prevent Petition Circulation and Filing (Refs & Annos)

**→§ 18621. Receipt by proponent of consideration for abandoning petitions;  
penalties**

Any proponent of an initiative or referendum measure or recall petition who seeks, solicits, bargains for, or obtains any money or thing of value of or from any person, firm, or corporation for the purpose of abandoning the same or stopping the circulation of petitions concerning the same, or failing or neglecting or refusing to file the measure or petition in the office of the elections official or other officer designated by law within the time required by law after obtaining the number of signatures required under the law to qualify the measure or petition, or performing any act that will prevent or aid in preventing the initiative, referendum or recall proposed from qualifying as an initiative or referendum measure, or resulting in a recall election is punishable by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative Intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29223, enacted by Stats.1961, c. 23, p. 874, § 29223, amended by Stats.1976, c. 1139, § 40.

Former § 29741, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11651 (added by Stats.1941, c. 1279, p. 3226, § 2, amended by Stats.1957, c. 139, p. 739, § 17).

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Elections official, defined for purposes of this Code, see Elections Code § 320.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Measure, defined for purposes of this Code, see Elections Code § 329.

Proponent or proponents of an initiative or referendum measure, defined for purposes of this Code, see Elections Code § 342.

Proponent or proponents of a recall petition, defined for purposes of this Code, see Elections Code § 343.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

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West's Ann.Cal.Elec.Code § 18622

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Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 3. Improper Payments to Prevent Petition Circulation and Filing (Refs & Annos)

→§ 18622. **Buying of petitions from circulators; misdemeanor**

Every person who offers to buy or does buy from a circulator any referendum, initiative, or recall petition on which one or more persons have affixed their signatures is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one year, or by a fine not exceeding one thousand dollars (\$1,000), or both. This section is not intended to prohibit compensation of a circulator, for his or her services, by a proponent of the petition or his or her agent.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29252, enacted by Stats.1961, c. 23, p. 875, § 29252.

Former § 29742, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11662 (added by Stats.1959, c. 96, p. 1950, § 1).

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Misdemeanor defined, see Penal Code § 17.

Proponent or proponents of a recall petition, defined for purposes of this Code, see Elections Code § 343.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

LIBRARY REFERENCES

2003 Main Volume

Officers and Public Employees k70.7.

Statutes ↔327, 367.

Westlaw Topic Nos. 283, 361.

C.J.S. Statutes § 140-142.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Elections § 319, Prevention of Circulation or Filing of Petition.

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West's Ann.Cal.Elec.Code § 18630

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 4. Threats and Theft to Prevent Petition Circulation and Filing

**→§ 18630. Threat to commit assault or battery or to damage property; misdemeanor**

Every person who threatens to commit an assault or battery on a person circulating a referendum, initiative, or recall petition or on a relative of a person circulating a referendum, initiative, or recall petition or to inflict damage on the property of the circulator or the relative, with the intent to dissuade the circulator from circulating the petition or in retribution for the circulation, is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29250, enacted by Stats.1961, c. 23, p. 875, § 29250.

Former § 29750, added by Stats.1976, c. 1192, § 15, amended by Stats.1977, c. 1112, § 9.

Elec.C.1939, § 11660 (added by Stats.1959, c. 96, p. 1950, § 1).

CROSS REFERENCES

Assault and battery, see Penal Code § 240 et seq.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Misdemeanor defined, see Penal Code § 17.

Recall petition, generally, see Elections Code § 11040 et seq.

LIBRARY REFERENCES

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Officers and Public Employees k70.7.

Statutes ↔327, 367.

Westlaw Topic Nos. 283, 361.

C.J.S. Statutes § 140-142.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Elections § 319, Prevention of Circulation or Filing of Petition.

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West's Ann.Cal.Elec.Code § 18631

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⌘ Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

⌘ Article 4. Threats and Theft to Prevent Petition Circulation and Filing

➔ **§ 18631. Taking petitions from circulators by force or stealth; misdemeanor**

Every person who forcibly or by stealth takes from the possession of a circulator any initiative, referendum, or recall petition on which one or more persons have affixed their signatures is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

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Legislative Intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29251, enacted by Stats.1961, c. 23, p. 875, § 29251.

Former § 29751, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11661 (added by Stats.1959, c. 96, p. 1950, § 1).

CROSS REFERENCES

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Misdemeanor defined, see Penal Code § 17.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

LIBRARY REFERENCES

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Officers and Public Employees k70.7.

Statutes ↵327, 367.

Westlaw Topic Nos. 283, 361.

C.J.S. Statutes § 140-142.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Elections § 319, Prevention of Circulation or Filing of Petition.

CA Jur. 3d Initiative and Referendum § 92, Interference With Initiative or Referendum. **005759**

West's Ann.Cal.Elec.Code § 18640

West's Annotated California Codes Currentness  
Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 5. Refusal of Circulators to Turn in Petitions

➔ **§ 18640. Failure to surrender petitions to proponents; penalties**

Any person working for the proponent or proponents of an initiative or referendum measure or recall petition who solicits signatures to qualify the measure or petition and accepts any payment therefor and who fails to surrender the measure or petition to the proponents thereof for filing is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29226, enacted by Stats.1961, c. 23, p. 875, § 29226, amended by Stats.1976, c. 1139, § 43.

Former § 29760, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11654 (added by Stats.1941, c. 1279, p. 3227, § 5, amended by Stats.1957, c. 139, p. 740, § 20).

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Measure, defined for purposes of this Code, see Elections Code § 329.

Proponent or proponents of an initiative or referendum measure, defined for purposes of this Code, see Elections Code § 342.

Proponent or proponents of a recall petition, defined for purposes of this Code, see Elections Code § 343.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

LIBRARY REFERENCES

2003 Main Volume

Officers and Public Employees k70.7.

Statutes ⇐327, 367.

Westlaw Topic Nos. 283, 361.

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West's Ann.Cal.Elec.Code § 18650

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 6. Misuse of Signatures on Petition (Refs & Annos)

→ § 18650. Use of signatures for other than qualification for ballot; misdemeanor

No one shall knowingly or willfully permit the list of signatures on an initiative, referendum, or recall petition to be used for any purpose other than qualification of the initiative or referendum measure or recall question for the ballot, except as provided in Section 6253.5 of the Government Code. Violation of this section is a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29256, added by Stats.1974, c. 1410, p. 3106, § 9; Stats.1974, c. 1445, p. 3155, § 9.

Former § 29770, added by Stats.1976, c. 1192, § 15, amended by Stats.1984, c. 875, § 4.

CROSS REFERENCES

Ballot, defined for purposes of this Code, see Elections Code § 301.

Certification by proponent of initiative measure, use of signatures, see Elections Code §§ 9608, 9609 and 9610.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Inspection of public records, exemptions from disclosure, patient-physician confidential communication, petition signatures, see Government Code § 6276.34.

Measure, defined for purposes of this Code, see Elections Code § 329.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

LAW REVIEW AND JOURNAL COMMENTARIES

Reforming direct democracy: Lessons from Oregon. Cody Hoesly, 93 Cal. L. Rev. 1191 (July 2005).

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Statutes ↵327, 367.

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West's Ann.Cal.Elec.Code § 18660

West's Annotated California Codes Currentness  
Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 7. False Affidavits Concerning Petitions

➔ **§ 18660. False affidavits; penalties**

Every person is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment, who makes any false affidavit concerning any initiative, referendum, or recall petition or the signatures appended thereto.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29218, enacted by Stats.1961, c. 23, p. 873, § 29218, amended by Stats.1976, c. 1139, § 35.

Former § 29780, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11646 (Stats.1939, c. 26, p. 315, amended by Stats.1957, c. 139, p. 738, § 13).

Pen.C. § 64b, subd. 5, added by Stats.1915, c. 49, p. 55, § 1.

CROSS REFERENCES

Affidavit defined, see Code of Civil Procedure § 2003.

County, City, defined for purposes of this Code, see Elections Code § 310.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

LIBRARY REFERENCES

2003 Main Volume

Officers and Public Employees k70.7.

Statutes ↔327, 367.

Westlaw Topic Nos. 283, 361.

C.J.S. Statutes § 140-142.

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RESEARCH REFERENCES

West's Ann.Cal.Elec.Code § 18661

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

▣ Article 7. False Affidavits Concerning Petitions

➔ **§ 18661. Public officers; false returns, certifications or affidavits**

Every public official or employee is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment, who knowingly makes any false return, certification or affidavit concerning any initiative, referendum, or recall petition or the signatures appended thereto.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative Intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29219, enacted by Stats.1961, c. 23, p. 873, § 29219, amended by Stats.1976, c. 1139, § 36.

Former § 29781, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11647 (Stats.1939, c. 26, p. 315, amended by Stats.1957, c. 139, p. 738, § 14).

Pen.C. § 64b, subd. 6, added by Stats.1915, c. 49, p. 55, § 1.

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

LIBRARY REFERENCES

2003 Main Volume

Officers and Public Employees k70.7.

Statutes ↔327, 367.

Westlaw Topic Nos. 283, 361.

C.J.S. Statutes § 140-142.

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RESEARCH REFERENCES

West's Ann.Cal.Elec.Code § 18670

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 8. Filing Petitions to Defeat an Initiative or Referendum (Refs & Annos)

→§ 18670. Misdemeanor

Every person is guilty of a misdemeanor who, either as principal or agent, files in the office of the Secretary of State, county elections official, or in the office of any other officer designated by law to receive the filing, a petition or any section of a petition relating to the Constitution or the laws of this state, authorized by the Constitution or laws of this state regulating the statewide initiative or referendum, with the intention of thereby defeating that initiative or referendum measure that is embraced in the petition. Nothing in this section applies to any person who, in good faith, files a petition embracing an initiative or referendum measure that conflicts with a similar measure already on file.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29212, enacted by Stats.1961, c. 23, p. 872, § 29212.

Former § 29790, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11640 (Stats.1939, c. 26, p. 313, amended by Stats.1939, c. 1095, p. 3026).

Pen.C. § 64a, added by Stats.1931, c. 662, p. 1402, § 1.

CROSS REFERENCES

Circulation of petition containing known false names or signatures, see Elections Code § 18610 et seq.

County, City, defined for purposes of this Code, see Elections Code § 310.

Elections official, defined for purposes of this Code, see Elections Code § 320.

Initiative and referendum, generally, see Const. Art. 2, §§ 8 to 11; Const. Art. 4, § 1; Elections Code § 9000 et seq.

Making false affidavits concerning petitions, see Elections Code § 18660.

Measure, defined for purposes of this Code, see Elections Code § 329.

Misdemeanor defined, see Penal Code § 17.

Proponent of initiative or referendum measure defined, see Elections Code § 342.

Secretary of State, powers and duties, administration and enforcement of Elections Code, see Const. Art. 5, § 11; Government Code § 12150 et seq.

LAW REVIEW AND JOURNAL COMMENTARIES

Penal provisions of Elections Code and municipal referendum and initiative elections. (Spring 1965). 5

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West's Ann.Cal.Elec.Code § 18671

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 8. Filing Petitions to Defeat an Initiative or Referendum (Refs & Annos)

**→§ 18671. Void petitions; filing with intent to defeat expression of public will**

Any petition, or any section of a petition, filed by any person other than the proponents of an initiative or referendum measure and with an intention of defeating an expression of the public will is null and void.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29213, enacted by Stats.1961, c. 23, p. 872, § 29213.

Former § 29791, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11641 (Stats.1939, c. 26, p. 314, amended by Stats.1939, c. 1095, p. 3026; Stats.1941, c. 1279, p. 3225, § 1.7).

Pen.C. § 64a, added by Stats.1931, c. 662, p. 1402, § 1.

CROSS REFERENCES

Initiative and referendum, generally, see Const. Art. 2, §§ 8 to 11; Const. Art. 4, § 1; Elections Code § 9000 et seq.

Making false affidavits concerning petitions, see Elections Code § 18660.

Measure, defined for purposes of this Code, see Elections Code § 329.

LIBRARY REFERENCES

2003 Main Volume

Statutes ⇐304, 344.

Westlaw Topic No. 361.

C.J.S. Statutes § 116, 125.

RESEARCH REFERENCES

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2 Witkin Cal. Crim. L. 3d Crimes Against Gov't Auth. § 144, (S 144) Interference With Procedure.

West's Ann. Cal. Elec. Code § 18671, CA ELEC § 18671

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West's Ann.Cal.Elec.Code § 18680

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

▣ Chapter 7. Initiative, Referendum, and Recall (Refs &amp; Annos)

▣ Article 9. Misuse of Campaign Funds (Refs &amp; Annos)

**→§ 18680. Misappropriation; expenses within due and lawful execution of the trust; penalties**

Every person who is entrusted with money or things of value for the purpose of promoting or defeating any initiative, referendum, or recall petition or any measure that has qualified for the ballot is a trustee of the money or things of value. If a person wrongfully appropriates the money or things of value to any use or purpose not in the due and lawful execution of the trust, the person shall be punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment. The following expenses are within the due and lawful execution of the trust:

- (a) Securing signatures to initiative, referendum, or recall petitions.
- (b) Circulating initiative, referendum, or recall petitions.
- (c) Holding and conducting public meetings.
- (d) Printing and circulating prior to an election:
  - (1) Specimen ballots.
  - (2) Handbills.
  - (3) Cards.
  - (4) Other papers.
- (e) Advertising.
- (f) Postage.
- (g) Expressage.
- (h) Telegraphing.
- (i) Telephoning.
- (j) All salaries and expenses of:

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West's Ann.Cal.Elec.Code § 18680

- (1) Campaign managers.
- (2) Lecturers.
- (3) Solicitors.
- (4) Agents.
- (5) All persons employed in transacting business at headquarters or branch offices, if the business transacted is related to promoting or defeating an initiative, referendum, or recall petition or any measure which has qualified for the ballot.
- (k) Maintaining headquarters and branch offices.
- (l) Renting of rooms for the transaction of the business of an association.
- (m) Attorney's fees and other costs in connection with litigation where the litigation arises directly out of any of the following:
  - (1) Activities related to promoting or defeating an initiative, referendum, or recall petition or any measure that has qualified for the ballot.
  - (2) The enactment, by the initiative process, of any ordinance, charter amendment, statute, or constitutional amendment.
  - (3) An election contest or recount.
  - (4) A violation of state or local campaign, disclosure, or election laws.

The amendment of this section by adding subdivision (m) thereto, made at the 1991-92 Regular Session of the Legislature, does not constitute a change in, but is declaratory of, the existing law.

Expenses for food, clothing, shelter and other personal needs of the trustee are not within the due and lawful execution of the trust. However, expenses for travel and necessary accommodations for the trustee are within the due and lawful execution of the trust, if the travel and accommodations are related to promoting or defeating an initiative, referendum, or recall petition or any measure that has qualified for the ballot.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

#### HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29227, enacted by Stats.1969, c. 106, p. 238, § 1, amended by Stats.1976, c. 1139, § 44.

Former § 29795, added by Stats.1976, c. 1192, § 15, amended by Stats.1991, c. 1002, § 1.

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West's Ann.Cal.Elec.Code § 18700

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 8. Obligations of Precinct Board (Refs & Annos)

## →§ 18700. Failure to fulfill duties; misdemeanor

Any voter who has filed an application for the position of, and been appointed as a precinct board member and who, without being excused by the county elections official, knowingly fails to act as a precinct board member, is guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100).

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18700, enacted by Stats.1961, c. 23, § 18700, relating to the number of votes required to win election, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 1634, enacted by Stats.1961, c. 23, p. 619, § 1634.

Former § 29500, added by Stats.1975, c. 1203, § 22.

Former § 29800, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 681 (Stats.1939, c. 26, p. 80).

Pol.C. § 1142, amended by Code Am.1873, to 74, c. 610, p. 21, § 38; Stats.1889, c. 274, p. 425, § 6; Stats.1895, c. 216, p. 298, § 1; Stats.1899, c. 70, p. 85, § 1; Stats.1903, c. 122, p. 133, § 1; Stats.1911, c. 440, p. 891, § 1; Stats.1911, Ex.Sess., c. 43, p. 186, § 1; Stats.1913, c. 634, p. 1165, § 1; Stats.1915, c. 522, p. 851, § 3; Stats.1919, c. 230, p. 333, § 2; Stats.1921, c. 549, p. 873, § 1; Stats.1929, c. 209, p. 368, § 1; Stats.1931, c. 1126, p. 2386, § 1; Stats.1937, c. 332, p. 721, § 1.

## CROSS REFERENCES

Contests, grounds for election contests, see Elections Code § 16100.

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I.C.A. § 39A.1

Iowa Code Annotated Currentness

Title II. Elections and Official Duties

▣ Subtitle 1. Elections

▣ Chapter 39A. Election Misconduct (Refs &amp; Annos)

**→39A.1. Title and purpose—election officials defined**

1. This chapter may be cited and referred to as the "Election Misconduct and Penalties Act".
2. The purpose of this chapter is to identify actions which threaten the integrity of the election process and to impose significant sanctions upon persons who intentionally commit those acts. It is the intent of the general assembly that offenses with the greatest potential to affect the election process be vigorously prosecuted and strong punishment meted out through the imposition of felony sanctions which, as a consequence, remove the voting rights of the offenders. Other offenses are still considered serious, but based on the factual context in which they arise, they may not rise to the level of offenses to which felony penalties attach. The general assembly also recognizes that instances may arise in which technical infractions of chapters 39 through 53 may occur which do not merit any level of criminal sanction. In such instances, administrative notice from the state or county commissioner of elections is sufficient. Mandates or proscriptions in chapters 39 through 53 which are not specifically included in this chapter shall be considered to be directive only, without criminal sanction.
3. For the purposes of this chapter, "election officials" include the state commissioner, the county commissioner, employees of the state commissioner and county commissioner who are responsible for carrying out functions or duties under chapters 39 through 53, and precinct election officials appointed pursuant to sections 49.12, 49.14, 49.18, and 53.23.

CREDIT(S)

Added by Acts 2002 (79 G.A.) ch. 1071, § 1.

I. C. A. § 39A.1, IA ST § 39A.1

Current through Acts of 2006 Reg. Sess. &amp; 1st Ex. Sess.

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I.C.A. § 39A.2

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Iowa Code Annotated Currentness

Title II. Elections and Official Duties

▣ Subtitle 1. Elections

▣ Chapter 39A. Election Misconduct (Refs &amp; Annos)

**→39A.2. Election misconduct in the first degree**

1. A person commits the crime of election misconduct in the first degree if the person willfully commits any of the following acts:

a. Registration fraud. Produces, procures, submits, or accepts a voter registration application that is known by the person to be materially false, fictitious, forged, or fraudulent.

b. Vote fraud.

(1) Destroys, delivers, or handles an application for a ballot or an absentee ballot with the intent of interfering with the voter's right to vote.

(2) Produces, procures, submits, or accepts a ballot or an absentee ballot, or produces, procures, casts, accepts, or tabulates a ballot that is known by the person to be materially false, fictitious, forged, or fraudulent.

(3) Votes or attempts to vote more than once at the same election, or votes or attempts to vote at an election knowing oneself not to be qualified.

(4) Makes a false or untrue statement in an application for an absentee ballot or makes or signs a false certification or affidavit in connection with an absentee ballot.

(5) Otherwise deprives, defrauds, or attempts to deprive or defraud the citizens of this state of a fair and impartially conducted election process.

c. Duress. Intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, a person to do any of the following:

(1) To register to vote, to vote, or to attempt to register to vote.

(2) To urge or aid a person to register to vote, to vote, or to attempt to register to vote.

(3) To exercise a right under chapters 39 through 53.

d. Bribery.

(1) Pays, offers to pay, or causes to be paid money or any other thing of value to a person to influence the person's vote.

(2) Pays, offers to pay, or causes to be paid money or any other thing of value to an election official conditioned on

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I.C.A. § 39A.2

some act done or omitted to be done contrary to the person's official duty in relation to an election.

(3) Receives money or any other thing of value knowing that it was given in violation of subparagraph (1) or (2).

e. Conspiracy. Conspires with or acts as an accessory with another to commit an act in violation of paragraphs "a" through "d".

2. Election misconduct in the first degree is a class "D" felony.

CREDIT(S)

Added by Acts 2002 (79 G.A.) ch. 1071, § 2.

I. C. A. § 39A.2, IA ST § 39A.2

Current through Acts of 2006 Reg. Sess. & 1st Ex. Sess.

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I.C.A. § 39A.3

Iowa Code Annotated Currentness

Title II. Elections and Official Duties

▣ Subtitle 1. Elections

▣ Chapter 39A. Election Misconduct (Refs &amp; Annos)

**→ 39A.3. Election misconduct in the second degree**

1. A person commits the crime of election misconduct in the second degree if the person willfully commits any of the following acts:

a. Interference with validity of election.

(1) Possesses an official ballot outside of the voting room unless the person is an election official or other person authorized by law to possess such a ballot.

(2) Makes or possesses a counterfeit of an official election ballot.

(3) Solicits or encourages a person to vote in an election knowing that person is not qualified to vote in the election.

b. Actions by election official. As an election official:

(1) Refuses to register a person who is entitled to register to vote under chapter 48A.

(2) Accepts a fee from an applicant applying for registration.

(3) While the polls are open, opens a ballot received from a voter, except as permitted by law.

(4) Marks a ballot by folding or otherwise so as to be able to recognize it.

(5) Attempts to learn how a voter marked a ballot.

(6) Causes a voter to cast a vote contrary to the voter's intention.

(7) Changes a ballot, or in any way causes a vote to be recorded contrary to the intention of the person casting that vote.

(8) Allows a person to do any of the acts proscribed by subparagraphs (1) through (7).

2. Election misconduct in the second degree is an aggravated misdemeanor.

CREDIT(S)

Added by Acts 2002 (79 G.A.) ch. 1071, § 3.

I. C. A. § 39A.3, IA ST § 39A.3

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I.C.A. § 39A.4

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Iowa Code Annotated Currentness

Title II. Elections and Official Duties

§ Subtitle 1. Elections

§ Chapter 39A. Election Misconduct (Refs &amp; Annos)

**→39A.4. Election misconduct in the third degree**

1. A person commits the crime of election misconduct in the third degree if the person willfully commits any of the following acts:

a. Election day acts. Any of the following on election day:

(1) Loitering, congregating, electioneering, posting signs, treating voters, or soliciting votes, during the receiving of the ballots, either on the premises of a polling place or within three hundred feet of an outside door of a building affording access to a room where the polls are held, or of an outside door of a building affording access to a hallway, corridor, stairway, or other means of reaching the room where the polls are held. This subparagraph does not apply to the posting of signs on private property not a polling place, except that the placement of a sign that is more than ninety square inches in size on a motor vehicle, trailer, or semitrailer, or its attachment to a motor vehicle, trailer, or semitrailer parked on public property within three hundred feet of a polling place is prohibited.

(2) Interrupting, hindering, or opposing a voter while in or approaching the polling place for the purpose of voting.

(3) As a voter, submitting a false statement as to the voter's ability to mark a ballot.

(4) Interfering or attempting to interfere with a voter when the voter is inside the enclosed voting space, or when the voter is marking a ballot.

(5) Endeavoring to induce a voter to show how the voter marks or has marked a ballot.

(6) Marking, or causing in any manner to be marked, on a ballot, any character for the purpose of identifying such ballot.

b. Actions by election official. As an election official:

(1) Serving as a member of a challenging committee or observer under section 49.104, subsection 2, 5, or 6, while serving as a precinct election official at the polls.

(2) Failing to perform duties prescribed by chapters 39 through 53, or performing those duties in such a way as to hinder the object of the law.

(3) Disclosing the manner in which a person's ballot has been voted to anyone except as ordered by a court.

(4) Failing to carry out a duty with regard to access under chapter 22 to a public record that relates to an election or voter registration.

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## I.C.A. § 39A.4

- (5) Furnishing a voter with a ballot other than the proper ballot to be used at an election.
- (6) Making or consenting to a false entry on the list of voters or poll books.
- (7) Placing or permitting another election official to place anything other than a ballot into a ballot box as provided in section 49.85, or permitting a person other than an election official to place anything into a ballot box.
- (8) Taking or permitting to be taken out of a ballot box a ballot deposited in the ballot box, except in the manner prescribed by law.
- (9) Destroying or altering a ballot that has been given to a voter.
- (10) Permitting a person to vote in a manner prohibited by law.
- (11) Refusing or rejecting the vote of a voter qualified to vote.
- (12) Wrongfully acting or refusing to act for the purpose of avoiding an election, or of rendering invalid a ballot cast from a precinct or other voting district.
- (13) Having been deputized to carry the poll books of an election to the place where they are to be canvassed, failing to deliver them to such place, safe, with seals unbroken, and within the time specified by law.

## c. Miscellaneous offenses.

- (1) As a party committee member or a primary election officer or public officer upon whom a duty is imposed by chapter 43 or by a statute applicable to chapter 43, neglecting to perform any such duty, or performing any such duty in such a way as to hinder the object of the statute, or by disclosing to anyone, except as may be ordered by a court, the manner in which a ballot may have been voted.
- (2) As a person who is designated pursuant to section 43.4 to report the results of a precinct caucus as it relates to the selection and reporting of delegates selected as part of the presidential nominating process or who is designated pursuant to section 43.4 to tabulate and report the number of persons attending the caucus favoring each presidential candidate, failing to perform those duties, falsifying the information, or omitting information required to be reported under section 43.4.
- (3) Making a false answer under chapter 43 relative to a person's qualifications and party affiliations.
- (4) Paying, offering to pay, or receiving compensation for voter registration assistance in violation of section 48A.25.
- (5) Using voter registration information in violation of section 48A.39.
- (6) As a candidate, making a promise to name or appoint another person to a position or to secure a position for another person in violation of section 49.120.
- (7) Soliciting the use of influence from a candidate in violation of section 49.121.
- (8) As a public official or employee, or a person acting under color of a public official or employee, knowingly requiring a public employee to act in connection with an absentee ballot in violation of section 53.7.
- (9) As a person designated by the county commissioner of elections or by the voter casting an absentee ballot,

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failing to return an absentee ballot in violation of section 53.35A.

(10) As an incumbent officeholder of, or a candidate for, an office being voted for at the election in progress, serving as a member of a challenging committee or observer under section 49.104, subsection 2, 5, or 6.

(11) Returning a voted absentee ballot, by mail or in person, to the commissioner's office and the person returning the ballot is not the voter, an absentee ballot courier, a special precinct election official designated pursuant to section 53.22, subsection 1, or the designee of a voter described in section 53.22, subsection 5.

(12) Making a false or untrue statement reporting that a voted absentee ballot was returned to the commissioner's office, by mail or in person, by a person other than the voter, an absentee ballot courier, a special precinct election official designated pursuant to section 53.22, subsection 1, or the designee of a voter described in section 53.22, subsection 5.

2. Election misconduct in the third degree is a serious misdemeanor.

CREDIT(S)

Added by Acts 2002 (79 G.A.) ch. 1071, § 4. Amended by Acts 2004 (80 G.A.) ch. 1083, § 1, eff. April 16, 2004.

#### HISTORICAL AND STATUTORY NOTES

##### 2006 Electronic Pocket Part Update

##### 2004 Legislation

The 2004 amendment, in subsec. 1, par. c, added subpar. (11) and subpar. (12).

Acts 2004 (80 G.A.) ch. 1083, § 37, provides:

"Sec. 37. Immediate effective date. This Act, being deemed of immediate importance, takes effect upon enactment and applies to elections held on or after September 15, 2004."

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Iowa Code Annotated Currentness

Title II. Elections and Official Duties

▣ Subtitle 1. Elections

▣ Chapter 39A. Election Misconduct (Refs & Annos)

**→39A.5. Election misconduct in the fourth degree**

1. A person commits the crime of election misconduct in the fourth degree if the person willfully commits any of the following acts:

a. Election day acts.

(1) As an employer, denying an employee the privilege conferred by section 49.109, or subjecting an employee to a penalty or reduction of wages because of the exercise of that privilege.

(2) Failing or refusing to comply with an order or command of an election official made pursuant to chapter 49 for which another penalty is not provided.

(3) Circulating, communicating, or attempting to circulate or communicate information with reference to the result of the counted ballots or making a compilation of vote subtotals before the polls are closed in violation of section 51.11, 52.40, or 53.23.

(4) Destroying, defacing, tearing down, or removing a list of candidates, card of instruction, or sample ballot posted as provided by law prior to the closing of the polls.

(5) Removing or destroying the supplies or articles furnished for the purpose of enabling voters to prepare their ballots.

(6) Violating or attempting to violate any of the provisions or requirements of chapter 49 to which another penalty does not apply.

b. Miscellaneous offenses.

(1) As a public employee, acting in connection with an absentee ballot in violation of section 53.7.

(2) Neglecting or refusing to return an absentee ballot in violation of section 53.35, or violating any other provision of chapter 53 for which another penalty is not provided.

(3) Filing a challenge containing false information under section 48A.14.

2. Election misconduct in the fourth degree is a simple misdemeanor.

CREDIT(S)

Added by Acts 2002 (79 G.A.) ch. 1071, § 5.

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▷

Iowa Code Annotated Currentness

Title II. Elections and Official Duties

▣ Subtitle 1. Elections

▣ Chapter 39A. Election Misconduct (Refs & Annos)

**→39A.6. Technical infractions—notice**

If the state commissioner or county commissioner becomes aware of an apparent technical violation of a provision of chapters 39 through 53, the state commissioner or county commissioner may administratively provide a written notice and letter of instruction to the responsible person regarding proper compliance procedures. This notice is not a final determination of facts or law in the matter, and does not entitle a person to a proceeding under chapter 17A.

CREDIT(S)

Added by Acts 2002 (79 G.A.) ch. 1071, § 6.

I. C. A. § 39A.6, IA ST § 39A.6

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**25-2407. Corrupt political advertising; penalty.**

Corrupt political advertising is:

(a) Publishing or causing to be published in a newspaper or other periodical any paid matter which is designed or tends to aid, injure or defeat any candidate for nomination or election to public office, unless such matter is followed by the word "advertisement" or the abbreviation "adv." in a separate line together with the name of the chairman of the political or other organization inserting the same or the name of the person who is responsible therefor; or

(b) broadcasting or causing to be broadcast by any radio or television station any paid matter which is designed or tends to aid, injure or defeat any candidate for nomination or election to public office, unless such matter is followed by a statement that the preceding was an advertisement together with the name of the chairman of the political or other organization sponsoring the same or the name of the person who is responsible therefor; or

(c) publishing or causing to be published in a newspaper or other periodical any paid matter which is intended to influence the vote of any person or persons for or against any question submitted for a proposition to amend the constitution or to authorize the issuance of bonds or any other question submitted at an election, unless such matter is followed by the word "advertisement" or the abbreviation "adv." in a separate line together with the name of the chairman of the political or other organization inserting the same or the name of the person who is responsible therefor; or

(d) broadcasting or causing to be broadcast by any radio or television station any paid matter which is intended to influence the vote of any person or persons for or against any question submitted for a proposition to amend the constitution or to authorize the issuance of bonds or any other question submitted at an election, unless such matter is followed by the statement that the preceding was an advertisement together with the name of the chairman of the political or other organization sponsoring the same or the name of the person who is responsible therefor.

Corrupt political advertising is a class C misdemeanor.

**History:** L. 1973, ch. 173, § 1; Feb. 23.

SOURCE OR PRIOR LAWS

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CROSS REFERENCES TO RELATED SECTIONS

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**25-2408. Definitions.**

As used in this act, unless the context otherwise requires: (a) "Election" means any primary, general or special election of national, state, county, township, school or city officers or officers of any other subdivision of the state, or any question submitted election held at any time whether the same be upon a constitutional amendment, authority to issue bonds by the state or any subdivision thereof or any other special question whatsoever.

(b) Words and phrases defined in article 25 of chapter 25 of Kansas Statutes Annotated shall have the same meaning when used in this act as is ascribed thereto in said article.

**History:** L. 1974, ch. 157, § 1; July 1.

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**25-2409. Election bribery.**

Election bribery is conferring, offering or agreeing to confer, or soliciting, accepting or agreeing to accept any benefit as consideration to or from any person either to vote or withhold any person's vote, or to vote for or against any candidate or question submitted at any public election.

Election bribery is a severity level 7, nonperson felony.

**History:** L. 1974, ch. 157, § 3; L. 1993, ch. 291, § 200; July 1.

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C.J.S. Elections § 332.

K. S. A. § 25-2409, KS ST § 25-2409

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**25-2410. Bribery to induce signing of nomination papers.**

Bribery to induce signing of nomination papers is knowingly: (a) Offering any benefit, property or thing of value to any person to induce him to sign any nomination paper; or

(b) accepting any benefit, property or thing of value, as consideration for signing any nomination paper.

Bribery to induce signing of nomination papers is a class B misdemeanor.

**History:** L. 1974, ch. 157, § 4; July 1.

K. S. A. § 25-2410, KS ST § 25-2410

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**25-2411. Election perjury.**

Election perjury is intentionally and knowingly falsely swearing, affirming, declaring or subscribing to any of the following: (a) Statements in answer to questions put to a person who has been challenged as unqualified to vote.

(b) Statements in answer to questions put to a witness concerning the qualifications of any person to vote.

(c) Statements contained in any affidavit which is prescribed by chapter 25 of the Kansas Statutes Annotated or any other election law of the state, or which is prescribed in any manner by the secretary of state or any county election officer under the election laws of this state.

(d) Statements in answer to questions put by a county election officer or deputy county election officer relating to application for voter registration of any person.

(e) Statements in answer to questions put by an election board member to a person asking for voter assistance because of age, visual handicap, lack of proficiency in reading the English language or physical disability.

(f) Statements of any witness at an election contest.

Election perjury is a severity level 9, nonperson felony.

**History:** L. 1974, ch. 157, § 5; L. 1976, ch. 188, § 1; L. 1993, ch. 291, § 201; July 1.

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Perjury ↪ 1.

C.J.S. Perjury §§ 2 to 8, 21.

K. S. A. § 25-2411, KS ST § 25-2411

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**25-2412. Election forgery.**

Election forgery is: (a) Knowingly and with intent to induce official action, signing or otherwise affixing any name other than one's own name to a certificate of nomination, nomination paper or any petition under the election laws of this state;

(b) marking any other person's ballot without such person's consent; or

(c) marking any other person's ballot contrary to the directions of such person.

Election forgery is a severity level 8, nonperson felony.

**History:** L. 1974, ch. 157, § 6; L. 1980, ch. 113, § 1; L. 1993, ch. 291, § 202; July 1.

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Forgery ↪ 1.

C.J.S. Forgery § 1.

CASE ANNOTATIONS

1993 Main Volume CASE ANNOTATIONS

1. Cited; constitutionality of mail ballot election act (25-431 et seq.) examined and upheld. Sawyer v. Chapman, 240 K. 409, 414, 415, 729 P.2d 1220 (1986).

K. S. A. § 25-2412, KS ST § 25-2412

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**25-2413. Disorderly election conduct.**

Disorderly election conduct is willfully: (a) Disturbing the peace in or about any voting place on election day;

(b) leaving or attempting to leave a voting place in possession of any ballot, except as is specifically permitted by law;

(c) approaching or remaining closer than three feet to any voting booth, voting machine or table being used by an election board except as admitted for the purpose of voting or by authority of the supervising judge;

(d) interrupting, hindering or obstructing any person approaching any voting place for the purpose of voting;

(e) engaging in any of the following activities within 250 feet from the entrance of a polling place during the hours the polls are open on election day:

(1) solicitation of contributions; or

(2) conduct of advisory elections other than those specifically authorized by law, including the exercise of home rule power, to be conducted by a county election officer.

Disorderly election conduct is a class B misdemeanor.

**History:** L. 1974, ch. 157, § 7; L. 1985, ch. 118, § 11; July 1.

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Elections ↪ 309.

C.J.S. Elections §§ 324, 334.

## ATTORNEY GENERAL'S OPINIONS

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Disorderly election conduct; advisory elections; assistance of county election officer; home rule. 94-106.

K. S. A. § 25-2413, KS ST § 25-2413

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**25-2414. Possessing false or forged election supplies.**

Possessing false or forged election supplies is possessing any falsely made, altered, forged or counterfeit poll book, tally lists or election returns of any election in this state with the intent to hinder or prevent a fair election.

Possessing false or forged election supplies is a severity level 9, nonperson felony.

**History:** L. 1974, ch. 157, § 8; L. 1993, ch. 291, § 203; July 1.

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**KANSAS STATUTES ANNOTATED  
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25-2415. Intimidation of voters.**

(a) Intimidation of voters is: (1) intimidating, threatening, coercing or attempting to intimidate, threaten, or coerce any person for the purpose of interfering with the right of such person to vote or to vote as he may choose, or of causing such person to vote for, or not to vote for, any candidate for any office or question submitted at any election; or

(2) mailing, publishing, broadcasting, telephoning or transmitting by any means false information intended to keep one or more voters from casting a ballot or applying for or returning an advance voting ballot.

(b) Intimidation of voters is a severity level 7, nonperson felony.

**History:** L. 1974, ch. 157, § 9; L. 2001, ch. 125, § 2; April 26.

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1993 Main Volume RESEARCH AND PRACTICE AIDS

Elections ⇐ 320.

C.J.S. Elections § 333.

**LAW REVIEW AND BAR JOURNAL REFERENCES:**

2005 Pocket Part LAW REVIEW AND BAR JOURNAL REFERENCES:

'2001 Legislative Wrap-Up,' Paul T. Davis, 70 J.K.B.A. No. 7, 14 (2001).

K. S. A. § 25-2415, KS ST § 25-2415

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**25-2416. Voting without being qualified.**

Voting without being qualified is knowingly and willfully: (a) Voting or attempting to vote at any election when not a lawfully registered voter.

(b) Voting or offering to vote more than once at the same election.

(c) Inducing or aiding any person to vote more than once at the same election.

Voting without being qualified is a class A misdemeanor.

**History:** L. 1974, ch. 157, § 10; July 1.

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1993 Main Volume RESEARCH AND PRACTICE AIDS

Elections ⇨ 313.

C.J.S. Elections § 325.

## CASE ANNOTATIONS

1993 Main Volume CASE ANNOTATIONS

1. Cited; law on voting absentee ballot for another (25-1124) applied. *Lambeth v. Levens*, 237 K. 614, 618, 702 P.2d 320 (1985).

2. Cited; constitutionality of mail ballot election act (25-431 et seq.) examined and upheld. *Sawyer v. Chapman*, 240 K. 409, 414, 415, 729 P.2d 1220 (1986).

K. S. A. § 25-2416, KS ST § 25-2416

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**25-2417. Bribery of an election official.**

Bribery of an election official is conferring or offering or agreeing to confer any benefit, property or thing of value upon an election official with intent to influence the election official to perform the election official's duties improperly.

Bribery of an election official is a severity level 7, nonperson felony.

**History:** L. 1974, ch. 157, § 11; L. 1993, ch. 291, § 204; July 1.

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C.J.S. Elections § 332.

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**25-2418. Bribe acceptance by an election official.**

Bribe acceptance by an election official is the acceptance by an election official of any benefit, property or thing of value in consideration for improper performance of election duties.

Bribe acceptance by an election official is a severity level 7, nonperson felony.

**History:** L. 1974, ch. 157, § 12; L. 1993, ch. 291, § 205; July 1.

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**25-2419. Misconduct of an election officer.**

Misconduct of an election officer is, while being charged with any election duty: (a) Being grossly neglectful with respect thereto.

(b) Furnishing a voter with a ballot and informing such voter that any of its contents are different from that which appear thereon with intent to induce such voter to vote contrary to such voter's inclinations.

(c) Changing the ballot of a voter.

(d) Willfully permitting any person to testify as a witness or make an affidavit contrary to law.

(e) Preventing a qualified elector from voting.

(f) Refusing to receive the vote of a qualified elector when duly offered.

Misconduct of an election officer is a class B misdemeanor.

**History:** L. 1974, ch. 157, § 13; July 1.

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Elections ↪ 314.

C.J.S. Elections § 327.

CASE ANNOTATIONS

1993 Main Volume CASE ANNOTATIONS

1. Cited; constitutionality of mail ballot election act (25-431 et seq.) examined and upheld. *Sawyer v. Chapman*, 240 K. 409, 414, 415, 729 P.2d 1220 (1986).

K. S. A. § 25-2419, KS ST § 25-2419

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**25-2420. Election fraud by an election officer.**

Election fraud by an election officer is, while being charged with any election duty, and with intent to hinder, prevent or defeat a fair election: (a) Receiving any vote by any person who is not a registered voter or otherwise qualified to vote.

(b) Receiving any vote offered by any person who shall have voted previously at the same election.

(c) Possessing any falsely made, altered, forged or counterfeit poll books, registration books, party affiliation lists, election abstracts or returns or any other election papers.

(d) Receiving, canvassing, counting or tallying any ballots, votes or election returns which are fraudulent, forged, counterfeited or illegal.

(e) Issuing, granting, mailing or delivering any false, fraudulent or illegal certificate of nomination or certificate of election.

(f) Declaring or otherwise proclaiming any false election result.

(g) Declaring or otherwise proclaiming any election result based upon fraudulent, fictitious or illegal votes.

(h) Entering or writing upon any poll book, registration book or party affiliation list the name of any person not qualified to vote.

(i) Entering or writing upon any poll book, registration book or party affiliation list the name of any person who has not voted when in fact such person has not voted.

Election fraud by an election officer is a severity level 10, nonperson felony.

**History:** L. 1974, ch. 157, § 14; L. 1993, ch. 291, § 206; July 1.

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C.J.S. Elections § 327.

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KANSAS STATUTES ANNOTATED  
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**25-2421. Election suppression.**

Election suppression is knowingly: (a) Suppressing any certificate of nomination, nomination papers, petition for nomination or any part thereof which have been duly filed.

(b) Being in possession of any certificate of nomination, nomination papers or petition for candidacy entitled to be filed under any of the election laws of this state and suppressing, neglecting or failing to cause the same to be filed at the proper time in the proper office.

Election suppression is a severity level 10, nonperson felony.

**History:** L. 1974, ch. 157, § 15; L. 1993, ch. 291, § 207; July 1.

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**25-2421a. Voter registration suppression.**

(a) Voter registration suppression is knowingly: (1) Destroying any application for voter registration signed by a person pursuant to K.S.A. 25-2309, and amendments thereto, (2) obstructing the delivery of any such signed application to the county election officer or the chief state election official, or (3) failing to deliver any such application to the appropriate county election officer or the chief state election official as required by law.

(b) Voter registration suppression is a severity level 10, nonperson felony.

**History:** L. 2001, ch. 125, § 1; April 26.

K. S. A. § 25-2421a, KS ST § 25-2421a

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**25-2422. Unauthorized voting disclosure.**

Unauthorized voting disclosure is, while being charged with any election duty, intentionally: (a) Disclosing or exposing the contents of any ballot or the manner in which the ballot has been voted, except as ordered by a court of competent jurisdiction.

(b) Endeavoring to induce any voter to show how the voter marks or has marked the voter's ballot.

Unauthorized voting disclosure is a severity level 10, nonperson felony.

**History:** L. 1974, ch. 157, § 16; L. 1993, ch. 291, § 208; July 1.

LAW REVIEW AND BAR JOURNAL REFERENCES:

2005 Pocket Part LAW REVIEW AND BAR JOURNAL REFERENCES:

'Kansas Sunshine Law: How Bright Does It Shine Now? The Kansas Open Meetings and Open Records Acts,' Theresa 'Terry' Marcel, 72 J.K.B.A. No. 5, 28 (2003).

ATTORNEY GENERAL'S OPINIONS

1993 Main Volume ATTORNEY GENERAL'S OPINIONS

Open public meetings; secret ballots; voting procedure to elect members of the state board of agriculture. 86-176.

K. S. A. § 25-2422, KS ST § 25-2422

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KANSAS STATUTES ANNOTATED  
CHAPTER 25.--ELECTIONS  
ARTICLE 24.--ELECTION CRIMES  
**25-2423. Election tampering.**

Election tampering is, while being charged with no election duty, making or changing any election record.

Election tampering is a severity level 8, nonperson felony.

**History:** L. 1974, ch. 157, § 17; L. 1993, ch. 291, § 209; July 1.

K. S. A. § 25-2423, KS ST § 25-2423

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KANSAS STATUTES ANNOTATED  
CHAPTER 25.--ELECTIONS  
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**25-2424. False impersonation as party officer.**

False impersonation as party officer is willfully and falsely representing oneself to be an officer of any political party organization or committeeman or committeewoman thereof with the intent to deceive any person or to influence in any way the outcome of any election.

False impersonation as party officer is a class A misdemeanor.

**History:** L. 1974, ch. 157, § 18; July 1.

K. S. A. § 25-2424, KS ST § 25-2424

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KANSAS STATUTES ANNOTATED  
CHAPTER 25.--ELECTIONS  
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**25-2425. Voting machine fraud.**

Voting machine fraud is: (a) Being in unlawful or unauthorized possession of a voting machine key.

(b) Intentionally tampering with, altering, disarranging, defacing, impairing or destroying any voting machine, automatic ballot, voting machine label or register or record made by a voting machine.

Voting machine fraud is a severity level 10, nonperson felony.

**History:** L. 1974, ch. 157, § 19; L. 1993, ch. 291, § 210; July 1.

K. S. A. § 25-2425, KS ST § 25-2425

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KANSAS STATUTES ANNOTATED  
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**25-2426. Printing and circulating imitation ballots.**

Printing and circulating imitation ballots is knowingly printing and circulating sample or imitation ballots except the official sample ballot furnished by the county election officer.

Printing and circulating imitation ballots is a severity level 10, nonperson felony.

**History:** L. 1974, ch. 157, § 20; L. 1993, ch. 291, § 211; July 1.

K. S. A. § 25-2426, KS ST § 25-2426

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KANSAS STATUTES ANNOTATED  
CHAPTER 25.--ELECTIONS  
ARTICLE 24.--ELECTION CRIMES

**25-2427. Marking ballots to identify.**

Marking ballots to identify is knowingly, in any manner or fashion marking, folding or clipping any ballot so that such ballot may be distinguished from other ballots.

Marking ballot to identify is a class A misdemeanor.

**History:** L. 1974, ch. 157, § 21; July 1.

ATTORNEY GENERAL'S OPINIONS

2005 Pocket Part ATTORNEY GENERAL'S OPINIONS

Advance voting ballot, death of voter prior to canvassing of ballot. 2002-15.

K. S. A. § 25-2427, KS ST § 25-2427

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K.S.A. § 25-2428

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**25-2428. Destruction of election supplies.**

Destruction of election supplies is intentionally destroying or defacing any list of candidates posted in accordance with law, card of instruction, sample ballot or any election supplies.

Destruction of election supplies is a severity level 9, nonperson felony.

**History:** L. 1974, ch. 157, § 22; L. 1993, ch. 291, § 212; July 1.

K. S. A. § 25-2428, KS ST § 25-2428

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KANSAS STATUTES ANNOTATED  
CHAPTER 25.--ELECTIONS  
ARTICLE 24.--ELECTION CRIMES  
**25-2429. Destruction of election papers.**

Destruction of election papers is intentionally destroying any certificate of nomination or nomination papers or any letter of withdrawal of a candidate.

Destruction of election papers is a severity level 9, nonperson felony.

**History:** L. 1974, ch. 157, § 23; L. 1993, ch. 291, § 213; July 1.

K. S. A. § 25-2429, KS ST § 25-2429

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KANSAS STATUTES ANNOTATED  
 CHAPTER 25.--ELECTIONS  
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**25-2430. Electioneering.**

(a) Electioneering is knowingly attempting to persuade or influence eligible voters to vote for or against a particular candidate, party or question submitted. Electioneering includes wearing, exhibiting or distributing labels, signs, posters, stickers or other materials that clearly identify a candidate in the election or clearly indicate support or opposition to a question submitted election within any polling place on election day or advance voting site during the time period allowed by law for casting a ballot by advance voting or within a radius of 250 feet from the entrance thereof. Electioneering shall not include bumper stickers affixed to a motor vehicle that is used to transport voters to a polling place or to an advance voting site for the purpose of voting.

(b) As used in this section, "advance voting site" means the central county election office or satellite advance voting sites designated as such pursuant to subsection (c) of K.S.A. 25-1122, and amendments thereto.

(c) Electioneering is a class C misdemeanor.

**History:** L. 1974, ch. 157, § 24; L. 2001, ch. 125, § 3; April 26.

**LAW REVIEW AND BAR JOURNAL REFERENCES:**

2005 Pocket Part LAW REVIEW AND BAR JOURNAL REFERENCES:

'2001 Legislative Wrap-Up,' Paul T. Davis, 70 J.K.B.A. No. 7, 14 (2001).

**ATTORNEY GENERAL'S OPINIONS**

1993 Main Volume ATTORNEY GENERAL'S OPINIONS

Mail ballot election act; voting by electors; statute inapplicable. 85-80.

K. S. A. § 25-2430, KS ST § 25-2430

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KANSAS STATUTES ANNOTATED  
CHAPTER 25.--ELECTIONS  
ARTICLE 24.--ELECTION CRIMES  
**25-2431. False impersonation of a voter.**

False impersonation of a voter is representing oneself as another and thereas voting or attempting to vote.

False impersonation of a voter is a severity level 9, nonperson felony.

**History:** L. 1974, ch. 157, § 25; L. 1993, ch. 291, § 214; July 1.

CASE ANNOTATIONS

1993 Main Volume CASE ANNOTATIONS

1. Cited; constitutionality of mail ballot election act (25-431 et seq.) examined and upheld. Sawyer v. Chapman, 240 K. 409, 414, 415, 729 P.2d 1220 (1986).

K. S. A. § 25-2431, KS ST § 25-2431

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KANSAS STATUTES ANNOTATED  
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**25-2432. Forfeiture of office or employment upon conviction.**

Upon final conviction of any person of any offense specified in this act, such person shall forfeit any public office or public employment which he may hold in addition to any other penalties imposed for such offense.

**History:** L. 1974, ch. 157, § 26; July 1.

RESEARCH AND PRACTICE AIDS

1993 Main Volume RESEARCH AND PRACTICE AIDS

Officers and Public Employees ↪ 31.

C.J.S. Officers and Public Employees § 22.

CASE ANNOTATIONS

1993 Main Volume CASE ANNOTATIONS

1. Cited; constitutionality of mail ballot election act (25-431 et seq.) examined and upheld. Sawyer v. Chapman, 240 K. 409, 414, 415, 729 P.2d 1220 (1986).

K. S. A. § 25-2432, KS ST § 25-2432

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KRS § 119.005

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X: Elections

Chapter 119: Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.005 Definitions**

- (1) A "ballot" or "official ballot" means the voting machine ballot label, ballot cards, paper ballots, an absentee ballot, a special ballot, or a supplemental paper ballot which has been authorized for the use of the voters in any primary, general or special election by the Secretary of State or the county clerk;
- (2) "Ballot label" means the cards, papers, booklet, pages or other material on which appear the names of candidates and the questions to be voted on by means of ballot cards or voting machines;
- (3) "Ballot card" means a tabulating card on which votes may be recorded by a voter by use of a voting punch device or by marking with a pen or special marking device;
- (4) "Voting machine" or "machine" shall include lever machines and, as far as applicable, any electronic or electromechanical unit and supplies utilized or relied upon by a voter in casting and recording his vote in an election.

HISTORY: 1982 c 360, § 11, eff. 7-15-82

**KENTUCKY ADMINISTRATIVE CODE REFERENCES**

Regulations governing use of electronic voting systems, 31 KAR 2:010

**RESEARCH REFERENCES**

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:20, In General.

KRS § 119.005, KY ST § 119.005

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KRS § 119.015

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Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.015 Clerk making or permitting wrongful registration, or failing or refusing to deliver copies of registration records**

Any county clerk or deputy county clerk who falsely or fraudulently registers the name of any person, or permits any person to register knowing that the person is not entitled to register, or who fails or refuses to deliver copies of the registration records to a person entitled thereto, shall be guilty of a Class D felony.

HISTORY: 1990 c 48, § 64, eff. 7-13-90; 1974 c 130, § 63

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.015, formerly compiled as 124.010, created by 1974 c 130, § 63, eff. 6-21-74; 1942 c 208, § 1; KS 1486bb-17.

## CROSS REFERENCES

2006 Main Volume Cross References

Access to registration records, 116.095

Eligibility to vote, 116.025

Qualifications for voting in primary election, 116.055

Sentence of imprisonment for Class D felony, 532.060

Voter registration, transfer, or change of party affiliation; county clerk to provide registration forms, cards, 116.045

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪ 314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

## RESEARCH REFERENCES

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KRS § 119.025

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Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.025 Wrongful registration**

Any person who knowingly or fraudulently causes himself to be registered in more than one (1) precinct, or to be registered more than once, or in a precinct other than the one in which he is a legal voter, or who registers under any name other than his real name, or who gives a false address, or who in any manner causes himself to be registered when he is not legally entitled to register, or who makes a false oath as to his ability to read or write, or who knowingly or fraudulently aids, abets, counsels or advises in the commission of any such act, shall be subject to the penalties prescribed for Class D felonies.

HISTORY: 1990 c 48, § 65, eff. 7-13-90; 1974 c 130, § 64

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.025, formerly compiled as 124.020, created by 1974 c 130, § 64, eff. 6-21-74; 1942 c 208, § 1; KS 1486b-54, 1486bb-18.

## CROSS REFERENCES

2006 Main Volume Cross References

Eligibility to vote, 116.025

False swearing, 523.040

Falsification of signature or verification, 116.165

Forgery, alteration, destruction, or failure to return completed registration form, 116.047

Qualifications for voting in primary election, 116.055

Sentence of imprisonment for Class D felony, 532.060

Verification of applications, 116.065

## KENTUCKY ADMINISTRATIVE CODE REFERENCES

Determining parole eligibility, 501 KAR 1:030

## LIBRARY REFERENCES

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KRS § 119.035

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Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.035 Alteration, suppression, mutilation, or destruction of registration record; making or using false or fraudulent record**

Any person who fraudulently or unlawfully alters any registration record, or fraudulently adds any name thereto, or willfully secretes, suppresses, mutilates or destroys any registration record, or makes or uses any false or fraudulent registration record, and any person who aids or abets in the commission of such act, shall be subject to the penalties prescribed for Class D felonies.

HISTORY: 1990 c 48, § 66, eff. 7-13-90; 1974 c 130, § 65

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.035, formerly compiled as 124.030, created by 1974 c 130, § 65, eff. 6-21-74; 1942 c 208, § 1; KS 1486b-55, 1486bb-17, 1486bb-19.

## CROSS REFERENCES

2006 Main Volume Cross References

Access to registration records, 116.095

Falsification of signature or verification, 116.165

Forgery, alteration, destruction or failure to return completed registration form, 116.047

Forms for registration, 116.155

Sentence of imprisonment for Class D felony, 532.060

Transfer of registration, 116.085

Voter registration, change of party affiliation, 116.045

## LIBRARY REFERENCES

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KRS § 119.045

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Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.045 Interfering with registration**

Any person who attempts to or forcibly prevents any person from registering, or in any way unlawfully interferes with any person registering, or prevents or interferes with a clerk or registration officer in carrying out his duties with relation to the registration of voters, shall be guilty of a Class A misdemeanor.

HISTORY: 1990 c 48, § 67, eff. 7-13-90; 1974 c 130, § 66

**HISTORICAL AND STATUTORY NOTES**

2006 Main Volume Historical and Statutory Notes

**Note:** 119.045, formerly compiled as 124.040, created by 1974 c 130, § 66, eff. 6-21-74; 1942 c 208, § 1; KS 1486b-57, 1486bb-20.

**CROSS REFERENCES**

2006 Main Volume Cross References

Sentence of imprisonment for Class A misdemeanor, 532.090

Voter registration, 116.045

**LIBRARY REFERENCES**

2006 Main Volume Library References

Elections ↪319.

Westlaw Topic No. 144.

C.J.S. Elections § 330.

**RESEARCH REFERENCES**

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:21, Wrongful Registration.

KRS § 119.045, KY ST § 119.045

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KRS § 119.056

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Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.056 Alteration, mutilation, or suppression of nomination papers**

Any person in possession of nomination papers entitled to be filed under the statutes relating to primary elections who wrongfully alters, mutilates or suppresses such papers, or wrongfully fails to cause them to be filed at the proper time in the proper office, shall be guilty of a Class A misdemeanor.

HISTORY: 1990 c 48, § 68, eff. 7-13-90; 1974 c 130, § 67

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.056, formerly compiled as 124.050, renumbered by the Reviser of Statutes and created by 1974 c 130, § 67, eff. 6-21-74; 1942 c 208, § 1; KS 1550-32.

## CROSS REFERENCES

2006 Main Volume Cross References

Filing of nomination papers, 118.165

Independent candidates filing to fill vacancy, 118.375

Petition for nomination, 118A.060

Sentence of imprisonment for Class A misdemeanor, 532.090

## LIBRARY REFERENCES

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C.J.S. Elections § 331.

## RESEARCH REFERENCES

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**Treatises and Practice Aids**

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KRS § 119.056

Abramson, Kentucky Practice, Substantive Criminal Law § 14:22, Nominating Papers.

KRS § 119.056, KY ST § 119.056

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KRS § 119.065

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Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.065 Forgery of nomination papers**

Any person who forges the name of a signer to a nomination paper shall be guilty of a Class C felony.

HISTORY: 1990 c 48, § 69, eff. 7-13-90; 1974 c 130, § 68

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.065, formerly compiled as 124.060, created by 1974 c 130, § 68, eff. 6-21-74; 1942 c 208, § 1; KS 1550-31.

## CROSS REFERENCES

2006 Main Volume Cross References

Filing of nomination papers, 118.165

Independent candidates filing to fill vacancy, 118.375

Petition for nomination, 118A.060

Sentence of imprisonment for Class C felony, 532.060

## LIBRARY REFERENCES

2006 Main Volume Library References

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C.J.S. Elections § 331.

## RESEARCH REFERENCES

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**Treatises and Practice Aids**

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KRS § 119.076

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Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.076 Clerk's failure to place candidate's name on ballot**

Any county clerk who willfully and knowingly refuses or fails to have the name of any candidate printed upon the official ballot in the manner provided by law shall be guilty of a Class D felony.

HISTORY: 1990 c 48, § 70, eff. 7-13-90; 1974 c 130, § 69

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.076, formerly compiled as 124.070, created by 1974 c 130, § 69, eff. 6-21-74; 1942 c 208, § 1; KS 1457a.

**Note:** 119.076 contains provisions analogous to former 119.160, repealed by 1972 c 188, § 69, eff. 12-1-72.

## CROSS REFERENCES

2006 Main Volume Cross References

Ballot labels for judicial primary election, 118A.060

Ballot labels for judicial regular election, 118A.090

Preparation of ballot labels, 117.145

Sentence of imprisonment for Class D felony, 532.060

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

## RESEARCH REFERENCES

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Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.095 Printer's violation of duty in printing ballots**

Any printer of ballots, or person employed in printing ballots, who prints or permits to be printed any ballot in any other form than the one prescribed by law, or with any name or device placed, spelled or arranged thereon other than as authorized and directed by the county clerk, or who gives or delivers, or knowingly permits to be taken, any ballot by any person other than the county clerk for whom the ballots are being printed, shall be guilty of a Class C felony.

HISTORY: 1990 c 48, § 71, eff. 7-13-90; 1974 c 130, § 71

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

Note: 119.095, formerly compiled as 124.090, created by 1974 c 130, § 71, eff. 6-21-74; 1942 c 208, § 1; KS 1463.

## CROSS REFERENCES

2006 Main Volume Cross References

Ballot labels for judicial primary election, 118A.060

Ballot labels for judicial regular election, 118A.090

Preparation of ballot labels, special paper ballots and supplemental paper ballots; provision for write-in votes, 117.145

Sentence of imprisonment for Class C felony, 532.060

## LIBRARY REFERENCES

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Elections ↪318.

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KRS § 119.105

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**→119.105 Removal or destruction of election supplies or booths**

- (1) Any person who steals or willfully destroys any of the election supplies required to be furnished by the county clerk shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200), and imprisoned in the county jail for not less than one (1) month nor more than six (6) months.
- (2) Any person who, during an election, knowingly and willfully removes or defaces the cards printed for the instruction of the voters, or destroys or removes any booth or other convenience provided for the election, or induces or attempts to induce any person to commit any such act, shall be imprisoned in the county jail for not less than six (6) months nor more than one (1) year.

HISTORY: 1974 c 130, § 72, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.105, formerly compiled as 124.100, created by 1974 c 130, § 72, eff. 6-21-74; 1942 c 208, § 1; KS 1465, 1568.

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↻319.  
Westlaw Topic No. 144.  
C.J.S. Elections § 330.

## RESEARCH REFERENCES

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**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:24, Destruction or Removal of Election Supplies.

KRS § 119.105, KY ST § 119.105

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KRS § 119.015

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Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.015 Clerk making or permitting wrongful registration, or failing or refusing to deliver copies of registration records**

Any county clerk or deputy county clerk who falsely or fraudulently registers the name of any person, or permits any person to register knowing that the person is not entitled to register, or who fails or refuses to deliver copies of the registration records to a person entitled thereto, shall be guilty of a Class D felony.

HISTORY: 1990 c 48, § 64, eff. 7-13-90; 1974 c 130, § 63

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.015, formerly compiled as 124.010, created by 1974 c 130, § 63, eff. 6-21-74; 1942 c 208, § 1; KS 1486bb-17.

## CROSS REFERENCES

2006 Main Volume Cross References

Access to registration records, 116.095

Eligibility to vote, 116.025

Qualifications for voting in primary election, 116.055

Sentence of imprisonment for Class D felony, 532.060

Voter registration, transfer, or change of party affiliation; county clerk to provide registration forms, cards, 116.045

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Westlaw Topic No. 144.

C.J.S. Elections § 327.

## RESEARCH REFERENCES

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KRS § 119.025

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Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

▣ Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.025 Wrongful registration**

Any person who knowingly or fraudulently causes himself to be registered in more than one (1) precinct, or to be registered more than once, or in a precinct other than the one in which he is a legal voter, or who registers under any name other than his real name, or who gives a false address, or who in any manner causes himself to be registered when he is not legally entitled to register, or who makes a false oath as to his ability to read or write, or who knowingly or fraudulently aids, abets, counsels or advises in the commission of any such act, shall be subject to the penalties prescribed for Class D felonies.

HISTORY: 1990 c 48, § 65, eff. 7-13-90; 1974 c 130, § 64

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.025, formerly compiled as 124.020, created by 1974 c 130, § 64, eff. 6-21-74; 1942 c 208, § 1; KS 1486b-54, 1486bb-18.

## CROSS REFERENCES

2006 Main Volume Cross References

Eligibility to vote, 116.025

False swearing, 523.040

Falsification of signature or verification, 116.165

Forgery, alteration, destruction, or failure to return completed registration form, 116.047

Qualifications for voting in primary election, 116.055

Sentence of imprisonment for Class D felony, 532.060

Verification of applications, 116.065

## KENTUCKY ADMINISTRATIVE CODE REFERENCES

Determining parole eligibility, 501 KAR 1:030

## LIBRARY REFERENCES

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KRS § 119.035

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**→ 119.035 Alteration, suppression, mutilation, or destruction of registration record; making or using false or fraudulent record**

Any person who fraudulently or unlawfully alters any registration record, or fraudulently adds any name thereto, or willfully secretes, suppresses, mutilates or destroys any registration record, or makes or uses any false or fraudulent registration record, and any person who aids or abets in the commission of such act, shall be subject to the penalties prescribed for Class D felonies.

HISTORY: 1990 c 48, § 66, eff. 7-13-90; 1974 c 130, § 65

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.035, formerly compiled as 124.030, created by 1974 c 130, § 65, eff. 6-21-74; 1942 c 208, § 1; KS 1486b-55, 1486bb-17, 1486bb-19.

## CROSS REFERENCES

2006 Main Volume Cross References

Access to registration records, 116.095

Falsification of signature or verification, 116.165

Forgery, alteration, destruction or failure to return completed registration form, 116.047

Forms for registration, 116.155

Sentence of imprisonment for Class D felony, 532.060

Transfer of registration, 116.085

Voter registration, change of party affiliation, 116.045

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪ 318.

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KRS § 119.045

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**→119.045 Interfering with registration**

Any person who attempts to or forcibly prevents any person from registering, or in any way unlawfully interferes with any person registering, or prevents or interferes with a clerk or registration officer in carrying out his duties with relation to the registration of voters, shall be guilty of a Class A misdemeanor.

HISTORY: 1990 c 48, § 67, eff. 7-13-90; 1974 c 130, § 66

**HISTORICAL AND STATUTORY NOTES**

2006 Main Volume Historical and Statutory Notes

**Note:** 119.045, formerly compiled as 124.040, created by 1974 c 130, § 66, eff. 6-21-74; 1942 c 208, § 1; KS 1486b-57, 1486bb-20.

**CROSS REFERENCES**

2006 Main Volume Cross References

Sentence of imprisonment for Class A misdemeanor, 532.090

Voter registration, 116.045

**LIBRARY REFERENCES**

2006 Main Volume Library References

Elections ↪319.  
Westlaw Topic No. 144.  
C.J.S. Elections § 330.

**RESEARCH REFERENCES**

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:21, Wrongful Registration.

KRS § 119.045, KY ST § 119.045

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KRS § 119.056

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**→ 119.056 Alteration, mutilation, or suppression of nomination papers**

Any person in possession of nomination papers entitled to be filed under the statutes relating to primary elections who wrongfully alters, mutilates or suppresses such papers, or wrongfully fails to cause them to be filed at the proper time in the proper office, shall be guilty of a Class A misdemeanor.

HISTORY: 1990 c 48, § 68, eff. 7-13-90; 1974 c 130, § 67

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.056, formerly compiled as 124.050, renumbered by the Reviser of Statutes and created by 1974 c 130, § 67, eff. 6-21-74; 1942 c 208, § 1; KS 1550-32.

## CROSS REFERENCES

2006 Main Volume Cross References

Filing of nomination papers, 118.165

Independent candidates filing to fill vacancy, 118.375

Petition for nomination, 118A.060

Sentence of imprisonment for Class A misdemeanor, 532.090

## LIBRARY REFERENCES

2006 Main Volume Library References

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C.J.S. Elections § 331.

## RESEARCH REFERENCES

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KRS § 119.065

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**→119.065 Forgery of nomination papers**

Any person who forges the name of a signer to a nomination paper shall be guilty of a Class C felony.

HISTORY: 1990 c 48, § 69, eff. 7-13-90; 1974 c 130, § 68

HISTORICAL AND STATUTORY NOTES

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**Note:** 119.065, formerly compiled as 124.060, created by 1974 c 130, § 68, eff. 6-21-74; 1942 c 208, § 1; KS 1550-31.

CROSS REFERENCES

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Filing of nomination papers, 118.165

Independent candidates filing to fill vacancy, 118.375

Petition for nomination, 118A.060

Sentence of imprisonment for Class C felony, 532.060

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Elections ↪318.

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C.J.S. Elections § 331.

RESEARCH REFERENCES

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**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:22, Nominating Papers.

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KRS § 119.076

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**→119.076 Clerk's failure to place candidate's name on ballot**

Any county clerk who willfully and knowingly refuses or fails to have the name of any candidate printed upon the official ballot in the manner provided by law shall be guilty of a Class D felony.

HISTORY: 1990 c 48, § 70, eff. 7-13-90; 1974 c 130, § 69

HISTORICAL AND STATUTORY NOTES

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**Note:** 119.076, formerly compiled as 124.070, created by 1974 c 130, § 69, eff. 6-21-74; 1942 c 208, § 1; KS 1457a.

**Note:** 119.076 contains provisions analogous to former 119.160, repealed by 1972 c 188, § 69, eff. 12-1-72.

CROSS REFERENCES

2006 Main Volume Cross References

Ballot labels for judicial primary election, 118A.060

Ballot labels for judicial regular election, 118A.090

Preparation of ballot labels, 117.145

Sentence of imprisonment for Class D felony, 532.060

LIBRARY REFERENCES

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KRS § 119.095

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**→ 119.095 Printer's violation of duty in printing ballots**

Any printer of ballots, or person employed in printing ballots, who prints or permits to be printed any ballot in any other form than the one prescribed by law, or with any name or device placed, spelled or arranged thereon other than as authorized and directed by the county clerk, or who gives or delivers, or knowingly permits to be taken, any ballot by any person other than the county clerk for whom the ballots are being printed, shall be guilty of a Class C felony.

HISTORY: 1990 c 48, § 71, eff. 7-13-90; 1974 c 130, § 71

## HISTORICAL AND STATUTORY NOTES

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**Note:** 119.095, formerly compiled as 124.090, created by 1974 c 130, § 71, eff. 6-21-74; 1942 c 208, § 1; KS 1463.

## CROSS REFERENCES

2006 Main Volume Cross References

Ballot labels for judicial primary election, 118A.060

Ballot labels for judicial regular election, 118A.090

Preparation of ballot labels, special paper ballots and supplemental paper ballots; provision for write-in votes, 117.145

Sentence of imprisonment for Class C felony, 532.060

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C.J.S. Elections § 331.

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KRS § 119.105

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**→119.105 Removal or destruction of election supplies or booths**

- (1) Any person who steals or willfully destroys any of the election supplies required to be furnished by the county clerk shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200), and imprisoned in the county jail for not less than one (1) month nor more than six (6) months.
- (2) Any person who, during an election, knowingly and willfully removes or defaces the cards printed for the instruction of the voters, or destroys or removes any booth or other convenience provided for the election, or induces or attempts to induce any person to commit any such act, shall be imprisoned in the county jail for not less than six (6) months nor more than one (1) year.

HISTORY: 1974 c 130, § 72, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

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**Note:** 119.105, formerly compiled as 124.100, created by 1974 c 130, § 72, eff. 6-21-74; 1942 c 208, § 1; KS 1465, 1568.

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪319.  
Westlaw Topic No. 144.  
C.J.S. Elections § 330.

## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:24, Destruction or Removal of Election Supplies.

KRS § 119.105, KY ST § 119.105

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KRS § 119.115

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**→119.115 Unauthorized possession of key to voting machine; tampering with, injuring, or destroying ballot labels or voting machines**

- (1) Any unauthorized person found in possession of any key to a voting machine to be used or being used in any primary, general, or special election shall be guilty of a Class A misdemeanor.
- (2) Any person who, during or before any primary, general, or special election, willfully tampers with or attempts to tamper with, disarrange, deface, or impair in any manner whatsoever, injures, or destroys any ballot label, or destroys any such voting machine while in use at an election or at any other time, or who shall, after such machine is locked and sealed in order to preserve the record of the vote, tamper with or attempt to tamper with the record of the vote, or who aids or abets with intent to destroy or change the record of the vote shall be guilty of a Class D felony.
- (3) Any election official, or other person entrusted with the custody or control of any voting machine who, with intent to cause or permit any voting machine to fail to correctly register votes cast thereon, tampers with or disarranges such machine in any way, unlawfully opens such voting machine, prevents or attempts to prevent the correct operation of such voting machine or causes such voting machine to be used or consents to its being used for any election with knowledge of the fact that the machine is not in order, or not perfectly set and adjusted to correctly register all votes cast thereon, or removes, changes, or mutilates any ballot label on a voting machine shall be guilty of a Class D felony.

HISTORY: 1992 c 463, § 11, eff. 7-14-92; 1990 c 48, § 72; 1984 c 111, § 65; 1974 c 277, § 1

## CROSS REFERENCES

## 2006 Main Volume Cross References

Custody of machines, 117.135

Examination of machines by county board, 117.165

Period machines to remain locked, custody of keys, 117.295

Sentence of imprisonment for Class A misdemeanor, 532.090

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KRS § 119.125

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**→119.125 Sheriff's failure to hold election or perform other election duties**

Any sheriff who willfully fails to cause an election to be held, as required by law, shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Any sheriff who willfully fails to perform any other duty concerning an election, for which there is no penalty specifically prescribed, shall be fined not less than twenty dollars (\$20) nor more than two hundred dollars (\$200).

HISTORY: 1974 c 130, § 73, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.125, formerly compiled as 124.110, created by 1974 c 130, § 73, eff. 6-21-74; 1942 c 208, § 1; KS 1578.

## CROSS REFERENCES

2006 Main Volume Cross References

Delivery of proclamations and writs to sheriffs, 118.740

Penalty for misfeasance, malfeasance or willful neglect of duty, 61.170

Sheriff to publish notice of special election, 118.750

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:26, Officials' Failure to Perform Duties.

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KRS § 119.145

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**→ 119.145 Election officer's refusal to admit challenger**

Any election officer who refuses to permit any challenger of any political party having a ticket to be voted for at an election, who has been duly appointed and presents a duly attested certificate of appointment, to perform his duties as challenger, shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500).

HISTORY: 1974 c 130, § 75, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.145, formerly compiled as 124.130, created by 1974 c 130, § 75, eff. 6-21-74; 1942 c 208, § 1; KS 1481a.

## CROSS REFERENCES

2006 Main Volume Cross References

Appointment of challengers and inspectors, 117.315

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C.J.S. Elections § 327.

## RESEARCH REFERENCES

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**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:26, Officials' Failure to Perform Duties.

KRS § 119.145, KY ST § 119.145

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KRS § 119.155

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**→119.155 Preventing voter from casting ballot; interfering with election**

- (1) Any person who unlawfully prevents or attempts to prevent any voter from casting his ballot, or intimidates or attempts to intimidate any voter so as to prevent him from casting his ballot, or who unlawfully interferes with the election officers in the discharge of their duties, shall be guilty of a Class D felony.
- (2) Any person who, by himself or in aid of others, forcibly breaks up or prevents, or attempts to break up or prevent, or obstructs or attempts to obstruct, the lawful holding of an election, shall be guilty of a Class A misdemeanor.

HISTORY: 1990 c 48, § 73, eff. 7-13-90; 1974 c 130, § 76

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.155, formerly compiled as 124.140, created by 1974 c 130, § 76, eff. 6-21-74; 1942 c 208, § 1; KS 1585a-4, 1588.

## CROSS REFERENCES

2006 Main Volume Cross References

Coercion of employee's vote prohibited, 121.310

Corrupt practices as grounds for contest, 120.015

Sentence of imprisonment for Class A misdemeanor, 532.090

Sentence of imprisonment for Class D felony, 532.060

## LIBRARY REFERENCES

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Elections ↪319, 320.

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C.J.S. Elections §§ 330, 333, 334(2).

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KRS § 119.165

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**→ 119.165 False personation of a voter; nonresident or unqualified person voting**

- (1) Any person who falsely personates a registered voter, and receives and casts a ballot by means of such personation, shall be guilty of a Class D felony. An attempt at such personation shall constitute a Class A misdemeanor.
- (2) Any person who, by means other than falsely personating a registered voter, votes at an election in this state when he is a resident of another state or country, or votes more than once at an election, or votes by use of the naturalization papers of another person, shall be guilty of a Class D felony. Any person who knowingly votes or attempts to vote in a precinct other than the one in which he resides shall be guilty of a Class A misdemeanor, unless by voting in a precinct in which he does not live he is enabled to vote in a race or on a matter in which he could not vote in his proper precinct in which case he shall be guilty of a Class D felony. Any person who lends or hires his or another's naturalization papers to be used for the purpose of voting shall be subject to the same penalty.
- (3) Any resident of this state who, by means other than falsely personating a registered voter, votes at a regular or special election before he has resided in this state thirty (30) days, or in the county and precinct where the election is held the time required by law, or before he has attained full age, or before he has become a citizen, shall be guilty of a Class B misdemeanor.
- (4) Any person who, by means other than falsely personating a registered voter, votes in a primary election knowing that he is not qualified as provided in KRS 116.055, shall be guilty of a violation.
- (5) Any person who applies for or receives a ballot at any voting place other than the one at which he is entitled to vote, under circumstances not constituting a violation of any of the provisions of subsections (1) to (4) of this section, shall be guilty of a Class A misdemeanor.

HISTORY: 1992 c 463, § 12, eff. 7-14-92; 1990 c 48, § 74; 1974 c 130, § 77

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.165, formerly compiled as 124.150, created by 1974 c 130, § 77, eff. 6-21-74; 1942 c 208, § 1; KS 1550-19, 1569, 1572, 1584, 1585.

## CROSS REFERENCES

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Determination of voter's residence, 116.035

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KRS § 119.175

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**→119.175 Receipt of illegal vote or rejection of legal vote by election officer**

- (1) Except as provided in subsection (2) of this section, any officer of election who receives, assents to receive or records a vote at an election at a time or place known by him not to be the time and place lawfully appointed, or who knowingly receives the vote of any person other than a qualified voter, or refuses to receive the vote of a qualified voter, shall, for each offense, be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), and shall forfeit any office he holds and be disqualified from ever holding any office.
- (2) Any judge of a primary election who knowingly receives a vote of an elector who is not qualified to vote in the primary election under KRS 116.055 shall be fined one hundred dollars (\$100) for each offense.

HISTORY: 1974 c 130, § 78, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.175, formerly compiled as 124.160, created by 1974 c 130, § 78, eff. 6-21-74; 1942 c 208, § 1; KS 1550-19, 1583.

## CROSS REFERENCES

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Misconduct by election officer, 117.995

Precinct election officers, 117.045

## LIBRARY REFERENCES

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C.J.S. Elections § 327.

## RESEARCH REFERENCES

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KRS § 119.185

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**→ 119.185 Disobeying election officer's command**

Any person who willfully disobeys any lawful command of an election officer, given in the execution of his duty as such at an election, shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).

HISTORY: 1974 c 130, § 79, eff. 6-21-74

**HISTORICAL AND STATUTORY NOTES**

2006 Main Volume Historical and Statutory Notes

**Note:** 119.185, formerly compiled as 124.170, created by 1974 c 130, § 79, eff. 6-21-74; 1942 c 208, § 1; KS 1576.

**CROSS REFERENCES**

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Precinct election officers, 117.045

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C.J.S. Elections §§ 324, 355(2).

**RESEARCH REFERENCES**

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:30, Disobeying Election Officer's Command.

**NOTES OF DECISIONS**

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1. Enforcement

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KRS § 119.195

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**→119.195 Removing or tampering with ballots**

- (1) Any person who, during an election, knowingly and willfully removes or attempts to remove an official ballot from the election room, or has in his possession outside the election room any official ballot, either genuine or counterfeit, shall be guilty of a Class D felony.
- (2) Any voter who attempts to leave the election room with an official ballot in his possession shall at once be arrested on demand of either of the judges of election and shall be guilty of a violation, unless the act was done knowingly in which event he shall be guilty of a Class A misdemeanor.
- (3) Any person who takes or removes in any manner, feloniously or with the consent or permission of the custodian, any official ballot from any place where it may lawfully be, or knowingly and willfully has in his possession or custody any such official ballot, except as an officer or custodian under the law or while within the polling place for the purpose of voting, and any custodian or officer who permits any official ballot to be removed or carried away from the place where it may lawfully be by any person other than the officer or custodian whose duty it is to receive it, shall be guilty of a Class C felony.
- (4) Any election officer, or other person entrusted with the custody or control of any official ballot, either before or after it has been voted, who in any way marks, mutilates, or defaces any official ballot or places any distinguishing mark thereon, for the purpose of vitiating the official ballot, shall be guilty of a Class C felony.
- (5) Any person who unlawfully destroys or attempts to destroy any official ballot box used, or any official ballot deposited, at any election, or who unlawfully, by force, fraud, or other improper means, obtains or attempts to obtain possession of any ballot box or any official ballot therein deposited, while the voting at any election is going on or before the official ballots are duly taken out and counted according to law, shall be guilty of a Class D felony.
- (6) Any election officer who mutilates or tampers with any of the seals, or destroys or removes any official ballots required to be preserved, shall be guilty of a Class D felony.
- (7) Any county clerk who knowingly and willfully opens any ballot box and removes any official ballot therefrom, or removes, destroys, or tampers with a ballot box and official ballots left in his care and custody, or permits any other person to do so, during the period the boxes are required to remain locked in his office, shall be guilty of a Class D felony.
- (8) Any person who removes, mutilates, or destroys, or adds any new official ballots to, the regular official ballots that have been counted and prepared for preservation, or that have already been preserved, so that the result of the election in the precinct or county is changed, shall be guilty of a Class D felony.
- (9) Any person who tampers with or changes the official ballots, or opens the receptacles in which the official ballots are contained without the order of the court, after the ballots have been sent to the Franklin County

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KRS § 119.205

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Baldwin's Kentucky Revised Statutes Annotated Currentness

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▣ Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.205 Making or receiving expenditures for vote, for withholding of vote, or for signing a petition to have public question on ballot; definition of "expenditure"; procedures for paying for transportation of voters; applicability of KRS 502.020**

- (1) Any person who makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate or public question at an election shall be guilty of a Class D felony.
- (2) Any person who solicits, accepts, or receives any such expenditure as payment or consideration for his vote, or the withholding of his vote, or to vote for or against any candidate or public question at an election shall be guilty of a Class D felony.
- (3) Any person who makes or offers to make an expenditure to any person to sign a petition to have a public question placed on the ballot, or any person who solicits, accepts, or receives any such expenditure as payment or consideration to sign a petition to have a public question placed on the ballot, shall be guilty of a Class B misdemeanor.
- (4) For purposes of this section, "expenditure" means any of the following when intended as payment or consideration for voting or withholding a vote, voting for or against any candidate or public question, or signing a petition to have a public question placed on the ballot:
  - (a) A payment, distribution, loan, advance, deposit, or gift of money or anything of value; or
  - (b) A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a payment, distribution, loan, advance, deposit, or gift of money or anything of value.

"Expenditure," as used in this section, shall not include the distribution of materials bearing the name, likeness, or other identification of a candidate, political party, committee, or organization, or position on a public question and not intended as payment or consideration for voting or withholding a vote, voting for or against any candidate or public question, or signing a petition to have a public question placed on the ballot.
- (5) Any candidate or committee, or any person on his behalf, who pays any person, including campaign workers, for transporting voters to the polls on the day of the election, shall make all payments by check. All payments, regardless of amount, shall be reported to the Registry of Election Finance in the manner that the Registry shall provide by administrative regulation. Any person who knowingly violates any requirement of this subsection shall be guilty of a Class B misdemeanor.
- (6) In addition to the above provisions, a person may be convicted of a violation of this section pursuant to KRS 502.020.

HISTORY: 2000 c 53, § 1, eff. 7-14-00; 1991 1st ex s, c 5, § 1, eff. 2- 15-91

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KRS § 119.207

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Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→ 119.207 Prohibition against paying compensation based upon number or characteristics of voters registered**

Any person who provides compensation or makes any such expenditure as payment or consideration for registering voters that is based upon the total number of voters a person registers or the total number of voters a person registers in a particular party, political group, political organization, or voters of independent status shall be guilty of a Class B misdemeanor.

HISTORY: 2006 c 107, § 1, eff. 3-30-06

KRS § 119.207, KY ST § 119.207

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KRS § 119.215

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Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.215 Providing another with intoxicants on election day**

Any person who sells, loans, gives or furnishes intoxicating liquor to any person in this state on the day of any regular or primary election, under circumstances not constituting a violation of KRS 242.100, 244.290 or 244.480, shall be fined not less than twenty-five dollars (\$25) nor more than fifty dollars (\$50) for each offense.

HISTORY: 1974 c 130, § 82, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.215, formerly compiled as 124.200, created by 1974 c 130, § 82, eff. 6-21-74; 1942 c 208, § 1; KS 1575.

## CROSS REFERENCES

2006 Main Volume Cross References

Corrupt practices as grounds for contest, 120.015

Sale or gift of liquor on election day, general assembly may regulate, Ky Const §154

## LIBRARY REFERENCES

2006 Main Volume Library References

Intoxicating Liquors ↪145.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors §§ 242, 256.

## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:33, Providing Intoxicants for Another on Election Day.

## NOTES OF DECISIONS

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KRS § 119.225

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Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.225 Denial of rights of inspectors by county board of elections**

Any member of a county board of elections who refuses to permit an inspector designated under KRS 117.275 and 117.315 to exercise free and full action in witnessing the count of the ballots, or interferes with the right of such an inspector to have a free and full opportunity to witness the count of the ballots, shall be guilty of a Class A misdemeanor.

HISTORY: 1990 c 48, § 77, eff. 7-13-90; 1982 c 394, § 35; 1974 c 130, § 83

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.225, formerly compiled as 124.210, created by 1974 c 130, § 83, eff. 6-21-74; 1942 c 208, § 1; KS 1482.

## CROSS REFERENCES

2006 Main Volume Cross References

Appointment of challengers and inspectors, 117.315

Counting and certification of votes, 117.275

Sentence of imprisonment for Class A misdemeanor, 532.090

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪319.

Westlaw Topic No. 144.

C.J.S. Elections § 330.

## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:34, Interference With Election Inspectors.

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KRS § 119.235

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Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.235 Alteration, suppression, or destruction of stub book, return, or certificate of election**

Any person who willfully alters, obliterates, secretes, suppresses or destroys a stub book, return or certificate of election, and any officer who makes, aids in making or authorizes the making of any false or fraudulent stub book, certificate of election or election return, shall be guilty of a Class D felony.

HISTORY: 1990 c 48, § 78, eff. 7-13-90; 1974 c 130, § 84

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.235, formerly compiled as 124.220, created by 1974 c 130, § 84, eff. 6-21-74; 1942 c 208, § 1; KS 1581.

## CROSS REFERENCES

2006 Main Volume Cross References

Issuance of certificates by state board of elections, 118A.190

Issuance of certificates of election by state board of elections, 118.425

Preservation of certificates and petitions of nomination, 118.385

Sentence of imprisonment for Class D felony, 532.060

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

## RESEARCH REFERENCES

2006 Main Volume Research References

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KRS § 119.245

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Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.245 Violation of law or failure to perform duty by member of board of elections**

Any member of the State Board of Elections or of a county board of elections who willfully and knowingly violates any provision of the statutes relating to his duties, or fails to execute faithfully any of the duties imposed upon him by law, for which no other penalty is provided, shall be guilty of a Class B misdemeanor.

HISTORY: 1990 c 48, § 79, eff. 7-13-90; 1982 c 394, § 36; 1974 c 130, § 85

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.245, formerly compiled as 124.230, created by 1974 c 130, § 85, eff. 6-21-74; 1942 c 208, § 1; KS 1596a-15.

**Note:** 119.245 contains provisions analogous to former 124.120 and 124.230, repealed by 1974 c 130, § 198, eff. 6-21-74.

## CROSS REFERENCES

2006 Main Volume Cross References

County board of elections, 117.035

Failure of county board of elections to divide county into election precincts, 117.055

Failure to perform duties with respect to voter registration, 116.995

Misconduct by member of county board of elections, 117.995

Sentence of imprisonment for Class B misdemeanor, 532.090

State board of elections, 117.015

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↻314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

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KRS § 119.255

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Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

■ Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.255 Intimidation of election officer or board of elections**

Any person who, by threat of violence or in any other manner, intimidates or attempts to intimidate the election officers, the State Board of Elections or a county board of elections in the performance of their duty and any persons who conspire together and go forth armed for the purpose of intimidating said officers, shall be guilty of a Class D felony.

HISTORY: 1990 c 48, § 80, eff. 7-13-90; 1982 c 394, § 37; 1974 c 130, § 86

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.255, formerly compiled as 124.240, created by 1974 c 130, § 86, eff. 6-21-74; 1942 c 208, § 1; KS 1596a-16.

## CROSS REFERENCES

2006 Main Volume Cross References

County board of elections, 117.035

Executive director and assistant, staff, powers and duties, 117.025

Precinct election officers, 117.045

Sentence of imprisonment for Class D felony, 532.060

State board of elections, 117.015

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↻320.

Westlaw Topic No. 144.

C.J.S. Elections §§ 333, 334(2).

## RESEARCH REFERENCES

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KRS § 119.265

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Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.265 Violation of duties for which no other penalty provided**

Any public officer who willfully neglects to perform a duty imposed upon him under the election laws, for which no other penalty is provided, or who willfully performs such duty in a way that hinders the objects of the election laws, shall be guilty of a Class B misdemeanor.

HISTORY: 1990 c 48, § 81, eff. 7-13-90; 1974 c 130, § 87

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.265, formerly compiled as 124.250, created by 1974 c 130, § 87, eff. 6-21-74; 1942 c 208, § 1; KS 1577.

## CROSS REFERENCES

2006 Main Volume Cross References

Misfeasance, malfeasance or willful neglect of duty, penalty, 61.170

Penalties for misconduct with respect to regulation of elections, 117.995

Sentence of imprisonment for Class B misdemeanor, 532.090

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections  314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:36, Failure of Member of Board of Elections or Other Public Officer to Perform Duty.

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KRS § 119.275

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**→119.275 Advising or assisting violation of election laws**

Any person who counsels, advises, procures or aids in the commission of any of the offenses named in this chapter shall incur the penalty provided for committing such offense.

HISTORY: 1974 c 130, § 88, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.275, formerly compiled as 124.260, created by 1974 c 130, § 88, eff. 6-21-74; 1942 c 208, § 1; KS 1590.

## CROSS REFERENCES

2006 Main Volume Cross References

Penalties for misconduct relating to regulation of elections, 117.995

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪309.

Westlaw Topic No. 144.

C.J.S. Elections §§ 324, 355(2).

## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:38, Complicity in Election Law Violation.

KRS § 119.275, KY ST § 119.275

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KRS § 119.277

Baldwin's Kentucky Revised Statutes Annotated Currentness  
 Title X. Elections  
 Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→119.277 Prohibitions against holding elective office**

Any person who shall have been convicted of any election law offense which is a Class A misdemeanor shall not be permitted to hold elective office for a period of five (5) years following the conviction. Any person who shall have been convicted of any election law offense which is a felony shall not be permitted to hold elective office until his civil rights have been restored by executive pardon.

HISTORY: 1988 c 341, § 17, eff. 7-15-88

CROSS REFERENCES

2006 Main Volume Cross References

Denial of right to have name placed on judicial ballot for violation of campaign finance regulations, 118A.080

Exclusion from office for bribery, fraud, intimidation, corrupt practices, Ky Const §151

Exclusion from office for crime, Ky Const §150

LIBRARY REFERENCES

2006 Main Volume Library References

Officers and Public Employees ←31.  
 Westlaw Topic No. 283.  
 C.J.S. Officers and Public Employees §§ 28 to 30.

KRS § 119.277, KY ST § 119.277

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KRS § 119.285

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Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.285 Irregularity or defect in conduct of election no defense**

Irregularities or defects in the mode of convening or conducting an election shall constitute no defense to a prosecution for a violation of the election laws.

HISTORY: 1974 c 130, § 89, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.285, formerly compiled as 124.270, created by 1974 c 130, § 89, eff. 6-21-74; 1942 c 208, § 1; KS 1591.

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↻321.

Westlaw Topic No. 144.

## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:20, In General.

## NOTES OF DECISIONS

**Evidence 1****Withholding candidate's name 2**

## 1. Evidence

This section does not warrant the court in holding that the testimony of a single witness, in support of the charge of receiving a bribe to vote, was corroborated by proof of general reputation of accused as a bribe taker, and having taken bribes for his vote at prior elections. (Annotation from former KRS 124.270.) *Romes v. Commonwealth* (Ky. 1915) 164 Ky. 334, 175 S.W. 669.

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KRS § 119.295

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Baldwin's Kentucky Revised Statutes Annotated Currentness

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Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.295 Applicability of penalties for regular elections to primaries and to elections for United States Senator.**

(1) Any act or deed denounced by the statutes concerning regular elections or concerning elections generally shall be an offense when committed in connection with a primary election held under KRS Chapter 118, and shall be punished in the same manner, and all the penalties for violation of the regular election laws shall apply with equal force to all similar violations of the provisions of the statutes relating to primary elections.

(2) Penalties prescribed for offenses against the election laws in the election of other officers shall apply to elections for United States Senator.

HISTORY: 1974 c 130, § 90, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.295, formerly compiled as 124.280, created by 1974 c 130, § 90, eff. 6-21-74; 1942 c 208, § 1; KS 1546-3, 1550-35.

## CROSS REFERENCES

2006 Main Volume Cross References

Election of United States senators, 118.465

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪309.

Westlaw Topic No. 144.

C.J.S. Elections §§ 324, 355(2).

## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:20, In General.

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KRS § 119.305

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.305 Report by election officers of violations; arrest of offenders**

Election officers shall give information of all infractions of the election laws to the grand jury, Commonwealth's attorney, Attorney General and the Registry of Election Finance. The election officers shall cooperate in any investigation or prosecution of election law violations. When there is reason to fear that an offender will escape out of the county before indictment, any election officer may procure his immediate apprehension.

HISTORY: 1988 c 341, § 38, eff. 7-15-88; 1974 c 130, § 91

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.305, formerly compiled as 124.290, created by 1974 c 130, § 91, eff. 6-21-74; 1942 c 208, § 1; KS 1592.

## CROSS REFERENCES

2006 Main Volume Cross References

Attorney general's jurisdiction to investigate and prosecute election law violations, 15.242

Burden of proof and order of proceedings in disciplinary proceedings, SCR 3.330

Burden of proof in civil cases, CR 43.01

Burden of proof in criminal cases, defenses, 500.070

Enforcement of election laws by attorney general, 15.243

## LIBRARY REFERENCES

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Elections k324.1.

Westlaw Topic No. 144.

KRS § 119.305, KY ST § 119.305

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KRS § 119.315

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→119.315 Grand jury may compel testimony as to violation of election laws**

Except as provided in KRS 119.325, any person who refuses, when summoned, to testify on oath before a grand jury as to any knowledge he may possess concerning any violation of law in relation to elections in the county during the preceding eighteen (18) months shall be imprisoned until he submits, and be fined not less than ten dollars (\$10) nor more than thirty dollars (\$30) by the court, and a like sum for each daily repetition of the contempt.

HISTORY: 1974 c 130, § 92, eff. 6-21-74

HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.315, formerly compiled as 124.300, created by 1974 c 130, § 92, eff. 6-21-74; 1942 c 208, § 1; KS 1593.

CROSS REFERENCES

2006 Main Volume Cross References

Grand jury instructions, RCr 5.02

Grand jury investigation, compelling testimony, RCr 5.12

Self-incrimination, US Const Am 5

LIBRARY REFERENCES

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Elections ↪326.  
Westlaw Topic No. 144.

KRS § 119.315, KY ST § 119.315

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KRS § 119.325

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Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.325 Refusal to produce evidence of corrupt practices when summoned by grand jury a Class A misdemeanor**

Any person having the possession of any books, correspondence or papers of a corporation that may show or tend to show any violation of the provisions of KRS 121.025, or of KRS 121.045 or 121.055, or of subsection (1) of KRS 121.310, who refuses, when summoned by a grand jury, to produce such books, correspondence or papers, or to appear and testify concerning them or to give any other evidence material to the matter under investigation, shall be guilty of a Class A misdemeanor.

HISTORY: 1990 c 48, § 82, eff. 7-13-90; 1974 c 130, § 93

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.325, formerly compiled as 124.310, created by 1974 c 130, § 93, eff. 6-21-74; 1942 c 208, § 1; KS 1565b-21.

## CROSS REFERENCES

2006 Main Volume Cross References

Attendance of witnesses at grand jury proceeding, RCr 5.06

Candidates prohibited from making expenditure, loan, promise, agreement or contract as to action when elected, in consideration for vote, 121.055

Coercion of employee's vote prohibited, 121.310

Compelling testimony from witness before grand jury, RCr 5.12

Contributions to certain candidates by individuals prohibited, 121.045

Corporate contributions to candidates prohibited, 121.025

Grand jury investigation, RCr 5.02

Self-incrimination, US Const Am 5

Sentence of imprisonment for Class A misdemeanor, 532.090

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KRS § 119.335

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Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.335 Evidence required to support conviction for violation of election laws**

No person shall be convicted of a violation of any of the statutes relating to elections upon the testimony of only one (1) witness, unless sustained by strong corroborating circumstances.

HISTORY: 1974 c 130, § 94, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.335, formerly compiled as 124.320, created by 1974 c 130, § 94, eff. 6-21-74; 1942 c 208, § 1; KS 1594.

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪ 329.

Westlaw Topic No. 144.

C.J.S. Elections §§ 349 to 351.

## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:20, In General.

## NOTES OF DECISIONS

**In general 1****Circumstantial evidence 2****Corroboration 3****Sale of liquor 4**

## 1. In general

Evidence not sufficient to convict for bribery. (Annotation from former KRS 124.320.) *Benge v. Com.* (Ky. 1924)

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KRS § 119.345

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Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.345 Witness not exempted from giving incriminating testimony; immunity except from perjury charge**

- (1) At the discretion of the prosecuting attorney, in any prosecution under the election laws it shall be no exemption for a witness that his information may criminate himself, and no such information given by a witness shall be used against him in any prosecution, except for perjury, and if used on behalf of the Commonwealth he shall stand discharged from all penalties for any violation of the election laws so necessarily disclosed in the information he so discloses as tending to convict the accused.
- (2) The statement of any person testifying in any case pending under the provisions of KRS 121.025, 121.045, 121.055, or subsection (1) of KRS 121.310 shall not be used against him in any prosecution or civil proceeding.

HISTORY: 1988 c 341, § 39, eff. 7-15-88; 1974 c 130, § 95

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.345, formerly compiled as 124.330, created by 1974 c 130, § 95, eff. 6-21-74; 1942 c 208, § 1; KS 1565b-20, 1594.

## CROSS REFERENCES

2006 Main Volume Cross References

Self-incrimination, US Const Am 5

## LIBRARY REFERENCES

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Elections ↻326.

Westlaw Topic No. 144.

## NOTES OF DECISIONS

**Immunity 1****Testimony required 2**

1. Immunity

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KRS § 119.355

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Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.355 Limitation of prosecutions**

No prosecution shall be had under the election laws where the penalty is less than confinement in the penitentiary unless the prosecution is commenced within two (2) years from the time of the commission of the offense.

HISTORY: 1974 c 130, § 96, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.355, formerly compiled as 124.340, created by 1974 c 130, § 96, eff. 6-21-74; 1942 c 208, § 1; KS 1595.

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections k324.1.

Westlaw Topic No. 144.

## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Criminal Practice and Procedure § 13:1, Statutory Limitations on Charging Defendant.

Abramson, Kentucky Practice, Substantive Criminal Law § 14:20, In General.

## NOTES OF DECISIONS

**Misdemeanors 2****Procedural issues 1**

## 1. Procedural issues

An indictment for receiving a bribe under KRS 124.150 (KS 1585) should show on its face that the offense was committed within two years; this may be done by giving the date of the election at which the bribe was received.

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Ala.Code 1975 § 17-23-1

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Code of Alabama Currentness

Title 17. Elections.

▣ Chapter 23. Miscellaneous Offenses. (Refs &amp; Annos)

**→§ 17-23-1. Illegal voting or attempting to vote.**

Any person who votes more than once at any election held in this state, or deposits more than one ballot for the same office as his vote at such election, or knowingly attempts to vote when he is not entitled to do so, or is guilty of any kind of illegal or fraudulent voting, must, on conviction, be imprisoned in the penitentiary for not less than two nor more than five years, at the discretion of the jury.

(Code 1876, § 4289; Code 1886, § 4185; Code 1896, § 4692; Code 1907, § 6788; Code 1923, § 3906; Code 1940, T. 17, § 302.)

## LIBRARY REFERENCES

29 C.J.S. Elections, §§ 325, n.1.

## CASENOTES

## 1. Scope of section

**Scope of section.** The language of this section is broad enough to embrace, and in fact does in *ipsis verbis* embrace, "any election held in this state." *Gandy v. State*, 82 Ala. 61, 2 So. 465 (Ala.1887). See also *Anderson v. State*, 72 Ala.187 (1882); *Washington v. State*, 75 Ala. 582 (1884).

## 2. "Election" defined

**"Election" defined.** The word "election" means the act of casting and receiving ballots, and the day and time of voting. *State v. Tucker*, 54 Ala.205 (Ala.1875).

## 3. The words "illegal or fraudulent" as used in this section are merely descriptive

**The words "illegal or fraudulent" as used in this section are merely descriptive** of the intent necessary for the commission of the offense. *Wilder v. State*, 401 So.2d 151 (Ala.Crim.App.1981), writ denied 401 So.2d 167, certiorari denied 102 S.Ct. 606, 454 U.S. 1057, 70 L.Ed.2d 595.

Clearly, the language of this section reflects a common understanding that "illegal or fraudulent voting" is voting more than one ballot for the same office, or attempting to vote when one is not entitled to do so. This section thus gives due notice of the criminal consequences of such action. *Wilder v. State*, 401 So.2d 151 (Ala.Crim.App.1981), writ denied 401 So.2d 167, certiorari denied 102 S.Ct. 606, 454 U.S. 1057, 70 L.Ed.2d 595.

## 4. Mistake as to qualifications

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Ala.Code 1975 § 17-23-2



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Code of Alabama Currentness

Title 17. Elections.

Chapter 23. Miscellaneous Offenses. (Refs & Annos)

**→§ 17-23-2. Illegal voting at municipal elections.**

Any person who falsely impersonates another and thereby or otherwise fraudulently casts a vote to which he is not entitled, or having voted at such municipal election votes a second time, whether in the same ward or another, or having once obtained registration in any ward, shall cause himself to be registered a second time, or attempts to obtain a second registration, whether in the same or another name, or whether in the same or another ward, or shall aid or assist another not so entitled, knowing him not to be so entitled, to vote or to obtain registration as a voter, shall be guilty of a felony, and, on conviction in the circuit court, or court of like jurisdiction, of the county, shall be punished by imprisonment in the penitentiary for a period of not less than one nor more than two years.

(Code 1907, § 6817; Code 1923, § 3935; Code 1940, T. 17, § 330.)

Ala. Code 1975 § 17-23-2, AL ST § 17-23-2

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Ala.Code 1975 § 17-23-3



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Code of Alabama Currentness

Title 17. Elections.

▣ Chapter 23. Miscellaneous Offenses. (Refs & Annos)

**→ § 17-23-3. Bribing or attempting to influence voter.**

Any person who, by bribery or offering to bribe, or by any other corrupt means, attempts to influence any elector in giving his vote, or deter him from giving the same, or to disturb, or to hinder him in the free exercise of the right of suffrage, at any election, must, on conviction, be fined not less than \$50.00 nor more than \$500.00.

(Code 1876, § 4292; Code 1886, § 4187; Code 1896, § 4694; Code 1907, § 6790; Code 1923, § 3908; Code 1940, T. 17, § 304.)

LIBRARY REFERENCES

29 C.J.S. Elections, § 218.

Ala. Code 1975 § 17-23-3, AL ST § 17-23-3

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Ala.Code 1975 § 17-23-4



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Code of Alabama Currentness

Title 17. Elections.

▣ Chapter 23. Miscellaneous Offenses. (Refs & Annos)

→ § 17-23-4. **Buying votes.**

Any person who buys or offers to buy any vote of any qualified elector at any election by the payment of money or the promise to pay the same at any future time, or by the gift of intoxicating liquors or other valuable thing, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than \$50.00 nor more than \$100.00.

(Code 1907, § 6808; Code 1923, § 3926; Code 1940, T. 17, § 321.)

Ala. Code 1975 § 17-23-4, AL ST § 17-23-4

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Ala.Code 1975 § 17-23-5



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Code of Alabama Currentness

Title 17. Elections.

Chapter 23. Miscellaneous Offenses. (Refs & Annos)

→ § 17-23-5. **Selling votes.**

Any qualified elector at any election who takes or receives any money or other valuable thing, upon the condition that the same shall be paid at any future time, in exchange for the vote of such elector for any particular candidate, or the promise to vote for any particular candidate, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$50.00 nor more than \$500.00. No witness shall be prosecuted for any offense under this section as to which he testified before the grand jury.

(Code 1907, § 6809; Code 1923, § 3927; Code 1940, T. 17, § 322.)

Ala. Code 1975 § 17-23-5, AL ST § 17-23-5

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Ala.Code 1975 § 17-23-6



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Title 17. Elections.

▣ Chapter 23. Miscellaneous Offenses. (Refs & Annos)

**→ § 17-23-6. Candidate barred by bribery.**

Any candidate for office in any election, upon conviction of bribing or attempting to influence voter under Section 17-23-3, shall in addition to the fine, be declared ineligible for the office to which he was elected for that term.

(Code 1907, § 368; Code 1923, § 458; Code 1940, T. 17, § 141.)

LIBRARY REFERENCES

29 C.J.S. Elections, §§ 216(5), 325.

Ala. Code 1975 § 17-23-6, AL ST § 17-23-6

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Ala.Code 1975 § 17-23-7



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Title 17. Elections.

▣ Chapter 23. Miscellaneous Offenses. (Refs & Annos)

→ § 17-23-7. **Altering or changing vote of elector.**

Any person who fraudulently alters or changes the vote of any elector, by which such elector is prevented from voting as he intended, must, on conviction, be fined not less than \$100.00 nor more than \$1,000.00, and imprisoned in the county jail for not less than 30 days nor more than six months.

(Code 1876, § 4293; Code 1886, § 4188; Code 1896, § 4695; Code 1907, § 6791; Code 1923, § 3909; Code 1940, T. 17, § 305.)

LIBRARY REFERENCES

29 C.J.S. Elections, § 340.

Ala. Code 1975 § 17-23-7, AL ST § 17-23-7

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Ala.Code 1975 § 17-23-8



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Title 17. Elections.

▣ Chapter 23. Miscellaneous Offenses. (Refs & Annos)

**→ § 17-23-8. Disturbing elector on election day.**

Any person who, on election day, disturbs or prevents, or attempts to prevent, any elector from freely casting his ballot must, on conviction, be fined not less than \$500.00 nor more than \$1,000.00, and also sentenced to hard labor for the county, or imprisoned in the county jail for not less than six months nor more than one year.

(Code 1876, § 4294; Code 1886, § 4189; Code 1896, § 4696; Code 1907, § 6792; Code 1923, § 3910; Code 1940, T. 17, § 306.)

#### LIBRARY REFERENCES

29 C.J.S. Elections, § 340.

Ala. Code 1975 § 17-23-8, AL ST § 17-23-8

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Ala.Code 1975 § 17-23-9



Code of Alabama Currentness

Title 17. Elections.

Chapter 23. Miscellaneous Offenses. (Refs & Annos)

~~→§ 17-23-9. Becoming intoxicated about voting place on election day. Repealed by Acts 1977, No. 607, p. 812, §9901, effective January 1, 1980.~~

Ala. Code 1975 § 17-23-9, AL ST § 17-23-9

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Ala.Code 1975 § 17-23-10



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Code of Alabama Currentness

Title 17. Elections.

▣ Chapter 23. Miscellaneous Offenses. (Refs & Annos)

**→ § 17-23-10. Employer intimidating employee.**

Any employer who attempts by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his vote in any election, or who requires or demands an examination or inspection by himself or another of an employee's ballot, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than \$500.00.

(Code 1907, § 6804; Code 1923, § 3922; Code 1940, T. 17, § 317.)

**LIBRARY REFERENCES**

29 C.J.S. Elections, §§ 334(2), 344.

Ala. Code 1975 § 17-23-10, AL ST § 17-23-10

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Ala.Code 1975 § 17-23-11



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Title 17. Elections.

Chapter 23. Miscellaneous Offenses. (Refs & Annos)

**→§ 17-23-11. Coercion of employees of corporations.**

Any officer or agent of a corporation, or other person with authority to discharge employees, who shall attempt by coercion, intimidation, threats to discharge or to lessen the remuneration of any employee, to influence his vote in any election, or who requires or demands an examination or inspection by himself or another of any employee's ballot, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than \$500.00.

(Code 1907, § 6805; Code 1923, § 3923; Code 1940, T. 17, § 318.)

LIBRARY REFERENCES

29 C.J.S. Elections, § 334(2).

Ala. Code 1975 § 17-23-11, AL ST § 17-23-11

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Ala.Code 1975 § 17-23-12



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Title 17. Elections.

Chapter 23. Miscellaneous Offenses. (Refs & Annos)

**→ § 17-23-12. Providing false information to register or vote.**

Any person who knowingly provides false information in order to vote or register to vote in violation of Act 2003-313 shall be guilty of a Class A misdemeanor and upon conviction thereof shall be punished as provided by law.

(Act 2003-313, p. 733, § 11.)

**HISTORY**

Effective date:

The act which added this section is effective June 19, 2003.

**Code Commissioner's Notes**

Act 2003-313 added this section and Sections 17-1-8, 17-10A-1, 17-10A-2, and 17-25-1 through 17-25-4, and amended Sections 17-4-127, 17-4-129, 17-4-130, 17-4-136, 17-4-138, 17-4-150, 17-4-151, 17-4-187, 17-4-210 through 17-4-214, 17-4-230, 17-4-231, 17-4-250, 17-4-252 through 17-4-255, 17-5A-4 through 17-5A-6, 17-7-13, 17-8-43, 17-9-23, 17-10-4, 17-10-5, 17-10-9, 17-10-10, 17-10-23, 17-14-1, 17-14-20, 17-16-31, 17-16-35, 17-16-36, and 17-20-4.

Ala. Code 1975 § 17-23-12, AL ST § 17-23-12

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A.C.A. § 7-1-103

C

West's Arkansas Code Annotated Currentness

Title 7. Elections

Chapter 1. General Provisions (Refs &amp; Annos)

## → § 7-1-103. Misdemeanors

(a) The violation of any of the following shall be deemed misdemeanors punishable as provided in this section:

(1) It shall be unlawful for any person to appoint or offer to appoint anyone to any office or position of trust or for any person to influence, attempt to influence, or offer to influence the appointment, nomination, or election of any person to office in consideration of the support or assistance of the person for any candidate in any election in this state;

(2)(A) It shall be unlawful for any public servant, as defined in § 21-8-402, to devote any time or labor during usual office hours toward the campaign of any other candidate for office or for the nomination to any office; and

(B) It shall be unlawful for any public servant, as defined in § 21-8-402, to circulate an initiative or referendum petition or to solicit signatures on an initiative or referendum petition in any public office of the state, county, or municipal governments of Arkansas or during the usual office hours or while on duty for any state agency or any county or municipal government in Arkansas;

(3) It shall be unlawful for any public servant, as defined in § 21-8-402, to use any office or room furnished at public expense to distribute any letters, circulars, or other campaign materials unless such office or room is regularly used by members of the public for such purposes without regard to political affiliation. It shall further be unlawful for any public servant to use for campaign purposes any item of personal property provided with public funds;

(4) It shall be unlawful for any person to assess any public employee, as defined in § 21-8-402, for any political purpose whatever or to coerce by threats or otherwise any public employee into making a subscription or contribution for any political purpose;

(5) It shall be unlawful for any person employed in any capacity in any department of the State of Arkansas to have membership in any political party or organization which advocates the overthrow of our constitutional form of government;

(6) It shall be unlawful for any campaign banners, campaign signs, or other campaign literature to be placed on any cars, trucks, tractors, or other vehicles belonging to the State of Arkansas or any municipality or county in the state;

(7)(A) All articles, statements, or communications appearing in any newspaper printed or circulated in this state or on radio, television, or any other electronic medium intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words "Paid Political Advertisement" or "Paid Political Ad".

(B) Both the persons placing and the persons publishing the articles, statements, or communications shall be

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A.C.A. § 7-1-103

responsible for including the required disclaimer;

(8) Repealed by Acts of 1999, Act 1525, § 1, eff. July 30, 1999.

(9)(A) No election official acting in his official capacity shall do any electioneering on any election day or any day on which early voting is allowed. Except as provided in subdivisions (B) and (C) of this subdivision (a)(9), no person shall hand out or distribute or offer to hand out or distribute any campaign literature or any literature regarding any candidate or issue on the ballot, solicit signatures on any petition, solicit contributions for any charitable or other purpose, or do any electioneering of any kind whatsoever in the building or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the polling place on election day.

(B) During early voting days, no person shall hand out or distribute or offer to hand out or distribute any campaign literature or any literature regarding any candidate or issue on the ballot, solicit signatures on any petition, solicit contributions for any charitable or other purpose, or do any electioneering of any kind whatsoever during early voting hours in the building or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the early voting site nor engage in those activities with persons standing in line to vote whether within or without the courthouse.

(C) When the early voting occurs at a facility other than the county clerk's office, no person shall hand out or distribute or offer to hand out or distribute any campaign literature or any literature regarding any candidate or issue on the ballot, solicit signatures on any petition, solicit contributions for any charitable or other purpose, or do any electioneering of any kind whatsoever in the building or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the polling place;

(10) No election official shall perform any of the duties of the position before taking and subscribing to the oath provided for in § 7-4-110;

(11) No person applying for a ballot shall swear falsely to any oath administered by the election officials with reference to his or her qualifications to vote;

(12) No person shall willfully cause or attempt to cause his own name to be registered in any other election precinct than that in which he is or will be before the next ensuing election qualified as an elector;

(13) During any election, no person shall remove, tear down, or destroy any booths or supplies or other conveniences placed in any booth or polling site for the purpose of enabling the voter to prepare his ballot;

(14) No person shall take or carry any ballot obtained from any election official outside of the polling room or have in his possession outside of the polling room before the closing of the polls any ballot provided by any county election commissioners;

(15) No person shall furnish a ballot to any elector who cannot read informing him that it contains a name or names different from those which are written or printed thereon or shall change or mark the ballot of any elector who cannot read so as to prevent the elector from voting for any candidate, act, section, or constitutional amendment as the elector intended;

(16) No election official or other person shall unfold a ballot or without the express consent of the voter ascertain or attempt to ascertain any vote on a ballot before it is placed in the ballot box;

(17) No person shall print or cause to be printed any ballot for any election held under this act with the names of

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A.C.A. § 7-1-103

the candidates appearing thereon in any other or different order or manner than provided by this act;

(18) No election official shall permit the vote of any person to be cast in any election precinct in this state in any election legally held in this state when the person does not appear in person at the election precinct and actually cast the vote. This subdivision shall not apply to persons entitled to cast absentee ballots;

(19)(A) No person shall vote or offer to vote more than one (1) time in any election held in this state, either in person or by absentee ballot, or shall vote in more than one (1) election precinct in any election held in this state.

(B) No person shall cast a ballot or vote in the preferential primary of one (1) political party and then cast a ballot or vote in the general primary of another political party in this state;

(20) No person shall:

(A) Vote, knowing himself not to be entitled to vote;

(B) Vote more than once at any election, or knowingly cast more than one (1) ballot, or attempt to do so;

(C) Alter or attempt to alter any ballot after it has been cast;

(D) Add or attempt to add any ballot to those legally polled at any election either by fraudulently introducing it into the ballot box before or after the ballots have been counted or at any other time or in any other manner with the intent or effect of affecting the count or recount of the ballots;

(E) Withdraw or attempt to withdraw any ballot lawfully polled with the intent or effect of affecting the count or recount of the ballots; or

(F) In any manner interfere with the officials lawfully conducting the election or the canvass or with the voters lawfully exercising their right to vote at the election;

(21) No person shall make any bet or wager upon the result of any election in this state;

(22) No election official, poll watcher, or any other person in or out of this state in any primary, general, or special election in this state shall divulge to any person the results of any votes cast for any candidate or on any issue in the election until after the closing of the polls on the day of the election. The provisions of this subdivision (22) shall not apply to any township or precinct in this state in which all of the registered voters therein have voted prior to the closing of the polls in those instances where there are fifteen (15) or fewer registered voters in the precinct or township; and

(23) Any person, election official, county clerk, or deputy clerk who violates any provisions of the absentee voting laws, § 7-5-401 et seq., shall be punished as provided in this section.

(b)(1) Except as otherwise provided, the violation of any provision of this section shall be a Class A misdemeanor.

(2)(A) Any person convicted under the provisions of this section shall thereafter be ineligible to hold any office or employment in any of the departments in this state.

(B)(i) If any person is convicted under the provisions of this section while employed by any of the departments of this state, he shall be removed from employment immediately.

(ii) If any person is convicted under the provisions of this section while holding public office, the conviction

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A.C.A. § 7-1-103

shall be deemed a misfeasance and malfeasance in office and shall subject the person to impeachment.

(c) Any violation of this act not covered by this section and § 7-1-104 shall be considered a Class A misdemeanor and shall be punishable as such.

Acts of 1969, Act 465, Art. 11, § 4; Acts of 1970 (Ex. Sess.), Act 3, § 1; Acts of 1971, Act 261, § 24; Acts of 1981, Act 327, § 1; Acts of 1987, Act 395, § 1; Acts of 1989, Act 505, § 2; Acts of 1991, Act 241, § 2; Acts of 1991, Act 786, § 4; Acts of 1995, Act 497, § 1; Acts of 1995, Act 1085, § 1; Acts of 1997, Act 445, § 2; Acts of 1997, Act 1121, § 1; Acts of 1999, Act 553, § 1, eff. July 30, 1999; Acts of 1999, Act 1525, § 1, eff. July 30, 1999; Acts of 2001, Act 795, § 1, eff. Aug. 13, 2001; Acts of 2001, Act 926, § 1, eff. Aug. 13, 2001; Acts of 2001, Act 1839, § 1, eff. April 20, 2001; Acts of 2005, Act 1284, § 1, eff. Aug. 12, 2005.

Formerly A.S.A. 1947, § 3-1104.

#### CROSS REFERENCES

Arkansas ethics commission, see § 7-6-217.

Campaign practices pledge, falsification, see § 7-6-102.

Citizen complaints filed with Arkansas Ethics Commission, see § 7-6-218.

Classification of offenses, determinate sentencing, misdemeanors and felonies, see § 5-4-401.

Election and voter registration law violations, see § 7-4-118.

Fines, restitution and imprisonment, punishment for misdemeanors and felonies generally, see § 5-4-104.

State Board of Election Commissioners; members; officers; meetings, see § 7-4-101.

#### LIBRARY REFERENCES

Elections ↪332.

Westlaw Key Number Search: 144k332.

C.J.S. Elections § 353.

#### NOTES OF DECISIONS

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## A.C.A. § 7-1-103

## 1. Electioneering

Evidence in proceeding alleging abridgment of right to vote established that county election officials did not prohibit voters from carrying voting aids into polling place but only that officials complied with Arkansas statute prohibiting handing out or distributing of campaign literature within 100 feet of polling place on election day. A.C.A. § 7-1-103(9). *McGruder v. Phillips County Election Com'n*, 1988, 850 F.2d 406. Counties ⤵ 38

## 2. Waiver of secrecy

Where it was impossible in primary election contest to identify ballot of voter, whose vote was challenged on ground that he had voted in wrong precinct, because his ballot stub could not be found, court properly permitted voter to waive secrecy of his ballot and state what candidate he voted for. *Wood v. Brown*, 1962, 235 Ark. 258, 235 Ark. 500, 361 S.W.2d 67. Elections ⤵ 154(10)

## 3. Domicile

Intention of a person as to where he resides is a question of fact. *Phillips v. Melton*, 1953, 222 Ark. 162, 257 S.W.2d 931. Domicile ⤵ 11

Where contestee in primary election contest questioned votes of two voters, who were husband and wife, and proved that they had been living in another state for nine years before election, trial court properly refused to allow contestant to show that voters had subjective intent to maintain residence in county of election, since proffered proof would not have established voters' right to vote in that county. *Wood v. Brown*, 1962, 235 Ark. 258, 235 Ark. 500, 361 S.W.2d 67. Elections ⤵ 154(10)

In election contest involving office of school director, evidence was sufficient to support finding that certain voters had not abandoned domicile in school district, even though they were living in another city. Ark.Stats. §§ 80-311, 80-318, 80-321. *Phillips v. Melton*, 1953, 222 Ark. 162, 257 S.W.2d 931. Elections ⤵ 295(1)

## 4. Betting on elections

Exceptionally strong case is made in primary election contest when losing candidate proves that election judge bet on outcome in violation of statutes. Ark.Stats. §§ 3-704, 3-801 et seq., 3-1516. *Wood v. Brown*, 1962, 235 Ark. 258, 235 Ark. 500, 361 S.W.2d 67. Elections ⤵ 154(10)

Betting on results of elections, including primary elections, is illegal and void, Crawford & Moses' Dig. § 3890. *Williams v. Kagy*, 1928, 176 Ark. 484, 3 S.W.2d 332. Gaming ⤵ 5

Wagers upon elections, then pending, are calculated to endanger the peace and harmony of society, and have a corrupting influence on the public morals, and have uniformly been considered as contrary to sound policy. *Jeffrey v. Ficklin*, 1841, 3 Ark. 227, 36 Am.Dec. 456, Unreported. Elections ⤵ 315

## 5. Availability of ballots

When ballots are not available in primary election contest, electors may be called to testify for whom they voted. *Wood v. Brown*, 1962, 235 Ark. 258, 235 Ark. 500, 361 S.W.2d 67. Elections ⤵ 154(10)

## 6. Intimidation of voter

A.C.A. § 7-1-103

Where voter on entering polling place told election judge that she was going to vote for one candidate and election judge told her that her husband had voted for another candidate and that her candidate would "tear up our school" and, as a result, voter cast her ballot for candidate recommended by election judge, discarding her vote was proper. Ark.Stats. § 3-1415. *Phillips v. Melton*, 1953, 222 Ark. 162, 257 S.W.2d 931. Elections ⇨ 227(9)

#### 7. Unlawful voting

Contention that voter improperly cast absentee ballot because he allegedly was not unavoidably absent from his precinct on election day was presented too late, where raised for first time on appeal and long after time for filing complaint in primary election contest. *Wood v. Brown*, 1962, 235 Ark. 258, 235 Ark. 500, 361 S.W.2d 67. Elections ⇨ 154(6)

#### 8. Unofficial ballots

Complete lists of all primary election candidates for each state, district and county office, distributed at political meeting by defendant telling audience for whom to vote in each case, were unofficial "ballots" within statute prohibiting distribution of "ballots" outside of ballots ordered for use in election for purpose of instructing voters how to vote, notwithstanding that official ballots were printed and that lists were mimeographed, and that lists did not have official designation as ballot to be used in Democratic Primary appearing on official ballots, and that one office on list appeared at different place than on official ballot. *Pope's Dig. § 4873. Branton v. State*, 1949, 214 Ark. 861, 218 S.W.2d 690, certiorari denied 70 S.Ct. 155, 338 U.S. 878, 94 L.Ed. 538. Elections ⇨ 320

#### 9. Offenses by officers

Granting of recount in primary election contest does not violate rule that voters are not to be disfranchised by misconduct of election official. *Wood v. Brown*, 1962, 235 Ark. 258, 235 Ark. 500, 361 S.W.2d 67. Elections ⇨ 154(2)

*Kirby's Dig. § 2825* creates two separate offenses, one for making a false count of the ballots and one for falsely certifying the election returns. *State v. Doughty*, 1918, 134 Ark. 435, 204 S.W. 968. Elections ⇨ 314

Falsifying election returns and making a false count of votes held separate offenses under Acts 1909, p. 507, § 4, making it a felony to falsify returns or make a false count of ballots. *Kelly v. State*, 1912, 102 Ark. 651, 145 S.W. 556. Elections ⇨ 314

Under Acts 1909, c. 165, section 4, providing that any judge or clerk who shall falsify the "returns" of a primary election shall be deemed guilty of a felony, etc., the returns consist of the poll books in which is entered the certificate of the officer conducting the election, together with a list of voters and one or more of the tally sheets, which are required to be carefully enveloped, sealed and delivered to the officer or board designated by the statute. *Kelly v. State*, 1912, 102 Ark. 651, 145 S.W. 556. Elections ⇨ 314

Under the primary election law, Acts 1909, c. 165, section 4, the offenses of falsifying the returns of a primary election and of knowingly making a false count of the ballots cast are separate and distinct. *Kelly v. State*, 1912, 102 Ark. 651, 145 S.W. 556. Elections ⇨ 314

*Kirby's Digest, § 1667*, imposing a penalty upon any judge or clerk of any election who "shall neglect, improperly delay or refuse to perform any of the duties required by law," etc., is inapplicable to school elections not conducted under the general election law, as provided by *Kirby's Digest, § 7591. Brown v. Haselman*, 1906, 79 Ark. 213, 95 S.W. 136. Elections ⇨ 323

In a declaration against a judge of elections for the statutory penalty for permitting an elector to vote twice, it is

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## A.C.A. § 7-1-103

sufficient to charge that he did so "intentionally, wrongfully, and from motives of partiality, contrary to the form," etc., without averring the name of the person for whom the elector voted. Kirkpatrick v. Stewart, 1858, 19 Ark. 695, Unreported. Elections ⇨ 323

In a declaration for a penalty, under Eng.Dig. c. 61, § 28, it is sufficient to charge that the defendant took out the ballots and counted them before the polls were closed and the poll books signed, "intentionally, knowingly, and contrary to the form," etc., without averring that he acted corruptly and maliciously. Kirkpatrick v. Stewart, 1858, 19 Ark. 695, Unreported. Elections ⇨ 323

A declaration in an action of debt against a judge of elections, under Eng.Dig. c. 61, § 28, to recover the penalty prescribed for neglect of duty and misbehavior in office in appointing a minor clerk, is sufficient if it charges that he did so "knowingly, willfully, wrongfully, and contrary to the form," etc., without charging that he did so corruptly and maliciously. Kirkpatrick v. Stewart, 1858, 19 Ark. 695, Unreported. Elections ⇨ 323

## 10. Transportation of ballots

Statute in effect at time of election did not criminalize allegedly improper transportation of ballots by sheriff who was candidate for reelection in contested race, but rather merely noted that sheriff running for reelection in contested election would be "disqualified" from carrying out duties to deliver election supplies; statute did not specifically prohibit any act on part of sheriff. A.C.A. § 7-5-211(a) (1996). State ex rel. Sargent v. Lewis, 1998, 979 S.W.2d 894, 335 Ark. 188. Elections ⇨ 314

Allegations that sheriff violated election laws by delivering ballots to precinct himself when he was candidate for re-election did not create forfeiture of office, by law, so as to support usurpation action, absent any actual conviction of election law violations. A.C.A. §§ 7-1-103(28, 29), 7-1-104, 7-5-211, 16-118-105. Sargent v. Foster, 1998, 966 S.W.2d 263, 332 Ark. 608. Sheriffs And Constables ⇨ 6

## 11. Sufficiency of evidence

In prosecution for introducing fraudulent ballots in primary election with intent to affect count or recount of ballots, evidence on questions whether defendant had clipped name of unopposed candidate for township committeeman from certain ballots, and had encouraged certain voter to mark ballot for certain candidates was insufficient for jury. Ark.Stats. § 3-1525. Williams v. State, 1953, 222 Ark. 458, 261 S.W.2d 263. Elections ⇨ 330

## A.C.A. § 7-1-103, AR ST § 7-1-103

Current through 2006 First Extraordinary Session of the 85th General Assembly, including changes made by the Arkansas code Revision Commission as a result of the 2006 First Extraordinary Session.

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A.C.A. § 7-1-104

**C**

West's Arkansas Code Annotated Currentness

Title 7. Elections

Chapter 1. General Provisions (Refs &amp; Annos)

**→ § 7-1-104. Felonies**

(a) The following offenses shall be deemed felonies punishable as provided in this section:

- (1) No person shall falsely make or fraudulently destroy any certificate of nominations or any part thereof, file any certificate of nominations knowing the certificate or any part thereof to be false, suppress any nomination or any part thereof which has been filed, or forge or falsely write the name or initials of any election official on any ballot;
- (2) No public official or other person shall in any manner willfully or corruptly permit any person not entitled to register for the purpose of voting to register, nor shall a public official or other person forge or attempt to forge a registration;
- (3) No person shall vote in any election in the state unless the person is a qualified elector of this state and has registered to vote in the manner provided by law;
- (4) It shall be unlawful for any person to offer, accept, receive, or pay any person any money, goods, wares, or merchandise or solicit any money, goods, wares, or merchandise for the purpose of influencing his or her vote during the progress of any election in this state;
- (5) It shall be unlawful for any person to make any threat or attempt to intimidate any elector or the family, business, or profession of the elector;
- (6) It shall be unlawful for any person to prevent or to interfere with any qualified elector from voting at any election or to attempt to prevent or interfere with any qualified elector from voting at any election, provided that this subdivision (a)(6) shall not prohibit good faith challenges of ballots or voters according to law by candidates, authorized representatives of candidates, political parties, or ballot issues;
- (7) It shall be unlawful for any person to attend any polling site on election day and hand out or give away any campaign cards, placards, or other articles for the purpose of influencing the electors to vote for any candidate, except in the manner now provided by law;
- (8) No person shall tamper with a voting machine or fraudulently affect or attempt to affect its results;
- (9) No person may cast a ballot in more than one (1) party primary election on the same day in this state or for candidates for more than one (1) political party;
- (10) No person shall vote in any election more than one (1) vote;
- (11) No person shall vote or attempt to vote other than his or her legal ballot;

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A.C.A. § 7-1-104

(12) No election official shall knowingly permit any person to vote other than his or her legal ballot in any election;

(13) No election official or other person shall fraudulently permit any person to vote illegally, refuse the vote of any qualified elector, or cast up or make a false return of any election;

(14) No election official or other person shall willfully make a false count of any election ballots or falsely or fraudulently certify the returns of any election;

(15) No person shall fraudulently change, alter, or obliterate the poll books or books of any election or break any seals upon any ballot box, voting machine, or stub box, except as authorized by law;

(16) No person shall contrive, alter, forge, counterfeit, detain, mutilate, steal, secrete, or destroy any election returns or election materials for the purpose of hindering or preventing or falsely reporting a tabulation or check of the returns; and

(17) Any person who violates the provisions of § 7-5-702 or who shall disclose how any voter may have voted unless compelled to do so in a judicial proceeding shall be deemed guilty of a Class D felony and punished as provided in this section.

(b)(1) Any person convicted of a felony as defined in this section shall be guilty of a Class D felony.

(2)(A) Any person convicted of a felony as defined in this section shall be barred from holding public office or employment in any of the departments of the state from the date of his conviction.

(B)(i) If the person is employed by any of the departments of this state at the time of his conviction, he shall be removed from employment immediately.

(ii) If any person is convicted under the provisions of this section while holding public office, the conviction shall be deemed a misfeasance and malfeasance in office and shall subject the person to impeachment.

Acts of 1969, Act 465, Art. 11, § 5; Acts of 1995, Act 497, § 1; Acts of 1995, Act 1085, § 1; Acts of 1997, Act 445, § 3; Acts of 1999, Act 655, § 1, eff. July 30, 1999; Acts of 2001, Act 1553, § 17, eff. Aug. 13, 2001; Acts of 2003, Act 1458, § 1, eff. July 16, 2003; Acts of 2005, Act 1677, § 1, eff. Aug. 12, 2005.

Formerly A.S.A. 1947, § 3-1105.

#### HISTORICAL AND STATUTORY NOTES

##### 2005 Legislation

Technical changes were made to conform with the official Arkansas Code of 1987 as approved by the Arkansas Code Revision Commission.

#### CROSS REFERENCES

Campaign practices pledge, falsification, see § 7-6-102.

Classification of offenses, determinate sentencing, misdemeanors and felonies, see § 5-4-401.

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A.C.A. § 7-1-104

Fines, restitution and imprisonment, punishment for misdemeanors and felonies generally, see § 5-4-104.

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Elections ↻332.  
Westlaw Key Number Search: 144k332.  
C.J.S. Elections § 353.

#### NOTES OF DECISIONS

**Evidence 7**  
**Federal law 5**  
**Indictment 6**  
**Instructions 8**  
**Intimidation and violence 2**  
**Penalties and actions 4**  
**Persons liable 3**  
**Vote buying 1**

##### 1. Vote buying

Evidence that defendant paid voter \$50 to obtain voter's blank absentee ballot and absentee voter statement was sufficient to support defendant's conviction of paying or offering to pay voter for voting, though voter did not personally complete absentee ballot by marking her candidate selections. Voting Rights Act of 1965, § 11(c), 42 U.S.C.A. § 1973i(c). U.S. v. Campbell, 1988, 845 F.2d 782, rehearing denied, certiorari denied 109 S.Ct. 490, 488 U.S. 965, 102 L.Ed.2d 527. Elections ↻ 316

Where it had never been suggested that all or substantial number of contributors to political party made their contributions with end in view of having their money spent to violate election laws, court could not presume that they did so and disclosure of all contributors and amount of all contributions was not relevant or justified, even if prosecuting attorney's investigation of vote buying might be advanced if he knew that certain individuals had made contributions to account which prosecuting attorney sought to inspect and copy. Ark.Stats. § 43-801 et seq.; U.S.C.A.Const. Amends. 1, 14. Pollard v. Roberts, 1968, 283 F.Supp. 248, affirmed 89 S.Ct. 47, 393 U.S. 14, 21 L.Ed.2d 14. Elections ↻ 121(1)

Section 18, Act Feb. 5, 1913, Acts 1913, p. 74, making it unlawful to give or promise an office or anything of value for political support, aid, or vote of any person, held not to require the promise to be made to person to whom the office, etc., is to be given. Wright v. State, 1918, 133 Ark. 76, 202 S.W. 236. Elections ↻ 316

##### 2. Intimidation and violence

The constitutional requirements that popular elections shall be "by ballot" and be "free and equal," Art. 3, secs. 2, 3, are violated by a systematic plan to coerce voters to deposit their ballots in such manner as to disclose their contents to bystanders. Jones v. Glidewell, 1890, 53 Ark. 161, 13 S.W. 723. Elections ↻ 320

The purpose of statute prohibiting distribution of ballots outside of ballots ordered for use in election for purpose of instructing voters how to vote, was to prevent intimidation of voters and use of undue influence in elections. Pope's Dig. § 4873. Branton v. State, 1949, 214 Ark. 861, 218 S.W.2d 690, certiorari denied 70 S.Ct. 155, 338 U.S. 878, 94 L.Ed. 538. Elections ↻ 320

##### 3. Persons liable

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## A.C.A. § 7-1-104

The governor of a state is not "an officer of election," within the meaning of Act May 31, 1870, § 22, 16 Stat. 145, which makes it criminal for any "election officer" fraudulently to make any false certificate of the result of any congressional election. *U.S. v. Clayton*, 1871, 25 F.Cas. 458, 4 Chi.Leg.N. 50, 0 No. 14814. Elections ⇨ 322

## 4. Penalties and actions

Allegations that sheriff violated election laws by delivering ballots to precinct himself when he was candidate for re-election did not create forfeiture of office, by law, so as to support usurpation action, absent any actual conviction of election law violations. A.C.A. §§ 7-1-103(28, 29), 7-1-104, 7-5-211, 16-118-105. *Sargent v. Foster*, 1998, 966 S.W.2d 263, 332 Ark. 608. *Sheriffs And Constables* ⇨ 6

Kirby's Digest, § 1667, imposing a penalty upon any judge or clerk of any election who "shall neglect, improperly delay or refuse to perform any of the duties required by law," etc., is inapplicable to school elections not conducted under the general election law, as provided by Kirby's Digest, § 7591. *Brown v. Haselman*, 1906, 79 Ark. 213, 95 S.W. 136. Elections ⇨ 323

In a declaration against a judge of elections for the statutory penalty for permitting an elector to vote twice, it is sufficient to charge that he did so "intentionally, wrongfully, and from motives of partiality, contrary to the form," etc., without averring the name of the person for whom the elector voted. *Kirkpatrick v. Stewart*, 1858, 19 Ark. 695, Unreported. Elections ⇨ 323

A declaration in an action of debt against a judge of elections, under Eng.Dig. c. 61, § 28, to recover the penalty prescribed for neglect of duty and misbehavior in office in appointing a minor clerk, is sufficient if it charges that he did so "knowingly, willfully, wrongfully, and contrary to the form," etc., without charging that he did so corruptly and maliciously. *Kirkpatrick v. Stewart*, 1858, 19 Ark. 695, Unreported. Elections ⇨ 323

In a declaration for a penalty, under Eng.Dig. c. 61, § 28, it is sufficient to charge that the defendant took out the ballots and counted them before the polls were closed and the poll books signed, "intentionally, knowingly, and contrary to the form," etc., without averring that he acted corruptly and maliciously. *Kirkpatrick v. Stewart*, 1858, 19 Ark. 695, Unreported. Elections ⇨ 323

## 5. Federal law

The laws of the United States concerning elections at which congressmen are elected are paramount, and Mansf.Dig.Ark. § 2694, providing that "the judges of election shall securely envelop all the ballots which may have been received under seal, and return the same to the clerk of the proper county, which shall in no event be opened except in case of a contested election," cannot be held to justify the refusal of the clerk to produce the ballots before the grand jury of the United States, pending an investigation into alleged violations of federal election laws. *In re Massey*, 1890, 45 F. 629. Elections ⇨ 326

The crime of destroying the ballot box used and the ballot cast at an election for congressman and presidential electors can be punished by the state as well as the United States. *Mason v. State*, 1892, 55 Ark. 529, 18 S.W. 827. Elections ⇨ 325

The courts of the State have jurisdiction to punish the fraudulent destruction of ballots cast for electors of President and Vice President of the United States, notwithstanding a representative in congress is also voted for. *Mason v. State*, 1892, 55 Ark. 529, 18 S.W. 827. Elections ⇨ 325

## 6. Indictment

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An indictment under Kirby's Dig. § 2825, charging election judges with making a false count of ballots, is not insufficient because it fails to set out the particular manner in which the false count was made or the names of the particular voters whose ballots were miscounted. *State v. Doughty*, 1918, 134 Ark. 435, 204 S.W. 968. Elections ⤵ 328(3)

Such indictment held not insufficient because it fails to specify whether the ballots themselves were miscounted or whether there was a miscount of the number of votes. *State v. Doughty*, 1918, 134 Ark. 435, 204 S.W. 968. Elections ⤵ 328(3)

An indictment for making false election returns under Kirby's Dig. § 2825, need not allege that the false certificate was delivered to the election commissioners; such delivery not being essential to the offense. *State v. Doughty*, 1918, 134 Ark. 435, 204 S.W. 968. Elections ⤵ 328(3)

In prosecution under Kirby's Dig. § 2783, for suppressing certificate of nomination of a candidate for sheriff, indictment held to sufficiently charge that petition of necessary number of qualified electors was filed with defendants, election commissioners, and that they suppressed the same. *State v. Hunter*, 1918, 134 Ark. 443, 204 S.W. 308. Elections ⤵ 328(3)

An indictment under Kirby's Dig. § 2783, as to suppression of certificate of nomination, was sufficient although it did not show that certificate of nomination was authenticated otherwise than by signatures of electors in view of section 2777. *State v. Hunter*, 1918, 134 Ark. 443, 204 S.W. 308. Elections ⤵ 328(3)

#### 7. Evidence

Convictions for giving false information about names to establish eligibility to vote and aiding and abetting others in that offense were supported by evidence that defendants completed absentee ballot applications in the names of other registered voters, that one of them forged voters' signatures on some applications and others marked some applications with X's even though voters were able to sign their own names, and that ballots were voted in favor of candidate for whom defendants were working, without knowledge or permission of the voters; evidence as to one defendant's intent was sufficient despite contention that she was trying to help registered voters obtain the absentee ballots. 18 U.S.C.A. § 2; Voting Rights Act of 1965, § 11(c, e), as amended, 42 U.S.C.A. § 1973i(c, e). *U.S. v. Boards*, 1993, 10 F.3d 587, rehearing denied, certiorari denied 114 S.Ct. 2674, 512 U.S. 1205, 129 L.Ed.2d 810. Elections ⤵ 329

In prosecution for introducing fraudulent ballots in primary election with intent to affect count or recount of ballots, evidence on questions whether defendant had clipped name of unopposed candidate for township committeeman from certain ballots, and had encouraged certain voter to mark ballot for certain candidates was insufficient for jury. Ark.Stats. § 3-1525. *Williams v. State*, 1953, 222 Ark. 458, 261 S.W.2d 263. Elections ⤵ 330

In a prosecution for making a promise as consideration for political support in violation of section 18, Act Feb. 5, 1913, Acts 1913, p. 74, evidence held to sustain a conviction. *Wright v. State*, 1918, 133 Ark. 76, 202 S.W. 236. Elections ⤵ 329

Evidence held insufficient to show that accused falsified primary election returns. *Kelly v. State*, 1912, 102 Ark. 651, 145 S.W. 556. Elections ⤵ 329

#### 8. Instructions

In a prosecution for making a promise as consideration for political support in violation of section 18, Act Feb. 5, 1913, Acts 1913, p. 74, held that the court correctly interpreted the statute and correctly declared the law in its

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rulings on the instructions. *Wright v. State*, 1918, 133 Ark. 76, 202 S.W. 236. Elections ↪ 330

A.C.A. § 7-1-104, AR ST § 7-1-104

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C.G.S.A. § 9-350

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

→ § 9-350. Failure to warn election

Any person whose duty it is to warn any election and who fails to warn such election as required by law shall be fined not more than five hundred dollars.

CREDIT(S)

(1949 Rev., § 1118; 1953, Supp. § 671c; 1955, Supp. § 827d.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

Derivation:

1902 Rev., § 1704.

1918 Rev., § 653.

1930 Rev., § 663.

CROSS REFERENCES

Procedure upon summons for infraction or violation under this section, payment by mail, and procedure at trial, see C.G.S.A. § 51-164n.

Publication of notices, see C.G.S.A. § 1-2.

Warning of elections, see C.G.S.A. § 9-226.

LIBRARY REFERENCES

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Elections ↪ 314, 323.

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C.J.S. Elections §§ 327, 355.

C. G. S. A. § 9-350, CT ST § 9-350

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C.G.S.A. § 9-351

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

→ § 9-351. Delay in counting or declaring vote

Any moderator of any election or voting district who, wilfully and without cause, delays the counting or declaration of the number of votes cast shall be fined not less than one hundred dollars nor more than five hundred dollars or be imprisoned not less than six months nor more than one year.

CREDIT(S)

(1949 Rev., § 1119; 1953, Supp. § 672c; 1955, Supp. § 828d.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Derivation:**

1902 Rev., § 1705.

1918 Rev., § 654.

1930 Rev., § 664.

CROSS REFERENCES

Canvass and returns, see C.G.S.A. § 9-307 et seq.

Contests, see C.G.S.A. § 9-324.

LIBRARY REFERENCES

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Elections ↪ 314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

C. G. S. A. § 9-351, CT ST § 9-351

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C.G.S.A. § 9-352

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs &amp; Annos)

**→§ 9-352. Tampering with machine by election official**

Any election official who, with intent to cause or permit any voting machine to fail to correctly register all votes cast thereon, tampers with or disarranges such machine in any way or any part or appliance thereof, or causes such machine to be used or consents to its being used for voting at any election with knowledge of the fact that the same is not in order, or not perfectly set and adjusted to correctly register all votes cast thereon, or who, for the purpose of defrauding or deceiving any elector or of causing it to be doubtful for what candidate or candidates or proposition any vote is cast, or causing it to appear upon such machine that votes cast for one candidate or proposition were cast for another candidate or proposition, removes, changes or mutilates any ballot label on such machine or any part thereof, shall be fined not more than one thousand dollars or imprisoned not more than five years or both.

CREDIT(S)

(1949 Rev., § 1220; 1953, Supp. § 673c; 1955, Supp. § 829d; 1987, P.A. 87-382, § 36, eff. June 23, 1987.)

## HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Amendments**

**1987 Amendment.** 1987, P.A. 87-382, § 36, deleted references to "ticket" throughout the section, and made corresponding language and punctuation changes.

**Derivation:**

1903, P.A. ch. 207.

1909, P.A. ch. 262.

1918 Rev., § 731.

1930 Rev., § 742.

## CROSS REFERENCES

Voting machines, see C.G.S.A. Const. Art. 6, § 5; C.G.S.A. § 9-238 et seq.

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Elections ↪314, 323, 332.

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C.G.S.A. § 9-353

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

→ § 9-353. False return

Any election official who, at the close of the polls, purposely causes the vote registered on the machine to be incorrectly taken down as to any candidate or proposition voted on, or who knowingly causes to be made or signed any false statement, certificate or return of any kind, of such vote, or who knowingly consents to any such act, shall be fined not more than one thousand dollars or imprisoned not more than five years or both.

CREDIT(S)

(1949 Rev., § 1221; 1953, Supp. § 674c; 1955, Supp. § 830d.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

Derivation:

1903, P.A. ch. 207.

1909, P.A. ch. 262.

1918 Rev., § 732.

1930 Rev., § 743.

CROSS REFERENCES

Voting machines, see C.G.S.A. Const. Art. 6, § 5; C.G.S.A. § 9-238 et seq.

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Elections ↪314.

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C.J.S. Elections § 327.

C. G. S. A. § 9-353, CT ST § 9-353

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C.G.S.A. § 9-354

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Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

**→ § 9-354. Improper printing of ballot label**

Any person who prints or causes to be printed upon any official ballot label the name of any person not a candidate of a party whose name is printed at the head of the column containing such nominees or who prints or causes to be printed any authorized ballot label in any manner other than that prescribed by the Secretary of the State shall be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned not more than five years or be both fined and imprisoned.

CREDIT(S)

(1953, Supp. § 675c; 1955, Supp. § 831d.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Derivation:**

1953, Supp. § 675c.

LIBRARY REFERENCES

2002 Main Volume

Elections  309.

Westlaw Topic No. 144.

C.J.S. Elections §§ 324, 334.

C. G. S. A. § 9-354, CT ST § 9-354

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C.G.S.A. § 9-355

**C**

Connecticut General Statutes Annotated Currentness

Title 9. Elections

▣ Chapter 151. Elections: Prohibited Acts and Penalties (Refs &amp; Annos)

**→ § 9-355. Official neglect or fraud**

Any person who, without reasonable cause, neglects to perform any of the duties required of him by the laws relating to elections or primaries and for which neglect no other punishment is provided, and any person who is guilty of fraud in the performance of any such duty, and any person who makes any unlawful alteration in any list required by law, shall be fined not more than three hundred dollars or be imprisoned not more than one year or be both fined and imprisoned. Any official who is convicted of fraud in the performance of any duty imposed upon him by any law relating to the registration or admission of electors or to the conduct of any election shall be disfranchised. Any public officer or any election official upon whom any duty is imposed by part I of chapter 147 and sections 9-308 to 9-311, inclusive, who wilfully omits or neglects to perform any such duty or does any act prohibited therein for which punishment is not otherwise provided shall be fined not more than two thousand dollars or imprisoned not more than three years or both.

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(1949 Rev., §§ 1121, 1217; 1953, Supp. § 676c; 1955, Supp. § 832d; 1980, P.A. 80-432, § 1, eff. Oct. 1, 1980.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Amendments**

**1980 Amendment.** 1980, P.A. 80-432, § 1, inserted, in the first sentence, "or primaries" following "laws relating to elections".

**Derivation:**

1902 Rev., § 1709.

1918 Rev., § 658.

1930 Rev., § 668.

CROSS REFERENCES

Elections and primaries, contests and complaints in election of state officers and judges of probate, see C.G.S.A. § 9-324.

Violation in casting of absentee ballot at referendum, complaint for relief by aggrieved person, see C.G.S.A. § 9-371b.

Voting errors and election law violations, contests and complaint procedures, see C.G.S.A. § 9-323.

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C.G.S.A. § 9-357

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Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs &amp; Annos)

**→ § 9-357. Fraudulent registration**

Any person who fraudulently procures himself or another to be registered as an elector shall be fined not more than five hundred dollars or imprisoned not more than one year or be both fined and imprisoned.

CREDIT(S)

(1949 Rev., § 1029; 1953, Supp. § 678c; 1955, Supp. § 834d.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Derivation:**

1902 Rev., § 1708.

1918 Rev., § 657.

1930 Rev., § 667.

CROSS REFERENCES

Elections and primaries, contests and complaints in election of state officers and judges of probate, see C.G.S.A. § 9-324.

Violation in casting of absentee ballot at referendum, complaint for relief by aggrieved person, see C.G.S.A. § 9-371b.

Voting errors and election law violations, contests and complaint procedures, see C.G.S.A. § 9-323.

LIBRARY REFERENCES

2002 Main Volume

Elections ↪312.

Westlaw Topic No. 144.

C.J.S. Elections § 326.

C. G. S. A. § 9-357, CT ST § 9-357

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C.G.S.A. § 9-358

**C**

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs &amp; Annos)

**→ § 9-358. False swearing before registrar, moderator, board or State Elections Enforcement Commission**

Any person who, upon oath or affirmation, legally administered, wilfully and corruptly testifies or affirms, before any registrar of voters, any moderator of any election, primary or referendum, any board for admission of electors or the State Elections Enforcement Commission, falsely, to any material fact concerning the identity, age, residence or other qualifications of any person whose right to be registered or admitted as an elector or to vote at any election, primary or referendum is being passed upon and decided, shall be guilty of a class D felony and shall be disfranchised.

CREDIT(S)

(1949 Rev., § 1126; 1953, Supp. § 679c; 1955, Supp. § 835d; 2005, P.A. 05-235, § 8, eff. July 1, 2005; 2006, P.A. 06-196, § 57, eff. June 7, 2006.)

## HISTORICAL AND STATUTORY NOTES

2006 Electronic Pocket Part Update

**Codification**

Section heading was changed to conform to the 2006 Supplement to the Connecticut General Statutes.

**Amendments**

**2005 Amendment.** 2005, P.A. 05-235, § 8, rewrote this section, which prior thereto read:

"Any person who, upon oath or affirmation, legally administered, wilfully and corruptly testifies or affirms, before any registrar of voters or the moderator of any election or any board for admission of electors, falsely, to any material fact concerning the identity, age, residence or other qualifications of any person whose right to be registered or admitted as an elector or to vote at any election is before such registrar, moderator or board for the purpose of being passed upon and decided, shall be imprisoned not more than two years and shall be disfranchised."

**2006 Amendment.** 2006, P.A. 06-196, § 57, substituted "is" for "for the purpose of", and made technical corrections.

2002 Main Volume

**Derivation:**

1945, Supp. § 146h.

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C.G.S.A. § 9-359

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs &amp; Annos)

**→ § 9-359. Absentee ballots**

Any (1) person who executes an absentee ballot for the purpose of informing any other person how he votes, or procures any absentee ballot to be prepared for such purpose, (2) municipal clerk or moderator, elector appointed to count any absentee ballot or other person who wilfully attempts to ascertain how any elector marked his absentee ballot or how it was cast, (3) person who unlawfully opens or fills out, except as provided in section 9-140a with respect to a person unable to write, any elector's absentee ballot signed in blank, (4) person designated under section 9-140a who executes an absentee ballot contrary to the elector's wishes, or (5) person who wilfully violates any provision of chapter 145, [FN1] shall be guilty of a class D felony.

CREDIT(S)

(1949 Rev., § 1149; 1953, Supp. § 680c; 1955, Supp. § 836d; 1974, P.A. 74-96, § 8, eff. Jan. 1, 1975; 1986, P.A. 86-179, § 45, eff. Jan. 1, 1987; 1995, P.A. 95-177, § 4, eff. Jan. 1, 1996.)

[FN1] C.G.S.A. § 9-133f et seq.

## HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Amendments**

**1974 Amendment.** 1974, P.A. 74-96, § 8, substituted, at the end, "guilty of a Class D felony" for "subject to the penalties provided in section 9-306" following "chapter 145, shall be".

**1986 Amendment.** 1986, P.A. 86-179, § 45, changed a citation.

**1995 Amendment.** 1995, P.A. 95-177, § 4, among other changes, inserted subd. (1), (2), (3) and (5) designations and added subd. (4).

**Derivation:**

1935, Supp. § 168c(h).

1943, Supp. § 146g(j).

1945, Supp. § 174h.

## CROSS REFERENCES

Accelerated pretrial rehabilitation, inapplicability to person charged with violation of this section, see C.G.S.A. § 54-56e.

Claimed violations in the casting of absentee ballots, see C.G.S.A. § 9-323.

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C.G.S.A. § 9-359a

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Chapter 151. Elections: Prohibited Acts and Penalties (Refs &amp; Annos)

**→ § 9-359a. False statement in absentee balloting. Class D felony**

(a) A person is guilty of false statement in absentee balloting when he intentionally makes a false written statement in or on or signs the name of another person to the application for an absentee ballot or the inner envelope accompanying any such ballot, which he does not believe to be true and which statement or signature is intended to mislead a public servant in the performance of his official function.

(b) False statement in absentee balloting is a class D felony.

CREDIT(S)

(1974, P.A. 74-96, § 1, eff. Jan. 1, 1975.)

## CROSS REFERENCES

Accelerated pretrial rehabilitation, inapplicability to person charged with violation of this section, see C.G.S.A. § 54-56e.

Elections and primaries, contests and complaints in election of state officers and judges of probate, see C.G.S.A. § 9-324.

Felony, defined, see C.G.S.A. § 53a-25.

Investigation of violations relating to election, referendum or primary, see C.G.S.A. § 9-7b.

Provisional ballots, applications for, see C.G.S.A. § 9-2321.

Violation in casting of absentee ballot at referendum, complaint for relief by aggrieved person, see C.G.S.A. § 9-371b.

Voting errors and election law violations, contests and complaint procedures, see C.G.S.A. § 9-323.

## ADMINISTRATIVE CODE REFERENCES

Elections Commission, subpoenas, see Regs. Conn. State Agencies, § 9-7b-28.

## LIBRARY REFERENCES

2002 Main Volume

Elections ↪ 216.1, 318, 332.

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C.G.S.A. § 9-360

**C**

Connecticut General Statutes Annotated Currentness

Title 9. Elections

\* Chapter 151. Elections: Prohibited Acts and Penalties (Refs &amp; Annos)

**→§ 9-360. Fraudulent voting**

Any person not legally qualified who fraudulently votes in any town meeting, primary, election or referendum in which the person is not qualified to vote, and any legally qualified person who, at such meeting, primary, election or referendum, fraudulently votes more than once at the same meeting, primary, election or referendum, shall be fined not less than three hundred dollars or more than five hundred dollars and shall be imprisoned not less than one year or more than two years and shall be disfranchised. Any person who votes or attempts to vote at any election, primary, referendum or town meeting by assuming the name of another legally qualified person shall be guilty of a class D felony and shall be disfranchised.

CREDIT(S)

(1949 Rev., §§ 1122, 1125; 1953, Supp. § 681c; 1955, Supp. § 837d; 1982, P.A. 82-176, § 1, eff. July 1, 1982; 2005, P.A. 05-235, § 9, eff. July 1, 2005; 2006, P.A. 06-196, § 58, eff. June 7, 2006.)

## HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Amendments**

2006 Electronic Pocket Part Update

**2005 Amendment.** 2005, P.A. 05-235, § 9, rewrote this section, which prior thereto read:

"Any person not legally qualified who fraudulently votes in any town meeting, primary or election in which he is not qualified to vote, and any legally qualified person who, at such meeting, primary or election, fraudulently votes more than once at the same meeting, primary or election, shall be fined not less than three hundred dollars nor more than five hundred dollars and shall be imprisoned not less than one year nor more than two years and shall be disfranchised. Any person who votes or attempts to vote at any election, primary or town meeting by assuming the name of another who is registered or enrolled, as the case may be, shall be fined five hundred dollars and be imprisoned one year and shall be disfranchised."

**2006 Amendment.** 2006, P.A. 06-196, § 58, made technical corrections.

**1982 Amendment.** 1982, P.A. 82-176, § 1, amended the first sentence by substituting ", primary or" for "or in any" following "in any town meeting", and by inserting "meeting, primary or" following "person who, at such" and following "once at the same"; and amended the second sentence by inserting ", primary" following "vote at any election", and by inserting "or enrolled, as the case may be," following "who is registered".

**Derivation:**

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C.G.S.A. § 9-361

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Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs &amp; Annos)

**→ § 9-361. Primary or enrollment violations**

The following persons shall be guilty of primary or enrollment violations: (1) Any person unlawfully voting or participating or attempting to vote or participate in any primary in which he is not eligible to vote or participate; (2) in towns divided into voting districts, any elector who registers or votes at any primary in a voting district other than the district in which such elector is legally entitled to vote at the time of such primary; (3) any elector who signs the name of another to a written application to register, without the knowledge and consent of the person whose name is signed thereto, or who falsely represents the contents of any written or printed form of application for enrollment with intent to secure the application of an elector for enrollment upon a list other than that of his true political preference; (4) any registrar or deputy registrar of voters who fails to hold sessions as provided in sections 9-51 and 9-53 or who fails to register an elector upon the oral or written application for enrollment of such elector, except as provided by law, or who fails to erase an elector's name as provided in section 9-59 or who registers any elector upon an enrollment list other than that declared by such elector in his application as his political preference, or who removes or erases the name of any elector from any enrollment list except as provided by law; (5) any person who fails to properly serve any notice or citation required by sections 9-60 and 9-61 when directed so to do by any registrar or deputy registrar, or who makes any false return as to any such notice or citation; and (6) any moderator of a primary of the enrolled electors of a specified party, such primary being legally called for the nomination of candidates for any public elective office, who fails to comply with the requirements of chapter 153. [FN1] The penalty for any such violation shall be a fine of not more than one hundred dollars or imprisonment of not more than sixty days, or both, except that any person found to have violated subdivision (1) or (2) of this section shall be guilty of a class D felony and shall be disfranchised.

CREDIT(S)

(1949 Rev., § 1186; 1953, Supp. § 682c; June, 1955, Supp. § 838d; Nov., 1955, Supp. § N114; 1987, P.A. 87-509, § 12, eff. June 24, 1987; 2003, P.A. 03-241, § 16, eff. Jan. 1, 2004; 2005, P.A. 05-235, § 10, eff. July 1, 2005.)

[FN1] C.G.S.A. § 9-372 et seq.

## HISTORICAL AND STATUTORY NOTES

2006 Electronic Pocket Part Update

**Amendments**

**2003 Amendment.** 2003, P.A. 03-241, § 16, deleted "or for the election of delegates to any political convention," following "any public elective office,"; made other nonsubstantive changes.

**2005 Amendment.** 2005, P.A. 05-235, § 10, inserted ", except that any person found to have violated subdivision (1) or (2) of this section shall be guilty of a class D felony and shall be disfranchised".

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C.G.S.A. § 9-362

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**→ § 9-362. Decision of election officials no bar to prosecution**

The decision of the board for admission of electors or of the registrars or of a moderator, as to a person's right to be admitted to the elector's oath, to registration or to cast his vote, shall, in no case, be a bar to a criminal prosecution for procuring himself to be made an elector or to be registered or for voting, without the qualifications required by law.

CREDIT(S)

(1949 Rev., § 1115; 1953, Supp. § 683c; 1955, Supp. § 839d.)

## HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Derivation:**

1902 Rev., § 1692.

1918 Rev., § 648.

1930 Rev., § 660.

## CROSS REFERENCES

Admission of electors, see C.G.S.A. § 9-20.

## LIBRARY REFERENCES

2002 Main Volume

Elections ↪321.

Westlaw Topic No. 144.

C.J.S. Elections § 335.

C. G. S. A. § 9-362, CT ST § 9-362

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C.G.S.A. § 9-363

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Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs &amp; Annos)

**→ § 9-363. Circulation of misleading instructions**

Any person who, with intent to defraud any elector of his vote or cause any elector to lose his vote or any part thereof, gives in any way, or prints, writes or circulates, or causes to be written, printed or circulated, any improper, false, misleading or incorrect instructions or advice or suggestions as to the manner of voting on any machine, the following of which or any part of which would cause any elector to lose his vote or any part thereof, or would cause any elector to fail in whole or in part to register or record the same on the machine for the candidates of his choice, shall be fined not more than five hundred dollars or be imprisoned not more than five years or be both fined and imprisoned.

CREDIT(S)

(1949 Rev., § 1222; 1953, Supp. § 684c; 1955, Supp. § 840d.)

## HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Derivation:**

1902 Rev., § 1710.

1918 Rev., § 659.

1930 Rev., § 669.

## LAW REVIEW AND JOURNAL COMMENTARIES

Corporate assertion of political power. John P. Maloney, 12 Conn.L.Rev. 14 (1979).

## LIBRARY REFERENCES

2002 Main Volume

Elections ↪ 318, 323, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 331, 353, 355.

C. G. S. A. § 9-363, CT ST § 9-363

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C.G.S.A. § 9-364

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Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

**→ § 9-364. Influencing elector to refrain from voting**

Any person who influences or attempts to influence any elector to stay away from any election shall be fined not more than five hundred dollars and imprisoned not more than one year nor less than three months.

CREDIT(S)

(1949 Rev., § 1123; 1953, Supp. § 685c; 1955, Supp. § 841d.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Derivation:**

1902 Rev., § 1711.

1918 Rev., § 660.

1930 Rev., § 670.

CROSS REFERENCES

Elections and primaries, contests and complaints in election of state officers and judges of probate, see C.G.S.A. § 9-324.

Violation in casting of absentee ballot at referendum, complaint for relief by aggrieved person, see C.G.S.A. § 9-371b.

Voting errors and election law violations, contests and complaint procedures, see C.G.S.A. § 9-323.

LIBRARY REFERENCES

2002 Main Volume

Elections 319.

Westlaw Topic No. 144.

C.J.S. Elections § 330.

C. G. S. A. § 9-364, CT ST § 9-364

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C.G.S.A. § 9-364a

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Connecticut General Statutes Annotated Currentness

Title 9. Elections

▣ Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

**→ § 9-364a. Acts prohibited in elections, primaries, referenda, caucuses and conventions. Penalties**

Any person who influences or attempts to influence by force or threat the vote, or by force, threat, bribery or corrupt means, the speech, of any person in a primary, caucus, referendum convention or election; or wilfully and fraudulently suppresses or destroys any vote or ballot properly given or cast or, in counting such votes or ballots, wilfully miscounts or misrepresents the number thereof; and any presiding or other officer of a primary, caucus or convention who wilfully announces the result of a ballot or vote of such primary, caucus or convention, untruly and wrongfully, shall be fined not more than one thousand dollars or imprisoned not more than one year or be both fined and imprisoned.

CREDIT(S)

(1949 Rev., § 1162; 1953, Supp. § 665c; 1955, Supp. § 821d; 1958, Rev., § 9- 344; 1974, P.A. 74-189, § 10, eff. May 22, 1974; 1981, P.A. 81-467, § 7, eff. July 1, 1981; 1982, P.A. 82-176, § 2, eff. July 1, 1982.)

**HISTORICAL AND STATUTORY NOTES**

2002 Main Volume

**Transfer of Section**

This section, formerly set out as C.G.S.A. § 9-344, was transferred to C.G.S.A. § 9-364a in Gen.St., Rev. to 1977.

**Amendments**

**1974 Amendment.** 1974, P.A. 74-189, § 10, amended section by inserting "referendum" following "in a primary caucus"; substituted "suppresses" for "suppress" following "fraudulently"; and substituted fine not "more than one thousand dollars or imprisoned not more than one year" for "less than twenty-five dollars nor more than one hundred dollars or imprisoned not less than seven days nor more than three months".

**1981 Amendment.** 1981, P.A. 81-467, § 7, deleted "or wilfully and knowingly votes more than once or casts more than one ballot at a time when he is entitled to vote but once or cast but one ballot;" following "referendum or convention;"

**1982 Amendment.** 1982, P.A. 82-176, § 2, substituted "convention or election" for "or convention" following "primary, caucus, referendum".

**Derivation:**

1902 Rev., § 1699.

1918 Rev., § 676.

1930 Rev., § 686.

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C.G.S.A. § 9-365

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**→ § 9-365. Employers' threats**

Any person who, at or within sixty days prior to any election, municipal meeting, school district election or school district meeting, attempts to influence the vote of any operative in his employ by threats of withholding employment from him or by promises of employment or who dismisses any operative from his employment on account of any vote he has given at any such election or meeting shall be fined not less than one hundred dollars nor more than five hundred dollars or be imprisoned not less than six months nor more than twelve months or be both fined and imprisoned.

CREDIT(S)

(1949 Rev., § 1116; 1953, Supp. § 686c; 1955, Supp. § 842d.)

## HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Derivation:**

1902 Rev., § 1700.

1918 Rev., § 650.

1930 Rev., § 661.

## CROSS REFERENCES

Elections and primaries, contests and complaints in election of state officers and judges of probate, see C.G.S.A. § 9-324.

Violation in casting of absentee ballot at referendum, complaint for relief by aggrieved person, see C.G.S.A. § 9-371b.

Voting errors and election law violations, contests and complaint procedures, see C.G.S.A. § 9-323.

## LAW REVIEW AND JOURNAL COMMENTARIES

Labor and Employment Law. Brian Clemow, 54 Conn.B.J. 473 (1980).

## LIBRARY REFERENCES

2002 Main Volume

Elections ↪ 320.

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C.G.S.A. § 9-366

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Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs &amp; Annos)

**→§ 9-366. Interference with electors in voting**

Any person who induces or attempts to induce any elector to write, paste or otherwise place, on a write-in ballot voted on a voting machine at any election, any name, sign or device of any kind, as a distinguishing mark by which to indicate to another how such elector voted, or enters into or attempts to form any agreement or conspiracy with any person to induce or attempt to induce electors or any elector to so place any distinguishing mark on such ballot, or attempts to induce any elector to do anything with a view to enabling another person to see or know for what persons or any of them such elector votes on such machine, or enters into or attempts to form any agreement or conspiracy to induce any elector to do any act for the purpose of enabling another person or persons to see or know for what person or persons such elector votes, or attempts to induce any person to place himself in such position, or to do any other act for the purpose of enabling him to see or know for what candidates any elector other than himself votes on such machine, or himself attempts to get in such position to do any act so that he will be enabled to see or know how any elector other than himself votes on such machine, or does any act which invades or interferes with the secrecy of the voting or causes the same to be invaded or interfered with, shall be imprisoned not more than five years.

CREDIT(S)

(1949 Rev., § 1219; 1953, Supp. § 687c; 1955, Supp. § 843d; 1987, P.A. 87-382, § 37, eff. June 23, 1987.)

## HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Amendments**

**1987 Amendment.** 1987, P.A. 87-382, § 37, deleted references to "ticket" throughout the section, and made corresponding language and punctuation changes.

**Derivation:**

1903, P.A. ch. 207.  
 1909, P.A. ch. 262.  
 1918 Rev., § 730.  
 1930 Rev., § 741.  
 1943, Supp. § 155g.

## CROSS REFERENCES

Distance markers, see C.G.S.A. § 9-236.

News media at polling place, see C.G.S.A. § 9-236.

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C.G.S.A. § 9-367

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Chapter 151. Elections: Prohibited Acts and Penalties (Refs &amp; Annos)

## → § 9-367. Tampering with voting machine

Any person, not being an election official, who, during any election or before any election, after a voting machine has had placed upon it the ballot label for such election, tampers with such machine, disarranges, defaces, injures or impairs the same in any manner, or mutilates, injures or destroys any ballot label placed thereon or to be placed thereon, or any other appliance used in connection with such machine, shall be imprisoned for not more than five years.

CREDIT(S)

(1949 Rev., § 1218; 1953, Supp. § 688c; 1955, Supp. § 844d.)

## HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Derivation:**

1903, P.A. ch. 207.

1909, P.A. ch. 262.

1918 Rev., § 728.

1930 Rev., § 740.

## CROSS REFERENCES

Voting machines, see C.G.S.A. § 9-238 et seq.

## LIBRARY REFERENCES

2002 Main Volume

Elections ↩ 309, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 324, 334, 353.

C. G. S. A. § 9-367, CT ST § 9-367

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C.G.S.A. § 9-368

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Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs &amp; Annos)

**→ § 9-368. Arrest of accused**

Upon the written complaint of any three electors of a town in which a violation of any law relating to elections has occurred to any judge of the superior court for the judicial district within which the offense has been committed, supported by oath or affirmation that the complainants have good reason to believe and do believe that the allegations therein contained are true and can be proved, such judge shall issue a warrant for the arrest of the accused.

CREDIT(S)

(1953, Supp. § 689c; 1955, Supp. § 845d; 1959, P.A. 28, § 167; 1974, P.A. 74-183, § 187, eff. Dec. 31, 1974; 1976, P.A. 76-436, § 163, eff. July 1, 1978; 1978, P.A. 78-280, § 1, eff. July 1, 1978.)

## HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Amendments**

**1974 Amendment.** 1974, P.A. 74-183, § 187, substituted "court of common pleas for the county or judicial district" for "circuit court for the circuit".

**1976 Amendment.** 1976, P.A. 76-436, § 163, substituted "superior court" for "court of common pleas" following "to any judge of the".

**1978 Amendment.** 1978, P.A. 78-280, § 1, provided for change of terms from "county" or "county or judicial district" to "judicial district".

## CROSS REFERENCES

Inconsistent special acts repealed, see C.G.S.A. § 51-274.

## LAW REVIEW AND JOURNAL COMMENTARIES

Protecting the right to vote. 78 Yale L.J. 662 (1969).

## LIBRARY REFERENCES

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Criminal Law ⇐217.

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C.G.S.A. § 9-368c

Connecticut General Statutes Annotated Currentness

Title 9. Elections

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→ § 9-368c. Misrepresentation of contents of a petition

(a) No person shall intentionally misrepresent the contents of a petition circulated under title 9.

(b) Any person who violates any provision of this section shall be guilty of a class D felony.

CREDIT(S)

(1987, P.A. 87-530.)

LIBRARY REFERENCES

2002 Main Volume

Elections ↪ 318.

Westlaw Topic No. 144.

C.J.S. Elections § 331.

C. G. S. A. § 9-368c, CT ST § 9-368c

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A.R.S. § 16-1001

**C**

Arizona Revised Statutes Annotated Currentness

Title 16. Elections and Electors (Refs &amp; Annos)

<sup>ns</sup> Chapter 7. Penal Provisions (Refs & Annos)        <sup>ns</sup> Article 1. General Provisions (Refs & Annos)**→§ 16-1001. Applicability of penal provisions**

The provisions of this title defining crimes involving elections and crimes against the elective franchise, and prescribing penalties therefor, apply to any general, primary or special election or to any election called by a board of supervisors for any purpose for which the board is authorized by law to call an election.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

## &lt;&lt;ARTICLE 1. GENERAL PROVISIONS&gt;&gt;

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

## HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, § 71.  
Laws 1912, Ch. 83, § 1.  
Pen. Code 1913, § 66.  
Rev.Code 1928, § 4513.  
Code 1939, § 43-1519.  
A.R.S. former § 16-1311.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

## LIBRARY REFERENCES

Elections ↪309.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 324, 334.

A. R. S. § 16-1001, AZ ST § 16-1001

Current through End of the Forty-Seventh Legislature,  
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A.R.S. § 16-1002

Arizona Revised Statutes Annotated Currentness  
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**→ § 16-1002. Counterfeiting or distributing unlawful ballots; classification**

A person who counterfeits a ballot, or who circulates or gives to another a counterfeit ballot, knowing at the time that the ballot has not been issued pursuant to the election laws of the state, is guilty of a class 5 felony.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, § 52.  
 Pen. Code 1913, § 51.  
 Rev. Code 1928, § 4506.  
 Code 1939, § 43-1512.  
 A.R.S. former § 16-846.  
 Laws 1973, Ch. 183, § 32.  
 Laws 1978, Ch. 201, § 248.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

CROSS REFERENCES

Classification of offenses, see § 13-601 et seq.  
 Fines, see § 13-801 et seq.  
 Sentences of imprisonment, see § 13-701 et seq.

LIBRARY REFERENCES

Elections ↪ 309.

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A.R.S. § 16-1003

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 ☐ Chapter 7. Penal Provisions (Refs & Annos)  
 ☐ Article 1. General Provisions (Refs & Annos)

**→ § 16-1003. False endorsement, knowing destruction or delay in delivery of ballot; classification**

A person who knowingly forges or falsely makes the official endorsement of a ballot, knowingly destroys or defaces a ballot, or knowingly delays the delivery of a ballot, is guilty of a class 3 misdemeanor.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Rev.Stat. 1901, §§ 2344 to 2348.  
 Rev.Stat. 1913, §§ 2970 to 2973.  
 Rev.Code 1928, § 1220.  
 Laws 1937, Ch. 13, § 1.  
 Laws 1952, Ch. 123, § 17.  
 Code 1939, Supp.1952, § 55-516.  
 A.R.S. former § 16-900.  
 Laws 1978, Ch. 201, § 283.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

CROSS REFERENCES

Culpable mental state, see § 13-105.

A. R. S. § 16-1003, AZ ST § 16-1003

Current through End of the Forty-Seventh Legislature,  
 Second Regular Session (2006)

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A.R.S. § 16-1004

Arizona Revised Statutes Annotated Currentness  
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 Chapter 7. Penal Provisions (Refs & Annos)  
 Article 1. General Provisions (Refs & Annos)

**→§ 16-1004. Interference with or corruption of election officer; interference with voting equipment; classification**

**A.** A person who at any election knowingly interferes in any manner with an officer of such election in the discharge of the officer's duty, or who induces an officer of an election or officer whose duty it is to ascertain, announce or declare the result of such election, to violate or refuse to comply with the officer's duty or any law regulating the election, is guilty of a class 5 felony.

**B.** A person who knowingly modifies the software, hardware or source code for voting equipment without receiving approval or certification pursuant to § 16-442 is guilty of a class 5 felony.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980. Amended by Laws 2005, Ch. 144, § 5.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code, 1901, § 63.  
 Pen. Code 1913, § 62.

Rev.Code 1928, § 4512.  
 Code 1939, § 43-1518.  
 A.R.S. former § 16-1308.  
 Laws 1978, Ch. 201, § 295.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

The 2005 amendment by Ch. 144 rewrote the section, which had read:

"A person who at any election knowingly interferes in any manner with an officer of such election in the discharge of his duty, or who induces an officer of an election or officer whose duty it is to ascertain, announce or declare the result of such election, to violate or refuse to comply with his duty or any law regulating the election, is guilty of a

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A.R.S. § 16-1005

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 Article 1. General Provisions (Refs & Annos)

**→ § 16-1005. Early ballot abuse; classification**

Any person who knowingly marks or punches an early ballot with the intent to fix an election for his own benefit or for that of another person is guilty of a class 5 felony.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980. Amended by Laws 1999, Ch. 32, § 12.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Laws 1970, Ch. 151, § 85.  
 Laws 1972, Ch. 218, § 51.  
 A.R.S. former § 16-1111.  
 Laws 1977, Ch. 135, § 2.  
 Laws 1978, Ch. 201, § 289.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

The 1999 amendment by Ch. 32 substituted "early voting" for "absentee voting".

CROSS REFERENCES

Classification of offenses, see § 13-601 et seq.  
 Culpable mental state, see § 13-105.  
 Fines, see § 13-801 et seq.  
 Sentence of imprisonment, see § 13-701 et seq.

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A.R.S. § 16-1006

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Arizona Revised Statutes Annotated Currentness  
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**→ § 16-1006. Changing vote of elector by corrupt means or inducement; classification**

**A.** It is unlawful for a person knowingly by force, threats, menaces, bribery or any corrupt means, either directly or indirectly:

1. To attempt to influence an elector in casting his vote or to deter him from casting his vote.
2. To attempt to awe, restrain, hinder or disturb an elector in the free exercise of the right of suffrage.
3. To defraud an elector by deceiving and causing him to vote for a different person for an office or for a different measure than he intended or desired to vote for.

**B.** A person who violates any provision of this section is guilty of a class 5 felony.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, §§ 43, 61.  
 Pen. Code 1913, §§ 45, 60.  
 Rev.Code 1928, §§ 4501, 4502, 4510.  
 Code 1939, §§ 43-1507, 43-1508, 43-1516.  
 A.R.S. former §§ 16-1305, 16-1307.  
 Laws 1978, Ch. 201, § 294.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

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A.R.S. § 16-1007

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**→ § 16-1007. Election officer ascertaining or disclosing elector's vote; classification**

An officer of an election, unless lawfully assisting a voter, is guilty of a class 2 misdemeanor, who knowingly:

1. Previous to the closing of the polls, attempts to find out for whom the elector has voted.
2. Opens or permits the folded ballot of an elector which has been delivered to the election official to be opened or examined previous to depositing it in the ballot box.
3. Makes or places a mark or device on a folded ballot with the intent to ascertain for whom any elector has voted.
4. Without consent of the elector, discloses the name of any person whom the election official has fraudulently or illegally discovered to have been voted for by the elector.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, § 57.  
 Pen. Code. 1913, § 56.  
 Rev.Code 1928, § 4508.  
 Code 1939, § 43-1514.  
 A.R.S. former § 16-898.  
 Laws 1970, Ch. 151, § 66.  
 Laws 1978, Ch. 201, § 281.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

CROSS REFERENCES

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A.R.S. § 16-1008

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 Article 1. General Provisions (Refs & Annos)

**→ § 16-1008. Election officer changing vote of elector by menace or reward; classification**

An officer of an election who, while acting as such, knowingly induces an elector, either by menace, reward or promise thereof, to vote differently than the elector intended or desired to vote, is guilty of a class 2 misdemeanor.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, § 61.  
 Pen. Code 1913, § 60.  
 Rev. Code 1928, § 4510.  
 Code 1939, § 43-1516.  
 A.R.S. former § 16-899.  
 Laws 1970, Ch. 151, § 67.  
 Laws 1978, Ch. 201, § 282.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

CROSS REFERENCES

Bribery and corruption, see § 13-2601 et seq.

NOTES OF DECISIONS

**Admissibility of evidence 1**

1. Admissibility of evidence

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A.R.S. § 16-1009

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 ☞ Article 1. General Provisions (Refs & Annos)

**→ § 16-1009. Failure or refusal to perform duty by election officer; classification**

A public officer upon whom a duty is imposed by this title, who knowingly fails or refuses to perform that duty in the manner prescribed by law, is guilty of a class 3 misdemeanor.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Rev.Stat.1901, §§ 2344 to 2348.  
 Rev.Stat.1913, §§ 2968, 2970 to 2973.  
 Rev.Code 1928, § 1220.  
 Laws 1937, Ch. 13, § 1.  
 Laws 1952, Ch. 123, § 17.  
 Code 1939, Supp.1952, § 55-516.  
 A.R.S. former § 16-1309.  
 Laws 1978, Ch. 201, § 296.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

LIBRARY REFERENCES

Elections ☞ 314.  
 Westlaw Topic No. 144.  
 C.J.S. Elections § 327.

A. R. S. § 16-1009, AZ ST § 16-1009

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A.R.S. § 16-1010

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 \* Article 1. General Provisions (Refs & Annos)

**→ § 16-1010. Refusal by election officer to perform duty; violation of election law; classification**

A person charged with performance of any duty under any law relating to elections who knowingly refuses to perform such duty, or who, in his official capacity, knowingly acts in violation of any provision of such law, is guilty of a class 6 felony unless a different punishment for such act or omission is prescribed by law.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, § 70.  
 Pen. Code 1913, § 65.  
 Rev. Code 1928, § 4513.  
 Code 1939, § 43-1519.  
 A.R.S. former § 16-1310.  
 Laws 1978, Ch. 201, § 297.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

LIBRARY REFERENCES

Elections ↻314.  
 Westlaw Topic No. 144.  
 C.J.S. Elections § 327.

A. R. S. § 16-1010, AZ ST § 16-1010

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A.R.S. § 16-1011

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**→ § 16-1011. Counterfeiting election returns; classification**

A person who knowingly forges or counterfeits returns of an election purporting to have been held at a precinct or place where no election was in fact held, or who knowingly substitutes, forges or counterfeits returns of election instead of the true returns for a precinct or place where an election was actually held, is guilty of a class 4 felony.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, § 58.  
 Pen. Code 1913, § 57.  
 Rev. Code 1928, § 4509.  
 Code 1939, § 43-1515.  
 A.R.S. former § 16-961.  
 Laws 1978, Ch. 201, § 287.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

CROSS REFERENCES

Classification of offenses, see § 13-601 et seq.

Culpable mental state, see § 13-105.

Fines, see § 13-801 et seq.

Forgery and counterfeiting, see § 13-2001 et seq.

Sentences of imprisonment, see § 13-701 et seq.

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A.R.S. § 16-1012

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 Article 1. General Provisions (Refs & Annos)

**→ § 16-1012. Intimidation of elector by employer; classification**

**A.** It is unlawful for an employer knowingly:

1. In paying employees the salary or wages due them, to enclose their pay in envelopes upon which there is written or printed any political mottoes, devices or arguments, containing threats, express or implied, intended or calculated to influence the political opinions, views or actions of the employees.

2. Within ninety days of an election provided by law, to put up or otherwise exhibit in any place where his employees are working or are present in the course of employment a handbill, notice or placard containing a threat, notice or information that if any particular ticket or candidate is elected or defeated work in his place or establishment will cease in whole or in part, or his establishment will be closed, or the wages of his workmen will be reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees.

**B.** An employer, whether acting in his individual capacity or as an officer or agent of a corporation, who violates a provision of this section is guilty of a class 1 misdemeanor.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, §§ 42, 43.  
 Pen. Code 1913, §§ 44, 45.  
 Rev. Code 1928, §§ 4500 to 4502.  
 Code 1939, §§ 43-1506 to 43-1508.  
 A.R.S. former §§ 16-1304 to 16-1306.  
 Laws 1978, Ch. 201, § 293.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1

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A.R.S. § 16-1013

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 ▣ Article 1. General Provisions (Refs & Annos)

**→ § 16-1013. Coercion or intimidation of elector; classification**

**A.** It is unlawful for a person knowingly:

1. Directly or indirectly, to make use of force, violence or restraint, or to inflict or threaten infliction, by himself or through any other person, of any injury, damage, harm or loss, or in any manner to practice intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting for a particular person or measure at any election provided by law, or on account of such person having voted or refrained from voting at an election.

2. By abduction, duress or any forcible or fraudulent device or contrivance whatever, to impede, prevent or otherwise interfere with the free exercise of the elective franchise of any voter, or to compel, induce or to prevail upon a voter either to cast or refrain from casting his vote at an election, or to cast or refrain from casting his vote for any particular person or measure at an election.

**B.** A person, whether acting in his individual capacity or as an officer or agent of a corporation, who violates a provision of this section is guilty of a class 1 misdemeanor.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

**HISTORICAL AND STATUTORY NOTES**

**Source:**

Pen. Code 1901, § 42.  
 Pen. Code 1913, § 44.  
 Rev.Code 1928, § 4500.  
 Code 1939, § 43-1506.  
 A.R.S. former § 16-1303.  
 Laws 1978, Ch. 201, § 292.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1

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▣ Article 1. General Provisions (Refs &amp; Annos)

**→§ 16-1014. Corruption of electors; classification**

A. It is unlawful for a person, directly or indirectly, by himself or through any other person knowingly:

1. To treat, give, pay, loan, contribute, offer or promise money or other valuable consideration, or to give, offer or promise an office, place or employment, or to promise or to procure or endeavor to procure an office, place or employment, to or for a voter, or to or for any other person, to induce the voter to vote or refrain from voting at an election for any particular person or measure, or to induce the voter to go to the polls, or remain away from the polls at an election, or on account of the voter having voted or refrained from voting for any particular person or measure, or having gone to the polls or remained away from the polls at an election.

2. To advance or pay or cause to be paid, money or other valuable consideration to or for the use of any other person with the intent that it, or any part thereof, be used for bribery at any election provided by law, or to knowingly pay or cause to be paid money or other valuable thing to any person in discharge or repayment of money, wholly or in part expended for bribery at any election.

3. To receive, agree or contract for, before, during or after an election provided by law, money, gifts, loans or other valuable consideration, office, place or employment for himself or other person, for voting or agreeing to vote, or for going or agreeing to go to the polls, or for refraining or agreeing to refrain from voting for a particular person or measure, or for inducing any person to vote or refrain from voting, or to vote or refrain from voting for a particular person or measure at an election.

B. A person violating any provision of this section is guilty of a class 2 misdemeanor.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

## &lt;&lt;ARTICLE 1. GENERAL PROVISIONS&gt;&gt;

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

## HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, §§ 38, 39.

Pen. Code 1913, §§ 39, 40.

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A.R.S. § 16-1015

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 ▣ Article 1. General Provisions (Refs & Annos)

**→ § 16-1015. Election wagers; classification**

A person who, before or during an election provided by law, knowingly makes, offers or accepts a bet or wager, or takes a share or interest in, or in any manner becomes a party to the bet or wager, or provides or agrees to provide money to be used by another in making the bet or wager, upon any contingency whatever arising out of such election, is guilty of a class 2 misdemeanor.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, §§ 41, 51.  
 Pen. Code 1913, §§ 42, 43.  
 Rev. Code 1928, § 4499.  
 Code 1939, § 43-1505.  
 A.R.S. former § 16-1302.  
 Laws 1978, Ch. 201, § 291.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

CROSS REFERENCES

Challenging elector, grounds, see § 16-591.

LIBRARY REFERENCES

Elections ↩ 315.  
 Westlaw Topic No. 144.  
 C.J.S. Elections § 328.

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 Article 1. General Provisions (Refs & Annos)

**→ § 16-1016. Illegal voting; pollution of ballot box; removal or destruction of ballot box, poll lists or ballots; classification**

A person is guilty of a class 5 felony who:

1. Not being entitled to vote, knowingly votes.
2. Knowingly votes more than once at any election.
3. Knowingly gives to an election official two or more ballots folded together.
4. Knowingly changes or destroys a ballot after it has been deposited in the ballot box.
5. Knowingly adds a ballot to those legally cast at any election, by fraudulently introducing the ballot into the ballot box either before or after the ballots therein have been counted.
6. Knowingly adds to or mixes with ballots lawfully cast, other ballots, while they are being canvassed or counted, with intent to affect the result of the election, or to exhibit the ballots as evidence on the trial of an election contest.
7. Knowingly and unlawfully carries away, conceals or removes a poll list, ballot or ballot box from the polling place, or from possession of the person authorized by law to have custody thereof.
8. Knowingly destroys a polling list, ballot or ballot box with the intent to interrupt or invalidate the election.
9. Knowingly detains, alters, mutilates or destroys ballots or election returns.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

Source:

Pen. Code 1901, § 62.

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A.R.S. § 16-1017

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 Article 1. General Provisions (Refs & Annos)

**→ § 16-1017. Unlawful acts by voters with respect to voting; classification**

A voter who knowingly commits any of the following acts is guilty of a class 2 misdemeanor:

1. Makes a false statement as to the voter's inability to mark a ballot.
2. Interferes with a voter within the seventy-five foot limit of the polling place as posted by the election marshal or within seventy-five feet of the main outside entrance to an on-site early voting location established by a county recorder pursuant to § 16-542, subsection A.
3. Endeavors while within the seventy-five foot limit for a polling place or on-site early voting location to induce a voter to vote for or against a particular candidate or issue.
4. Prior to the close of an election defaces or destroys a sample ballot posted by election officers, or defaces, tears down, removes or destroys a card of instructions posted for the instruction of voters.
5. Removes or destroys supplies or conveniences furnished to enable a voter to prepare the voter's ballot.
6. Hinders the voting of others.
7. Votes in a county in which the voter no longer resides, except as provided in § 16-125.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980. Amended by Laws 1993, Ch. 98, § 67, eff. Jan. 1, 1994; Laws 1999, Ch. 32, § 13; Laws 2005, Ch. 98, § 12.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

Source:

Rev.Stat. 1901, §§ 2344 to 2348.

Rev.Stat. 1913, §§ 2968, 2970 to 2973.

Rev.Code 1928, § 1220.

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A.R.S. § 16-1018

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 ◻ Article 1. General Provisions (Refs & Annos)

**→ § 16-1018. Additional unlawful acts by persons with respect to voting; classification**

A person who commits any of the following acts is guilty of a class 2 misdemeanor:

1. Knowingly electioneers on election day within a polling place or in a public manner within seventy-five feet of the main outside entrance of a polling place or on-site early voting location established by a county recorder pursuant to § 16-542, subsection A.
2. Intentionally disables or removes from the polling place, on-site early voting location or custody of an election official a voting machine or a voting record.
3. Knowingly removes an official ballot from a polling place before closing the polls.
4. Shows the voter's ballot or the machine on which the voter has voted to any person after it is prepared for voting in such a manner as to reveal the contents, except to an authorized person lawfully assisting the voter.
5. Knowingly solicits a voter to show the voter's ballot, or receives from a voter a ballot prepared for voting, unless the person is an election official or unless otherwise authorized by law.
6. Knowingly receives an official ballot from a person other than an election official having charge of the ballots.
7. Knowingly delivers an official ballot to a voter, unless the voter is an election official.
8. Except for a completed ballot transmitted by an elector by fax pursuant to § 16-543, knowingly places a mark on the voter's ballot by which it can be identified as the one voted by the voter.
9. After having received a ballot as a voter, knowingly fails to return the ballot to the election official before leaving the polling place or on-site early voting location.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980. Amended by Laws 1993, Ch. 98, § 68, eff. Jan. 1, 1994; Laws 1999, Ch. 32, § 14; Laws 2000, Ch. 249, § 32, eff. Sept. 1, 2000; Laws 2003, Ch. 38, § 4.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

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A.R.S. § 16-1019

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→ § 16-1019. Political signs; tampering; classification

**A.** It is a class 2 misdemeanor for any person to knowingly remove, alter, deface or cover any political sign of any candidate for public office for the period commencing forty-five days prior to a primary election and ending seven days after the general election.

**B.** The provisions of this section shall not apply to the removal, alteration, defacing or covering of a political sign by the candidate or the authorized agent of the candidate in support of whose election the sign was placed, or by the owner or authorized agent of the owner of private property on which such signs are placed with or without permission of the owner, or placed in violation of state law, or county, city or town ordinance or regulation.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Laws 1962, Ch. 124, § 1.  
 A.R.S. former § 16-1312.  
 Laws 1978, Ch. 201, § 298.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

LIBRARY REFERENCES

Elections ↪309.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 324, 334.

A. R. S. § 16-1019, AZ ST § 16-1019

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A.R.S. § 16-1020

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**→ § 16-1020. Signing of petitions; violation; classification**

A person knowingly signing any name other than his own to a nomination petition or a petition for formation, alteration or dissolution of a special district, except in a circumstance where he signs for a person, in the presence of and at the specific request of such person who is incapable of signing his own name because of physical infirmity, or knowingly signing his name more than once to a nomination petition or a petition for formation, alteration or dissolution of a special district, or who is not at the time of signing a qualified elector entitled to vote at the election initiated by the petition, is guilty of a class 1 misdemeanor.

CREDIT(S)

Added by Laws 1981, Ch. 227, § 8.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

## LIBRARY REFERENCES

Elections ↪309.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 324, 334.

A. R. S. § 16-1020, AZ ST § 16-1020

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A.R.S. § 16-1021

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**→ § 16-1021. Enforcement by attorney general and county, city or town attorney**

In any election for state office, members of the legislature, justices of the supreme court, judges of the court of appeals or statewide initiative or referendum the attorney general may enforce the provisions of this title through civil and criminal actions. In any election for county, city or town office, community college district governing board, judge or a county, city or town initiative or referendum, the appropriate county, city or town attorney may enforce the provisions of this title through civil and criminal actions. In any special district election, the county attorney of any county in which the district or a portion of the district is located or the attorney general may enforce the laws governing such election.

CREDIT(S)

Added by Laws 1985, Ch. 292, § 19. Amended by Laws 1986, Ch. 320, § 30.

## &lt;&lt;ARTICLE 1. GENERAL PROVISIONS&gt;&gt;

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

## HISTORICAL AND STATUTORY NOTES

The 1986 amendment added the last sentence, relating to special district elections.

## Reviser's Notes:

**1985 Note.** Pursuant to authority of § 41-1304.02, in the section heading "Enforcement by" was substituted for "Powers of".

A. R. S. § 16-1021, AZ ST § 16-1021

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C.R.S.A. § 1-13-101

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**→ § 1-13-101. District attorney or attorney general to prosecute**

(1) Any person may file an affidavit with the district attorney stating the name of any person who has violated any of the provisions of this code and stating the facts which constitute the alleged offense. Upon the filing of such affidavit, the district attorney shall forthwith investigate, and, if reasonable grounds appear therefor, he shall prosecute the violator.

(2) The attorney general shall have equal power with district attorneys to file and prosecute informations or complaints against any persons for violating any of the provisions of this code.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

## LIBRARY REFERENCES

2000 Main Volume

Elections ◊ 326.

Westlaw Topic No. 144.

C.J.S. Elections § 338.

## NOTES OF DECISIONS

**Injunctions 1**

## 1. Injunctions

The state, through its Attorney General, may maintain a bill in equity in its sovereign capacity to enjoin a conspiracy to commit illegal and fraudulent acts which will result in the pollution of the ballot box and the perversion of an election, though the acts charged if committed, constitute criminal offenses. *People v. Tool*, 1905, 86 P. 224, 35 Colo. 225, 117 Am.St.Rep. 198. States ◊ 192

The interest of the state in a pure election is not limited to the protection which may be afforded by the punishment of those, through criminal prosecutions, who violate the laws relating to elections by padding registration lists, permitting repeating, and falsifying election returns, but equity will afford protection by enjoining the crime. *People v. Tool*, 1905, 86 P. 224, 35 Colo. 225, 117 Am.St.Rep. 198. Injunction ◊ 78

C. R. S. A. § 1-13-101, CO ST § 1-13-101

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C.R.S.A. § 1-13-102

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**→§ 1-13-102. Sufficiency of complaint—judicial notice**

Irregularities or defects in the mode of calling, giving notice of, convening, holding, or conducting any general, primary, or congressional vacancy election authorized by law constitute no defense to a prosecution for a violation of this code. When an offense is committed in relation to any general, primary, or congressional vacancy election, an indictment, information, or complaint for such offense is sufficient if it alleges that such election was authorized by law without stating the call or notice of the election, the names of the judges holding such election, or the names of the persons voted for at such election. Judicial notice shall be taken of the holding of any general, primary, or congressional vacancy election.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

## LIBRARY REFERENCES

2000 Main Volume

Elections ↔321, 328(1).  
 Evidence ↔45.  
 Westlaw Topic Nos. 144, 157.  
 C.J.S. Elections §§ 335, 345, 346.  
 C.J.S. Evidence § 51.

C. R. S. A. § 1-13-102, CO ST § 1-13-102

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**→ § 1-13-103. Immunity of witness from prosecution**

Any person violating any of the provisions of this code is a competent witness against any other violator and may be compelled to attend and testify at any trial, hearing, proceeding, or investigation in the same manner as other persons; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying, except for perjury in giving such testimony. A person so testifying shall not thereafter be liable to indictment, prosecution, or punishment for the offense with reference to which his testimony was given and may plead or prove the giving of testimony accordingly in bar of such indictment or prosecution.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

- Witnesses ↪ 293 1/2.
- Westlaw Topic No. 410.
- C.J.S. Witnesses § 433.

C. R. S. A. § 1-13-103, CO ST § 1-13-103

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**→§ 1-13-104. Perjury**

Any person, having taken any oath or made any affirmation required by this code, who swears or affirms willfully, corruptly, and falsely in a matter material to the issue or point in question or who suborns any other person to swear or affirm as aforesaid commits perjury in the second degree as set forth in section 18-8-503, C.R.S., and shall be punished as provided in section 18-1.3-501, C.R.S.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 2002, Ch. 318, § 5, eff. Oct. 1, 2002.

**HISTORICAL AND STATUTORY NOTES**

## 2006 Electronic Pocket Part Update

Laws 2002, Ch. 318, § 2, amended and relocated Article 1.3 of Title 18, effective October 1, 2002, from provisions formerly located in Articles 7, 8, 9, 11, 11.5, 13, and 18.5 of Title 16, Articles 26, 27, 27.8, and 27.9 of Title 17, and Articles 1 and 4 of Title 18. Section 5 of that Act made conforming amendments to this section.

**CROSS REFERENCES**

Challenge to be made by written oath, see § 1-9-202.

Self-affirmation, false statements, see § 1-1-104.

Signature on registration sheet is proof of oath, see § 1-13-207.

**LIBRARY REFERENCES**

## 2000 Main Volume

Elections ↪317, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-104, CO ST § 1-13-104

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**→§ 1-13-105. False certificates by officers**

Any notary public or any officer authorized by law to administer oaths who knowingly makes a false certificate in regard to a matter connected with an election held under the laws of this state commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 2002, Ch. 318, § 6, eff. Oct. 1, 2002.

HISTORICAL AND STATUTORY NOTES

2006 Electronic Pocket Part Update

Laws 2002, Ch. 318, § 2, amended and relocated Article 1.3 of Title 18, effective October 1, 2002, from provisions formerly located in Articles 7, 8, 9, 11, 11.5, 13, and 18.5 of Title 16, Articles 26, 27, 27.8, and 27.9 of Title 17, and Articles 1 and 4 of Title 18. Section 6 of that Act made conforming amendments to this section.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪314, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 353.

C. R. S. A. § 1-13-105, CO ST § 1-13-105

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C.R.S.A. § 1-13-106

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**→ § 1-13-106. Forgery**

Any person who falsely makes, alters, forges, or counterfeits any ballot before or after it has been cast, or who forges any name of a person as a signer or witness to a petition or nomination paper, or who forges any letter of acceptance, declination, or withdrawal, or who forges the name of a registered elector to an absentee voter's ballot commits forgery as set forth in section 18-5-102, C.R.S., and shall be punished as provided in section 18-1.3-401, C.R.S.

**CREDIT(S)**

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1993, H.B.93-1255, § 120, eff. July 1, 1993; Laws 1994, S.B.94-206, § 5, eff. May 31, 1994; Laws 2002, Ch. 318, § 7, eff. Oct. 1, 2002.

**HISTORICAL AND STATUTORY NOTES****2006 Electronic Pocket Part Update**

Laws 2002, Ch. 318, § 2, amended and relocated Article 1.3 of Title 18, effective October 1, 2002, from provisions formerly located in Articles 7, 8, 9, 11, 11.5, 13, and 18.5 of Title 16, Articles 26, 27, 27.8, and 27.9 of Title 17, and Articles 1 and 4 of Title 18. Section 7 of that Act made conforming amendments to this section.

**2000 Main Volume**

The 1993 amendment substituted "absentee" for "absent" and deleted "1973" following "C.R.S." in two places.

The 1994 amendment deleted "in the second degree" following "commits forgery", and substituted "section 18-5-102" for "section 18-5-103".

**CROSS REFERENCES**

Absentee ballots, investigation of forged affidavits, see § 1-8-304.

**LIBRARY REFERENCES****2000 Main Volume**

Elections ↪ 318, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 331, 353.

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C.R.S.A. § 1-13-107

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**→ § 1-13-107. Violation of duty**

Any public officer, election official, or other person upon whom any duty is imposed by this code who violates, neglects, or fails to perform such duty or is guilty of corrupt conduct in the discharge of the same or any notary public or other officer authorized by law to administer oaths who administers any oath knowing it to be false or who knowingly makes a false certificate in regard to a matter connected with any election provided by law is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13- 111.

**CREDIT(S)**

Repealed and reenacted by Laws 1980, S.B.1, § 1.

**LIBRARY REFERENCES**

2000 Main Volume

Elections ↪ 314, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 353.

C. R. S. A. § 1-13-107, CO ST § 1-13-107

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**→§ 1-13-109: False statements relating to candidates or questions submitted to electors--penalties--definitions**

(1)(a) No person shall knowingly make, publish, broadcast, or circulate or cause to be made, published, broadcasted, or circulated in any letter, circular, advertisement, or poster or in any other communication any false statement designed to affect the vote on any issue submitted to the electors at any election or relating to any candidate for election to public office.

(b) Any person who violates any provision of paragraph (a) of this subsection (1) commits a class 1 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501, C.R.S.

(2)(a) No person shall recklessly make, publish, broadcast, or circulate or cause to be made, published, broadcasted, or circulated in any letter, circular, advertisement, or poster or in any other communication any false statement designed to affect the vote on any issue submitted to the electors at any election or relating to any candidate for election to public office. Notwithstanding any other provision of law, for purposes of this subsection (2), a person acts "recklessly" when he or she acts in conscious disregard of the truth or falsity of the statement made, published, broadcasted, or circulated.

(b) Any person who violates any provision of paragraph (a) of this subsection (2) commits a class 2 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501, C.R.S.

(3) For purposes of this section, "person" means any natural person, partnership, committee, association, corporation, labor organization, political party, or other organization or group of persons, including a group organized under section 527 of the Internal Revenue Code.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 2002, Ch. 318, § 8, eff. Oct. 1, 2002; Laws 2005, Ch. 305, § 1, eff. Sept. 1, 2005.

## HISTORICAL AND STATUTORY NOTES

## 2006 Electronic Pocket Part Update

Laws 2002, Ch. 318, § 2, amended and relocated Article 1.3 of Title 18, effective October 1, 2002, from provisions formerly located in Articles 7, 8, 9, 11, 11.5, 13, and 18.5 of Title 16, Articles 26, 27, 27.8, and 27.9 of Title 17, and Articles 1 and 4 of Title 18. Section 8 of that Act made conforming amendments to this section.

Laws 2005, Ch. 305, § 1, rewrote this section, which previously read:

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**→ § 1-13-110. Wagers with electors**

It is unlawful for any person, including any candidate for election to public office, before or during any election provided by law, to make any bet or wager with an elector, or take a share or interest in, or in any manner become a party to, any such bet or wager, or provide or agree to provide any money to be used by another in making such bet or wager upon any event or contingency arising out of such election. Each such offense is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1- 13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

## LIBRARY REFERENCES

2000 Main Volume

Elections ↪ 315, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 328, 353.

## NOTES OF DECISIONS

**Removal from office 1**

## 1. Removal from office

Laws 1891, p. 168, making it unlawful for any candidate to provide, or agree to provide, money to be used by another in making any bet on any event arising out of the election, and declaring that a violation thereof shall be a misdemeanor, does not authorize the removal by the board of trustees of a mayor who has violated it, in the absence of a prosecution and conviction of such offense in a court of competent jurisdiction. Board of Trustees of Town of Gillett v. People ex rel. Keith, App.1899, 59 P. 72, 13 Colo.App. 553. Municipal Corporations ↪ 156

C. R. S. A. § 1-13-110, CO ST § 1-13-110

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**→§ 1-13-111. Penalties for election offenses**

In all cases where an offense is denominated by this code as being a misdemeanor and no penalty is specified, the offender, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

CROSS REFERENCES

Defacing petitions, misdemeanor violation, see § 1-13-403.

Elected officials not to handle voting machines or electronic voting equipment or devices, see § 1-5-607.

Voter registration drives, organizer violations, penalties, see § 1-2-703.

LIBRARY REFERENCES

2000 Main Volume

Elections ↻332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections § 353.

C. R. S. A. § 1-13-111, CO ST § 1-13-111

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C.R.S.A. § 1-13-112

**C**

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Article 13. Election Offenses (Refs &amp; Annos)

Part 1. Offenses--General Provisions

**→ § 1-13-112. Offenses relating to mail ballots**

Any person who, by use of force or other means, unduly influences an elector to vote in any particular manner or to refrain from voting, or who falsely makes, alters, forges, or counterfeits any mail ballot before or after it has been cast, or who destroys, defaces, mutilates, or tampers with such a ballot shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

CREDIT(S)

Added by Laws 1990, S.B.90-97, § 2, eff. Jan. 1, 1991. Amended by Laws 1995, H.B.95-1241, § 81, eff. July 1, 1995.

## HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1995 amendment substituted "shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment" for "is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111".

Former § 1-13-112 was deleted from this article as repealed and reenacted by Laws 1980, S.B.12, § 1.

## CROSS REFERENCES

Mail Ballot Election Act, see § 1-7.5-101 et seq.

C. R. S. A. § 1-13-112, CO ST § 1-13-112

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C.R.S.A. § 1-13-113

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 ▣ Article 13. Election Offenses (Refs & Annos)  
 ▣ Part 1. Offenses--General Provisions

**→§ 1-13-113. Interference with distribution of election material**

During the period beginning forty-five days before and ending four days after any election, any person who prevents, hinders, or interferes with the lawful distribution of any card, pamphlet, circular, poster, handbill, yard sign, or other written material relating to any candidate for election for any office or relating to any issue that is to be submitted to the electors in any election, or any person who removes, defaces, or destroys any lawfully placed billboard, sign, or written material from any premises to which it was delivered, commits a misdemeanor and shall be punished by a fine of not more than seven hundred fifty dollars. Any person found guilty of removing, defacing, or destroying any billboard, sign, or written material shall pay the cost of replacement. The owner of the premises, an authorized agent of the owner, or any person charged with enforcement of any state law, ordinance, or regulation may remove any billboard, sign, or written material without penalty when placed without permission or authorization of the owner of such premises, or in violation of state law or county or municipal ordinance or regulation, or which is in place at any time other than during the period beginning forty-five days before and ending four days after any election.

CREDIT(S)

Added by Laws 1993, S.B.93-228, § 1, eff. July 1, 1993.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

Section 2 of Laws 1993, S.B.93-228, adding this section, provides:

**"Effective date—applicability.** This act shall take effect July 1, 1993, and shall apply to offenses committed on or after said date."

Former § 1-13-113 was deleted from this article as repealed and reenacted by Laws 1980, S.B.12, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪311.  
 Westlaw Topic No. 144.  
 C.J.S. Elections § 324.

C. R. S. A. § 1-13-113, CO ST § 1-13-113

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C.R.S.A. § 1-13-114

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▣ Part 1. Offenses--General Provisions

**→§ 1-13-114. Failure to comply with requirements of secretary of state**

Any person who willfully interferes or willfully refuses to comply with the rules of the secretary of state or the secretary of state's designated agent in the carrying out of the powers and duties prescribed in section 1-1-107 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

CREDIT(S)

Added by Laws 1996, H.B.96-1061, § 48, eff. July 1, 1996.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

This section was derived from former § 1-1-107(3).

C. R. S. A. § 1-13-114, CO ST § 1-13-114

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C.R.S.A. § 1-13-201

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▣ Part 2. Offenses--Qualifications and Registration of Electors (Refs &amp; Annos)

**→§ 1-13-201. Interfering with or impeding registration**

Any person who intentionally interferes with or impedes the registration of electors, whether by act of commission or by failure to perform any act or duty imposed or required for the proper administration of parts 2 and 3 of article 2 of this title, or who knowingly permits or encourages another to do so is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111. A person who collects a voter registration application from an eligible elector for mailing or delivery to the county clerk and recorder and who fails to mail or deliver the application to the proper county clerk and recorder within five business days after the application is signed is guilty of a violation of this section.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 2005, Ch. 309, § 54, eff. June 6, 2005; Laws 2005, Ch. 310, § 54, eff. June 6, 2005.

## HISTORICAL AND STATUTORY NOTES

## 2006 Electronic Pocket Part Update

Laws 2005, Ch. 309, § 54 and Laws 2005, Ch. 310, § 54, added the second sentence.

## LIBRARY REFERENCES

2000 Main Volume

Elections ↻319, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 330, 353.

C. R. S. A. § 1-13-201, CO ST § 1-13-201

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C.R.S.A. § 1-13-202

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▣ Part 2. Offenses--Qualifications and Registration of Electors (Refs &amp; Annos)

**→§ 1-13-202. Unlawful qualification as taxpaying elector**

It is unlawful to take or place title to property in the name of another or to pay the taxes or to take or issue a tax receipt in the name of another for the purpose of attempting to qualify such person as a taxpaying elector or as a qualified taxpaying elector or to aid or assist any person to do so. The ballot of any person violating this section shall be void. Any person, company, corporation, or association violating this section shall forfeit and lose all rights, franchises, or other benefits accruing or to accrue to the benefit of such person, company, corporation, or association by or as the result of any such election. Any person who violates any of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

## LIBRARY REFERENCES

2000 Main Volume

Elections ↪317, 323, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353, 355.

C. R. S. A. § 1-13-202, CO ST § 1-13-202

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**→§ 1-13-203. Procuring false registration**

It is unlawful for any person to procure his or her own name, or the name of any other person, to be registered in the registration book of a precinct in which such person is not, at the time of such registration, entitled to be registered or for any person to procure any fictitious name to be registered in the registration book of any precinct. Any person who violates any of the provisions of this section shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment. Each violation shall be considered a separate offense.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1995, H.B.95-1241, § 82, eff. July 1, 1995.

## HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1995 amendment, in the first sentence, inserted "or her", and in the second sentence, substituted "shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment" for "is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111".

## LIBRARY REFERENCES

2000 Main Volume

Elections ↪312, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 326, 353.

C. R. S. A. § 1-13-203, CO ST § 1-13-203

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C.R.S.A. § 1-13-204

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▣ Part 2. Offenses--Qualifications and Registration of Electors (Refs & Annos)

**→§ 1-13-204. Adding names after registration closed**

No name shall be added to the registration book of any precinct after the close of the registration, and, if any county clerk and recorder, judge of election, or other person willfully and knowingly adds any such name of any person or any fictitious or false name to the registration book of any precinct after the close of registration, he is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars. Each violation shall be considered a separate offense.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

CROSS REFERENCES

Federal postcard applications from persons in United States service, see § 1-2-208.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪317, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-204, CO ST § 1-13-204

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▣ Part 2. Offenses--Qualifications and Registration of Electors (Refs & Annos)

**→§ 1-13-205. County clerk and recorder signing wrongful registration**

Every county clerk and recorder who willfully signs his name on the registration record opposite the name of any person knowing that said person is not legally entitled to be registered pursuant to the provisions of section 1-2-101 is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1991, H.B.91-1137, § 79, eff. May 1, 1991.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1991 amendment substituted "registration record" for "registration sheet".

LIBRARY REFERENCES

2000 Main Volume

Elections ↻312, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 326, 353.

C. R. S. A. § 1-13-205, CO ST § 1-13-205

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▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 2. Offenses--Qualifications and Registration of Electors (Refs & Annos)

**→§ 1-13-207. Signature on registration record is proof of oath**

Any elector, election official, or other person, by his signature on the registration record, shall be conclusively deemed in law to have duly verified such registration record. The registration record containing such signature, or a copy thereof certified by the county clerk and recorder, shall be admissible in evidence as proof of the taking of an oath or affirmation as to the information contained therein in all criminal proceedings pursuant to sections 1-13-104, 1-13-203, and 1-13-205.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1991, H.B.91-1137, § 80, eff. May 1, 1991.

**HISTORICAL AND STATUTORY NOTES**

2000 Main Volume

The 1991 amendment substituted "registration record" for "registration sheet" throughout the section.

**LIBRARY REFERENCES**

2000 Main Volume

Elections ↪329.

Westlaw Topic No. 144.

C.J.S. Elections § 348 et seq.

C. R. S. A. § 1-13-207, CO ST § 1-13-207

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C.R.S.A. § 1-13-208

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▣ Part 2. Offenses--Qualifications and Registration of Electors (Refs &amp; Annos)

**→§ 1-13-208. Deputy county clerk and recorder--influencing party affiliation**

Any deputy county clerk and recorder for voter registration purposes, or employee of the department of revenue who is authorized to conduct voter registration at local driver's license examination facilities, or employee of a voter registration agency who is authorized to conduct voter registration who influences or attempts to influence any person during the registration process to affiliate with a political party or to affiliate with a specific political party is guilty of a misdemeanor and, upon conviction, shall be punished as provided in section 1-13-111.

CREDIT(S)

Added by Laws 1992, H.B.92-1333, § 16, eff. Jan. 1, 1993. Amended by Laws 1994, H.B.94-1294, § 34, eff. Jan. 1, 1995.

## HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1994 amendment substituted "employee of a voter registration agency who is authorized to conduct voter registration" for "person authorized to conduct voter registration at branch registration sites".

C. R. S. A. § 1-13-208, CO ST § 1-13-208

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C.R.S.A. § 1-13-209

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▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 2. Offenses--Qualifications and Registration of Electors (Refs & Annos)

**→ § 1-13-209. High school deputy registrar--influencing party affiliation**

Any high school deputy registrar for voter registration purposes who influences or attempts to influence any person during the registration process to affiliate with a political party or to affiliate with a specific political party is guilty of a misdemeanor and, upon conviction, shall be punished as provided in section 1-13-111.

CREDIT(S)

Added by Laws 1992, H.B.92-1317, § 2, eff. July 1, 1992. Amended by Laws 1993, H.B.93-1255, § 121, eff. July 1, 1993.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1993 amendment substituted "registrar" for "county clerk and recorder".

C. R. S. A. § 1-13-209, CO ST § 1-13-209

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C.R.S.A. § 1-13-301

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▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 3. Offenses--Political Party Organization (Refs & Annos)

**→ § 1-13-301. Fraud at precinct caucus, assembly, or convention**

Any person in authority at any precinct caucus, assembly, or convention who in any manner dishonestly, corruptly, or fraudulently performs any act devolving on him by virtue of the position of trust which he fills or knowingly aids or abets any other person to do any fraudulent, dishonest, or corrupt act or thing in reference to the carrying on of any precinct caucus, assembly, or convention or the ascertaining or promulgating of its true will is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13- 111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪ 314, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 353.

C. R. S. A. § 1-13-301, CO ST § 1-13-301

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C.R.S.A. § 1-13-302

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▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 3. Offenses--Political Party Organization (Refs & Annos)

**→ § 1-13-302. Fraudulent voting in precinct caucus, assembly, or convention**

Any person who fraudulently participates and votes in a precinct caucus, assembly, or convention when he is not a member of the political party holding such precinct caucus, assembly, or convention, as shown on the registration books of the county clerk and recorder, is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪ 318, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 331, 353.

C. R. S. A. § 1-13-302, CO ST § 1-13-302

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C.R.S.A. § 1-13-303

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▣ Part 3. Offenses--Political Party Organization (Refs &amp; Annos)

**→§ 1-13-303. Offenses at precinct caucus, assembly, or convention**

(1) It is unlawful for any person at any precinct caucus, assembly, or convention:

- (a) To fraudulently vote more than once; or
- (b) To knowingly hand in two or more ballots deceitfully folded together; or
- (c) To knowingly procure, aid, counsel, or advise another to vote or attempt to vote fraudulently or corruptly; or
- (d) To falsely personate any elector and vote under his name or under an assumed name; or
- (e) To fraudulently procure, aid, abet, or encourage, directly or indirectly, any person to attempt to falsely personate any elector or to vote under an assumed name; or
- (f) To influence any voter in the casting of his vote by bribery, duress, or any other corrupt or fraudulent means; or
- (g) To receive any money or valuable thing, or the promise of either, for casting his vote for or against any person or measure or to offer his vote for or against any person or measure in consideration of money or other valuable thing, or the promise of either.

(2) Each offense mentioned in subsection (1) of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

**CREDIT(S)**

Repealed and reenacted by Laws 1980, S.B.1, § 1.

**LIBRARY REFERENCES**

2000 Main Volume

Elections ↻316, 318, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 331, 332, 353.

C. R. S. A. § 1-13-303, CO ST § 1-13-303

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C.R.S.A. § 1-13-401

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▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 4. Offenses--Access to Ballot by Candidate (Refs & Annos)

**→§ 1-13-401. Bribery of petition signers**

Any person who offers or, with knowledge of the same, permits any person to offer for his benefit any bribe or promise of gain to an elector to induce him to sign any petition or other election paper or any person who accepts any bribe or promise of gain of any kind in the nature of a bribe as consideration for signing the same, whether such bribe or promise of gain in the nature of a bribe is offered or accepted before or after signing, is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↻316, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 332, 353.

C. R. S. A. § 1-13-401, CO ST § 1-13-401

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C.R.S.A. § 1-13-402

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▣ Part 4. Offenses--Access to Ballot by Candidate (Refs &amp; Annos)

**→§ 1-13-402. Tampering with nomination papers--nomination petitions**

(1) Any person who, being in possession of any petition, certificate of nomination, or letter of acceptance, declination, or withdrawal, wrongfully or willfully destroys, defaces, mutilates, suppresses, neglects to file, or fails to cause to be filed the same within the prescribed time or who files any such paper knowing the same, or any part thereof, to be falsely made or who adds, amends, alters, or in any way changes the information on the petition as written by a signing elector is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

(2) Any person who willfully destroys, defaces, mutilates, or suppresses any nomination petition or who willfully neglects to file or delays the delivery of the nomination petition or who conceals or removes any petition from the possession of the person authorized by law to have the custody thereof, or who aids, counsels, procures, or assists any person in doing any of said acts commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1988, H.B.1358, § 5; Laws 1989, S.B.129, § 26, eff. May 9, 1989.

## LIBRARY REFERENCES

2000 Main Volume

Elections ↪317, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-402, CO ST § 1-13-402

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▣ Part 4. Offenses--Access to Ballot by Candidate (Refs &amp; Annos)

**→ § 1-13-403. Defacing of petitions other than nominating petitions**

Any person who willfully destroys, defaces, mutilates, or suppresses a petition; who willfully neglects to file or delays delivery of a petition; who conceals or removes a petition from the possession of the person authorized by law to have custody of it; or who aids, counsels, procures, or assists any person in doing any of the above acts commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Added by Laws 1995, H.B.95-1241, § 84, eff. July 1, 1995. Amended by Laws 1996, H.B.96-1061, § 49, eff. July 1, 1996.

## HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1996 amendment substituted "suppresses a petition; who willfully neglects to file or delays delivery of a petition; who conceals or removes a petition from" for "suppresses a petition for nomination or for recall; who willfully neglects to file or willfully delays the petition or petition section; who conceals or removes a petition or petition section from".

C. R. S. A. § 1-13-403, CO ST § 1-13-403

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C.R.S.A. § 1-13-601

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Article 13. Election Offenses (Refs & Annos)

Part 6. Offenses--Notice and Preparation for Elections (Refs & Annos)

**→ § 1-13-601. Tampering with notices or supplies**

Any person who, prior to an election, willfully defaces, removes, or destroys any notice of election posted in accordance with the provisions of this code, or who, during an election, willfully defaces, removes, or destroys any card of instruction or sample ballot printed or posted for the instruction of electors, or who, during an election, willfully defaces, removes, or destroys any of the supplies or conveniences furnished to enable a voter to prepare his ballot is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections 317, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-601, CO ST § 1-13-601

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C.R.S.A. § 1-13-701

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 ¶ Article 13. Election Offenses (Refs & Annos)  
 ¶ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→ § 1-13-701. Interference with election official**

Any person who, at any election provided by law, interferes in any manner with any election official in the discharge of his duty or who induces any election official to violate or refuse to comply with his duty or any law regulating the same is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ⇐ 319, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 330, 353.

C. R. S. A. § 1-13-701, CO ST § 1-13-701

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C.R.S.A. § 1-13-702

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 ▣ Article 13. Election Offenses (Refs & Annos)  
 ▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→ § 1-13-702. Interfering with watcher**

Any person who intentionally interferes with any watcher while he is discharging his duties set forth in section 1-7-108(3) is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 2003, Ch. 315, § 1, eff. May 22, 2003.

HISTORICAL AND STATUTORY NOTES

2006 Electronic Pocket Part Update

Laws 2003, Ch. 315, § 1 substituted "1-7-108(3)" for "1-7-202(3)".

LIBRARY REFERENCES

2000 Main Volume

Elections ↻319, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 330, 353.

C. R. S. A. § 1-13-702, CO ST § 1-13-702

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C.R.S.A. § 1-13-703

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**→ § 1-13-703. Tampering with registration book, registration list, or pollbook**

Any person who mutilates or erases any name, figure, or word in any registration book, registration list, or pollbook; or who removes such registration book, registration list, or pollbook or any part thereof from the place where it has been deposited with an intention to destroy the same, or to procure or prevent the election of any person, or to prevent any voter from voting; or who destroys any registration book, registration list, or pollbook or part thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪ 317, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-703, CO ST § 1-13-703

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C.R.S.A. § 1-13-704

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▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-704. Unlawfully refusing ballot or permitting to vote**

If at any election provided by law any judge of election willfully and maliciously refuses or neglects to receive the ballot of any registered elector who has taken or offered to take the oath prescribed by section 1-9-204 or knowingly and willfully permits any person to vote who is not entitled to vote at such election, such judge is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↻314, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 353.

C. R. S. A. § 1-13-704, CO ST § 1-13-704

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C.R.S.A. § 1-13-704.5

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 Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-704.5. Voting by persons not entitled to vote--penalty**

(1) Any person voting in any election provided by law knowing that he or she is not entitled to vote in such election commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

CREDIT(S)

Added by Laws 2006, 1 Ex. Sess., Ch. 6, § 1, eff. July 31, 2006.

HISTORICAL AND STATUTORY NOTES

2006 Electronic Pocket Part Update

Laws 2006, 1st Ex.Sess., Ch. 6, § 4, provides:

"Applicability. This act shall apply to offenses committed on or after the effective date of this act."

C. R. S. A. § 1-13-704.5, CO ST § 1-13-704.5

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C.R.S.A. § 1-13-705

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**→§ 1-13-705. Personating elector**

Any person who falsely personates any elector and votes at any election provided by law under the name of such elector shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1995, H.B.95-1241, § 85, eff. July 1, 1995.

## HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1995 amendment substituted "shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment" for "is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111".

## LIBRARY REFERENCES

2000 Main Volume

Elections ↪318, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 331, 353.

C. R. S. A. § 1-13-705, CO ST § 1-13-705

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C.R.S.A. § 1-13-706

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**→ § 1-13-706. Delivering and receiving ballots at polls**

- (1) No voter shall receive an official ballot from any person except one of the judges of election having charge of the ballots, nor shall any person other than such judge deliver an official ballot to such voter.
- (2) No person except a judge of election shall receive from any voter a ballot prepared for voting.
- (3) Any voter who does not vote the ballot received by him shall return his ballot to the judge from whom he received the same before leaving the polling place.
- (4) Each violation of the provisions of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪ 317, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-706, CO ST § 1-13-706

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C.R.S.A. § 1-13-707

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        ▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-707. Inducing defective ballot**

Any person who causes any deceit to be practiced with intent to fraudulently induce a voter to deposit a defective ballot so as to have the ballot thrown out and not counted is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪318, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 331, 353.

C. R. S. A. § 1-13-707, CO ST § 1-13-707

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C.R.S.A. § 1-13-708

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 ▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→ § 1-13-708. Tampering with voting equipment**

Any person who tampers with any electronic or electromechanical voting equipment before, during, or after any election provided by law with intent to change the tabulation of votes thereon to reflect other than an accurate accounting is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 2004, Ch. 334, § 28, eff. May 28, 2004.

## HISTORICAL AND STATUTORY NOTES

## 2006 Electronic Pocket Part Update

Laws 2004, Ch. 334, § 28, substituted "any electronic or electromechanical" for "a voting machine or any electronic".

## LIBRARY REFERENCES

## 2000 Main Volume

Elections ↪ 317, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-708, CO ST § 1-13-708

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C.R.S.A. § 1-13-708.5

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▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→ § 1-13-708.5. Elected officials not to handle electronic or electromechanical voting equipment or devices**

Any person who violates any provision of section 1-5-607 is guilty of a misdemeanor and shall be punished as provided in section 1-13-111.

CREDIT(S)

Added by Laws 1996, H.B.96-1061, § 50, eff. July 1, 1996.

HISTORICAL AND STATUTORY NOTES

2006 Electronic Pocket Part Update

This section is reprinted to conform to the state edition.

2000 Main Volume

This section was derived from former § 1-5-607(4).

C. R. S. A. § 1-13-708.5, CO ST § 1-13-708.5

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C.R.S.A. § 1-13-709

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▣ Part 7. Offenses--Conduct of Elections (Refs &amp; Annos)

**→ § 1-13-709. Voting in wrong precinct**

Any person who, at any election provided by law, knowingly votes or offers to vote in any election precinct in which he or she is not qualified to vote shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1995, H.B.95-1241, § 86, eff. July 1, 1995.

## HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1995 amendment inserted "or she", deleted "is guilty of a misdemeanor and, upon conviction thereof," following "qualified to vote", substituted "five thousand" for "two hundred" and "eighteen" for "three", and added ", or by both such fine and imprisonment".

## LIBRARY REFERENCES

2000 Main Volume

Elections ↻313, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 325, 353.

## RESEARCH REFERENCES

2006 Electronic Pocket Part Update

**ALR Library**

5 ALR 6th 1, Validity, Construction, and Application of State Statutory Voting Offenses.

## NOTES OF DECISIONS

Law governing 2  
Limitation of actions 3  
Validity 1

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C.R.S.A. § 1-13-709.5

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▣ Part 7. Offenses--Conduct of Elections (Refs &amp; Annos)

→ § 1-13-709.5. Residence--false information--penalty

Any person who votes by knowingly giving false information regarding the elector's place of present residence commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

CREDIT(S)

Added by Laws 1996, H.B.96-1061, § 51, eff. July 1, 1996. Amended by Laws 2002, Ch. 318, § 9, eff. Oct. 1, 2002.

## HISTORICAL AND STATUTORY NOTES

## 2006 Electronic Pocket Part Update

Laws 2002, Ch. 318, § 2, amended and relocated Article 1.3 of Title 18, effective October 1, 2002, from provisions formerly located in Articles 7, 8, 9, 11, 11.5, 13, and 18.5 of Title 16, Articles 26, 27, 27.8, and 27.9 of Title 17, and Articles 1 and 4 of Title 18. Section 9 of that Act made conforming amendments to this section.

## LIBRARY REFERENCES

2000 Main Volume

Elections ↔312.

Westlaw Topic No. 144.

C.J.S. Elections § 326.

C. R. S. A. § 1-13-709.5, CO ST § 1-13-709.5

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C.R.S.A. § 1-13-710

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**→ § 1-13-710. Voting twice—penalty**

Any voter who votes more than once or, having voted once, offers to vote again or offers to deposit in the ballot box more than one ballot shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1995, H.B.95-1241, § 87, eff. July 1, 1995.

## HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1995 amendment substituted "Any voter who" for "If any voter" and "shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment" for "he is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111".

## LIBRARY REFERENCES

2000 Main Volume

Elections ↪ 313, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 325, 353.

C. R. S. A. § 1-13-710, CO ST § 1-13-710

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C.R.S.A. § 1-13-711

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→ § 1-13-711. Interference with voter while voting

Any person who interferes with any voter who is inside the immediate voting area or is marking a ballot or operating a voting device or electronic voting device at any election provided by law is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 2004, Ch. 334, § 29, eff. May 28, 2004.

HISTORICAL AND STATUTORY NOTES

2006 Electronic Pocket Part Update

Laws 2004, Ch. 334, § 29, substituted "device or electronic voting device" for "machine".

LIBRARY REFERENCES

2000 Main Volume

- Elections ↪ 319, 332.
- Westlaw Topic No. 144.
- C.J.S. Elections §§ 330, 353.

C. R. S. A. § 1-13-711, CO ST § 1-13-711

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C.R.S.A. § 1-13-712

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 ▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-712. Disclosing or identifying vote**

- (1) Except as provided in section 1-7-108, no voter shall show his ballot after it is prepared for voting to any person in such a way as to reveal its contents. No voter shall place any mark upon his ballot by means of which it can be identified as the one voted by him, and no other mark shall be placed on the ballot by any person to identify it after it has been prepared for voting.
- (2) No person shall endeavor to induce any voter to show how he marked his ballot.
- (3) No election official, watcher, or person shall reveal to any other person the name of any candidate for whom a voter has voted or communicate to another his opinion, belief, or impression as to how or for whom a voter has voted.
- (4) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

## LIBRARY REFERENCES

2000 Main Volume

Elections ↻317, 332.  
 Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-712, CO ST § 1-13-712

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C.R.S.A. § 1-13-713

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 ▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-713. Intimidation**

It is unlawful for any person directly or indirectly, by himself or by any other person in his behalf, to impede, prevent, or otherwise interfere with the free exercise of the elective franchise of any elector or to compel, induce, or prevail upon any elector either to give or refrain from giving his vote at any election provided by law or to give or refrain from giving his vote for any particular person or measure at any such election. Each such offense is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪319, 320, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 330, 333, 353.

UNITED STATES SUPREME COURT

First Amendment, election day prohibition on solicitation of votes, displays, or distribution of campaign materials near polling place, see *Burson v. Freeman*, 1992, 112 S.Ct. 1846, 504 U.S. 191, 119 L.Ed.2d 5.

C. R. S. A. § 1-13-713, CO ST § 1-13-713

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C.R.S.A. § 1-13-714

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**→§ 1-13-714. Electioneering--removing and return of ballot**

No person shall do any electioneering on the day of any election within any polling place or in any public street or room or in any public manner within one hundred feet of any building in which a polling place is located, as publicly posted by the designated election official. As used in this section, the term "electioneering" includes campaigning for or against any candidate who is on the ballot or any ballot issue or ballot question that is on the ballot. "Electioneering" also includes soliciting signatures for a candidate petition, a recall petition, or a petition to place a ballot issue or ballot question on a subsequent ballot. "Electioneering" shall not include a respectful display of the American flag. No person shall remove any official ballot from the polling place before the closing of the polls. Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

## CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1994, H.B.94-1286, § 72, eff. July 1, 1994; Laws 1995, H.B.95-1241, § 88, eff. July 1, 1995; Laws 2006, Ch. 356, § 23, eff. June 6, 2006.

## HISTORICAL AND STATUTORY NOTES

## 2006 Electronic Pocket Part Update

Laws 2006, Ch. 356, § 23, inserted "'Electioneering' shall not include a respectful display of the American flag".

## 2000 Main Volume

The 1994 amendment, in the first sentence, substituted "designated election official" for "county clerk and recorder"; and inserted the second and third sentences.

The 1995 amendment, in the first sentence, inserted "building in which a" and "is located", and in the second sentence, substituted "that" for "which".

## CROSS REFERENCES

Polling places, multi-use buildings, see § 1-5-105.

Posting of signs at polling places, see § 1-5-504.5.

## LIBRARY REFERENCES

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**→ § 1-13-715. Liquor in or near polling place**

(1) It is unlawful for any election official or other person to introduce into any polling place, or to use therein, or to offer to another for use therein, at any time while any election is in progress or the result thereof is being ascertained by the counting of the ballots, any intoxicating malt, spirituous, or vinous liquors.

(2) It is unlawful for any officer or board of officers of any county or any municipality, whether incorporated under general law or by special charter, who may at any time be by law charged with the duty of designating polling places for the holding of any general or congressional election therein, to select therefor a room wherein any intoxicating malt, spirituous, or vinous liquors are usually sold for consumption on the premises.

(3) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

## CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1983, S.B.187, § 31; Laws 1996, H.B.96-1061, § 52, eff. July 1, 1996.

## HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1996 amendment, in subsec. (2), deleted "or a room within the distance of fifty feet, measured in a direct line, of any place where any such liquors are usually sold for consumption on the premises" from the end.

## CROSS REFERENCES

Qualifications for election judges, see § 1-6-101.

## LIBRARY REFERENCES

2000 Main Volume

Elections ↻317, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-715, CO ST § 1-13-715

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C.R.S.A. § 1-13-716

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Title 1. Elections (Refs & Annos)

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▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-716. Destroying, removing, or delaying delivery of election records**

(1) No person shall willfully destroy, deface, or alter any ballot or any election records or willfully delay the delivery of any such ballots or election records, or take, carry away, conceal, or remove any ballot, ballot box, or election records from the polling place or from the possession of a person authorized by law to have the custody thereof, or aid, counsel, procure, advise, or assist any person to do any of the aforesaid acts.

(2) No election official who has undertaken to deliver the official ballots and election records to the county clerk and recorder shall neglect or refuse to do so within the time prescribed by law or shall fail to account fully for all official ballots and other records in his charge. Informality in the delivery of the ballots and election records shall not invalidate the vote of any precinct if such records are delivered prior to the canvassing of the votes by the county board of canvassers.

(3) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↻314, 317, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 329, 353.

C. R. S. A. § 1-13-716, CO ST § 1-13-716

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C.R.S.A. § 1-13-717

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▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→ § 1-13-717. Penalty for destruction of supplies**

Any person who, during an election, willfully defaces, tears down, removes, or destroys any card of instruction or sample ballot printed or posted for the instruction of voters or who, during an election, willfully removes or destroys any of the supplies or conveniences furnished to enable a voter to prepare his ballot or willfully hinders the voting of others is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪ 317, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-717, CO ST § 1-13-717

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C.R.S.A. § 1-13-718

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▣ Part 7. Offenses--Conduct of Elections (Refs &amp; Annos)

**→§ 1-13-718. Release of information concerning count**

Any election official, watcher, or other person who releases information concerning the count of ballots cast at precinct polling places or of absentee voters' ballots prior to 7 p.m. on the day of the election is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1993, H.B.93-1255, § 122, eff. July 1, 1993.

## HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1993 amendment substituted "absentee" for "absent".

## LIBRARY REFERENCES

2000 Main Volume

Elections ⇨314, 317, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 329, 353.

## NOTES OF DECISIONS

**Recount 1****1. Recount**

Fraud and gross negligence and disregard of duties in election held such as could not be purged by recount (C.L. §§ 7691, 7692, 7744, 7745). *People v. Lindsey*, 1927, 253 P. 465, 80 Colo. 465, certiorari denied 47 S.Ct. 767, 274 U.S. 757, 71 L.Ed. 1336. Elections ⇨ 232

C. R. S. A. § 1-13-718, CO ST § 1-13-718

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C.R.S.A. § 1-13-719

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▣ Part 7. Offenses--Conduct of Elections (Refs &amp; Annos)

**→ § 1-13-719. Employer's unlawful acts**

(1) It is unlawful for any employer, whether corporation, association, company, firm, or person, or any officer or agent of such employer:

(a) In any manner to control the action of his employees in casting their votes for or against any person or measure at any precinct caucus, assembly, or convention; or

(b) To refuse to an employee the privilege of taking time off to vote as provided by section 1-7-102, or to subject an employee to a penalty or reduction of wages because of the exercise of such privilege, or to violate any of the provisions of section 1-7-102 in any other way; or

(c) In paying his employees the salary or wages due them, to enclose their pay in pay envelopes upon which there is written or printed any political mottoes, devices, or arguments containing threats, express or implied, intended or calculated to influence the political opinions, views, or actions of such employees; or

(d) Within ninety days of any election provided by law, to put up or otherwise exhibit in his factory, workshop, mine, mill, boardinghouse, office, or other establishment or place where his employees may be working or be present in the course of such employment any handbill, notice, or placard containing any threat, notice, or information that, if any particular ticket or candidate is elected, work in his place or establishment will cease in whole or in part, or his establishment will be closed, or the wages of his workmen will be reduced or containing other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees.

(2) Each offense mentioned in subsection (1) of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111. In addition thereto, any corporation violating this section shall forfeit its charter and right to do business in this state.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

## LIBRARY REFERENCES

2000 Main Volume

Elections ↻317, 319, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 330, 353.

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C.R.S.A. § 1-13-720

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**→§ 1-13-720. Unlawfully giving or promising money or employment**

(1) It is unlawful for any person, directly or indirectly, by himself or through any other person:

(a) To pay, loan, or contribute, or offer or promise to pay, loan, or contribute, any money or other valuable consideration to or for any elector, or to or for any other person, to induce such elector to vote or refrain from voting at any election provided by law or to induce any elector to vote or refrain from voting at such election for any particular person or to induce such elector to go to the polls or remain away from the polls at such election or on account of such elector having voted or refrained from voting for any particular person or issue or having gone to the polls or remained away from the polls at such election; or

(b) To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person with the intent that the same, or any part thereof, shall be used in bribery at any election provided by law or to knowingly pay, or cause to be paid, any money or other valuable thing to any person in discharge or repayment of any money wholly or partially expended in bribery at any such election; or

(c) To give, offer, or promise any office, place, or employment or to promise, procure, or endeavor to procure any office, place, or employment to or for any elector, or to or for any other person, in order to induce such elector to vote or refrain from voting at any election provided by law or to induce any elector to vote or refrain from voting at such election for any particular person or issue.

(2) Each offense set forth in subsection (1) of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

## CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

## LIBRARY REFERENCES

2000 Main Volume

Elections ↻316, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 332, 353.

## UNITED STATES SUPREME COURT

First Amendment, election day prohibition on solicitation of votes, displays, or distribution of campaign materials

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C.R.S.A. § 1-13-721

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 ▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-721. Receipt of money or jobs**

(1) It is a misdemeanor for any person, directly or indirectly, by himself or through any other person:

(a) Before or during an election provided by law, to receive, agree to accept, or contract for any money, gift, loan, or other valuable consideration, office, place, or employment, for himself or any other person, for voting or agreeing to vote, or for going or agreeing to go to the polls, or for remaining away or agreeing to remain away from the polls, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote or refraining or agreeing to refrain from voting for any particular person or measure at any election provided by law;

(b) During or after an election provided by law, to receive any money or other valuable thing on account of himself or any other person for voting or refraining from voting at such election, or on account of himself or any other person for voting or refraining from voting for any particular person at such election, or on account of himself or any other person for going to the polls or remaining away from the polls at such election, or on account of having induced any person to vote or refrain from voting for any particular person or measure at such election.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1982, H.B.1031, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↻216.  
 Westlaw Topic No. 144.  
 C.J.S. Elections § 204 et seq.

UNITED STATES SUPREME COURT

First Amendment, election day prohibition on solicitation of votes, displays, or distribution of campaign materials near polling place, see *Burson v. Freeman*, 1992, 112 S.Ct. 1846, 504 U.S. 191, 119 L.Ed.2d 5.

C. R. S. A. § 1-13-721, CO ST § 1-13-721

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C.R.S.A. § 1-13-722

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 ¶ Article 13. Election Offenses (Refs & Annos)  
 ¶ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→ § 1-13-722. Defacing or removing abstract of votes**

Any person who defaces, mutilates, alters, or removes the abstract of votes cast posted upon the outside of the polling place in accordance with section 1-7-602 is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1999, Ch. 154, § 23, eff. July 1, 1999; Laws 1999, Ch. 186, § 1, eff. Aug. 4, 1999.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

Laws 1999, Ch. 154, § 23, inserted "cast".

Laws 1999, Ch. 186, § 1, substituted "1-7-602" for "1-7-311".

LIBRARY REFERENCES

2000 Main Volume

Elections ↪ 317, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-722, CO ST § 1-13-722

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C.R.S.A. § 1-13-723

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 ¶ Article 13. Election Offenses (Refs & Annos)  
 ¶ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→ § 1-13-723. Penalty for neglect of duty--destruction of ballots--breaking seal**

(1) Every officer upon whom any duty is imposed by any election law who violates his duty or who neglects or omits to perform the same is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

(2) Any official or person, except one authorized by law, who breaks or loosens a seal on a ballot or a ballot box with the intent to disclose or learn the number of such ballot or ballot box is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↔ 314, 317, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 327, 329, 353.

C. R. S. A. § 1-13-723, CO ST § 1-13-723

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C.R.S.A. § 1-13-801

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▣ Part 8. Offenses--Absentee Voting and Voting by New Residents (Refs &amp; Annos)

**→ § 1-13-801. Mailing other materials with absentee voter's ballot**

It is unlawful for any county clerk and recorder to deliver or mail to a registered elector, as a part of or in connection with the absentee voter's ballot, anything other than the voting material as provided in article 8 of this title. Each such offense is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1993, H.B.93-1255, § 123, eff. July 1, 1993.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1993 amendment, in the first sentence, substituted "absentee" for "absent".

LIBRARY REFERENCES

2000 Main Volume

Elections ⇨ 314, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 353.

C. R. S. A. § 1-13-801, CO ST § 1-13-801

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C.R.S.A. § 1-13-802

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▣ Article 13. Election Offenses (Refs &amp; Annos)

▣ Part 8. Offenses--Absentee Voting and Voting by New Residents (Refs &amp; Annos)

**→ § 1-13-802. Absentee voter applications and deliveries outside county clerk and recorder's office**

No county clerk and recorder shall accept any application for any absentee voter's ballot nor make personal delivery of any such ballot to the applicant unless such acceptance and delivery occurs within the confines of the official office of such county clerk and recorder, except as otherwise provided in sections 1-8-104, 1-8-106, and 1-8-112. Any acceptance or delivery contrary to the provisions of this section renders void the ballot to which it relates. Each violation of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1993, H.B.93-1255, § 124, eff. July 1, 1993; Laws 1996, H.B.96-1061, § 80, eff. July 1, 1996.

## HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1993 amendment, in the first sentence, substituted "absentee" for "absent".

The 1996 amendment, in the first sentence, substituted "sections 1-8-104, 1-8-106, and 1-8-112" for "sections 1-8-103, 1-8-105, and 1-8-111."

## LIBRARY REFERENCES

2000 Main Volume

Elections ☞ 316, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 332, 353.

C. R. S. A. § 1-13-802, CO ST § 1-13-802

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C.R.S.A. § 1-13-803

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▣ Part 8. Offenses--Absentee Voting and Voting by New Residents (Refs &amp; Annos)

**→§ 1-13-803. Offenses relating to absentee voting**

Any election official or other person who knowingly violates any of the provisions of article 8 of this title relative to the casting of absentee voters' ballots or who aids or abets fraud in connection with any vote cast, or to be cast, or attempted to be cast by an absentee voter shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1993, H.B.93-1255, § 125, eff. July 1, 1993; Laws 1995, H.B.95-1241, § 89, eff. July 1, 1995.

## HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1993 amendment substituted "absentee" for "absent" in two places.

The 1995 amendment substituted "shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment" for "is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111".

## LIBRARY REFERENCES

2000 Main Volume

Elections ↪314, 317, 332.

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C.J.S. Elections §§ 327, 329, 353.

C. R. S. A. § 1-13-803, CO ST § 1-13-803

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1 MR. DICKSON: I am just glad to  
2 have more of us.

3 MR. KLINER: Mr. Chairman,  
4 Whereas the Election Assistance Commission  
5 is an agency of the United States Federal  
6 Government created by the Help America  
7 Vote Act, and whereas, the working group  
8 met in May, 2006, and heard an initial  
9 verbal presentation of information to be  
10 included in a report on voter fraud and  
11 voter intimidation and made specific  
12 recommendations for the content of the  
13 report, whereas the voter fraud and  
14 intimidation report was submitted to the  
15 EAC on or about July, 2006, but was not  
16 released to the public, whereas on or  
17 about 2006, [REDACTED] wrote a letter  
18 of complaint regarding the failure to  
19 timely release the report, noting that  
20 these issues are of utmost important to  
21 the fair administration of elections, and  
22 whereas the EAC released in December of

1 2006 a severely edited version of the  
2 voter fraud and intimidation report to the  
3 public, and whereas these issues of voter  
4 fraud and intimidation have become the  
5 justification for many states passage of  
6 voter identification and citizenship laws,  
7 now, therefore, be it resolved that the  
8 Board of Advisors recommends to the United  
9 States Election Assistance Commission that  
10 it release the original voter fraud and  
11 intimidation report to the public, and in  
12 the alternative, be it resolved that the  
13 Board of Advisors recommends to the United  
14 States Election Assistance Commission that  
15 it release the voter fraud and  
16 intimidation report to the EAC Board of  
17 Advisors for its review.

18           I would note that the period  
19 after, and in the next to the last  
20 paragraph, should be deleted and the  
21 period, EAC was deleted. Those are typos  
22 that are my fault.

1           Approved as to form by the  
2 committee.

3           MR. THOMAS: Thank you. Barbara  
4 Arnwine.

5           MS. ARNWINE: Yes, if I may. I  
6 raised this issue yesterday, and I just  
7 wanted to offer one clarification. The  
8 letter that I wrote is dated October 6,  
9 2006. I did receive a response on October  
10 12, 2006, to my letter, and the report was  
11 released, to my best information, in  
12 December.

13           The concern, basically, is one  
14 of transparency, and I also would say I  
15 think it goes a lot also to the  
16 credibility of the EAC before the advocacy  
17 community, that in serving on the working  
18 group, it was my understanding that this  
19 was an important function, to come up with  
20 a good analysis of the real data and  
21 evidence on voter fraud and voter  
22 intimidation. And two very capable

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1 consultants had been hired to engage in  
2 preparing that report, and it was our  
3 understanding that the report would, in  
4 fact, be submitted. And it was our  
5 expectation that it would be released as  
6 submitted.

7           Unfortunately, there was this  
8 delay that raised the question within the  
9 advocacy community of why the delay and it  
10 was unclear why the report was not being  
11 released immediately. That was  
12 compounded, of course, by state  
13 legislature that is engaging in a series  
14 of strategy for adopting a series of  
15 statutory provisions that, in fact, were  
16 presuming fraud and other basis for their  
17 putting together voter identification  
18 laws, some of them very onerous and  
19 onerous citizenship requirement laws.

20           As a consequence, one of our  
21 concerns, and the reason I wrote the  
22 letter is I felt the report needed to come

1 out, and it would be helpful to the  
2 conversation of all of us who are in  
3 active debate on these issues.

4           As you may recall, in late  
5 October, the U.S. Congress and the House  
6 had a huge fight on this very issue, a  
7 very close vote on the issue of voter  
8 identification. And, once again, the  
9 issue of what role does it play in  
10 deterring fraud was at the basis of the  
11 contention.

12           Those who, of course, are pro  
13 these laws believe very strongly that they  
14 have that deterrent effect. There are so  
15 much issues here, I won't try to do them  
16 all, but what I will say is that I believe  
17 that it is important to our role for the  
18 EAC itself, in its issues of transparency,  
19 to make sure that an issue this critical,  
20 this important, this at the forefront of  
21 the major debates out there in the field  
22 on what is a fair electoral process, that

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1 this should have -- this report, at the  
2 minimum, should have been presented to  
3 this body, and for us to have had some  
4 attempt to review it in its original form  
5 and at a maximum, that it should have been  
6 released to the public, that I have really  
7 concerns about what has happened here.

8           I think that in the absence of  
9 this body's voluntary releasing the report  
10 to the field, that Foyer requests that  
11 have not filed that will compel our  
12 lawsuits that will follow will somehow  
13 compel the release of this report, and  
14 it's going to be embarrassing because  
15 there shouldn't be anything for us to feel  
16 that it should not be released.

17           If the body had felt that the  
18 consultants, as was expressed yesterday,  
19 over personalized their opinions within  
20 the report, I think there's other ways  
21 that could have been handled, but I do  
22 have a problem with the withholding of the

1 document and of the subsequent what I  
2 think will be embarrassment as we proceed  
3 with these Foyer requests and other  
4 attempts that groups are already  
5 undertaking to obtain the original report.

6           And so I, therefore, made my  
7 motion, I hope, in the best spirit to  
8 acquire the original report, which I do  
9 not have a copy of and I have not seen, so  
10 I have no idea how it differs in total  
11 substance, but I understand it differs  
12 significantly from just the -- whatever  
13 you call it. As everybody knows, the only  
14 secret in D.C. is a syndicated secret, as  
15 far as I understand, and I would like to  
16 see the original report, and I think this  
17 whole body should have that original  
18 report.

19           MR. THOMAS: [REDACTED] is out of the  
20 room so I will give him an opportunity to  
21 speak when he gets back. Any other  
22 discussion? Question?

1                   MR. CUNNINGHAM: Keith  
2 Cunningham. Is it common practice to edit  
3 reports prior to their release? I'm not  
4 sure how the Commission works. Is that  
5 germane to this particular report or have  
6 you done it on other reports?

7                   MS. HILLMAN: We have had other  
8 studies where we have received the  
9 information from consultants that has  
10 informed a report that the EAC releases.  
11 So it's not the first time that we have  
12 not released the full report that has come  
13 in to us.

14                   MR. CUNNINGHAM: Was that the  
15 situation with the provisional ballot  
16 report?

17                   MR. WILKEY: That was the case  
18 and others, and is certainly a part of how  
19 we structure our contracts. When we  
20 develop a contract with a consultant, we  
21 ask them to research a specific issue.  
22 In this particular case, it was a first

1 step effort of what we see as a long-term  
2 process of studying the issue, looking at  
3 what was out there in terms of available  
4 information resources, what have you,  
5 giving us the draft report.

6           That report was, of course, pre  
7 decisional on our part. Let me add that  
8 as part of this report, that the two  
9 consultants, one -- and I will be very  
10 frank with you, whose work I have greatly  
11 admired over the years and whose  
12 recommendation I did a significant amount  
13 of research in the appendix of this  
14 record, all of which in its entirety was  
15 made available and is up on our web site  
16 for everybody to see. There was a  
17 tremendous amount of research effort, but  
18 as you recall, and I didn't happen to be  
19 in the room because we had that  
20 simultaneous meeting both of your board  
21 and Standards Board, but I am made to  
22 understand that there was a status report

1 given on this very subject in which there  
2 was a great deal of interest and a great  
3 deal of discussion from various board  
4 members about issues related to that  
5 report.

6           And so, again, taking advice  
7 from this board, as we're required to do  
8 and we will do, we followed in that  
9 direction and took this report. And staff  
10 looked at it, presented it to the  
11 Commission in the appropriate way, and put  
12 it out to the public in December last  
13 year, but that's how we developed these  
14 contracts.

15           Certainly, there are other  
16 reports that may come along that the  
17 Commission may decide to publish in its  
18 entirety, without adopting it, but making  
19 it available or taking it, looking at it  
20 as a draft, as is required by the  
21 contract, and fashioning it into a  
22 document that they believe has more value

1 to the public.

2           Let me add, as I said at the  
3 beginning, this was the first step in an  
4 effort that's going to go on. As part of  
5 that report and part of the recommendation  
6 in that draft report, by the way, which is  
7 clearly stated in the record that we  
8 issued, we have taken a number of those  
9 recommendations and are moving forward in  
10 that comprehensive process to reach out to  
11 other people involved in this area to get  
12 even more information.

13           So that's where we are, that is  
14 what we did, and I will gladly answer any  
15 other questions that you have.

16           MR. DEGREGORIO: Paul  
17 DeGregorio. Let me add to what Tom has  
18 said about these reports. You might  
19 remember because I was present when this  
20 body met back in May and had some concerns  
21 about the reports that we issued about the  
22 information that's contained in the

005985

1 reports, and the research and information  
2 that's contained to make sure that it's  
3 accurate and that it's fair to all  
4 concerned. And I think we have treated  
5 this particular report no different than  
6 the other reports that we received and the  
7 research we received.

8           And Tom is exactly right, it was  
9 a draft, and we did report to you -- [REDACTED]  
10 [REDACTED] reported to this body back in May the  
11 status of this particular report. But I  
12 think it's always incumbent on the EAC  
13 before we put our empamater (sic) on  
14 whatever document we issue as a body to  
15 make sure national information that we  
16 would put out as a Commission is correct  
17 and is fair to all parties concerned.

18           And in this particular case, we  
19 know that DOJ had a concern about some of  
20 the information that was provided to us  
21 that they felt was inaccurate. So it was  
22 issues like that that our general counsel

005986

1 looked at the whole picture, and looked at  
2 what the intent was from the beginning of  
3 what this report was supposed to be, and  
4 then came to the EAC with her research on  
5 this, and with the document that we were  
6 comfortable with that leads to the future  
7 or that needs to be done in research in  
8 this particular area.

9       And also as Tom said, included a lot  
10 of information that's on our web site  
11 where people can go and find detailed  
12 reports and studies about voter fraud and  
13 voter intimidation, very good studies,  
14 very good information. We didn't take a  
15 stand on those particular documents, but  
16 we provided them as informational, as we  
17 will continue to do.

18               MR. THOMAS: Jim Dickson, you  
19 are back in the room. You are co-sponsor.  
20 Would you like to speak to this  
21 resolution?

22               MR. DICKSON: Yes. Thank you.

005987

1 Jim Dickson.

2           I support this resolution, but I  
3 also support its underlying notion of  
4 supporting transparency and openness. I  
5 absolutely am certain in my own heart that  
6 everyone on the Commissioner and staff are  
7 doing the best that you can do under very  
8 different circumstances in educating and  
9 informing the country's debate, and  
10 providing practical assistance to election  
11 officials.

12           Unfortunately, it seems to me  
13 you can say we receive this report without  
14 saying we accept it. You can receive a  
15 report without saying this is our  
16 position. And I would encourage the  
17 Commission to think that way because the  
18 flip side of it is whenever a report is  
19 issued that was paid for with public money  
20 and something is redacted, it just sends  
21 the paranoids through the roof. They are  
22 probably going to go through the roof

005988

1 anyway, but we don't need to give them  
2 ammunition.

3           There are many people of good  
4 will, when they see a redacted report in  
5 the public, it just raises doubt. They  
6 don't live and breathe this very complex  
7 topic the way we do. And when the  
8 Commission sends out something that's  
9 redacted and it raises doubt in the press,  
10 it raises doubt amongst people of good  
11 will, that is beginning to create an  
12 absolutely erroneous perception, but I am  
13 afraid a very real perception, that the  
14 Commission is about supporting the status  
15 quo and protecting the administration of  
16 elections.

17           Now, I want to be clear, I think  
18 that that view is wrong. It's wrong in  
19 spirit, it's wrong based on the facts, but  
20 I urge passage of this so that we don't --  
21 so that the Commission can be perceived as  
22 doing the very valuable, open, hard work

005989

1 that the Commission is doing, and there is  
2 no taint on it.

3 MR. THOMAS: Further discussion?  
4 Mr. Overton.

5 MR. OVERTON: Thank you. I am  
6 in favor of disclosure, I think, at the  
7 very least to this Board of Advisors. My  
8 understanding is that the Department of  
9 Justice had access to report to review it.  
10 Is that correct?

11 MS. QUINN: No. We had access  
12 to the same draft report you did in May of  
13 2006.

14 MR. OVERTON: So, basically,  
15 only the Commissioners and their staffers  
16 have had access to the report.

17 MS. HILLMAN: Clarification. I  
18 believe it's correct that Mr. Dansanto was  
19 a part of the working group.

20 MR. DONSANTO: I was a part of  
21 the panel that was a reviewing panel.

22 MS. HILLMAN: I don't know, and

005990

1 in the absence of the staff person who  
2 worked on it, I don't know which documents  
3 that group saw. And DOJ should answer for  
4 itself whether or not DOJ saw any more of  
5 the report than the working group did.

6 MR. DONSANTO: Craig

7 Donsanto, Department of Justice.

8 This is a developing project. It's a  
9 long-term project. It is a complex  
10 project. It seems to measure something  
11 that I have been trying to study for most  
12 of my life. It is not an easy subject.

13 I was invited along with several  
14 other people to be a part of a review  
15 panel on this. Included on this review  
16 panel was Gary Weinberg used to be head of  
17 the voting rights division, and several  
18 other people with a background in this  
19 subject. We were given a preliminary  
20 statement or preliminary product of these  
21 contractors to look at. And the purpose  
22 of us looking at it was to determine

005991

1 whether it was accurate and something to  
2 be acted upon, and we found this -- not  
3 just myself, but the panel in general,  
4 found that that the report was  
5 preliminary, it was incomplete, in some  
6 cases, it was conclusionary, in a couple  
7 instances, it was not accurate, and that  
8 it needed more work.

9           And as a result of that session,  
10 which was part of the internal review of  
11 contractors work, it was resubmitted for  
12 further work.

13           On the related issue of Freedom  
14 of Information Act, as I understand it, it  
15 is one of the pre decisional documents.  
16 It would not be discoverable under FOIA.

17           It is a preliminary draft so it  
18 would be not be releasable. And if I can  
19 answer any more questions about this  
20 preliminary process that I was privileged  
21 to be a small part of, I will be pleased  
22 to, but that's kind of it.

005992

1           MS. ARNWINE: Let me be very  
2 clear. I am talking about the document  
3 that was submitted to the Commission on or  
4 about July of 2006. And I have no idea if  
5 your panel review was after that point or  
6 before then.

7           MR. DONSANTO: Sounds about  
8 right.

9           MS. ARNWINE: I just think that  
10 raises so many other issues that I don't  
11 even want to get into them today. But I  
12 will say that it is important that we --  
13 on something this critical, it is  
14 important, I think, that it had been  
15 released. Because clearly if I had been  
16 on the panel reviewing it in July, given  
17 the differences that the Lawyers Committee  
18 and DOJ has on some of these perceptions  
19 of what's accurate and not accurate, we  
20 might have had a different conclusion.  
21           I just think that there's issues  
22 here that are deep regarding the function

005993

1 of the EAC. And I do believe that there  
2 are answers that we need to keep working  
3 at, but I do think that it does not serve  
4 this body well at all to be perceived in  
5 any regard as suppressing information or  
6 not sharing information with the public  
7 that clearly would be informative to this  
8 overall debate.

9 MR. THOMAS: Mr. Overton. You  
10 had the floor when this exchange started.  
11 Anything further?

12 MR. OVERTON: No. I think, at  
13 the very least with regard to disclosure  
14 to this body, I think I am in support of  
15 the resolution.

16 MR. THOMAS: Cameron.

17 MS. QUINN: A couple things.  
18 One going back to the issue of the when.  
19 Craig, I could have sworn when we saw the  
20 draft report in May, that you had just  
21 been in the working group meeting.

22 MR. DONSANTO: That's accurate.

005994

1 MS. QUINN: So it's nowhere near  
2 this July time frame.

3 MR. DONSANTO: Time passes when  
4 you're having fun.

5 MS. QUINN: I have some vague  
6 recollection, and it was a very balanced  
7 group, but I don't recall offhand who was  
8 in.

9 MR. DONSANTO: I believe that  
10 the information that was released  
11 contained the working groups identity of  
12 all the people on the working group.

13 MS. QUINN: I thought it did.  
14 It was a very balanced group of people on  
15 both sides of the issue. I just don't  
16 recall, and apparently no one from the EAC  
17 does, who was on that working group.

18 MS. ARNWINE: Once again, the  
19 question is in July, after the report was  
20 issued, the working group was not  
21 reconvened to review or to receive what  
22 the final product was, to give any

1 analysis. And, of course, the role of the  
2 working group is another one of my issues  
3 here, but it was not reconvened to give  
4 any input as to whether or not the report  
5 was sufficient or if it had addressed the  
6 concerns that had been raised in May. And  
7 I just continue to say that I think this  
8 was not handled in the best way, and that  
9 there needs to be disclosure of this  
10 information.

11 MS. QUINN: If I can just finish  
12 out on saying on a completely different  
13 subject, they have got four corrections on  
14 typos I would like to suggest when it's  
15 appropriate.

16 MS. HILLMAN: I just want to  
17 state I think it's hard for all us here  
18 from the EAC to recite dates and sequences  
19 of events because the staff who worked on  
20 this are not in this room.

21 Now, I for one am on record  
22 saying that the EAC should have handled

005996

1 the time frame of our review and how we  
2 expedited the information from once we  
3 received, that clearly was not our finest  
4 hour. It could not have been helped. I  
5 am forever probably going to wonder what  
6 would life have been like on this  
7 Commission had we not had an FDE cap, had  
8 we had a full budget the first year we  
9 were in operation, if we could have been  
10 able to operate at a level of capacity  
11 that we know we need.

12           Be that as it may, we couldn't,  
13 and so we were really ham strung this  
14 summer by having one of our soldiers down  
15 for a while, and we just didn't pick up  
16 the ball fast enough. That's past tense.  
17 There is not much we can do about that.  
18 And so with respect to who saw what when  
19 after the May working group, I can't shed  
20 light on that.

21           With respect to when the people  
22 who were quoted in sections of the

005997

1 information we received from the  
2 consultants, I know that there, as a part  
3 of our due diligence process, verification  
4 of that information to see if, in fact, it  
5 was an accurate reflection of the dialogue  
6 and conversation that went on. How that  
7 was done, I don't know. I don't know if  
8 it was done over the phone or how staff  
9 verified the information, but I do want to  
10 also clarify to this body that information  
11 we give the Board of Advisors is public  
12 information. So it's not like we can give  
13 you a document that we can't make public.

14                   MR. LEWIS: I have listened  
15 to this discussion and I have struggled  
16 with what's the appropriate role for the  
17 Board of Advisors, and what really is the  
18 business of the Commission itself. And if  
19 we adopt this kind of resolution, then it  
20 says to me that the contractors have more  
21 authority than the Commissioners because  
22 the contractors get to propose what they

1 propose, write what they write, and then  
2 you don't have any ability at that point  
3 to say, well, that's not our position, and  
4 that's not where we went to recommend to  
5 the public, and we don't find enough  
6 supporting information or documentation or  
7 we think it's too filled with personal or  
8 anecdotal stuff for us to be able to  
9 support it.

10           I will tell you, at least at the  
11 election center when we deal with  
12 contractors, they understand they are  
13 submitting things outside, and that we may  
14 or may not publish it in it's native  
15 format. We may or may not share it with  
16 others. And I'm going to guess that every  
17 governmental office in this room does sort  
18 of the same sort of thing.

19           This seems to me, with all due  
20 respect to the strong feelings that I know  
21 that are viewed in this kind of study and  
22 the issues related to it, I think it's

005999

1 appropriate for us to have that discussion  
2 within these walls, but not necessarily  
3 whether or not this body ought to have the  
4 ability to review the native format and  
5 then tell the Commission how it's supposed  
6 to react to that. I think that usurps the  
7 authority of the Commission, and quite  
8 frankly, I won't be for that.

9           MS. KAUFMAN: I would like to  
10 move the previous question. It requires a  
11 secretary takes a two thirds vote to pass.

12           MR. THOMAS: I guess that gets  
13 us to all in favor, call it to question  
14 all. Cutting off debate, the question to  
15 cut off debate.

16           MS. QUINN: Mr. Chairman, can I  
17 ask that we're going to vote on this and  
18 there are typos.

19           MR. THOMAS: We're not voting on  
20 this. We're voting on calling the  
21 questions.

22           MS. ARNWINE: Unreadiness. I

1 would like to respond to the authority  
2 question.

3           MR. THOMAS: The question's been  
4 called. I'm sorry. I have to move to  
5 that. All in favor of calling the  
6 question to cut off debate, I. Opposed?  
7 Motion carries.

8           Now, therefore, be it resolved,  
9 I'm going to ask my parliamentarian to  
10 take care of typos. We will take care of  
11 those later.

12           Now, therefore, be it resolved  
13 that the Board of Advisors recommends to  
14 the United States Election Assistance  
15 Commission that it release the original  
16 voter fraud and intimidation report to the  
17 public, and in the alternative be it  
18 resolved that the Board of Advisors  
19 recommends to the United States Election  
20 Assistance Commission that it, the EAC,  
21 release the voter fraud and intimidation  
22 record to the EAC Board of Advisors for

006001

1 it's review.

2 All in favor, say I. All  
3 opposed, nay. Motion does not carry.

4 MR. CRANGLE: Mr. Chair, I think  
5 I had received a proposed resolution, and  
6 I have propose approached the committee  
7 members and may I read it, because I don't  
8 have copies for everyone.

9 MR. THOMAS: Please read it.

10 MR. CRANGLE: The resolution  
11 would read, whereas the Election  
12 Assistance Commission is an agency of the  
13 United States Federal Government created  
14 by the Help America Vote Act, and whereas  
15 the ability of the EAC to conduct accurate  
16 and timely research is necessary and  
17 whereas the ability of the EAC to respond  
18 with information which can assist  
19 policymakers and Congress in time to  
20 respond to proposed legislation, and  
21 whereas, during election cycles, it is  
22 urgent that the EAC have an ability to

006002

Tamar Nedzar [REDACTED]  
07/31/2006 08:30 AM

To Sheila A. Banks [REDACTED]  
cc  
bcc  
Subject Re: Bylaws [REDACTED]

Sheila,

Update: I have reviewed FACA and read through the Bylaws for the Board of Advisors and Standards Board. Not much, but...

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

[REDACTED] Sheila A. Banks/EAC/GOV  
07/25/2006 07:47 AM

To Tamar Nedzar/EAC/GOV@EAC  
cc  
Subject Bylaws

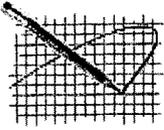
Tamar,

Please be ready to give Commissioner Hillman and I an update on the status of the Bylaws. This can be done via email if you prefer. We have an conference call with the Standards Board Executive Board on July 13 at 1:00 p.m. and the Bylaws are an agenda item.

Thanks,

Sheila

006003



Tamar Nedzar /EAC/GOV

08/20/2006 01:31 PM

To Sheila A. Banks/EAC/GOV@EAC

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

bcc

Subject Standards Board Bylaws Draft

Sheila,

Please find attached a draft of the bylaws. Because it is a draft, I erred on the side of being over-inclusive. In addition, you will see that I tracked changes instead of doing a strike-through, primarily because I made more changes than I anticipated, many of which were to the document's organization.

If you have any questions or would like assistance in creating an "changes at-a-glance" document, I will be in the office bright and early on Tuesday.

Enjoy the rest of your weekend!

Tamar Nedzar

Law Clerk

U.S. Election Assistance Commission

1225 New York Avenue, NW Suite 1100

Washington, DC 20005

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<http://www.eac.gov>



[TNedzar@eac.gov](mailto:TNedzar@eac.gov) Standards\_Board\_BYLAWS\_8\_20\_06.doc

006004

Jeannie Layson/EAC/GOV  
07/07/2006 03:16 PM

To EAC Personnel  
cc  
bcc  
Subject FOIA Request

History:  This message has been replied to.

Hello everyone,

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

I need this information and/or a response by COB July 28. If you cannot comply by this date, please provide notification and an estimated time when you will provide the information and the reason why you cannot comply by the original deadline. Thanks for your cooperation. See request below:

Transcend recently submitted an offer in response to RFP 06-02 (RFQ142611). The contract was awarded to the Cresston Company, LLC d.b.a. Compass Languages. Under the Freedom of Information Act, I would like to request copies of the following documents: 1) The full proposal submitted by the Cresston Company for RFP 06-02 (RFQ142611); 2) a list of all offerors and the costs proposed for each; 3) our scores on each component of the evaluation criteria for the technical proposal and the scores of the Cresston Company technical proposal. Criteria includes relevant organizational experience (max 65 points), quality and look of samples (max 10 points), compliance with proposal instructions (max 5 points) and results of reference checks (max 20 points).

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

006005

Jeannie Layson/EAC/GOV

08/28/2006 11:14 AM

To EAC Personnel

cc

bcc

Subject FOIA request regarding poll worker findings

History:  This message has been replied to.

Hello everyone,

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

I need this information and/or a response by COB September 1, 2006. If you cannot comply by this date, please provide notification and an estimated time when you will provide the information and the reason why you cannot comply by the original deadline. Thanks for your cooperation. See request below:

In a follow up to her original FOIA request for information regarding RFP 05-05 (poll worker recruitment, training, and retention), Bonnie Glaser of [REDACTED] has placed another FOIA request, asking for the poll worker report and findings referenced by Kay Maxwell in her testimony at our May public meeting. In her testimony, Kay said "Our report submitted to the EAC includes a detailed description of all our findings, as well as the methodology employed."

Please see me if you have any questions.

Jeannie Layson  
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Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

006006

Jeannie Layson/EAC/GOV

08/28/2006 04:49 PM

To EAC Personnel

cc

bcc

Subject FOIA REQUEST

History:  This message has been replied to.

Hello (again) everyone,

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

I need this information and/or a response by COB September 15, 2006. If you cannot comply by this date, please provide notification and an estimated time when you will provide the information and the reason why you cannot comply by the original deadline. Thanks for your cooperation. See request below:

"I am writing to make a formal request for materials pursuant to the Freedom of Information Act. In particular, I am interested in receiving the following items: 1) All materials submitted by the Ohio Secretary of State that pertain to Ohio's expenditure of funds allocated under the Help America Vote Act; 2) All communications between the US Election Assistance Commission and the Ohio Secretary of State concerning HAVA-related matters; and 3) Any materials setting forth guidelines for spending HAVA funds."

This request was submitted by Michael Montgomery  Please let me know if you would like a copy of the FOIA request.

Please see me if you have any questions.

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

006007

Bryan Whitener/EAC/GOV  
10/20/2006 02:55 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Edgardo Cortes/EAC/GOV@EAC,  
Brian Hancock/EAC/GOV@EAC, Laiza N.  
cc Jeannie Layson/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Gavin S.  
bcc

Subject Response Requested - URGENT Please send documents

History:  This message has been replied to.

It is urgent that we obtain electronic attachments of all documents presented at the Standards Board and Board of Advisors public meetings last May. Please respond affirmatively or negatively if ANY of these documents were submitted by you and clearly identify them. At minimum, they consist of the items contained in the notebooks that were circulated. Since these were public meetings, we need to obtain any documents that were presented at the meetings ( in or out of a notebook ). If you have them, please email them to me ASAP.

Thanks for your cooperation,  
Bryan Whitener

006008

Jeannie Layson/EAC/GOV  
10/20/2006 03:42 PM

To Bryan Whitener/EAC/GOV@EAC  
cc Amie J. Sherrill/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Edgardo  
bcc  
Subject Re: Response Requested - URGENT Please send documents 

Just want to make sure everyone understands... we're not going to distribute or post this information. However, we need to get copies of all of the same documents that were included in the notebook and house them in one place on the server. These are considered public documents, and we are obligated to provide them if requested. We just want to make sure we have access to them if we get requests. Please let me know if you have any questions.

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www.eac.gov  
Bryan Whitener/EAC/GOV

Bryan Whitener/EAC/GOV  
10/20/2006 02:55 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC, Edgardo Cortes/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Laiza N. Otero/EAC/GOV@EAC, Tamar Nedzar/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC  
cc Jeannie Layson/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC  
Subject Response Requested - URGENT Please send documents

It is urgent that we obtain electronic attachments of all documents presented at the Standards Board and Board of Advisors public meetings last May. Please respond affirmatively or negatively if ANY of these documents were submitted by you and clearly identify them. At minimum, they consist of the items contained in the notebooks that were circulated. Since these were public meetings, we need to obtain any documents that were presented at the meetings ( in or out of a notebook ). If you have them, please email them to me ASAP.

Thanks for your cooperation,  
Bryan Whitener

006009

Bryan Whitener/EAC/GOV  
10/20/2006 04:32 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC, Edgardo Cortes/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Laiza N.  
cc Jeannie Layson/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Gavin S.  
bcc

Subject Amie has all the docs from the notebooks

All, a big thanks to Amie. She's provided all the docs from the notebooks. Thank you too Laiza.

----- Forwarded by Bryan Whitener/EAC/GOV on 10/20/2006 04:28 PM -----

Bryan Whitener/EAC/GOV  
10/20/2006 02:55 PM

To Karen Lynn-Dyson/EAC/GOV, Margaret Sims/EAC/GOV, Edgardo Cortes/EAC/GOV, Brian Hancock/EAC/GOV, Laiza N. Otero/EAC/GOV, Tamar Nedzar/EAC/GOV, Special Assistants  
cc Jeannie Layson/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC

Subject Response Requested - URGENT Please send documents

It is urgent that we obtain electronic attachments of all documents presented at the Standards Board and Board of Advisors public meetings last May. Please respond affirmatively or negatively if ANY of these documents were submitted by you and clearly identify them. At minimum, they consist of the items contained in the notebooks that were circulated. Since these were public meetings, we need to obtain any documents that were presented at the meetings ( in or out of a notebook ). If you have them, please email them to me ASAP.

Thanks for your cooperation,  
Bryan Whitener

006010

Bryan Whitener/EAC/GOV  
10/23/2006 12:11 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Edgardo Cortes/EAC/GOV@EAC,  
Brian Hancock/EAC/GOV@EAC, Laiza N.  
cc Jeannie Layson/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Gavin S.  
bcc  
Subject FYI - Documents posted from Board Meetings ( Voter Fraud,  
etc. )

All:

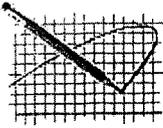
The notebook documents presented at the Standards Board and Board of Advisors public meetings last May have been posted on the shared "T" drive under the "Media and Communications" folder. They can be accessed as follows.

The full path top down is:

" EAC\_Shared\_Files\$ on 'Server - CIO EAC File Server (icoh2s-eac-fp)' (T:) "  
" Media and Communications "  
" BoA Research materials"

###

006011



Tamar Nedzar/EAC/GOV

11/29/2006 03:42 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject Re: Urgent-- FOIA Request Eagleton materials 

You might want to check with Joanna Tepper. When she moved the contract files to get the FY '07 drawers ready, I believe she noted that that particular binder was missing. At the very least, I know she came across a binder labeled "2 of x," but one or more in the series was missing.

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-1707  
<http://www.eac.gov>  
[TNedzar@eac.gov](mailto:TNedzar@eac.gov)

-----Karen Lynn-Dyson/EAC/GOV wrote: -----

To: EAC Personnel  
From: Karen Lynn-Dyson/EAC/GOV  
Date: 11/29/2006 03:28PM  
Subject: Urgent-- FOIA Request Eagleton materials

All-

As everyone knows, we have a FOIA request which involves, in part, materials from the Eagleton/Moritz contract.

In an effort to pull these materials together I have gone to the EAC Contracts file (located outside of Tom's office) only to discover one of the binders is missing. The binder was there last week and is now missing.

If you have this Eagleton Contract Binder 1 (4 inches thick) please return to me ASAP.

Thanks

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

006012

FOIA; 5-7-2007"

@PJL SET JOBATTR="JobAcct1=TamarNedzar"

@PJL SET JOBATTR="JobAcct2

006013



Tamar Nedzar/EAC/GOV

08/29/2006 07:52 AM

To Jeannie Layson/EAC/GOV@EAC

cc

bcc

Subject Re: FOIA request regarding poll worker findings 

NO RECORDS.

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-1707  
<http://www.eac.gov>  
TNedzar@eac.gov  
Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV

08/28/2006 11:14 AM

To EAC Personnel

cc

Subject FOIA request regarding poll worker findings

Hello everyone,

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

I need this information and/or a response by COB September 1, 2006. If you cannot comply by this date, please provide notification and an estimated time when you will provide the information and the reason why you cannot comply by the original deadline. Thanks for your cooperation. See request below:

In a follow up to her original FOIA request for information regarding RFP 05-05 (poll worker recruitment, training, and retention), Bonnie Glaser of UCAL at Berkeley has placed another FOIA request, asking for the poll worker report and findings referenced by Kay Maxwell in her testimony at our May public meeting. In her testimony, Kay said "Our report submitted to the EAC includes a detailed description of all our findings, as well as the methodology employed."

Please see me if you have any questions.

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

006014

Tamar Nedzar/EAC/GOV

08/29/2006 07:51 AM

To Jeannie Layson/EAC/GOV@EAC

cc

bcc

Subject Re: FOIA REQUEST

NO RECORDS.

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-1707  
<http://www.eac.gov>  
TNedzar@eac.gov  
Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV

08/28/2006 04:49 PM

To EAC Personnel

cc

Subject FOIA REQUEST

Hello (again) everyone,

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

I need this information and/or a response by COB September 15, 2006. If you cannot comply by this date, please provide notification and an estimated time when you will provide the information and the reason why you cannot comply by the original deadline. Thanks for your cooperation. See request below:

"I am writing to make a formal request for materials pursuant to the Freedom of Information Act. In particular, I am interested in receiving the following items: 1) All materials submitted by the Ohio Secretary of State that pertain to Ohio's expenditure of funds allocated under the Help America Vote Act; 2) All communications between the US Election Assistance Commission and the Ohio Secretary of State concerning HAVA-related matters; and 3) Any materials setting forth guidelines for spending HAVA funds."

This request was submitted by Michael Montgomery of Baker & Hostetler LLP of Cleveland, Ohio. Please let me know if you would like a copy of the FOIA request.

Please see me if you have any questions.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005

006015

Phone: 202-566-3100  
www.eac.gov

006016

Tamar Nedzar/EAC/GOV  
07/07/2006 03:33 PM

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

no records.

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

Jeannie Layson/EAC/GOV  
07/07/2006 03:16 PM

To EAC Personnel  
cc  
Subject FOIA Request

Hello everyone,

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

I need this information and/or a response by COB July 28. If you cannot comply by this date, please provide notification and an estimated time when you will provide the information and the reason why you cannot comply by the original deadline. Thanks for your cooperation. See request below:

Transcend recently submitted an offer in response to RFP 06-02 (RFQ142611). The contract was awarded to the Cresston Company, LLC d.b.a. Compass Languages. Under the Freedom of Information Act, I would like to request copies of the following documents: 1) The full proposal submitted by the Cresston Company for RFP 06-02 (RFQ142611); 2) a list of all offerors and the costs proposed for each; 3) our scores on each component of the evaluation criteria for the technical proposal and the scores of the Cresston Company technical proposal. Criteria includes relevant organizational experience (max 65 points), quality and look of samples (max 10 points), compliance with proposal instructions (max 5 points) and results of reference checks (max 20 points).

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

006017

[www.eac.gov](http://www.eac.gov)

006019

Tamar Nedzar/EAC/GOV  
02/06/2006 09:54 AM

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

Hi Jeannie,

No records!

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

Jeannie Layson/EAC/GOV  
02/03/2006 02:47 PM

To EAC Staff  
cc  
Subject FOIA REQUEST

Hello everyone,

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

I need this information and/or a response by COB February 17. If you cannot comply by this date, please provide notification and an estimated time when you will provide the information and the reason why you cannot comply by the original deadline. Thanks for your cooperation.

1. "We are seeking all agency records concerning agency contracts awarded between July 9, 2004 and the date of the receipt of this letter (February 3, 2006). The documents sought include, but are not limited to, documents regarding contracts, memoranda of understanding, and fee-for-service agreements in the employment of Brittain 'Brit' Williams and Paul Craft by the U.S. Election Assistance Commission (EAC). We also seek documents regarding contracts, memoranda of understanding, and fee-for-service agreements and employment of other current or former members of EAC's Technical Guidelines Development Committee (TGDC)."
2. "We are seeking the following records concerning the performance of the Election Assistance Commission's (EAC) agency contract number EAC-0544 awarded under no-bid circumstances to Kennesaw State University. The documents sought include: (a) Database of Comments filed with the EAC on the Voluntary Voting System Guidelines found in the EAC's Voluntary Voting System Guidelines Tracking and Management System. If possible, we request that you provide this on CD-Rom. (b) The

006019

individuals or organizations and their comments on the Voluntary Voting System Guidelines and the records related to the assignment of reference numbers as listed in the 'Tracking Management System.'"  
(c) Records that define or explain the meaning of the 'Accept/Reject' designation in the 'Section Comments Sorted by Section Number' document provided by the agency under a FOIA request."

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

006020



Tamar Nedzar /EAC/GOV  
01/04/2007 11:17 AM

To jwickliffe@gpo.gov  
cc  
bcc  
Subject Training for publishing in the CFR

Mr. Wickliffe,

Four of our staff members would like to attend your next training on how to publish in the CFR . Tuesday and Thursday mornings are generally easiest for us to accomodate . The four staff members are:

Juliet Hodgkins, General Counsel  
Gavin Gilmour, Associate General Counsel  
Tamar Nedzar, Law Clerk  
Bryan Whitener, Communications Assistant

Please let me know when your next training will be and if you need any further information from us .

Thank you,

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-1707  
<http://www.eac.gov>  
[TNedzar@eac.gov](mailto:TNedzar@eac.gov)

006021



Tamar Nedzar/EAC/GOV

01/14/2007 09:52 PM

To jhodgkins@eac.gov

cc

bcc

Subject Fw: RE: Federal Register liaison training workshop

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-1707  
<http://www.eac.gov>  
[TNedzar@eac.gov](mailto:TNedzar@eac.gov)

-----Forwarded by Tamar Nedzar/EAC/GOV on 01/14/2007 09:50PM -----

To: tnedzar@eac.gov, kgiles@gpo.gov  
From: "Michael White" <michael.white@nara.gov>  
Date: 01/12/2007 04:30PM  
cc: "Allyson Christou" <Allyson.Christou@nara.gov>  
Subject: RE: Federal Register liaison training workshop

We will be happy to discuss these issues and offer advice, especially if we can see concrete examples of materials with an explanation as to how they would apply to the regulated or affected parties.

One of the complexities of the modern Federal regulatory system is the often blurry line between traditional direct rulemaking action (rules of general applicability and legal effect applied to the public or a defined class) and other quasi-regulatory schemes set up by statute.

A non-traditional indirect regulatory system may be created through an extensive system of grant requirements that must be applied by the recipient to carry out a regulatory objective, or other cases where there is voluntary acceptance of broad Federal regulatory oversight by parties who receive a Federal benefit in return for compliance.

Where there is a one-off set of grant or program requirements, it is only necessary to have general set of grant/program regulations, which may include general reporting requirements. Then the specifics of the one-and-done grant application and administration process may be handled in a Notice. However, if the grant program requirements are extensive, on-going, and subject to regular updates, it may be more appropriate to codify all the requirements in the CFR.

For instance, a grant Notice should be a complete, self-contained document framed for one time actions (who is eligible, how to apply, how to administer and report back). A Notice can only be supplemented and corrected, but not amended in the manner of a codified regulation, whereas the CFR readily accomodates the amendment process for ongoing, evolving programs.

Similarly, the voluntary model of regulation includes something that might be called "Federal regulations once removed." The Federal standards may not be enforceable regulations in and of themselves, but

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once adopted by states, they take on regulatory effect at the state level. If the Federal model regulations or proto-regulations need to look and function like traditional regulations, then they may need to be included in the CFR.

Michael White

Director of Legal Affairs and Policy

Office of the Federal Register

National Archives and Records Administration

Location: 800 North Capitol St NW, Washington DC 20002

Mail: 8601 Adelphi Road, College Park MD 20740

Email: michael.white@nara.gov

Alternate Email: michael.white@tmo.blackberry.net

Tel: 202-741-6025 Fax: 202-741-6026

>>> "Giles, Kent H." <kgiles@gpo.gov> 01/12/07 3:51 PM >>>

Tamar - I think you might want to consult our attorneys on the issues you

set out below. Their contact information is as follows:

Legal Affairs and Policy: 202 741-6030

Christou, Allyson

741-6024

allyson.fenton@nara.gov

White, Michael

741-6025

michael.white@nara.gov

006023

[Michael and Allyson - as background, EAC is preparing to establish a new CFR chapter.]

Kent Giles

Office of the Federal Register

Scheduling Unit

(202) 741-6062

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

From: tnedzar@eac.gov [<mailto:tnedzar@eac.gov>]

Sent: Friday, January 12, 2007 2:41 PM

To: kgiles@gpo.gov

Subject: RE: Federal Register liaison training workshop

Some of our guidance is voluntary, but it does have general applicability.

For example, we publish the Voluntary Voting Systems Guidelines, which are not requirements, but which many states by statute or rulemaking follow. Since states administer elections, the Federal government cannot require that they do so in a specific way in most cases. But if a state chooses to adopt the VVSG for their voting systems, their statute may require adherence to the guidance.

Another example is our voting system certification manual, which describes

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the processes voting machine manufacturers must go through to become EAC certified for use in Federal elections.

In addition, we provide funding to the states to replace their voting equipment and educate their voters. States have to comply with specific reporting requirements to receive the funds.

We also run a grant program that provides money to colleges and universities to encourage college-aged citizens to become poll workers.

I am sure there are other programmatic areas that we are considering including. Maybe a rundown of what other agencies typically include/do not include in the CFR would be helpful?

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-1707  
<http://www.eac.gov><<http://www.eac.gov>>  
[TNedzar@eac.gov](mailto:TNedzar@eac.gov) <<mailto:TNedzar@eac.gov>>

-----"Giles, Kent H." <[kgiles@gpo.gov](mailto:kgiles@gpo.gov)> wrote: -----

To: "'[tnedzar@eac.gov](mailto:tnedzar@eac.gov)'" <[tnedzar@eac.gov](mailto:tnedzar@eac.gov)>  
From: "Giles, Kent H." <[kgiles@gpo.gov](mailto:kgiles@gpo.gov)>  
Date: 01/12/2007 01:52PM  
Subject: RE: Federal Register liaison training workshop

We are at 800 North Capitol Street, Suite 700 . If you take Metrorail to Union Station, you can walk down Massachusetts Avenue (past the Postal Museum and Capitol Brewing Company) to North Capitol Street . Turn right on North Capitol and walk one long block. Our building is at the corner of North Capitol and H Streets, on the left side as you walk north. You will recognize our building by the Au Bon Pain restaurant on the first floor.

I would like clarification of your question #3. Can you describe the manuals and program documents that you wish to publish in the CFR? I am asking because documents that do not impose requirements with general applicability and legal effect, and do not affect a rulemaking proceeding, should remain in the Notices section. I want to make sure I understand

006025

your  
question.

Thanks -

Kent Giles

Office of the Federal Register

Scheduling Unit

(202) 741-6062

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

From: tnedzar@eac.gov [<mailto:tnedzar@eac.gov>]

Sent: Friday, January 12, 2007 1:17 PM

To: kgiles@gpo.gov

Subject: RE: Federal Register liaison training workshop

Great! Just one more question. Where is your office?

Minor detail.

Tamar Nedzar

Law Clerk

U.S. Election Assistance Commission

1225 New York Avenue, NW Suite 1100

Washington, DC 20005

(202) 566-1707

<http://www.eac.gov> <<http://www.eac.gov/>>

[TNedzar@eac.gov](mailto:TNedzar@eac.gov) <<mailto:TNedzar@eac.gov>>

-----"Giles, Kent H." <kgiles@gpo.gov> wrote: -----

To: "'tnedzar@eac.gov'" <tnedzar@eac.gov>

From: "Giles, Kent H." <kgiles@gpo.gov>

Date: 01/12/2007 01:17PM

Subject: RE: Federal Register liaison training workshop

Thanks for the list of questions, Tamar - I will address them at the workshop.

We will be glad to have Mr. Cortes as a participant.

Kent Giles

Office of the Federal Register

006026

Scheduling Unit

(202) 741-6062

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

From: tnedzar@eac.gov [mailto:tnedzar@eac.gov]  
Sent: Friday, January 12, 2007 12:58 PM  
To: kgiles@gpo.gov  
Cc: ggilmour@eac.gov; jhodgkins@eac.gov; ecortes@eac.gov  
Subject: RE: Federal Register liaison training workshop

Mr. Giles,

Please find below a list of questions we have. If some of them are questions that should be directed to another department, please let me know to whom I should address them. I am sure other questions will come up as well, but we can address them in time.

- 1) Is there a Commission-structured federal agency that runs certification programs you can point to as a good example for structuring our parts and sub-parts? For example, is the FCC organized well? Should we follow the US Postal Commission's structure?
- 2) If something has been published in the Federal Register as a final version for notice and coment purposes, will we have to re-publish it once we have modified its organization for the CFR?
- 3) Do you have a checklist of things we should be doing when publishing manuals and program documents in the Federal Register for notice/comment purposes that will enable us to use the same publications for CFR purposes?
- 4) Can you explain the differences in the kinds of CFR officers? Liaison, Certifying, and Authorizing?
- 5) How much lead time does your office need to review a document and

006027

suggest  
changes?

6) What is your office's turnaround time once documents are submitted to your office for suggestions?

7) Do you recommend publishing large guidance materials in parts/subparts or in appendices? What do other agencies do? How do they accommodate for revisions to such guidance materials?

8) Our agency has statutory authority over laws that were previously under the purview of a different agency. How should we handle transfer of those regulations to our section? Is transfer necessary? Advisable?

9) Since we are a January agency, is it the case that anything we publish in the CFR this year will not be in hard copy until January, 2008, but will be available online before then?

10) Please outline the different kinds of publications agencies typically include in the CFR and how the structures and processes differ for each.

Also, is it possible to add Edgardo Cortes, Election Research Specialist, to the list of participants?

As you can see, we have a lot of questions as we are new to this process!

Thank you,

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-1707  
<http://www.eac.gov> <<http://www.eac.gov/>>  
Tnedzar@eac.gov <<mailto:Tnedzar@eac.gov>>

006028

-----"Giles, Kent H." <kgiles@gpo.gov> wrote: -----

To: "'tnedzar@eac.gov'" <tnedzar@eac.gov>  
From: "Giles, Kent H." <kgiles@gpo.gov>  
Date: 01/09/2007 01:10PM  
Subject: RE: Federal Register liaison training workshop

The list of questions would be very welcome. Thanks--

Kent Giles

Office of the Federal Register

Scheduling Unit

(202) 741-6062

006029



"Giles, Kent H."  
<kgiles@gpo.gov>  
01/17/2007 10:27 AM

To "tnedzar@eac.gov" <tnedzar@eac.gov>  
cc  
bcc  
Subject Moving regulations to new CFR chapter

Hello, Tamar. I checked the Department of Homeland Security reorganization to see whether I could find an example of regulations transferred from one CFR chapter to another. However, DHS did not do it that way. They added regulations to title 6 part by part.

I talked to my supervisor, Jim Wickliffe, and he recommended the other option that we discussed in yesterday's workshop. That is, the other agency could simply remove regulations from its chapter, and you could add the new regulations (in their entirety) in your chapter. It could be done in separate final rules - you would not have to do a joint rulemaking. If you wanted to have the final rules publish on the same day, EAC and the other agency could each reference the companion final rule in cover letters and coordinate the submission of the two final rules to OFR.

Let me know if you have questions -

Kent Giles  
Office of the Federal Register  
Scheduling Unit  
(202) 741-6062

006030

Tamar Nedzar/EAC/GOV  
05/18/2006 04:36 PM

To cdonsanto@usdoj.gov, weinutr@verizon.net,  
assistant@sos.in.gov, krogers@sos.state.ga.us,  
jrperetz50@sbcglobal.net, mhearne@lathropgage.com,  
cc Margaret Sims/EAC/GOV@EAC, Edgardo  
Cortes/EAC/GOV@EAC, Juliet E.  
Thompson-Hodgkins/EAC/GOV@EAC  
bcc  
Subject Senate and House Conference Reports

All,

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

Kind Regards,

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



House Conference Report.doc



Senate Conference Report.doc

006031



Tamar Nedzar/EAC/GOV  
11/30/2005 05:25 PM

To wang@tcf.org, serebrov@sbcglobal.net  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject Search Results Example

Tova and Job,

It was good to talk to you today. Hope you are doing well. I've attached my African American search results below. It encompasses all of the terms you suggested having to do with African Americans.

The following is a search I used to truncate words and combine terms, but I still got a large number of results:

Vot! and deny and black or vot! and black and challenge or vot! and black and reject or vot! and black or vot! And deny and African w/s American or vot! And African w/s American and reject or challenge or vot! And African w/s American or election and black and deny or challenge or reject or election and black or election and African w/s American and deny or challenge or reject or election and African w/s American or ballot and security and black or ballot and security and African w/s American or black and vot! And suppress! Or African w/s American and vot! And suppress or African w/s and disenfranchis! or black and disenfranchis!

If this search yields useful cases for you, I can continue searching using the same strategy. If not, please provide me with additional guidelines and I will do my best!

Please feel free to contact me should you have any questions or need additional information.

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



[TNedzar@eac.gov](mailto:TNedzar@eac.gov) African American Search.pdf

006032

Tamar Nedzar/EAC/GOV  
12/05/2005 09:43 AM

To Margaret Sims/EAC/GOV  
cc  
bcc  
Subject Fw: Search Results Example

Don't know if you saw this or not.

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-2377  
<http://www.eac.gov>  
TNedzar@eac.gov  
----- Forwarded by Tamar Nedzar/EAC/GOV on 12/05/2005 09:44 AM -----



"Job Serebrov"  
<serebrov@sbcglobal.net>  
12/02/2005 05:18 PM

To tnedzar@eac.gov  
cc wang@tcf.org  
Subject Re: Search Results Example

Tamar:

You are not going to be able to place all of these word searches together. We need you to take each term on the list and do a search on it. You can only merge terms when it will not add other terms and therefore affect the outcome. For instance, vote and voter could probable be merged. I know this creates much much more work but it can't be helped. I would like you to pull the first 50 cases for each set of terms and send them to us with a short case summary (I know Westlaw lets you do a short case summary). From there we will have to read the cases and decide if we need any others in that search term.

Regards,

Job

--- tnedzar@eac.gov wrote:

-----  
Tova and Job,

It was good to talk to you today. Hope you are doing well. I've attached my African American search results below. It encompasses all of the terms you suggested having to do with African Americans.

The following is a search I used to truncate words and

006033

combine terms, but I still got a large number of results:

Vot! and deny and black or vot! and black and challenge or vot! and black and reject or vot! and black or vot! And deny and African w/s American or vot! And African w/s American and reject or challenge or vot! And African w/s American or election and black and deny or challenge or reject or election and black or election and African w/s American and deny or challenge or reject or election and African w/s American or ballot and security and black or ballot and security and African w/s American or black and vot! And suppress! Or African w/s American and vot! And suppress or African w/s and disenfranchis! or black and disenfranchis!

If this search yields useful cases for you, I can continue searching using the same strategy. If not, please provide me with additional guidelines and I will do my best!

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Thank you,

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

006034

Tamar Nedzar/EAC/GOV  
12/05/2005 10:24 AM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
cc Margaret Sims/EAC/GOV@EAC  
bcc Karen Lynn-Dyson/EAC/GOV@EAC  
Subject RE: Search Results Example

Tova and Job,

Thank you for your feedback. There are two factors that went into my decision to perform the search in the manner I indicated which may have a bearing on whether you want me to do each search individually.

First, I checked with the Lexis representative at my school, who suggested the search methodology I used. She indicated that I would get the same results if I did the searches separately or together.

Second, as I am in the midst of finals, as you can imagine, I have limited time to devote to work. I will only be in the office two days in the next two weeks and will not be able to do much work from home. As a result, I probably won't be able to do the majority of the searches until just after Christmas if I am to do the each term separately. If not, I should be able to get you results by the week before Christmas.

I will do whatever you and Peggy decide given your timelines, but wanted to let you know the factors that went into my decision.

Thank you,

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



"Tova Wang"  
<wang@tcf.org>  
12/02/2005 05:22 PM

To tnedzar@eac.gov  
cc "Job Serebrov" <serebrov@sbcglobal.net>  
Subject RE: Search Results Example

And thank you for your work on this. Let us know if you have any questions.

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

From: Job Serebrov [mailto:serebrov@sbcglobal.net]  
Sent: Friday, December 02, 2005 5:19 PM  
To: tnedzar@eac.gov  
Cc: wang@tcf.org  
Subject: Re: Search Results Example

Tamar:

006035

You are not going to be able to place all of these word searches together. We need you to take each term on the list and do a search on it. You can only merge terms when it will not add other terms and therefore affect the outcome. For instance, vote and voter could probable be merged. I know this creates much much more work but it can't be helped. I would like you to pull the first 50 cases for each set of terms and send them to us with a short case summary (I know Westlaw lets you do a short case summary). From there we will have to read the cases and decide if we need any others in that search term.

Regards,

Job

--- tnedzar@eac.gov wrote:

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The following is a search I used to truncate words and combine terms, but I still got a large number of results:

Vot! and deny and black or vot! and black and challenge or vot! and black and reject or vot! and black or vot! And deny and African w/s American or vot! And African w/s American and reject or challenge or vot! And African w/s American or election and black and deny or challenge or reject or election and black or election and African w/s American and deny or challenge or reject or election and African w/s American or ballot and security and black or ballot and security and African w/s American or black and vot! And suppress! Or African w/s American and vot! And suppress or African w/s and disenfranchis! or black and disenfranchis!

If this search yields useful cases for you, I can continue searching using the same strategy. If not, please provide me with additional guidelines and I will do my best!

Please feel free to contact me should you have any questions or need additional information.  
Thank you,

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005

006036

(202) 566-2377  
<http://www.eac.gov>  
TNedzar@eac.gov

006037

Tamar Nedzar/EAC/GOV  
12/05/2005 10:25 AM

To "Job Serebrov" <serebrov@sbcglobal.net>  
cc  
bcc  
Subject Fw: Search Results Example

I just realized that I neglected to send this to you as well.

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

----- Forwarded by Tamar Nedzar/EAC/GOV on 12/05/2005 10:26 AM -----

Tamar Nedzar/EAC/GOV  
12/05/2005 10:24 AM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
cc Margaret Sims/EAC/GOV@EAC  
Subject RE: Search Results Example 

Tova and Job,

Thank you for your feedback. There are two factors that went into my decision to perform the search in the manner I indicated which may have a bearing on whether you want me to do each search individually.

First, I checked with the Lexis representative at my school, who suggested the search methodology I used. She indicated that I would get the same results if I did the searches separately or together.

Second, as I am in the midst of finals, as you can imagine, I have limited time to devote to work. I will only be in the office two days in the next two weeks and will not be able to do much work from home. As a result, I probably won't be able to do the majority of the searches until just after Christmas if I am to do the each term separately. If not, I should be able to get you results by the week before Christmas.

I will do whatever you and Peggy decide given your timelines, but wanted to let you know the factors that went into my decision.

Thank you,

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
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(202) 566-2377  
<http://www.eac.gov>  
TNedzar@eac.gov  
"Tova Wang" <wang@tcf.org>



"Tova Wang"

006038



<wang@tcf.org>  
12/02/2005 05:22 PM

To tnedzar@eac.gov  
cc "Job Serebrov" <serebrov@sbcglobal.net>  
Subject RE: Search Results Example

And thank you for your work on this. Let us know if you have any questions.

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

From: Job Serebrov [mailto:serebrov@sbcglobal.net]  
Sent: Friday, December 02, 2005 5:19 PM  
To: tnedzar@eac.gov  
Cc: wang@tcf.org  
Subject: Re: Search Results Example

Tamar:

You are not going to be able to place all of these word searches together. We need you to take each term on the list and do a search on it. You can only merge terms when it will not add other terms and therefore affect the outcome. For instance, vote and voter could probable be merged. I know this creates much much more work but it can't be helped. I would like you to pull the first 50 cases for each set of terms and send them to us with a short case summary (I know Westlaw lets you do a short case summary). From there we will have to read the cases and decide if we need any others in that search term.

Regards,

Job

--- tnedzar@eac.gov wrote:

-----  
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The following is a search I used to truncate words and combine terms, but I still got a large number of results:

Vot! and deny and black or vot! and black and challenge or vot! and black and reject or vot! and black or vot! And deny and African w/s American or vot! And African w/s American and reject or challenge or vot! And African w/s American or election and black and deny or challenge or reject or election and black or election and African w/s American and deny or

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challenge or reject or election and African w/s  
American or ballot and security and black or ballot  
and security and African w/s American or black and  
vot! And suppress! Or African w/s American and vot!  
And suppress or African w/s and disenfranchis! or  
black and disenfranchis!

If this search yields useful cases for you, I can  
continue searching using the same strategy. If not,  
please provide me with additional guidelines and I  
will do my best!

Please feel free to contact me should you have any  
questions or need additional information.  
Thank you,

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

006040

Tamar Nedzar/EAC/GOV  
12/05/2005 10:38 AM

To Margaret Sims/EAC/GOV  
cc  
bcc  
Subject Fw: Search Results Example

Job has spoken. I can do what he suggests so long as it is ok with you that they not get the results until after Christmas.

Just let me know!

Thanks,

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

----- Forwarded by Tamar Nedzar/EAC/GOV on 12/05/2005 10:38 AM -----



"Job Serebrov"  
<serebrov@sbcglobal.net>  
12/05/2005 10:31 AM

To tnedzar@eac.gov  
cc wang@tcf.org  
Subject Re: Fw: Search Results Example

No. Please do the seperate searches as per my last instructions. If we don't get the results until after Christmas we will deal with it. I have performed both Westlaw and Lexis searches for years and I question the Lexis reps statement. I thought you were using Westlaw which tend to give a better result. In any case, we need the cases listed under each search term in groups of 50 with shor case descriptions.

Job

--- tnedzar@eac.gov wrote:

> I just realized that I neglected to send this to you  
> as well.

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

006041

> 12/05/2005 10:26 AM -----  
>  
> Tamar Nedzar/EAC/GOV  
> 12/05/2005 10:24 AM  
>  
> To  
> "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
> cc  
> Margaret Sims/EAC/GOV@EAC  
> Subject  
> RE: Search Results Example  
>  
>  
>  
>  
> Tova and Job,  
>  
> Thank you for your feedback. There are two factors  
> that went into my  
> decision to perform the search in the manner I  
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> decision.  
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> Thank you,  
>  
> Tamar Nedzar  
> Law Clerk  
> U.S. Election Assistance Commission  
> 1225 New York Avenue, NW Suite 1100  
> Washington, DC 20005  
> (202) 566-2377  
> <http://www.eac.gov>  
> [TNedzar@eac.gov](mailto:TNedzar@eac.gov)  
>  
>

006042

>  
> "Tova Wang" <wang@tcf.org>  
> 12/02/2005 05:22 PM  
>  
> To  
> tnedzar@eac.gov  
> cc  
> "'Job Serebrov'" <serebrov@sbcglobal.net>  
> Subject  
> RE: Search Results Example  
>  
>  
>  
>  
>  
> And thank you for your work on this. Let us know if  
> you have any  
> questions.  
>  
>  
> -----Original Message-----  
> From: Job Serebrov [mailto:serebrov@sbcglobal.net]  
> Sent: Friday, December 02, 2005 5:19 PM  
> To: tnedzar@eac.gov  
> Cc: wang@tcf.org  
> Subject: Re: Search Results Example  
>  
>  
> Tamar:  
>  
> You are not going to be able to place all of these  
> word searches together. We need you to take each  
> term  
> on the list and do a search on it. You can only  
> merge  
> terms when it will not add other terms and  
> therefore  
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> could  
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> to us with a short case summary (I know Westlaw lets  
> you do a short case summary). From there we will  
> have  
> to read the cases and decide if we need any others  
> in  
> that search term.  
>  
> Regards,  
>  
> Job  
>  
> --- tnedzar@eac.gov wrote:  
>  
>  
> -----

006043

> Tova and Job,  
>  
> It was good to talk to you today. Hope you are doing  
> well. I've attached my African American search  
> results  
> below. It encompasses all of the terms you suggested  
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> The following is a search I used to truncate words  
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> combine terms, but I still got a large number of  
> results:  
>  
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> challenge or vot! and black and reject or vot! and  
> black or vot! And deny and African w/s American or  
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> challenge  
> or vot! And African w/s American or election and  
> black  
> and deny or challenge or reject or election and  
> black  
> or election and African w/s American and deny or  
> challenge or reject or election and African w/s  
> American or ballot and security and black or ballot  
> and security and African w/s American or black and  
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> And suppress or African w/s and disenfranchis! or  
> black and disenfranchis!  
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> If this search yields useful cases for you, I can  
> continue searching using the same strategy. If not,  
> please provide me with additional guidelines and I  
> will do my best!  
>  
> Please feel free to contact me should you have any  
> questions or need additional information.  
> Thank you,  
>  
> Tamar Nedzar  
> Law Clerk  
> U.S. Election Assistance Commission  
> 1225 New York Avenue, NW Suite 1100  
> Washington, DC 20005  
> (202) 566-2377  
> <http://www.eac.gov>  
> [TNedzar@eac.gov](mailto:TNedzar@eac.gov)  
>  
>  
>  
>  
>  
>

006044

Tamar Nedzar/EAC/GOV  
12/19/2005 04:55 PM

To wang@tcf.org, serebrov@sbcglobal.net  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject First set of search results

Tova and Job,

Now that my exams are over for the semester, I am able to spend more time on your project. I plan to send you an email with my results from the day. Please find the first batch below.

Thanks,

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



TovaJob12\_19.ZIP

006045

Tamar Nedzar/EAC/GOV  
12/20/2005 09:45 AM

To "Job Serebrov"  
<serebrov@sbcglobal.net>@GSAEXTERNAL  
cc wang@tcf.org, Margaret Sims/EAC/GOV@EAC  
bcc  
Subject Re: Cases 

Job,

I was using Lexis because I don't have inter-semester access to Westlaw. In addition, Westlaw does not allow me to restrict to specific dates. However, I called the dean of my school this morning and he granted me access to Westlaw for the break on a limited basis, so I will start fresh with the terms.

In the student version of Westlaw, I can choose cases in the past 3 or 10 years, but cannot select a date range. I will use the 10 year limitation unless you write to tell me otherwise.

I'll send results tonight.

Thanks,

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



"Job Serebrov"  
<serebrov@sbcglobal.net>  
12/19/2005 09:30 PM

To TNedzar@eac.gov  
cc wang@tcf.org  
Subject Cases

Tamar:

I received your first Zip File today and there is another major problem. These look like Lexis and not Westlaw searches. The way this material is presented it is impossible to tell what is going on. I stated in my last e-mail that I wanted you to use Westlaw because you can pull up a short case evaluation for each case. These are no good to us without these evaluations. The evaluations list the parties, a short statement of facts and a short summary of the court's holding. I can only evaluate these cases with such a summary. Sorry to send you back to the drawing board but better now than after you substantially completed the assignment. If you can get these kind of evaluations with Lexis then go ahead but if not you need to use Westlaw.

006046

Regards,

Job

006047

Tamar Nedzar/EAC/GOV  
12/20/2005 11:31 AM

To "Job Serebrov"  
<serebrov@sbcglobal.net>@GSAEXTERNAL  
cc wang@tcf.org, Margaret Sims/EAC/GOV@EAC  
bcc  
Subject Re: Cases 

Hi Job,

The Westlaw search took more than half an hour-I think because I can only download results into ASCII format. I did find a way to add a case summary to the Lexis output. I have attached the first search below. If this is useful to you, I would rather use Lexis because output into a PDF file is faster. If you'd still prefer me to use Westlaw, I'll have to figure out a way to shorten the search times.



fraud\_and\_election.pdf

Thanks,

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



"Job Serebrov"  
<serebrov@sbcglobal.net>  
12/20/2005 09:53 AM

To tnedzar@eac.gov  
cc wang@tcf.org  
Subject Re: Cases

Tamar:

Please use the 10 year range. The case summary is the most important item. In the US Courts version of Westlaw you can restrict by date.

Thanks,

Job

--- tnedzar@eac.gov wrote:

> Job,  
>  
> I was using Lexis because I don't have  
> inter-semester access to Westlaw.  
> In addition, Westlaw does not allow me to restrict

006048

> to specific dates.  
> However, I called the dean of my school this morning  
> and he granted me  
> access to Westlaw for the break on a limited basis,  
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> In the student version of Westlaw, I can choose  
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> unless you write to tell me otherwise.  
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> Thanks,  
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> Tamar Nedzar  
> Law Clerk  
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> [TNedzar@eac.gov](mailto:TNedzar@eac.gov)  
>  
>  
>  
> "Job Serebrov" <[serebrov@sbcglobal.net](mailto:serebrov@sbcglobal.net)>  
> 12/19/2005 09:30 PM  
>  
> To  
> [TNedzar@eac.gov](mailto:TNedzar@eac.gov)  
> cc  
> [wang@tcf.org](mailto:wang@tcf.org)  
> Subject  
> Cases  
>  
>  
>  
>  
> Tamar:  
>  
> I received your first Zip File today and there is  
> another major problem. These look like Lexis and not  
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> but better now than after you substantially  
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006049

> the assignment. If you can get these kind of  
> evaluations with Lexis then go ahead but if not you  
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>  
> Regards,

>  
> Job

>  
>  
>

006050

Tamar Nedzar/EAC/GOV  
12/20/2005 05:53 PM

To wang@tcf.org, serebrov@sbcglobal.net  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject Today's Searches

Tova and Job,

Please find below today's results. I modified the searches in Lexis so that the files now include the case summaries as well as headnotes. I'll keep plugging away tomorrow. Please be in touch if you have any questions.

Thank you,

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



12\_20.ZIP

006051

Tamar Nedzar/EAC/GOV  
12/20/2005 05:53 PM

To wang@tcf.org, serebrov@sbcglobal.net  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject Today's Searches

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Thank you,

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



12\_20.ZIP

006052

Tamar Nedzar/EAC/GOV  
12/21/2005 09:44 AM

To wang@tcf.org@GSAEXTERNAL  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject Re: Today's Searches 

Tova,

Please find below yesterday's search results. I'll send another email at the end of the day today.

If you do not receive the results again, please call me at the office. GSA will only allow us to send such large files after business hours, so it may be that your computer times out receipt after a certain amount of time.



12\_20.ZIP

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



wang@tcf.org  
12/20/2005 08:52 PM

To "Job Serebrov" <serebrov@sbcglobal.net>,  
tnedzar@eac.gov  
cc psims@eac.gov  
Subject Re: Today's Searches

Somehow I did not get the original email with the search results. Would someone please send them to me? Thanks. Tova

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

From: "Job Serebrov" <serebrov@sbcglobal.net>  
To: <tnedzar@eac.gov>; <wang@tcf.org>  
Cc: <psims@eac.gov>  
Sent: Tuesday, December 20, 2005 8:15 PM  
Subject: Re: Today's Searches

> Tamar:  
>  
> This looks real good. Thanks for the excellent effort.  
> I know this has not been the easiest assignment.  
>  
> Job

006053

>  
> --- tnedzar@eac.gov wrote:  
>  
>> Tova and Job,  
>>  
>> Please find below today's results. I modified the  
>> searches in Lexis so  
>> that the files now include the case summaries as  
>> well as headnotes. I'll  
>> keep plugging away tomorrow. Please be in touch if  
>> you have any questions.  
>>  
>>  
>> Thank you,  
>>  
>> Tamar Nedzar  
>> Law Clerk  
>> U.S. Election Assistance Commission  
>> 1225 New York Avenue, NW Suite 1100  
>> Washington, DC 20005  
>> (202) 566-2377  
>> <http://www.eac.gov>  
>> TNedzar@eac.gov  
>>  
>>  
>>  
>  
>

006054

Tamar Nedzar/EAC/GOV  
12/21/2005 05:21 PM

To wang@tcf.org, serebrov@sbcglobal.net  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject Results for 12/21/05

Hi Tova and Job,

Hope you're still finding the results helpful. Attached is today's installment. More to come tomorrow...



12\_21.ZIP

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

006055

Tamar Nedzar/EAC/GOV  
12/22/2005 09:39 AM

To "Job Serebrov"  
<serebrov@sbcglobal.net>@GSAEXTERNAL,  
wang@tcf.org  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject Re: Results for 12/21/05

Hi Job,

I anticipate sending 8-10 more emails. I can get through approximately 30 terms per day. If you would prefer that I hold on to a few days' worth of searches and send fewer emails, I am more than happy to do so.

I will not be sending another search email until the 27th as I will be working from home until then and do not have the means to send such large files when I am not at work. I can give you a better idea of how much longer it will take me at that point.

Happy Holidays!

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



"Job Serebrov"  
<serebrov@sbcglobal.net>  
12/21/2005 05:33 PM

To tnedzar@eac.gov  
cc  
Subject Re: Results for 12/21/05

Tamar:

How far into the word search terms are you. I am trying to figure out how many daily file folders we will get before it is all over.

Regards,

Job

--- tnedzar@eac.gov wrote:

> Hi Tova and Job,  
>  
> Hope you're still finding the results helpful.  
> Attached is today's

006058

> installment. More to come tomorrow...  
>  
>  
>  
> Tamar Nedzar  
> Law Clerk  
> U.S. Election Assistance Commission  
> 1225 New York Avenue, NW Suite 1100  
> Washington, DC 20005  
> (202) 566-2377  
> <http://www.eac.gov>  
> [TNedzar@eac.gov](mailto:TNedzar@eac.gov)

006057

Tamar Nedzar/EAC/GOV  
12/29/2005 05:14 PM

To wang@tcf.org, serebrov@sbcglobal.net  
cc Margaret Sims/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC  
bcc  
Subject Batches of Results

Tova and Job,

Please find below what I have completed since we last spoke. I will send you another email or two next week with the rest of the results.

Happy New Year!

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



12\_27.zip



12\_28.zip



12\_29.zip

006058

Tamar Nedzar/EAC/GOV  
01/06/2006 10:25 AM

To wang@tcf.org, serebrov@sbcglobal.net  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject First of five emails

Tova and Job,

I haven't forgotten about you. The server has been returning my batches of results for you because they exceed the maximum file size, so I will be sending you 5 emails today and one or two more from my home computer either tonight or tomorrow.

Please call if you have questions.

Thank you,

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



12\_27.zip

006059

Tamar Nedzar/EAC/GOV  
01/06/2006 10:28 AM

To wang@tcf.org, serebrov@sbcglobal.net  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject 2nd of 5 emails

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



12\_28.zip

006060

Tamar Nedzar/EAC/GOV  
01/06/2006 10:30 AM

To wang@tcf.org, serebrov@sbcglobal.net  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject 3rd of 5 emails

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



12\_29.zip

006061

Tamar Nedzar/EAC/GOV  
01/06/2006 10:32 AM

To wang@tcf.org, serebrov@sbcglobal.net  
cc  
bcc  
Subject 4th of 5 emails

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



African American Vote Fraud Terms.zip

006062

Tamar Nedzar/EAC/GOV  
01/06/2006 02:37 PM

To Margaret Sims/EAC/GOV  
cc  
bcc  
Subject Fw: 4th of 5 emails

Just realized I hadn't forwarded this to you. Job said he got all but one email and I will contact GSA before the end of the day about that one.

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

----- Forwarded by Tamar Nedzar/EAC/GOV on 01/06/2006 02:38 PM -----

Tamar Nedzar/EAC/GOV  
01/06/2006 10:32 AM

To wang@tcf.org, serebrov@sbcglobal.net  
cc  
Subject 4th of 5 emails

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



African American Vote Fraud Terms.zip

006063

Tamar Nedzar/EAC/GOV  
01/06/2006 04:53 PM

To wang@tcf.org, serebrov@sbcglobal.net  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject 5th of 5 emails

More to come either tonight or tomorrow.

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



Latino Vote Fraud.zip

006064

Tamar Nedzar/EAC/GOV  
01/06/2006 05:01 PM

To wang@tcf.org, serebrov@sbcglobal.net  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject Fraud Search Wrap-Up

Tova and Job,

After I send the emails from home tonight or tomorrow, that should be all of the search terms you requested. Given the problems with sending emails, if you have any questions, think you are missing anything, or would like to review what I have sent, please feel free to call me. I will only be in the office on Mondays and Fridays, but I check email regularly.

Have a great weekend!

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

006065

Tamar Nedzar/EAC/GOV  
01/09/2006 09:40 AM

To wang@tcf.org, serebrov@sbcglobal.net  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject First of three emails

Good morning,

All of the emails I sent from home were sent back to me, so I'm trying from work. Please let me know if you do not receive three emails from me by the end of the day today.

Thanks,

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



12\_26.zip

006060

Tamar Nedzar/EAC/GOV  
01/09/2006 09:45 AM

To wang@tcf.org, serebrov@sbcglobal.net  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject 2nd of 3 emails

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



Asian Vote Fraud.zip

006067

Tamar Nedzar/EAC/GOV  
01/09/2006 09:48 AM

To wang@tcf.org, serebrov@sbcglobal.net  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject 3rd of 3 emails

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



Native American Vote Fraud.zip

006068

Tamar Nedzar/EAC/GOV  
01/09/2006 02:06 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
cc psims@eac.gov, serebrov@sbcglobal.net  
bcc  
Subject RE: 3rd of 3 emails

Hi Tova,

The first two emails were on another server, which could explain the delay. All three should be released today; if you don't receive them by 5, please send me an email and I will follow up with GSA. Job, if you have any problems with receiving emails, please also let me know.

Keeping my fingers crossed!

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



"Tova Wang"  
<wang@tcf.org>  
01/09/2006 01:34 PM

To tnedzar@eac.gov, serebrov@sbcglobal.net  
cc psims@eac.gov  
Subject RE: 3rd of 3 emails

I am very confused. I didn't get the first two.

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

**From:** tnedzar@eac.gov [mailto:tnedzar@eac.gov]  
**Sent:** Monday, January 09, 2006 9:49 AM  
**To:** wang@tcf.org; serebrov@sbcglobal.net  
**Cc:** psims@eac.gov  
**Subject:** 3rd of 3 emails

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

006069

Tamar Nedzar/EAC/GOV  
01/09/2006 02:15 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
cc psims@eac.gov, serebrov@sbcglobal.net  
bcc  
Subject RE: 3rd of 3 emails

There should be three total for today. All email subject lines should say something like, "First of 3, second of 3," etc.

Please let me know if I need to resend anything.

Thanks,

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



"Tova Wang"  
<wang@tcf.org>  
01/09/2006 02:12 PM

To tnedzar@eac.gov  
cc psims@eac.gov, serebrov@sbcglobal.net  
Subject RE: 3rd of 3 emails

I got the first two now. Whats the total number we should have for the day?

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

**From:** tnedzar@eac.gov [mailto:tnedzar@eac.gov]  
**Sent:** Monday, January 09, 2006 2:07 PM  
**To:** wang@tcf.org  
**Cc:** psims@eac.gov; serebrov@sbcglobal.net  
**Subject:** RE: 3rd of 3 emails

Hi Tova,

The first two emails were on another server, which could explain the delay. All three should be released today; if you don't receive them by 5, please send me an email and I will follow up with GSA. Job, if you have any problems with receiving emails, please also let me know.

Keeping my fingers crossed!

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100

006070

Washington, DC 20005  
(202) 566-2377  
<http://www.eac.gov>  
TNedzar@eac.gov

"Tova Wang" <[wang@tcf.org](mailto:wang@tcf.org)>

01/09/2006 01:34 PM

To: [tnedzar@eac.gov](mailto:tnedzar@eac.gov), [serebrov@sbcglobal.net](mailto:serebrov@sbcglobal.net)  
Cc: [psims@eac.gov](mailto:psims@eac.gov)  
Subject RE: 3rd of 3 emails

I am very confused. I didn't get the first two.

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

**From:** [tnedzar@eac.gov](mailto:tnedzar@eac.gov) [<mailto:tnedzar@eac.gov>]  
**Sent:** Monday, January 09, 2006 9:49 AM  
**To:** [wang@tcf.org](mailto:wang@tcf.org); [serebrov@sbcglobal.net](mailto:serebrov@sbcglobal.net)  
**Cc:** [psims@eac.gov](mailto:psims@eac.gov)  
**Subject:** 3rd of 3 emails

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

006071

Tamar Nedzar/EAC/GOV  
01/09/2006 02:24 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject RE: 3rd of 3 emails 

No problem.

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



12\_26.zip  
"Tova Wang" <wang@tcf.org>



"Tova Wang"  
<wang@tcf.org>  
01/09/2006 02:20 PM

To tnedzar@eac.gov  
cc  
Subject RE: 3rd of 3 emails

I need the first one

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

**From:** tnedzar@eac.gov [mailto:tnedzar@eac.gov]  
**Sent:** Monday, January 09, 2006 2:15 PM  
**To:** wang@tcf.org  
**Cc:** psims@eac.gov; serebrov@sbcglobal.net  
**Subject:** RE: 3rd of 3 emails

There should be three total for today. All email subject lines should say something like, "First of 3, second of 3," etc.

Please let me know if I need to resend anything.

Thanks,

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-2377

006072

<http://www.eac.gov>  
TNedzar@eac.gov

"Tova Wang" <wang@tcf.org>

01/09/2006 02:12 PM

To tnedzar@eac.gov  
cc psims@eac.gov, serebrov@sbcglobal.net  
Subject RE: 3rd of 3 emails

I got the first two now. Whats the total number we should have for the day?

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

**From:** tnedzar@eac.gov [mailto:tnedzar@eac.gov]  
**Sent:** Monday, January 09, 2006 2:07 PM  
**To:** wang@tcf.org  
**Cc:** psims@eac.gov; serebrov@sbcglobal.net  
**Subject:** RE: 3rd of 3 emails

Hi Tova,

The first two emails were on another server, which could explain the delay. All three should be released today; if you don't receive them by 5, please send me an email and I will follow up with GSA. Job, if you have any problems with receiving emails, please also let me know.

Keeping my fingers crossed!

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

"Tova Wang" <wang@tcf.org>

01/09/2006 01:34 PM

To tnedzar@eac.gov, serebrov@sbcglobal.net  
cc psims@eac.gov  
Subject RE: 3rd of 3 emails

006073

I am very confused. I didn't get the first two.

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

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

**Sent:** Monday, January 09, 2006 9:49 AM

**To:** wang@tcf.org; serebrov@sbcglobal.net

**Cc:** psims@eac.gov

**Subject:** 3rd of 3 emails

Tamar Nedzar

Law Clerk

U.S. Election Assistance Commission

1225 New York Avenue, NW Suite 1100

Washington, DC 20005

(202) 566-2377

<http://www.eac.gov>

[TNedzar@eac.gov](mailto:TNedzar@eac.gov)

006074

### Word Search Terms

When performing a case law word search please use this word list and search both federal and state cases. The & (and) is included as the word search connector. You may have to substitute w/5 (within five words) for example instead of &. I want cases after 2000.

Election & fraud  
Voter & fraud  
Vote & fraud  
Voter & challenge  
Vote & challenge  
Election & challenge  
Election & irregularity  
Election & irregularities  
Election & violation  
Election & statutory & violation  
Election & statute & violation  
Election & administration  
Stealing & election  
At & the & time & of & the & election  
After & the & election  
Before & the & election  
Election & commissioners  
Election & mandamus  
Election & mandamus & declaratory & judgment  
Election & declaratory & judgment  
Election & theft  
Ballot & box  
Ballot & box & tampering  
Ballot & box & theft  
Ballot & box & stealing  
Paper & ballot  
Paper & ballot & tampering  
Election & officers  
Election & Sheriff  
Over & vote  
Over & votes  
Under & vote  
Under & votes  
Vote & counting  
Vote & count  
Election & counting  
Election & count  
Miscount & votes  
Vote & optical & scan  
Election & optical & scan  
Election & crime  
Election & criminal  
Vote & crime  
Vote & criminal  
Double & voting  
Multiple & voting  
Dead & voting  
Election & counting & violation  
Election & counting & error  
Vote & counting & violation

006075

Vote & counting & error  
Voter & intimidation  
Vote & intimidation  
Voter & intimidating  
Voter & registration  
Voter & registration & fictitious & name  
Voter & registration & destruction  
Vote & registration  
Denial & voter & registration  
Voter & card  
Vote & card  
Voter & refuse & vote  
Voter & refuse  
Vote & refuse  
Voter & rolls  
Vote & rolls  
Voter & identification  
Vote & identification  
Voter & racial & profiling  
Vote & racial & profiling  
Voter & racial  
Voter & reject  
Vote & racial  
Vote & reject  
Voter & racial & challenge  
Vote & racial & challenge  
Voter & deny & racial  
Vote & deny & racial  
Voter & deny & challenge  
Voter & deny & reject  
Vote & deny & challenge  
Vote & deny & reject  
Poll & tax  
Voting & test  
Absentee & ballot  
Absentee & ballot & deny  
Absentee & ballot & reject  
Absentee & ballot & count  
Absentee & ballot & challenge  
Touch & screen & (vote or voting)  
Motor & Voter & Act  
Overseas & ballots & count  
Overseas & ballots & deny  
Overseas & ballots & reject  
Overseas & ballot  
Overseas & ballot & count  
Overseas & ballot & deny  
Overseas & ballot & reject  
Military & ballot  
Military & ballot & count  
Military & ballot & deny  
Military & ballot & reject  
Electioneering & polls  
Electioneering & within & polls  
Unregistered & (voter or vote)  
Prevent & (vote or voter)

006076

Prevent & election  
Stop & election  
Stop & (vote or voter)  
Delay & election  
Delay & (vote or voter)  
Close & poll  
Open & poll  
Prevent & close & poll  
Prevent & open & poll  
(Vote or voter) & legal & challenge  
Election & legal & challenge  
Election & void  
Election & reverse  
Vote & void  
(Vote or voter) & police  
Poll & police  
(Vote or voter) & law & enforcement  
Poll & law & enforcement  
(Vote or voter) & deceptive & practices  
Election & deceptive & practices  
Voter & deceive  
Voter & false & information  
Voter & eligibility  
Vote & felon  
Vote & ex & felon  
Vote & exfelon  
Disenfranchisement  
Disenfranchise  
Law & election & manipulation  
Vote & purging  
Vote & purge  
Registration & (remove or removal)  
Registration & (purge or purging)  
Vote & buying  
(Vote or voter) & non & citizen  
(Vote or voter) & noncitizen  
(Vote or voter) & alien  
Vote & selective enforcement  
Identification & selective  
Election & accessible  
Election & inaccessible  
Election & misinformation  
Registration & restrictions  
Election & administrator & fraud  
Election & official & fraud  
Provisional & ballot & deny  
Provisional & ballot & denial  
Affidavit & ballot & deny  
Affidavit & ballot & denial  
Absentee & ballot & coerce  
Absentee & ballot & coercion  
Registration & destruction  
Poll & worker & intimidation  
Poll & worker & intimidating  
Poll & worker & threatening  
Poll & worker & abusive

006077

Poll & inspector & intimidation  
Poll & inspector & intimidating  
Poll & inspector & threatening  
Poll & inspector & abusive  
Election & official & (intimidation or intimidating)  
Election & official & threatening  
Election & official & abusive  
Poll & judge & (intimidation or intimidating)  
Poll & judge & threatening  
Poll & judge & abusive  
Election & judge & (intimidation or intimidating)  
Election & judge & threatening  
Election & judge & abusive  
Poll & monitor & (intimidation or intimidating)  
Poll & monitor & threatening  
Poll & monitor & abusive  
Election & monitor & (intimidation or intimidating)  
Election & monitor & threatening  
Election & monitor & abusive  
Poll & observer & (intimidation or intimidating)  
Poll & observer & threatening  
Poll & observer & abusive  
Election & observer & (intimidation or intimidating)  
Election & observer & threatening  
Election & observer & abusive  
(vote or Voter) & (deter or deterrence)  
Ballot & integrity  
Ballot & security  
Ballot & security & minority  
Vote & (suppression or suppress)  
Minority & vote & (suppression or suppress)  
Minority & disenfranchisement  
(Vote or voter) & disenfranchisement  
(Vote or voter) & discourage  
(Vote or voter) & depress  
Poll & watcher & challenge  
Poll & watcher & (intimidate or intimidating or intimidation)  
Poll & watcher & abusive  
Poll & watcher & threatening  
Literacy & test  
Voter & (harass or harassment)  
Vote & mail & fraud  
Poll & guards  
Election & consent & decree  
(Vote or voter) & barrier  
Voting & barrier

African American

(Vote or voter) & deny & black  
(Vote or voter) & black & challenge  
(Vote or voter) & black & reject  
(vote or voter) & black  
(Vote or voter) & deny & African & American  
(Vote or voter) & African & American & reject  
(Vote or voter) & African & American & challenge  
(Vote or voter) & African & American

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Election & deny & black  
Election & black & challenge  
Election & black & reject  
Election & black  
Election & deny & African & American  
Election & African & American  
Election & African & American & challenge  
Election & African & American & reject  
Jim & Crow  
African American & vote & suppress  
African & American & disenfranchisement  
Black & disenfranchisement  
Black & & vote & suppression  
African & American & vote & suppression  
Black & vote & suppress  
Ballot & security & black  
Ballot & security & African & American

Latino

(Vote or voter) & deny & Hispanic  
(Vote or voter) & Hispanic & challenge  
(Vote or voter) & Hispanic & reject  
(Vote or voter) & Hispanic  
Election & deny & Hispanic  
Election & Hispanic & challenge  
Election & Hispanic & reject  
Election & Hispanic  
(Vote or voter) & deny & Latino  
(Vote or voter) & Latino & challenge  
(Vote or voter) & Latino & reject  
(Vote or voter) & Latino  
Election & deny & Latino  
Election & Latino & challenge  
Election & Latino & reject  
Election & Latino  
Latino & disenfranchisement  
Hispanic & disenfranchisement  
Ballot & security & Latino  
Ballot & security & Hispanic  
Latino & vote & suppression  
Hispanic & vote & suppression  
Latino & vote & suppress

Native American

(Vote or voter) & deny & Native & American  
(Vote or voter) & Native & American & challenge  
(Vote or voter) & Native & American & reject  
(Vote or voter) & Native & American  
Election & deny & Native & American  
Election & Native & American & challenge  
Election & Native & American & reject  
Election & Native & American  
Ballot security & Native & American  
Native & American & & vote & suppression  
Native & American & vote & suppress  
Native & American & disenfranchisement

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(Vote or voter) & deny & Indian  
(Vote or voter) & Indian & challenge  
(Vote or voter) & Indian & reject  
(Vote or voter) & Indian  
Election & deny & Indian  
Election & Indian & challenge  
Election & Indian & reject  
Election & Indian  
Ballot & security & Indian  
Indian & & vote & suppression  
Indian & vote & suppress  
Indian & disenfranchisement

Asian

(Vote or voter) & deny & Asian  
(Vote or voter) & Asian & challenge  
(Vote or voter) & Asian & reject  
(Vote or voter) & Asian  
Election & deny & Asian  
Election & Asian & challenge  
Election & Asian & reject  
Election & Asian  
Ballot & security & Asian  
Asian & & vote & suppression  
Asian & vote & suppress  
Asian & disenfranchisement  
Korean & (vote or voter)  
Vietnamese & (vote or voter)  
Thai & (vote or voter)  
Chinese & (vote or voter)  
Japanese & (vote or voter)  
Taiwanese & (vote or voter)

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# OFFICE OF MANAGEMENT AND BUDGET

September 23, 1992

## POLICY LETTER 92-1

### TO THE HEADS OF EXECUTIVE AGENCIES AND DEPARTMENTS

**SUBJECT:** Inherently Governmental Functions

1. **Purpose.** This policy letter establishes Executive Branch policy relating to service contracting and inherently governmental functions. Its purpose is to assist Executive Branch officers and employees in avoiding an unacceptable transfer of official responsibility to Government contractors.
2. **Authority.** This policy letter is issued pursuant to section 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, codified at 41 U.S.C. [[section]] 405.
3. **Exclusions.** Services obtained by personnel appointments and advisory committees are not covered by this policy letter.
4. **Background.** Contractors, when properly used, provide a wide variety of useful services that play an important part in helping agencies to accomplish their missions. Agencies use service contracts to acquire special knowledge and skills not available in the Government, obtain cost effective services, or obtain temporary or intermittent services, among other reasons.

Not all functions may be performed by contractors, however. Just as it is clear that certain functions, such as the command of combat troops, may not be contracted, it is also clear that other functions, such as building maintenance and food services, may be contracted. The difficulty is in determining which of these services that fall between these extremes may be acquired by contract. Agencies have occasionally relied on contractors to perform certain functions in such a way as to raise questions about whether Government policy is being created by private persons. Also, from time to time questions have arisen regarding the extent to which de facto control over contract performance has been transferred to contractors. This policy letter provides an illustrative list of functions, that are, as a matter of policy, inherently governmental (see Appendix A), and articulates the practical and policy considerations that underlie such determinations (see [[section]] 7).

As stated in [[section]] 9, however, this policy letter does not purport to specify which functions are, as a legal matter, inherently governmental, or to define the factors used in making such legal determination. Thus, the fact that a function is listed in Appendix A, or a factor is set forth in [[section]] 7(b), does not necessarily mean that the function is inherently governmental as a legal matter or that the factor would be relevant in making the legal determination.

5. **Definition.** As a matter of policy, an "inherently governmental function" is a function that is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities that require either the exercise of discretion in applying Government authority or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: (1) the act of governing, i.e., the discretionary exercise of Government authority, and (2) monetary transactions and entitlements.

An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to:

(a) bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(b) determine, protect, and advance its economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

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- (c) significantly affect the life, liberty, or property of private persons;
- (d) commission, appoint, direct, or control officers of employees of the United States; or
- (e) exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security; mail operations; operation of cafeterias; housekeeping; facilities operations and maintenance, warehouse operations, motor vehicle fleet management and operations, or other routine electrical or mechanical services.

The detailed list of examples of commercial activities found as an attachment to Office of Management and Budget (OMB) Cir. No. A-76 is an authoritative, nonexclusive list of functions that are not inherently governmental functions. These functions therefore may be contracted.

## 6. Policy.

(a) **Accountability.** It is the policy of the Executive Branch to ensure that Government action is taken as a result of informed, independent judgments made by Government officials who are ultimate accountable to the President. When the Government uses service contracts, such informed, independent judgment is ensured by:

- (1) prohibiting the use of service contracts for the performance of inherently governmental functions (See Appendix A);
- (2) providing greater scrutiny and an appropriate enhanced degree of management oversight (see subsection 7(f)) when contracting for functions that are not inherently governmental but closely support the performance of inherently governmental functions (see Appendix B);
- (3) ensuring, in using the products of those contracts, that any final agency action complies with the laws and policies of the United States and reflects the independent conclusions of agency officials and not those of contractors who may have interests that are not in concert with the public interest, and who may be beyond the reach of management controls otherwise applicable to public employees; and
- (4) ensuring that reasonable identification of contractors and contractor work products is made whenever there is a risk that the public, Congress, or other persons outside of the Government might confuse them with Government officials or with Government work products, respectively.

(b) **OMB Circular No. A-76.** This policy letter does not purport to supersede or otherwise effect any change in OMB Circular No. A-76, Performance of Commercial Activities.

(c) **Drafting of Congressional testimony, responses to Congressional correspondence, and agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity.** While the approval of a Government document is an inherently governmental function, its drafting is not necessarily such a function. Accordingly, in most situations the drafting of a document, or portions thereof, may be contracted, and the agency should review and revise the draft document, to the extent necessary, to ensure that the final document expresses the agency's views and advances the public interest. However, even though the drafting function is not necessarily an inherently government function, it may be inappropriate, for various reasons, for a private party to draft a document in particular circumstances. Because of the appearance of private influence with respect to documents that are prepared for Congress or for law enforcement or oversight agencies and that may be particularly sensitive, contractors are not to be used for the drafting of Congressional testimony; responses to Congressional correspondence; or agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity.

- 7. **Guidelines.** If a function proposed for contract performance is not found in Appendix A, the following guidelines will assist agencies in understanding the application of this policy letter, determining whether the

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function is, as a matter of policy, inherently governmental and forestalling potential problems.

(a) **The exercise of discretion.** While inherently governmental functions necessarily involve the exercise of substantial discretion, not every exercise of discretion is evidence that such a function is involved. Rather, the use of discretion must have the effect of committing the Federal Government to a course of action when two or more alternative courses of action exist (e.g., purchasing a minicomputer than a mainframe computer, hiring a statistician rather than an economist, supporting proposed legislation rather than opposing economist, supporting proposed legislation rather than opposing it, devoting more resources to prosecuting one type of criminal case than another, awarding a contract to one firm rather than another, adopting one policy rather than another, and so forth).

A contract may thus properly be awarded where the contractor does not have the authority to decide on the course of action to be pursued but is rather tasked to develop options to inform an agency decision maker, or to develop or expand decisions already made by Federal officials. Moreover, the mere fact that decisions are made by the contractors in performing his or her duties (e.g., how to allocate the contractor's own or subcontract resources, what techniques and procedures to employ, whether and whom to consult, what research alternatives to explore given the scope of the contract, what conclusions to emphasize, how frequently to test) is not determinative of whether he or she is performing an inherently government function.

(b) **Totality of the circumstances.** Determining whether a function is an inherently governmental function often is difficult and depends upon an analysis of the factors of the case. Such analysis involves consideration of a number of factors, and the presence or absence of any one is not in itself determinative of the issue. Nor will the same emphasis necessarily be placed on any one factor at different times, due to the changing nature of the Government's requirements.

The following factors should be considered when deciding whether award of a contract might effect, or the performance of a contract has effected, a transfer of official responsibility:

(1) Congressional legislative restrictions or authorizations.

(2) The degree to which official discretion is or would be limited, i.e., whether the contractor's involvement in agency functions is or would be so extensive or his or her work product is so far advanced toward completion that the agency's ability to develop and consider options other than those provided by the contractor is restricted.

(3) In claims adjudication and related services,

(i) the finality of any contractor's action affecting individual claimants or applicants, and whether or not review of the contractor's action is *de novo* (i.e., to be effected without the appellate body's being bound by prior legal rulings or factual determinations) on appeal of his or her decision to an agency official;

(ii) the degree to which contractor activities may involve wide-ranging interpretations of complex, ambiguous case law and other legal authorities, as opposed to being circumscribed by detailed laws, regulations, and procedures.

(iii) the degree to which matters for decision by the contractor involve recurring fact patterns or unique fact patterns; and

(iv) The contractor's discretion to determine an appropriate award or penalty.

(4) The contractor's ability to take action that will significantly and directly affect the life, liberty, or property of individual members of the public, including the likelihood of the contractor's need to resort to force in support of a police or judicial function; whether force, especially deadly force, is more likely to be initiated by the contractor or by some other person; and the degree to which force may have to be exercised in public or relatively uncontrolled areas. (Note that contracting for guard, convoy security, and plant protection services, armed or unarmed, is not proscribed by these policies.)

(5) The availability of special agency authorities and the appropriateness of their application to the situation at hand, such as the power to deputize private persons.

(6) Whether the function in question is already being performed by private persons, and the

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circumstances under which it is being performed by them.

(c) **Finality of agency determinations.** Whether or not a function is an inherently governmental function, for purposes of this policy letter, is a matter for agency determination. However, agency decisions that a function is or is not an inherently governmental function may be reviewed, and, if necessary, modified by appropriate OMB officials.

(d) **Preaward responsibilities.** Whether a function being considered for performance by contract is an inherently governmental function is an issue to be addressed prior to issuance of the solicitation.

(e) **Post-award responsibilities.** After award, even when a contract does not involve performance of an inherently governmental function, agencies must take steps to protect the public interest by playing an active, informed role in contract administration. This ensures that contractors comply with the terms of the contract and that Government policies, rather than private ones, are implemented. Such participation should be appropriate to the nature of the contract, and should leave no doubt that the contract is under the control of Government officials. This does not relieve contractors of their performance responsibilities under the contract. Nor does this responsibility to administer the contract require Government officials to exercise such control over contractor activities to convert the contract, or portion thereof, to a personal service contract.

In deciding whether Government officials have lost or might lose control of the administration of a contract, the following are relevant considerations: the degree to which agencies have effective management procedures and policies that enable meaningful oversight of contractor performance, the resources available for such oversight, the actual practice of the agency regarding oversight, the duration of the contract, and the complexity of the tasks to be performed.

(f) **Management controls.** When functions described in Appendix B are involved, additional management attention to the terms of the contract and the manner of performance is necessary. How close the scrutiny or how extensive or stringent the management controls need to be is for agencies to determine. Examples of additional control measures that might be employed are:

(1) developing carefully crafted statements of work and quality assurance plans, as described in OFPP Policy Letter 91-2 **Service Contracting**, that focus on the issue of Government oversight and measurement of contractor performance;

(2) establishing audit plans for periodic review of contracts by Government auditors;

(3) conducting preaward conflict of interest reviews to ensure contract performance in accordance with objective standards and contract specifications;

(4) physically separating contractor personnel from Government personnel at the worksite; and

(5) requiring contractors to (a) submit reports that contain recommendations and that explain and rank policy or action alternatives, if any, (b) describe what procedures they used to arrive at their recommendations, (c) summarize the substance of their deliberations, (d) report any dissenting views, (e) list sources relied upon, and/or (f) otherwise make clear the methods and considerations upon which their recommendations are based.

(g) **Identification of contractor personnel and acknowledgment of contractor participation.** Contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties must be required to identify themselves as such to avoid creating an impression in the minds of members of the public or the Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. All documents or reports produced by contractors are to be suitably marked as contractor products.

(h) **Degree of reliance** The extent of reliance on service contractors is not by itself a cause for concern. Agencies must, however, have a sufficient number of trained and experienced staff to manage Government programs properly. The greater the degree of reliance on contractors the greater the need for oversight by agencies. What number of Government officials is needed to oversee a particular contract is a management decision to be made after analysis of a number of factors. These include, among others, the scope of the activity in question; the technical complexity of the project or its components; the technical capability, numbers, and workload of Federal oversight officials; the inspection techniques available; and the importance of the activity. Current contract administration resources shall not be determinative. The most efficient and most effective approach shall be utilized.

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(i) **Exercise of approving or signature authority.** Official responsibility to approve the work of contractors is a power reserved to Government officials. It should be exercised with a thorough knowledge and understanding of the contents of documents submitted by contractors and a recognition of the need to apply independent judgment in the use of these work products.

## 8. Responsibilities.

(a) **Heads of agencies.** Heads of departments and agencies are responsible for implementing this policy letter. While these policies must be implemented in the Federal Acquisition Regulation (FAR), it is expected that agencies will take all appropriate actions in the interim to develop implementation strategies and initiate staff training to ensure effective implementation of these policies.

(b) **Federal Acquisition Regulatory Council.** Pursuant to subsections 6(a) and 25(f) of the OFPP Act, as amended, 41 U.S.C. [[section]][[section]] 405(a) and 421(f), the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this policy letter is published in the **Federal Register**. Issuance of final regulations within this 210-day period shall be considered issuance "in a timely manner" as prescribed in 41 U.S.C. [[section]] 405(b).

(c) **Contracting officers.** When requirements are developed, when solicitations are drafted, and when contracts are being performed, contracting officers are to ensure:

(1) that functions to be contracted are not among those listed in Appendix A of this letter and do not closely resemble any functions listed here;

(2) that functions to be contracted that are not listed in Appendix A, and that do not closely resemble them, are not inherently governmental functions according to the totality of the circumstances test in subsection 7(b), above;

(3) that the terms and the manner of performance of any contract involving functions listed in Appendix B of this letter are subject to adequate scrutiny and oversight in accordance with subsection 7(f), above; and

(4) that all other contractible functions are properly managed in accordance with subsection 7(e), above.

(d) **All officials.** When they are aware that contractor advice, opinions, recommendations, ideas, reports, analyses, and other work products are to be considered in the course of their official duties, all Federal Government officials are to ensure that they exercise independent judgment and critically examine these products.

9. **Judicial review.** This policy letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this policy letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this policy letter.
10. **Information contact.** For information regarding this policy letter contact Richard A. Ong, Deputy Associate Administrator, the Office of Federal Procurement Policy, 725 17th Street, N.W., Washington, DC 20503. Telephone (202) 395-7209.
11. **Effective date.** This policy letter is effective 30 days after the date of publication.

Allan V. Burman  
Administrator

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The following is an illustrative list of functions considered to be inherently governmental functions: (footnote: With respect to the actual drafting of Congressional testimony, of responses to Congressional correspondence, and of agency responses to audit reports from the Inspector General, the General Accounting Office, or other Federal audit entity, see special provisions in subsection 6(c) of the text of the policy letter)

1. The direct conduct of criminal investigation.
2. The control of prosecutions and performance of adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).
3. The command of military forces, especially the leadership of military personnel who are members of the combat, combat support or combat service support role.
4. The conduct of foreign relations and the determination of foreign policy.
5. The determination of agency policy, such as determining the content and application of regulations, among other things.
6. The determination of Federal program priorities or budget requests.
7. The direction and control of Federal employees.
8. The direction and control of intelligence and counter-intelligence operations.
9. The selection or nonselection of individuals for Federal Government employment.
10. The approval of position descriptions and performance standards for Federal employees.
11. The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices with specified ranges and subject to other reasonable conditions deemed appropriate by the agency).
12. In Federal procurement activities with respect to prime contracts,
  - (a) determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);
  - (b) participating as a voting member on any source selection boards;
  - (c) approval of any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;
  - (d) awarding contracts;
  - (e) administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);
  - (f) terminating contracts; and
  - (g) determining whether contract costs are reasonable, allocable, and allowable.
13. The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.
14. The conduct of administrative hearings to determine the eligibility of any person for a security clearance.

involving actions that affect matters of personal reputation or eligibility to participate in Government programs.

15. The approval of Federal licensing actions and inspections.
  16. The determination of budget policy, guidance, and strategy.
  17. The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds, unless authorized by statute, such as title 31 U.S.C. [[section]] 952 (relating to private collection contractors) and title 31 U.S.C. [[section]] 3718 (relating to private attorney collection services), but not including:
    - (a) collection of fees, fines, penalties, costs or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard cash management techniques, and
    - (b) routine voucher and invoice examination.
  18. The control of the treasury accounts.
  19. The administration of public trusts
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## **APPENDIX B**

The following list is of services and actions that are not considered to be inherently governmental functions. However, they may approach being in that category because of the way in which the contractor performs the contract or the manner in which the government administers contractor performance. When contracting for such services and actions, agencies should be fully aware of the terms of the contract, contractor performance, and contract administration to ensure that appropriate agency control is preserved.

This is an illustrative listing, and is not intended to promote or discourage the use of the following types of contractor services:

1. Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.
2. Services that involve or relate to reorganization and planning activities.
3. Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.
4. Services that involve or relate to the development of regulations.
5. Services that involve or relate to the evaluation of another contractor's performance.
6. Services in support of acquisition planning.
7. Contractors' providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).
8. Contractors' providing technical evaluation of contract proposals.
9. Contractors' providing assistance in the development of statements of work.
10. Contractors' providing support in preparing responses to Freedom of Information Act requests.

11. Contractors' working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the Defense Industrial Security Program described in FAR 4.402(b)).
  12. Contractors' providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.
  13. Contractors' participating in any situation where it might be assumed that they are agency employees or representatives.
  14. Contractors' participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.
  15. Contractors' serving as arbitrators or providing alternative methods of dispute resolution.
  16. Contractors' constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.
  17. Contractors' providing inspection services.
  18. Contractors' providing legal advice and interpretations of regulations and statutes to Government officials.
  19. Contractors' providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.
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**OFFICE OF MANAGEMENT AND BUDGET  
Office Of Federal Procurement Policy**

**AGENCY:**

Office of Management and Budget, Executive Office of the President, Office of Federal Procurement Policy.

**ACTION:**

Policy Letter on Inherently Governmental Functions.

**SUMMARY:**

The Office of Federal Procurement Policy (OFPP) publishes today the final version of a policy letter providing guidance to Executive Departments and agencies on (1) what functions are inherently governmental functions that must only be performed by Government officers and employees and (2) what contractible functions so closely support Government officers and employees in their performance of inherently governmental functions that the terms and performance of those contracts require closer scrutiny from Federal officials. This policy letter has been developed because executive agencies, members of Congress, the General Accounting Office, and the public have from time to time either requested guidance regarding, or inquired about, the propriety of awarding contracts for certain types of functions or administering contracts in certain ways. Previous guidance on this issue has also not been as detailed as that which we now provide.

**FOR FURTHER INFORMATION CONTACT:**

Richard A. Ong, Deputy Association  
Administrator, Office of Federal Procurement Policy  
725 17th Street, NW, Suite 9001  
Washington, DC 20503  
(202) 395-7209.

To obtain a copy of this policy letter, please call OMB's Procurement Policy Office at (202) 395-3501.

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## SUPPLEMENTARY INFORMATION

**Comments received.** We received 34 comments in response to our proposed policy letter published in the **Federal Register** on December 16, 1991 (56 Fed. Reg. 65279): eight from industry or trade groups, four from private individuals, two from employee organizations, one from a Federally funded research and development center, and 19 from Government agencies.

1. **Purpose of the policy letter.** This policy letter on inherently governmental functions is being published to provide guidance on what kinds of functions, as a matter of policy, must be performed by officials of the Executive Branch of the United States and what kinds of functions may be performed by private persons under contract with the Federal Government.

Previous guidance on these matters that has been available to the Executive Branch has not been detailed and sometimes Federal agencies have permitted contractors to perform functions that should be performed by Government personnel. We now provide more detailed guidance.

2. **Relationships of policy letter to other OFPP publications on service contracting.** This policy letter is also one of several that the Office of Federal Procurement Policy (OFPP) has published recently that have focused on some aspect of service contracting in the Federal Government. At this time, OFPP has determined it is best to deal with individual aspects of service contracting rather than trying to publish comprehensive guidance in one document. We will consider collecting all of the guidance on service contracts in one document in the future.

Thus, we do not cover in detail in this policy letter such matters as cost effectiveness of contracting for services, conflicts of interest of service contractors, and management of service contracts. These issues are dealt with in OMB Circular No. A-76, Performance of Commercial Activities, August 4, 1983 (under revision); OFPP Policy Letter 89-1, Conflict of interest Policies Applicable to Consultants, 54 Fed. Reg. 51,805 (December 18, 1989); OFPP Memorandum for Agency Senior Procurement Executives, Government-Wide Guidance on Contract Administration (March 15, 1991); OFPP Policy Letter 91-2, Service Contracting, 56 Fed. Reg. 15110 (April 15, 1991); proposed OFPP Policy Letter 91-\_\_\_\_, Past Performance Information, 56 Fed. Reg. 63988 (December 6, 1991); and proposed OFPP Policy Letter 92-\_\_\_\_, Management of Service Contracting, 56 Fed. Reg. 66091 (December 20, 1991).

3. **Relationship to OMB Circular No. A-76.** One commenter asked that we make clear our apparent intent to clarify rather than alter the guidance originally found in OMB Circular No. A-76 on inherently government functions. This is our intent. No fundamental change is intended.

We have altered the form of the original Circular A-76 definition of an inherently governmental function in the interest of clarity. Specific examples cited in the original A-76 definition have been incorporated into Appendix A and a list of the general principles underlying the selection of the functions listed in that appendix has been added in their stead.

The terms "function" and "activity" as used in this policy letter and Circular A-76, respectively, are interchangeable.

The same commenter above suggested that we add a new Appendix C, containing a nonexclusive list of functions that are commercial activities that should be contracted. We have not adopted this suggestion because the scheme proposed is the same one we have implicitly adopted. The proposed Appendix C is nothing more than the list of examples of commercial activities found as an Attachment to Circular A-76. We do not believe it is necessary to incorporate that A-76 attachment in this policy letter. The fact that we have not provided this Appendix C thus should not be construed as narrowing the scope of functions that have been contracted in the past. Nonetheless, we have added language to [[section]] 5 to clarify the relationship between Circular A-76 and this policy letter on this point.

Another commenter stated that the relationship between this policy letter and Circular A-76 is unclear. This policy letter is to be the exclusive source of guidance on what constitutes, as a matter of policy, an inherently governmental function.

4. **Libraries.** Several persons questioned the inclusion of library operations as a ministerial function that should be contracted out in subsection 7(a) of the December version of the policy letter. The fact that employees render professional services in performing a function does not mean that the function in question is necessarily inherently governmental. In fact, the Government frequently seeks out contract services precisely because of the level of sophistication required to perform a particular function. On the other hand, agencies

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may determine that aspects of their library operations, such as handling certain types of information in certain circumstances, involve performance of an inherently government function. Therefore, we have removed the reference to libraries.

5. **Contract audits for inspectors general.** One commenter suggested that Federal inspector general (IG) work should be done by using Government resources, with exceptions justified on a case-by-case basis, unless specific technical expertise is needed temporarily and is not available within the Government. This suggestion was not adopted because (1) Congress has specifically authorized the use of contract auditors in [[paragraph]] 6(a) (9) of the Inspector General Act codified at 5 U.S.C. App. 3, and (2) financial and compliance audit activities are not considered inherently governmental functions.

Another commenter questioned whether subsection 12(g) of Appendix A pertaining to the determination of whether contract costs are reasonable, allocable, and allowable proscribes the use of contract audit services. It does not. The decision on what costs are reasonable, allocable, and allowable is ultimately a Government decision, but that decision may be based on recommendations made by contract auditors. Certified public accountants, for example, only render "opinions" and contracts sometimes provide that audit reports are advisory only. Moreover, the use of contract auditors has been authorized by Congress, as noted above.

6. **Agency determinations.** One commenter interpreted the policy letter as authorizing Federal managers to make a final determination on whether a function is an inherently governmental function, under this policy letter, without such determination's being subject to being overturned by the Office of Management and Budget (OMB) or being subject to a cost comparison study under Circular A-76. In general, agencies are expected to make their own determinations, subject to oversight by OMB. Language has been added to subsection 7(c) to clarify this point.
7. **Agency discretion.** One commenter questioned the need for the language in former subsection 7(e) regarding agency discretion to award nonpersonal service contracts. We agree it is unnecessary. It is already clear that awarding a contract is an agency responsibility.
8. **Incorporation in OMB Circular No. A-76, other documents.** Several commenters suggested that the policy letter be incorporated in Circular A-76, "Commercial Activities," currently being revised. We did not incorporate this suggestion because A-76 is already a lengthy document. Also, contracting for inherently government functions is indeed a consideration in contracting out, but it is not unique to the A-76 program. All Federal officials who contract for nonpersonal services must consider the problem of inherently governmental functions, and we thus believe separate guidance applicable to all such contracting, not just to nonpersonal service contracting in the A-76 context, is the better alternative. Other commenters urged that the policy letter be combined with one or more other OFPP policy letters, such as those on conflict of interest, service contracting, and past performance and published in a form other than a policy letter. This suggestion has merit but we believe it best to try to deal with discrete portions of service contracting rather than to try to deal with all facets of a complex problem at once, as discussed in point 2, above.
9. **Agency discretion regarding resource allocation.** One commenter suggested we should address the issues of the future balance between official and contractor workforce in the performance of "basic government work," the specific expertise needed to manage the contractor workforce now or in the future, where this expertise should be located, and the way in which it can be maintained. We believe this is a matter for agencies themselves to determine, given their knowledge of their mission, their resources, the kinds of services they wish to contract, and the size of their service contracting effort. We merely highlight the problem of lack of oversight as a loss of Government control and require agencies to be aware of their existing oversight responsibilities. They are, however, to use their own discretion to figure out how to manage their contracts.
10. **Evaluation of proposals.** One commenter believes there is an apparent conflict between former subsection 14(b) in Appendix and [[section]] 8 of Appendix B. There is no conflict as new subsection 12(b) refers to participation as a voting member on source selection boards only.
11. **Appendix B controls.** The same commenter also suggested that Appendix B should contain a discussion of possible controls that the Government should employ to prevent the functions listed there from being perceived as inherently government function. We do not believe this is necessary, as any function that is in Appendix B is by definition **not** an inherently governmental function.
12. **Applicability to nonpersonal services.** Three commenters questioned why the policy letter applies only to nonpersonal service contracts. Upon consideration, we have accordingly deleted the definition of "service contract" in [[section]] 5. No useful purpose is served by defining "personal services" differently from the FAR and no harm arises from having the policy letter apply to the minimal number of true personal services.

contracts. Personal service contracts that are really personnel appointments are excluded from the coverage of the policy letter. Thus, FAR 37.102(b) need not be amended as a result of this policy letter.

13. **Subcontractors.** Commenters questioned whether subsection 12(d) of Appendix A should apply to subcontractors. It does not and clarifying language has been added.
14. **Supplies or services purchased by prime contractors.** Some commenters questioned the apparent effect of subsection 12 in Appendix A of preventing contractors from buying supplies and services for their own account. It is not the intent of this policy letter to prevent contractors mess halls from buying food to be prepared for military personnel. Nor does it affect what or how contractors buy to be incorporated into supplies or services to be delivered to the Government. Similarly, contractors may purchase supplies or services for the Government while acting within reasonable Government guidelines. Section 12 is only meant to address the Government's direct acquisition of supplies or services.
15. **Independent judgment.** The emphasis placed on independent judgment by this policy letter does not preclude the wholesale adoption of contractor advice, opinions, recommendations, ideas, or conclusions. They merely may not be adopted, in whole or in part, without officials' first exercising independent judgment.
16. **Duties of contracting officers.** We have added language to [[section]] 8 to spell out the analytical steps to be following by contracting officers seeking to comply with this policy letter.
17. **Risk of injury to the public.** One commenter stated that the definition of an inherently government function does not clearly address the danger to the public interest when a function is contracted out and the public is at risk if contractors, such as fire fighters or military support contractors, fail or refuse to act in time of crisis. The risk of injury to the public is an important consideration. We believe, however that [[paragraph]] 7(b)(5) appropriately identifies this point as a consideration in determining whether a function is, as a matter of policy, an inherently governmental function. The decision to include several of the functions listed in Appendix A reflects an underlying concern for this risk.
18. **Binding nature of decisions.** This same commenter noted that it is an overstatement to say that the use of discretion (referred to in what is not subsection 7(a) of the policy letter) must have the effect of committing the Government to a course of action. This is because a scientific consulting firm, for example, could submit a study that would have a tremendous impact on regulations or other agency actions but would not necessary lead to a commitment to a course of action.

We have addressed the element of discretion in subsection 7(a) to convey the idea that the mere existence of the element of discretion is not determinative of whether, as a matter of policy, an inherently governmental function is involved. Moreover, it is useful to observe that a study hat has a tremendous impact is not per se a bad thing. A study may have that effect because of its great merit. We should be concerned, however, when a study is allowed to proceed to the point where alternative views, solutions, research, or conclusions, and so forth, cannot realistically be included or taken into account. In this case, the contractor has in effect made all important decisions. Section 7(b)(c) addresses this issue.

19. **Federally funded research and development center (FFRDCs).** One commenter stated that while profit-making contractors can perform functions listed in Appendix B, the policy letter should cross-reference FAR 35.107 pertaining to FFRDCs and "recognize less rigorous oversight." We have not adopted this suggestion. We do not agree that FFRDCs necessarily require less oversight. FAR Part 35 and that its provisions may suffice to enable satisfactory agency oversight of FFRDCs. Whether fewer or additional control measures are necessary to ensure agency control over FFRDCs is a matter for agencies to decide in the circumstances of each case.
20. **Architect-engineer evaluation boards.** This same commenter questioned whether [[section]] 3, which states that services obtained by personnel appointments and advisory committees are not covered by this policy letter, could be construed to prohibit private individuals appointed to architect-engineer source evaluation boards in accordance with FAR 36.602 from voting. To the extent such boards are advisory committees, the policy letter is not applicable to them. If they are not, the commenter makes an excellent point. FAR 36.602-4 makes clear that the agency is to make the final selection and FAR 36.602-3(d) provides for the evaluation board to set out in its report the considerations upon which its recommendations were based. This is an acceptable mechanism and we have accordingly revised subsection 12(b) of Appendix A and [[section]] 14 of Appendix B to make clear that it is **selection** of sources that is the most sensitive function. Contractor activities that result in recommendations and that explain how those recommendations were arrived at adequately preserve agency options. A related change has been made in subsection 7(f) stating that requiring contractors to explain how they arrived at their recommendations is another available control measure

21. Factors to consider in totality of the circumstances.

(a) **Complexity and oversight.** One commenter questioned the inclusion of [[paragraph]] 7(d)(2) of the proposed policy letter relating to the complexity of the task to be performed. Upon consideration, we conclude that complexity is better considered in conjunction with the provision that was at 7(d)(12) relating to oversight procedures, resources, and practices. We have amended paragraph 12 accordingly and moved it, as well as the provision in former [[paragraph]] 7(d)(4) relating to the duration of the contract, to new subsection 7(e), Post-award responsibilities. This was done to remove questions relating to contract oversight from the "totality of the circumstances" test. It is important to understand that, if an agency has inadequate oversight procedures or poor oversight practices, the **underlying** function of any agency contract affected by these deficiencies is not thereby transformed into an inherently governmental function. As the totality test focuses on the nature of the function in question and as there can be a transfer of oversight responsibility even if the underlying function is contractible, the issue of de facto transfer of control should therefore be dealt with elsewhere. (Note that a transfer of contract management responsibility to the contractor is explicitly not permitted by Appendix A, subsection 12(e).)

(b) **Ultimate user of contractor work product.** Several commenters questioned the inclusion of this factor at [[paragraph]] 7(d)(3) of the proposed policy letter. We agree it should be taken out. Who will use the contractor's work product is important and this has bearing on how much management attention to give to the contract, but it doesn't say anything about the nature of the underlying function or the adequacy of agency contract administration.

(c) **Review of contractor action.** The same commenter questions the advisability of including a factor (new [[paragraph]] 7(b)(5)) that relates to the finality of any contractor's adjudication of any claim and the type of agency review of contractor adjudications. We see no problem with agencies' providing for contractor adjudication of claims so long as citizens know that they have a right of recourse to agency decisionmakers if they are dissatisfied with the decisions of the contractor. (Note, however, that certain kinds of hearings may still not be eligible of any person for a security clearance, or hearings involving actions that affect matters of personal reputation or eligibility to participate in Government programs. See Appendix A, [[section]] 14.)

Thus, we distinguish between on the one hand, holding hearings and making recommendations and, on the other, retaining the authority to issue the final adjudicatory decision. Contractors may perform the former functions so long as there is adequate oversight, agencies retain the authority to issue the final decision, and the public has a right to insist that the agency make the final decision, if it so desires. This is easier to understand if one views the contractor's action as more of a advisory action than one that binds the claimant with only limited opportunities to change the result before the agency. Note that in the absence of an appeal by a claimant, the agency need not rule on each contractor decision or ruling. It should of course, inspect or sample contractor decisions or rulings from time to time to ensure that contractors comply with agency guidelines and procedures.

(d) **Limited or extinguishing discretion.** The same commenter noted that our speaking in terms of contractor limiting or extinguishing discretion in former [[paragraph]] 7(d)(5) could mistakenly create the impression that some of the Government's authority can be exercised by a contractor. The policy letter attempts to clarify this issue at subsection 7(a).

(e) **Public perception.** Several commenters questioned the inclusion of this factor at [[paragraph]] 7(d)(11) of the proposed policy letter, believing that public perception is too ambiguous a concept. We agree. A function can probably be analyzed in the light of other factors listed without the need to resort to the concept of perceptions. Appendix A of the policy letter is itself an up-to-date listing that already takes into account the factor of public perceptions. The paragraph has been deleted.

(f) **Laws applicable to the Civil Service.** Several commenters questioned the inclusion of this factor at [[paragraph]] 7(d)(123) of the proposed policy letter. We agree and have deleted this factor. The consideration listed may be relevant to what good contract management should require by way of contract conditions, but they don't say anything about the nature of the function or the adequacy of agency contract administration practices.

(g) **Record keeping requirements.** One commenter found the meaning of paragraph 8(d)(15) of the proposed policy letter unclear. This factor was included to cover situations such as a contractor's providing a aircraft-related training. If the contractor proves to be incompetent or negligent, the fact that the contractor did maintain or was required to maintain records of who was trained permits corrective action to be taken, such as locating improperly trained students and requiring retraining. If records are not maintained, the Government cannot exercise ultimate control because it cannot correct any errors. Nonetheless, the provision appears to have only limited application and has been deleted.

22. **Collection of fees.** Two commenters questioned the provision of [[paragraph]] 20 of Appendix A of the proposed policy letter prohibiting collection of fees or other public moneys, pointing out that contractors in mess halls for military personnel currently collect charges for meals and Department of Housing and Urban Development (HUD) contractors collect fees from purchasers of HUD properties. We have modified the policy letter to enable routine collection of fees where good cash management practices and other controls are in effect, where there is little danger of miscalculating the amount of money ultimately due the Government, and where there is little difficulty in obtaining payment. For example, a contractor could have discretion to determine that a family seeking entrance to a part consists of four people rather than three, and that one of the four is a child under 12, but the contractor would not have the discretion to determine the amount of the fee to be paid by each person in a particular category. HUD contractors may also collect fees from purchasers of HUD properties in accordance with subsection 17(a) of Appendix A. We also make clear that routine voucher and invoice examination by contractors is an acceptable practice.
23. **Contract for one function or several.** One commenter questioned whether the policy letter reflects our belief that only contracts with multiple functions are susceptible to confusion with respect to inherently governmental functions. This is not our belief. The policy letter is intended to provide guidance with respect to discrete functions regardless of whether there is a mixture of several functions in a contract or there is only one function that is being contracted.
24. **Post-aware responsibilities.** Section 7(e) has been amended to make clear that agency contract oversight is to ensure contractor performance in accordance with the terms of the contract, but that oversight must not be exercised so as to create a personal service contract. Language from subsection 7(d) of the proposed policy letter has been moved to subsection 7(e), as explained in [[section]] 21, above.
25. **Drafting of Congressional testimony, responses to Congressional correspondence, and agency responses to audit reports from an Inspector General, the General Accounting Office or other Federal audit entity.** Two commenters questioned whether contractors should be able to draft Congressional testimony, subject to ultimate agency approval. Approval is a key power reserved to any official and we by no means agree that officials do or will approve contractor work in a perfunctory manner. We have nonetheless reexamined this issue and, because of the importance of Congressional testimony and correspondence of agency responses to audit reports, we are not deciding, as a matter of policy, that these documents should not be drafted by contractors. We have thus added a new subsection (c) to the body of the policy letter to this effect. We deleted the relative portions of Appendix A because we do not believe that drafting documents per se is an inherently governmental function and failing to exercise sufficient oversight with respect to drafting of such documents does not transform the underlying function into an inherently governmental function, as noted in subsection [[paragraph]] 21(a), above. Contractor reports, conclusions, summaries, analyses, and other work products may, of course, still be quoted correspondence, and responses to audit reports, or set out in such things as attachments, appendices, or enclosures thereto.
26. **Reliance on contractor support.** One commenter called attention to our statement in [[paragraph]] 4 of the policy letter that agencies "award service contracts for various reasons, such as to acquire special skills not available in the Government or to meet the need for intermittent services." The commenter pointed out that "'support service' contractors have come to serve as the permanent workforce for many programs" seemingly implying that our statement does not take this into account. In fact, our statement is an accurate one, citing only two of the reasons why agencies award service contracts as examples. Contracting actions under Circular A-76 are also a reason why agencies award service contracts.

Whatever the reason for using service contracts to accomplish agency missions, it is important to understand that agency use of the function must not be an inherently government function, and if it is not, the agency must be able to exercise effective oversight of any contract awarded. We make clear that management of a contract is just as important as deciding whether the contract may properly be awarded in the first place.

Our policy letter is limited in scope and does not focus on why agencies use service contracts. Rather we are concerned that service contracts, when used, are used only when contractors may perform the functions in question and when agencies have the resources to manage the contracts. It is true that agencies have sometimes contracted functions that we have listed in the policy letter as inherently governmental functions, and it is true that they have sometimes failed to recognize that they were not exercising effective oversight over nongovernmental functions that had been contracted. Nonetheless, effective corrective action has been taken by the agencies in the past when oversight problems were identified.

Additional problems in this area will probably arise in the future. Even the General Accounting Office recognized the difficulty in defining inherently government functions and providing guidance to agencies on the subject. **Are Service Contractors Performing Inherently Governmental Functions?**, GAO/GGD-92-11, November 1991, p. 3. We have every reason to expect, however, that because our guidance is much more detailed than anything that was available to agencies in the past there will be fewer instances of

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problems in this area. We thus disagree strongly with the commenter that the policy letter is a mere exhortation to better management.

27. **Other issues.** One commenter also suggested that we should address whether "contractors who perform work historically performed by civil servants should be subjected to comparable limitations on pay and rules of conduct;" measurement of the short-term and long-term costs of reliance on contractors versus officials; whether Superfund and the savings and loan bailout programs "provide models for public management of the next bailout or cleanup program;" and the "practical meaning that we will give to the concept of 'public service' as the Federal Government heads into the 21st century."

The concept of work "historically performed" by civil servants is not useful because a function may have been performed by civil servants in the past for reasons other than the belief that the function was inherently governmental. In fact, the premise of Circular No. A-76 is that many functions historically performed by Government employees can more appropriately be performed by the private sector.

We believe that competition is the most powerful force available to keep costs down, even though there may be instances where this will not be so. In such instances, determinations shall be made in accordance with Circular No. A-76.

Measurement of the short-term and long-term costs of reliance on contractors versus officials is an aspect of cost effectiveness of service contracts and need not be dealt with here. Similarly, the efficacy of the Superfund and savings and loan programs is a matter beyond the scope of this policy letter.

So far as the practical meaning of the concept of public service is concerned, this policy letter attempts to identify those functions that, as a matter of policy, should only be performed by Government officials and those that may be performed by service contractors. If our taxonomy and analytical methods are sound, our policy letter should define what public service entails in terms of the functions that officials must perform for the foreseeable future.

28. **Acknowledgment.** Finally, we wish to acknowledge our reliance on the excellent work of the Environmental Protection Agency in our drafting of the appendices to this policy letter. Also, the comments we received were all exceptionally well thought out. We are most grateful for the time, effort and imagination that went into the preparation of those comments.

**Allan V. Burman**  
*Administrator*

Date: September 23, 1992

Return to Policy Letters

00609A

# Sample of a Federal Advisory Committee Act (FACA) Charter

**Official Designation:** Governmentwide Policy Advisory Board

**Scope and Objectives:** The Board will provide advice and recommendations on a broad range of policy issues dealing with the acquisition, management and disposal of governmentwide assets within GSA's areas of responsibility. Such assets include, motor vehicles, aircraft, real property, and personal property.

In addition, the Board will provide advice regarding policies and guidance on such issues as the deployment of smart card technologies, electronic commerce, information technology, public participation, and intergovernmental coordination.

**Duration:** The Board will exist for 2 years from the date of the Charter, unless earlier renewed.

**Reporting Relationship:** The Board reports to GSA's Associate Administrator for Governmentwide Policy.

**Support:** GSA's Office of Governmentwide Policy will support the Board's activities.

**Duties:** The Board will provide advice and recommendations only.

**Costs:** The estimated annual operating costs associated with supporting the Board's functions are estimated to be \$75,000 per year, including all direct and indirect expenses. It is estimated that 1.0 FTE will be required to support the Board.

**Meetings:** It is anticipated that the Board will meet at least 4 times per year.

**Organization:** GSA will create any subcommittees which may be necessary to fulfill the Board's mission. In addition, GSA and the Board will establish such operating procedures as required to support the group, consistent with the Federal Advisory Committee Act, as amended.

**Date of Termination:** The Board will terminate 2 years from the date of charter filing, unless sooner renewed.

**Charter Filing Date:**

April 18, 1997  
David J. Barram  
Acting Administrator

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Federal Register Notice

**Establishment of the Governmentwide Policy Advisory Board**

**Establishment of advisory board.** This notice is published in accordance with the provisions of the Federal Advisory committee Act (P.L. 92-463), and advises of the establishment of the GSA Governmentwide Policy Advisory Board. The Administrator of General Services has determined that the establishment of the Board is in the public interest.

**Purpose of the advisory board.** The Board will provide advice and recommendations on a broad range of policy issues dealing with the acquisition, management and disposal of governmentwide assets within GSA's areas of responsibility. Such assets include, motor vehicles, aircraft, real property, and personal property. In addition, the Board will provide advice regarding policies and guidance on such issues as the deployment of smart card technologies, electronic commerce, information technology, public participation, and intergovernmental coordination.

**Contact for information:** The Office of Governmentwide Policy is the organization within GSA that is sponsoring this board. For additional information, contact John Doe, Committee Management Secretariat (MC), 1800 F Street, NW, Washington, DC 20405; telephone (202) 555-5555.

David J. Barram  
Acting Administrator  
Signed 4/18/97

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# 2004 Current FY Report: Review of Federal Advisory Committee

Committee Menu

5/7/2007 10:28:17 AM

1. Department or Agency

**Election Assistance Commission**

2. Fiscal Year

**2004**

3. Committee or SubCommittee

**EAC Board of Advisors**

3b. GSA Committee No.

**21504**

4. Is this New During Fiscal Year?

**Yes**

5. Current Charter

**6/15/2004**

6. Expected Renewal Date

**6/15/2006**

7. Expected Term Date

**5/24/2006**

8a. Was Terminated During FY?

**No**

8b. Specific Termination Authority

8c. Actual Termination Date

9. Agency Recommendation for Next FY

**Continue**

10a. Legislation Req to Terminate?

**No**

10b. Legislation Pending?

11. Establishment Authority

**Statutory (Congress Created)**

12. Specific Establishment Authority

**Public Law 107-252, Help America Vote Act of 2002**

13. Effective Date

**10/29/2002**

14. Committee Type

**Continuing**

14c. Presidential?

**No**

15. Description of Committee

**National Policy Issue Advisory Board**

16a. Total Number of Reports

**2**

16b. Report Titles and Dates

**Best Practices In Election Administration**

**7/30/2004**

**Best Practices for Facilitating Voting by U.S. Citizens Covered by UOCAVA**

**9/1/2004**

17a Open:

**1**

17b. Closed: **0**

17c. Partially Closed: **0**

17d. Total Meetings **1**

Meeting Purposes and Dates

**Organizational plans for the newly established U.S. Election Assistance Commission (EAC) Board of Advisors. As required by the Help America Vote Act of 2002, the Board will present its views on issues in the administration of Federal Elections, and formulate recommendations to the EAC.**

**6/28/2004 12:00:00 PM 6/28/2004 4:30:00 PM**

Current Fiscal Year

Next Fiscal Year

18a(1) Personnel Pmts to Non-Federal Members

**\$3,245**

**\$10,000**

18a(2) Personnel Pmts to Federal Members

**\$376**

**\$1,000**

18a(3) Personnel Pmts to Federal Staff

**\$10,064**

**\$20,000**

18a(4) Personnel Pmts to Non-member Consultants

**\$0**

**\$0**

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18b(1) Travel and Per Diem to Non-Federal Members	\$8,130	\$20,000
18b(2) Travel and Per Diem to Federal Members	\$2,040	\$5,000
18b(3) Travel and Per Diem to Federal Staff	\$5,040	\$15,000
18b(4) Travel and Per Diem to Non-Member Consultants	\$0	\$0
18c. Other (rents, user charges, graphics, printing, mail etc.)	\$57,244	\$50,000
18d Total	\$86,139	\$121,000
19. Federal Staff Support Years	2.0	2.0

20a. How does the Committee accomplish its purpose?

**The Board of Advisors review proposed voluntary voting system guidelines and EAC technical guidance. They play a role in recommending candidates for the EAC Executive Director. They also may hold hearings and take testimony related to carrying out the provisions of the Help America Vote Act.**

20b. How does the Committee balance its membership?

**The Board of Advisors consists of 37 members as required by the Help America Vote Act who were appointed by a number of non-profit groups and associations of elected officials. Also, the U.S. House and Senate, including the majority and minority leadership of both Houses, shall make appointments to the Board of Advisors.**

20c. How frequent and relevant are the Committee meetings?

**Estimated Number of Meetings per Year - 1 According to the Help America Vote Act, the Board of Advisors should hold a meeting of its members not less frequently than once every year for purposes of voting on the voluntary voting system guidelines.**

20d. Why can't the advice or information this committee provides be obtained elsewhere?

**CHARTER OF THE U.S. ELECTION ASSISTANCE COMMISSION BOARD OF ADVISORS** The U.S. Election Assistance Commission (EAC) hereby Charters the Board of Advisors established in title II section 211 of the Help America Vote Act of 2002 (HAVA) [Public Law 107-252] pursuant to the Federal Advisory Committee Act. **OBJECTIVES AND DUTIES** 1. The objective of the Board of Advisors (the Board) is to advise the EAC through review of the voluntary voting systems guidelines described in title II Part 3 of the HAVA; through review of the voluntary guidance described under title III of HAVA; and through the review of the best practices recommendations contained in the report submitted under Section 242(b) of title II (HAVA title II section 212). 2. The Board will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act. **MEMBERSHIP** 1. The Board shall consist of the following: -Two members appointed by the National Governors Association. -Two members appointed by the National Conference of State Legislatures. -Two members appointed by the National Association of Secretaries of State. -Two members appointed by the National Association of State Election Directors. -Two members appointed by the National Association of Counties. -Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks. -Two members appointed by the United States Conference of Mayors. -Two members appointed by the Election Center. -Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers. -Two members appointed by the United States Commission on Civil Rights. -Two members appointed by the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). -The chief of the Office of Public Integrity of the Department of Justice, or the chief's designee. -The Chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee. -The director of the Federal Voting Assistance Program of the Department of Defense. -Four members representing professionals in the field of science and

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technology, of whom— (A) one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and (B) one each shall be appointed by the Majority Leader and the Minority Leader of the Senate. -Eight members representing voter interests, of whom— (A) four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and (B) four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member. (HAVA title II section 214 (a)). 2. Vacancy appointments shall be made in the same manner as the original appointments. 3. Members of the Board shall serve for a term of 2 years and may be reappointed. 4. The Board shall elect a Chair from among its members. ADMINISTRATIVE PROVISIONS 1. The Board will report to the EAC through the Advisory Committee Management Officer pursuant to 5 U.S.C. App.1 section 8 (b). This officer shall be an EAC Commissioner designated by the Chairman of the EAC. 2. The Board will meet a minimum of once a year for purposes of voting on the voluntary voting system guidelines. Additional meetings may be called at such other times as it considers appropriate for the purposes of conducting other business as it considers appropriate consistent with title II of HAVA. (HAVA title II, section 215 (a)(2)). 3. The EAC and GAO will provide clerical and other necessary support services to the Board. (HAVA title II, section 215 (d)). 4. Members of the Board will not be compensated for their services but will be reimbursed for travel expenses and subsistence. (HAVA title II section 215 (e)). 5. The Board may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government. (HAVA title II, section 215 (c)). 6. The annual cost for operating the Board is estimated at \$100,000 which includes one quarter staff year for support services. 7. The Board may establish such committees of its members as may be necessary subject to the provisions of the law. 8. The Board may, by simple majority vote, adopt resolutions and make recommendations. Such resolutions and recommendations will, however, be only advisory to the EAC and will be restricted to the EAC's activities described in title II section 212 of the Help America Vote Act of 2002. 9. The EAC will provide liaison services between the Board and the Advisory Panel Secretariat as required by the Federal Advisory Committee Act. DURATION This is a permanent committee as established in title II section 215 (f) of the Help America Vote Act of 2002.

20e. Why is it necessary to close and/or partially close committee meetings?

**Meetings do not have to be closed.**

#### 21. Remarks

As a newly established commission, EAC had to convene a meeting for both boards in a short period of time. The meetings were held together, therefore, the cost figures for Federal Staff, Travel:Federal Staff, and Federal Staff Support are the same as those given for the Standards Board. Two full-time staff members supported the activities of both boards during FY2004, and it is estimated that they spent about 10% of their time providing administrative support for the boards and their coordinating activities. Travel:Federal Staff amount includes airfare and per diem. The \$57,243.77 amount given for other costs reflects expenses incurred for sleeping rooms (\$20,793.00), food (\$18,302.76), equipment (\$7326.55), court recorder (\$2,485.95), photographer (\$1,470.00), Sign language interpreter (\$1,400.00), photocopying (\$465.52 - Houston), and Supplies/Courier/FedEX (\$5,000.00).

Designated Federal Official: **Ms. Gracia M. Hillman Vice-Chair, U.S. Election Assistance Commission**

Committee Members	Start	End	Occupation	Member Designation

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<b>Brunelli, Ms. Polli</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>Director, Federal Voting Assistance Program United States Department of Defence</b>	<b>Not required until FY05</b>
<b>Buie, Ms. Sharon Turner</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>Director of Elections, Kansas City (Missouri) Board of Election Commissioners</b>	<b>Not required until FY05</b>
<b>Carnahan, Ms. Robin</b>	<b>5/27/2004</b>	<b>5/27/2006</b>	<b>Attorney at Law</b>	<b>Not required until FY05</b>
<b>Carnes, Mr. Jim</b>	<b>5/27/2004</b>	<b>5/27/2006</b>	<b>Deputy Director, Ohio Department of Natural Resources</b>	<b>Not required until FY05</b>
<b>Crangle, Mr. Joseph</b>	<b>5/27/2004</b>	<b>5/27/2006</b>	<b>Attorney, Colucci &amp; Gallaher, P.C.</b>	<b>Not required until FY05</b>
<b>Dickson, Mr. James</b>	<b>5/27/2004</b>	<b>5/27/2006</b>	<b>V.P. for Governmental Affairs, American Association of People with Disabilities (AAPD)</b>	<b>Not required until FY05</b>
<b>Elekes, Mr. James</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>Board Member U.S. Access Board</b>	<b>Not required until FY05</b>
<b>Guess, Mr. Francis</b>	<b>8/17/2004</b>	<b>8/17/2006</b>	<b>Vice President, Danner Company</b>	<b>Not required until FY05</b>
<b>Gwadosky, Mr. Dan</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>Secretary of State</b>	<b>Not required until FY05</b>
<b>Hanaway, Ms. Catherine L.</b>	<b>6/23/2004</b>	<b>6/23/2006</b>	<b>Speaker of the Missouri House of Representatives</b>	<b>Not required until FY05</b>
<b>Harding, Mr. James R.</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>Board Member, The U.S. Access Board</b>	<b>Not required until FY05</b>
<b>Hawkins, Mr. Ernie</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>Former Registrar of Voters, Sacramento County</b>	<b>Not required until FY05</b>
<b>Hillman, Mr. Noel</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>Chief, Office of Public Integrity, United States Department of Justice</b>	<b>Not required until FY05</b>
<b>Kaufman, Ms. Beverly</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>Harris County Clerk</b>	<b>Not required until FY05</b>
<b>Kiffmeyer, Ms. Mary</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>Secretary of State</b>	<b>Not required until FY05</b>
<b>Kliner Jr., Mr. Wesley R.</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Attorney</b>	<b>Not required until FY05</b>
<b>Lewis, Mr. Doug</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>Executive Director, The Election Center</b>	<b>Not required until FY05</b>
<b>Noren, Ms. Wendy</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>Boone County Clerk</b>	<b>Not required until FY05</b>
<b>Orr, Mr. David</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>Cook County Clerk</b>	<b>Not required until FY05</b>
<b>Palmer, Mr. Douglas</b>	<b>10/14/2004</b>	<b>10/14/2006</b>	<b>Mayor, Trenton, New Jersey</b>	<b>Not required until FY05</b>
<b>Purcell, Ms. Helen</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>Maricopa County Recorder</b>	<b>Not required until FY05</b>
<b>Rants, Mr.</b>			<b>Iowa Speaker of the House</b>	<b>Not required</b>

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<b>Christopher Sautermeister, Ms. Sue</b>	<b>5/27/2004</b>	<b>5/27/2006</b>	<b>Municipal Election Commissioner - City of Ridgeland</b>	<b>until FY05 Not required until FY05</b>
<b>Shelton, Mr. Hilary</b>	<b>5/27/2004</b>	<b>5/27/2006</b>	<b>Director, Washington Bureau , NAACP</b>	<b>Not required until FY05</b>
<b>Shortbull, Mr. Thomas</b>	<b>5/27/2004</b>	<b>5/27/2006</b>	<b>President, Oglala Lakota College</b>	<b>Not required until FY05</b>
<b>Silver, Mr. Sheldon</b>			<b>Speaker, New York Assembly</b>	<b>Not required until FY05</b>
<b>Sirvello, III, Mr. Tony</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>IACREOT Executive Director (formerly Harris County Elections Administrator)</b>	<b>Not required until FY05</b>
<b>Somerville, Ms. Tamara</b>	<b>5/27/2004</b>	<b>5/27/2006</b>	<b>Senior V.P. for Governmental Affairs National Food Processors Assn.</b>	<b>Not required until FY05</b>
<b>Thomas, Mr. Christopher</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>Director of Elections, State of Michigan</b>	<b>Not required until FY05</b>
<b>von Spakovsky, Mr. Hans</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>Counsel to the Assistant Attorney General United States Department of Justice</b>	<b>Not required until FY05</b>
<b>Watt, Mr. JC</b>	<b>7/14/2004</b>	<b>7/14/2006</b>	<b>Former Congressman</b>	<b>Not required until FY05</b>
<b>Wilkey, Mr. Thomas</b>	<b>5/13/2004</b>	<b>5/13/2006</b>	<b>Former Executive Director, New York State Board of Elections</b>	<b>Not required until FY05</b>
<b>Wilson, Ms. Victoria</b>	<b>8/17/2004</b>	<b>8/17/2006</b>	<b>Vice President, Alfred A. Knopf Publishers</b>	<b>Not required until FY05</b>
<b>Total Count of Committee Members</b>			<b>33</b>	

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## 2004 Current FY Report: Review of Federal Advisory Committee

Committee Menu
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5/7/2007 10:29:04 AM

1. Department or Agency

2. Fiscal Year

**Election Assistance Commission****2004**

3. Committee or SubCommittee

3b. GSA Committee No.

**Technical Guidelines Development Committee****21509**

4. Is this New During Fiscal Year?

5. Current Charter

6. Expected Renewal Date

7. Expected Term Date

**Yes****6/17/2004****6/17/2006****6/17/2006**

8a. Was Terminated During FY?

8b. Specific Termination Authority

8c. Actual Termination Date

**No**

9. Agency Recommendation for Next FY

10a. Legislation Req to Terminate?

10b. Legislation Pending?

**Continue**

11. Establishment Authority

**Statutory(Congress Created)**

12. Specific Establishment Authority

13. Effective Date

14. Committee Type

14c. Presidential?

**Continuing****No**

15. Description of Committee

**Other**

16a. Total Number of Reports

**No Reports for this Fiscal Year.**

17d. Total Meetings

**No Meetings for this Fiscal Year.**

	Current Fiscal Year	Next Fiscal Year
18a(1) Personnel Pmts to Non-Federal Members	\$0	\$0
18a(2) Personnel Pmts to Federal Members	\$0	\$0
18a(3) Personnel Pmts to Federal Staff	\$0	\$0
18a(4) Personnel Pmts to Non-member Consultants	\$0	\$0
18b(1) Travel and Per Diem to Non-Federal Members	\$13,669	\$0
18b(2) Travel and Per Diem to Federal Members	\$0	\$0
18b(3) Travel and Per Diem to Federal Staff	\$0	\$0
18b(4) Travel and Per Diem to Non-Member Consultants	\$0	\$0
18c. Other(rents,user charges,graphics,printing,mail etc.)	\$0	\$0
18d Total	\$13,669	\$0
19. Federal Staff Support Years	0.0	0.0

20a. How does the Committee accomplish its purpose?

**TGDC meets in lenary session to discuss, debate and pass resolutions that instruct the National Institute of Standards and Technology on the policy considerations for developing voluntary voting system guidelines. In addition, three subcommittees (Security and Transparency, Human Factors and Privacy, and Core Requirements and Testing) meet to discuss issues related to their subject matter and involving the development of testable guidelines for voting systems.**

20b. How does the Committee balance its membership?

**The membership of TGDC is established by Section 221 of the Help American Vote Act of 2002. All members and representatives were chosen in keeping with the provisions of that statute.**

20c. How frequent and relevant are the Committee meetings?

**TGDC has met in 3 plenary sessions over the past year. In addition, the subcommittees have met over 20 times during the past year. These meetings are crucial to the development of comprehensive guidelines regarding the technical functioning of voting systems. It is anticipated that TGDC will continue to meet with the same frequency over the next year.**

20d. Why can't the advice or information this committee provides be obtained elsewhere?

**EAC is required by law (Section 221 of HAVA) to obtain advice from the TGDC. To use some other body or group to provide such advice would violate Federal law.**

20e. Why is it necessary to close and/or partially close committee meetings?

**All TGDC meetings have been open to the public.**

21. Remarks

Designated Federal Official: **Mr. Paul S. DeGregorio Commissioner, U.S. Election Assistance Commission**

Committee Members	Start	End	Occupation	Member Designation
<b>Berger, Mr. H. Stephen</b>	<b>7/9/2004</b>			<b>Not required until FY05</b>
<b>Buie, Ms. Sharon Turner</b>	<b>7/9/2004</b>			<b>Not required until FY05</b>
<b>Caldas, Ms. Ann</b>	<b>7/9/2004</b>			<b>Not required until FY05</b>
<b>Craft, Mr. Paul</b>	<b>7/9/2004</b>			<b>Not required until FY05</b>
<b>Davidson, Ms. Donetta</b>	<b>7/9/2004</b>			<b>Not required until FY05</b>
<b>Elekes, Mr. James</b>	<b>7/9/2004</b>			<b>Not required until FY05</b>
<b>Gannon, Mr. Patrick</b>	<b>7/9/2004</b>			<b>Not required until FY05</b>
<b>Harding, Dr. James</b>	<b>7/9/2004</b>			<b>Not required until FY05</b>
<b>Miller, Ms. Alice</b>	<b>7/9/2004</b>			<b>Not required until FY05</b>
<b>Purcell, Ms. Helen</b>	<b>7/9/2004</b>			<b>Not required until FY05</b>
<b>Quesenbery, Ms. Whitney</b>	<b>7/9/2004</b>			<b>Not required until FY05</b>
<b>Rivest, Dr. Ronald</b>	<b>7/9/2004</b>			<b>Not required until FY05</b>
<b>Schutzer, Dr. Daniel</b>	<b>7/9/2004</b>			<b>Not required until FY05</b>
<b>Semerjian, Dr. Hratch</b>	<b>7/9/2004</b>			<b>Not required until FY05</b>
<b>Turner-Buie, Ms. Sharon</b>	<b>7/9/2004</b>			<b>Not required until FY05</b>
<b>Williams, Dr. Brittain</b>	<b>7/9/2004</b>			<b>Not required until FY05</b>

Total Count of Committee Members

**16**

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# 2004 Current FY Report: Review of Federal Advisory Committee

Committee Menu

5/7/2007 10:28:37 AM

1. Department or Agency

**Election Assistance Commission**

2. Fiscal Year

**2004**

3. Committee or SubCommittee

**EAC Standards Board**

3b. GSA Committee No.

**21503**

4. Is this New During Fiscal Year?

**Yes**

5. Current Charter

**6/15/2004**

6. Expected Renewal Date

**6/15/2006**

7. Expected Term Date

**5/24/2006**

8a. Was Terminated During FY?

**No**

8b. Specific Termination Authority

8c. Actual Termination Date

9. Agency Recommendation for Next FY

**Continue**

10a. Legislation Req to Terminate?

**No**

10b. Legislation Pending?

11. Establishment Authority

**Statutory(Congress Created)**

12. Specific Establishment Authority

**Public Law 107-252, Help America Vote Act of 2002**

13. Effective Date

**10/29/2002**

14. Committee Type

**Continuing**

14c. Presidential?

**No**

15. Description of Committee

**National Policy Issue Advisory Board**

16a. Total Number of Reports

**2**

16b. Report Titles and Dates

**Best Practices In Election Administration**

**7/30/2004**

**Best Practices for Facilitating Voting by U.S. Citizens Covered by UOCAVA**

**9/1/2004**

17a Open:

**1**

17b. Closed: **0**

17c. Partially Closed: **0**

17d. Total Meetings **1**

Meeting Purposes and Dates

**Organizational plans for the newly established U.S. Election Assistance Commission (EAC) Standards Board. As required by the Help America Vote Act of 2002, the Board will present its views on issues in the administration of Federal Elections, and formulate recommendations to the EAC.**

**6/29/2004 9:00:00 AM 11/29/2004 4:30:00 PM**

	Current Fiscal Year	Next Fiscal Year
18a(1) Personnel Pmts to Non-Federal Members	<b>\$7,424</b>	<b>\$23,000</b>
18a(2) Personnel Pmts to Federal Members	<b>\$0</b>	<b>\$0</b>
18a(3) Personnel Pmts to Federal Staff	<b>\$10,064</b>	<b>\$30,000</b>
18a(4) Personnel Pmts to Non-member Consultants	<b>\$0</b>	<b>\$0</b>

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18b(1) Travel and Per Diem to Non-Federal Members	\$31,793	\$87,000
18b(2) Travel and Per Diem to Federal Members	\$0	\$0
18b(3) Travel and Per Diem to Federal Staff	\$5,040	\$15,000
18b(4) Travel and Per Diem to Non-Member Consultants	\$0	\$0
18c. Other (rents, user charges, graphics, printing, mail etc.)	\$57,244	\$100,000
18d Total	\$111,565	\$255,000
19. Federal Staff Support Years	2.0	2.0

20a. How does the Committee accomplish its purpose?

**The duties of the Standards Board are to review proposed voluntary voting system guidelines and EAC technical guidance. Members play a role in recommending candidates for the EAC Executive Director. They also may hold hearings and take testimony related to carrying out the provisions of the Help America Vote Act.**

20b. How does the Committee balance its membership?

**The Standards Board is comprised of 110 members: 55 State election officials selected by the chief State election official of each State and 55 local election officials selected by their peers. The two officials from each State may not be members of the same political party.**

20c. How frequent and relevant are the Committee meetings?

**Estimated Number of Meetings per Year - 1 According to the Help America Vote Act, the Standards Board should hold a meeting of its members not less frequently than once every year for purposes of voting on the voluntary voting system guidelines.**

20d. Why can't the advice or information this committee provides be obtained elsewhere?

**CHARTER OF THE U.S. ELECTION ASSISTANCE COMMISSION STANDARDS BOARD**  
**The U.S. Election Assistance Commission (EAC) hereby Charters the Standards Board established in title II section 211 of the Help America Vote Act of 2002 (HAVA) [Public Law 107-252] pursuant to the Federal Advisory Committee Act. OBJECTIVES AND DUTIES 1. The objective of the Standards Board (the Board) is to advise the EAC through review of the voluntary voting systems guidelines described in title II Part 3 of the HAVA; through review of the voluntary guidance described under title III of HAVA; and through the review of the best practices recommendations contained in the report submitted under Section 242(b) of title II (HAVA title II section 212). 2. The Board will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act. MEMBERSHIP 1. The Board shall consist of 110 members. 55 members shall be State election officials selected by the chief State election official of each State. 55 shall be local election officials selected under a process supervised by the chief election official of the State. The 2 members of the Standards Board who represent the same State may not be members of the same political party. (HAVA title II section 213 (a)). Vacancy appointments shall be made in the same manner as the original appointments. 2. The Board shall select 9 of its members as an Executive Board of whom, not more than 5 may be State election officials; not more than 5 may be local election officials; and not more than 5 may be members of the same political party. Members of the Executive Board shall serve 2 year terms and may not serve more than 3 consecutive terms. Of the initial Executive Board, 3 members shall serve for 1 term; 3 shall serve for 2 consecutive terms; and 3 shall serve for 3 consecutive terms, as determined by lot at the time the members are first appointed (HAVA title II, section 213 (c)). ADMINISTRATIVE PROVISIONS 1. The Board will report to the EAC through the Advisory Committee Management Officer pursuant to 5 U.S.C. App.1 section 8 (b). This officer shall be an EAC Commissioner designated by the Chairman of the EAC. 2. The Board will meet a minimum of once a year for purposes of voting on the voluntary voting system guidelines and not less frequently than once every 2 years for**

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purposes of selecting the Executive Board. Additional meetings may be called at such other times as it considers appropriate for the purposes of conducting other business as it considers appropriate consistent with title II of HAVA. (HAVA title II, section 215 (a)(2)). 3. The EAC and GAO will provide clerical and other necessary support services to the Board. (HAVA title II, section 215 (d)). 4. Members of the Board will not be compensated for their services but will be reimbursed for travel expenses and subsistence. (HAVA title II section 215 (e)). 5. The Board may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government. (HAVA title II, section 215 (c)). 6. The annual cost for operating the Board is estimated at \$210,000 which includes one quarter staff year for support services. 7. The Board may establish such committees of its members as may be necessary subject to the provisions of the law. 8. The Board may, by simple majority vote, adopt resolutions and make recommendations. Such resolutions and recommendations will, however, be only advisory to the EAC and will be restricted to the EAC's activities described in title II section 212 of the Help America Vote Act of 2002. 9. The EAC will provide liaison services between the Board and the Advisory Panel Secretariat as required by the Federal Advisory Committee Act. **DURATION** This is a permanent committee as established in title II section 215 (f) of the Help America Vote Act of 2002.

20e. Why is it necessary to close and/or partially close committee meetings?

**Meetings are not closed.**

#### 21. Remarks

As a newly established commission, EAC had to convene a meeting for both boards in a short period of time. The meetings were held together, therefore, the cost figures for Federal Staff, Travel:Federal Staff, and Federal Staff Support are the same as those given for the Board of Advisors. Two full-time staff members supported the activities of both boards during FY2004, and it is estimated that they spent about 10% of their time providing administrative support for the boards and their coordinating activities. Travel:Federal Staff amount includes airfare and per diem. The \$57,243.77 amount given for other costs reflects expenses incurred for sleeping rooms (\$20,793.00), food (\$18,302.76), equipment (\$7326.55), court recorder (\$2,485.95), photographer (\$1,470.00), Sign language interpreter (\$1,400.00), photocopying (\$465.52 - Houston), and Supplies/Courier/FedEX (\$5,000.00).

Designated Federal Official: **Mr. Ray Martinez III Commissioner, U.S. Election Assistance Commission**

Committee Members	Start	End	Occupation	Member Designation
<b>Andino, Ms. Marci</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Executive Director, State Election Commission</b>	<b>Not required until FY05</b>
<b>Armbruster, Ms. Joanne</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Atlantic county Superintendent of Elections</b>	<b>Not required until FY05</b>
<b>Atkins, Ms. Kim A.</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Voter Registration Manager</b>	<b>Not required until FY05</b>
<b>Avery, Ms. Marilyn</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Election Commissioner, Hinds County</b>	<b>Not required until FY05</b>
<b>Bailey, Ms. Lynn</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Election Administrator, Richmond County Board of Elections</b>	<b>Not required until FY05</b>
<b>Bartholomew, Ms. Tonni</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Troy City Clerk</b>	<b>Not required until FY05</b>
<b>Bernard, Mr. Louie</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Clerk of Court, Natchitoches Parish</b>	<b>Not required</b>

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Berry, Ms. Mary	3/7/2003 9/30/2005 DeKalb County Clerk	until FY05 Not required until FY05
Blackwell, Secretary J. Kenneth	3/7/2003 9/30/2005 Secretary of State, Ohio	Not required until FY05
Blevins, Mr. Don	3/7/2003 9/30/2005 Fayette County Clerk	Not required until FY05
Brewer, Secretary Jan	3/7/2003 9/30/2005 Secretary of State, Arizona	Not required until FY05
Brown, Secretary Bob	3/7/2003 9/30/2005 Secretary of State, Montana	Not required until FY05
Bysiewicz, Secretary Susan	3/7/2003 9/30/2005 Secretary of State, Connecticut	Not required until FY05
Calio, Mr. Frank B.	3/7/2003 9/30/2005 Commissioner of Elections	Not required until FY05
Campbell, Mr. Hoyt	3/7/2003 9/30/2005 Director, Darlington County Registration and Elections	Not required until FY05
Campbell, Mr. Willaim	3/7/2003 9/30/2005 City Clerk, city of Woburn	Not required until FY05
Cappy, Ms. Annette	3/7/2003 9/30/2005 Town Clerk, Town of Brattleboro	Not required until FY05
Clark, Mr. Bradley	3/7/2003 9/30/2005 Alameda County Registrar of Voters	Not required until FY05
Clark, Secretary Eric	3/7/2003 9/30/2005 Secretary of State, Mississippi	Not required until FY05
Clark, Ms. Marian	3/7/2003 9/30/2005 Chair, town of Jamestown Board of Canvessers	Not required until FY05
Colon-Berlingeri, Mr. Nestor J.	3/7/2003 9/30/2005 First Vice President	Not required until FY05
Connor, Secretary Geoffrey S.	3/7/2003 9/30/2005 Secretary of State, Texas	Not required until FY05
Cooley, Mr. Luke	3/7/2003 9/30/2005 Judge of Probate, Houston County	Not required until FY05
Cooper, Ms. Kathie Chastain	3/7/2003 9/30/2005 Director of Elections, Forsyth County	Not required until FY05
Cortes, Secretary Pedro	3/7/2003 9/30/2005 Secretary of the Commonwealth	Not required until FY05
Cowen, Mr. Richard	3/7/2003 9/30/2005 Chicago Board of Election Commissioners	Not required until FY05
Cowles, Mr. Bill	3/7/2003 9/30/2005 Supervisor of Elections, Orange County	Not required until FY05
Culver, Secretary Chet	3/7/2003 9/30/2005 Secretary of State, Iowa	Not required until FY05
Daniels, Secretary Charlie	3/7/2003 9/30/2005 Secretary of State, Arkansas	Not required until FY05

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<b>Davidson, Secretary Donetta</b>	<b>3/7/2003 9/30/2005 Secretary of State, Colorado</b>	<b>Not required until FY05</b>
<b>DeBeauvoir, Ms, Dana</b>	<b>3/7/2003 9/30/2005 Travis County Clerk</b>	<b>Not required until FY05</b>
<b>English, Mr. Dan</b>	<b>3/7/2003 9/30/2005 Kootenai County Clerk</b>	<b>Not required until FY05</b>
<b>Enoch, Mr. Joe</b>	<b>3/7/2003 9/30/2005 Dyer County Election Commissioner</b>	<b>Not required until FY05</b>
<b>Etter, Mr. Mitch</b>	<b>3/7/2003 9/30/2005 Assistant Elections Director</b>	<b>Not required until FY05</b>
<b>Ewing, Mr. Dennis</b>	<b>3/7/2003 9/30/2005 Tooele County Clerk</b>	<b>Not required until FY05</b>
<b>Flynn, Ms. Julie</b>	<b>3/7/2003 9/30/2005 Deputy Secretary of State</b>	<b>Not required until FY05</b>
<b>Freese, Ms. Julie</b>	<b>3/7/2003 9/30/2005 Fremont Coutny Clerk</b>	<b>Not required until FY05</b>
<b>Fuimaono, Mr. Soliai</b>	<b>3/7/2003 9/30/2005 Chief Election Officer</b>	<b>Not required until FY05</b>
<b>Gale, Secretary John</b>	<b>3/7/2003 9/30/2005 Secretary of State, Nebraska</b>	<b>Not required until FY05</b>
<b>Galvin, Secretary William Francis</b>	<b>3/7/2003 9/30/2005 Secretary of the Commenwealth</b>	<b>Not required until FY05</b>
<b>Gardner, Secretary William</b>	<b>3/7/2003 9/30/2005 Secretary of State, New Hampshire</b>	<b>Not required until FY05</b>
<b>Glaiser, Secretary Laura A.</b>	<b>3/7/2003 9/30/2005 Secretary of State, Alaska</b>	<b>Not required until FY05</b>
<b>Growden, Ms. Shelly</b>	<b>9/30/2005 Division of Elections Regional III Supervisor</b>	<b>Not required until FY05</b>
<b>Haggerty Jr., Mr. John</b>	<b>3/7/2003 9/30/2005 Deputy Executive Director, Task Force on Election Modernization</b>	<b>Not required until FY05</b>
<b>Handy, Mr. Nick</b>	<b>3/7/2003 9/30/2005 Director of Elections, State of Washington</b>	<b>Not required until FY05</b>
<b>Harrison Jr., Mr. Allen</b>	<b>3/7/2003 9/30/2005 Chair, Arlington County Electoral Board</b>	<b>Not required until FY05</b>
<b>Harvey, Mr. Peter C.</b>	<b>3/7/2003 9/30/2005 Attorney General</b>	<b>Not required until FY05</b>
<b>Heller, Secretary Dean</b>	<b>3/7/2003 9/30/2005 Secretary of State, Nevada</b>	<b>Not required until FY05</b>
<b>Hurst, Mr. Timothy</b>	<b>3/7/2003 9/30/2005 Chief Deputy, Secretary of State</b>	<b>Not required until FY05</b>
<b>Jarrett, Mr. Terry</b>	<b>3/7/2003 9/30/2005 General Counsel</b>	<b>Not required until FY05</b>
<b>Jensen, Ms. Jean</b>	<b>3/7/2003 9/30/2005 Secretary, State Board of Elections</b>	<b>Not required until FY05</b>
<b>Johnson, Ms. Sarah Ball</b>	<b>3/7/2003 9/30/2005 Executive Director, State Board of Elections</b>	<b>Not required until FY05</b>

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<b>Kauffman, Mr. John</b>	<b>3/7/2003 9/30/2005</b>	<b>Director, Multnomah County Elections</b>	<b>Not required until FY05</b>
<b>Kennedy, Mr. Kevin J.</b>	<b>3/7/2003 9/30/2005</b>	<b>Executive Director, State Elections Board</b>	<b>Not required until FY05</b>
<b>Kiffmeyer, Secretary Mary</b>	<b>3/7/2003 9/30/2005</b>	<b>Secretary of State, Minnesota</b>	<b>Not required until FY05</b>
<b>Kunko, Mr. David</b>	<b>3/7/2003 9/30/2005</b>	<b>Chaues County Clerk</b>	<b>Not required until FY05</b>
<b>Lamone, Ms. Linda H,</b>	<b>3/7/2003 9/30/2005</b>	<b>Administrator of Elections</b>	<b>Not required until FY05</b>
<b>Land, Secretary Terri Lynn</b>	<b>3/7/2003 9/30/2005</b>	<b>Secretary of State, Michigan</b>	<b>Not required until FY05</b>
<b>Lindback, Mr. John</b>	<b>3/7/2003 9/30/2005</b>	<b>Director, State of Oregon Elections Division</b>	<b>Not required until FY05</b>
<b>Lomax, Mr. Harvard L.</b>	<b>3/7/2003 9/30/2005</b>	<b>Clark County Registrar of Voters</b>	<b>Not required until FY05</b>
<b>Mageo, Mr. Filivaa M.</b>	<b>3/7/2003 9/30/2005</b>	<b>Election Administrator</b>	<b>Not required until FY05</b>
<b>Markowitz, Secretary Deborah</b>	<b>3/7/2003 9/30/2005</b>	<b>Secretary of State, Vermont</b>	<b>Not required until FY05</b>
<b>Marthia, Ms. Ethelyn</b>	<b>3/7/2003 9/30/2005</b>	<b>Town Clerk Kennebunk</b>	<b>Not required until FY05</b>
<b>McClellan, Ms. Renee</b>	<b>3/7/2003 9/30/2005</b>	<b>Hardin County Auditor</b>	<b>Not required until FY05</b>
<b>McFarlane, Ms. Jonda</b>	<b>3/7/2003 9/30/2005</b>	<b>DC Board of Elections and Ethics, Board Member</b>	<b>Not required until FY05</b>
<b>McLean, Ms. Johnnie</b>	<b>3/7/2003 9/30/2005</b>	<b>Deputy Director</b>	<b>Not required until FY05</b>
<b>Merriman, Mr. Donald</b>	<b>3/7/2003 9/30/2005</b>	<b>Saline County Clerk</b>	<b>Not required until FY05</b>
<b>Miller, Ms. Alice P.</b>	<b>3/7/2003 9/30/2005</b>	<b>Executive Director, DC Board of Elections and Ethics</b>	<b>Not required until FY05</b>
<b>Montplaisir, Mr. Michael</b>	<b>3/7/2003 9/30/2005</b>	<b>County Auditor</b>	<b>Not required until FY05</b>
<b>Naccarato, Ms. Amy</b>	<b>3/7/2003 9/30/2005</b>	<b>Director of Elections</b>	<b>Not required until FY05</b>
<b>Nago, Mr. Scott</b>	<b>3/7/2003 9/30/2005</b>	<b>Section Head, Counting Center Operations</b>	<b>Not required until FY05</b>
<b>Nighswonger, Ms. Peggy</b>	<b>3/7/2003 9/30/2005</b>	<b>State Elections Director</b>	<b>Not required until FY05</b>
<b>Parr, Mr. Clint</b>	<b>3/7/2003 9/30/2005</b>	<b>Vice Chairman, Tulsa County Election Board</b>	<b>Not required until FY05</b>
<b>Plaskett, Ms. Corinne Halyard</b>	<b>3/7/2003 9/30/2005</b>	<b>Deputy Supervisor of Elections</b>	<b>Not required until FY05</b>
<b>Poser, Mr. Gary</b>	<b>3/7/2003 9/30/2005</b>	<b>Elections and License Bureau Supervisor</b>	<b>Not required until FY05</b>

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<b>Ragsdale, Mr. Russ</b>	<b>3/7/2003 9/30/2005</b>	<b>City and County of Broomfield Clerk and Recorder</b>	<b>Not required until FY05</b>
<b>Roberts, Ms. Dawn Kimmel</b>	<b>3/7/2003 9/30/2005</b>	<b>Director of the Division of Elections, Florida Department of State</b>	<b>Not required until FY05</b>
<b>Rogers, Ms. Kathy</b>	<b>3/7/2003 9/30/2005</b>	<b>Director of Election Administration</b>	<b>Not required until FY05</b>
<b>Rokita, Secretary Todd</b>	<b>3/7/2003 9/30/2005</b>	<b>Secretary of State, Indiana</b>	<b>Not required until FY05</b>
<b>Roust, Ms. Sue</b>	<b>3/7/2003 9/30/2005</b>	<b>Minnehaha County Auditor</b>	<b>Not required until FY05</b>
<b>Ruggiero, Ms. Jan</b>	<b>3/7/2003 9/30/2005</b>	<b>Director of Elections</b>	<b>Not required until FY05</b>
<b>Sciortino, Mr. Michael</b>	<b>3/7/2003 9/30/2005</b>	<b>Director, Mahoning County Board of Elections</b>	<b>Not required until FY05</b>
<b>Shelley, Secretary Kevin</b>	<b>3/7/2003 9/30/2005</b>	<b>Secretary of State, California</b>	<b>Not required until FY05</b>
<b>Sholl Jr., Mr. Howard</b>	<b>3/7/2003 9/30/2005</b>	<b>Deputy Administrative Director, Department of Elections for New Castle County</b>	<b>Not required until FY05</b>
<b>Silrum, Mr. I. James</b>	<b>3/7/2003 9/30/2005</b>	<b>Deputy Secretary of State</b>	<b>Not required until FY05</b>
<b>Slinkard, Ms. Mary Lou</b>	<b>9/30/2005</b>	<b>Benton County Clerk</b>	<b>Not required until FY05</b>
<b>Smith, Ms. Cindy</b>	<b>3/7/2003 9/30/2005</b>	<b>Team Leader of Elections</b>	<b>Not required until FY05</b>
<b>Spencer-Norton, Ms. Merietta</b>	<b>3/7/2003 9/30/2005</b>	<b>General Counsel</b>	<b>Not required until FY05</b>
<b>Spevak, Ms. Lynne</b>	<b>3/7/2003 9/30/2005</b>	<b>LaPorte County Clerk</b>	<b>Not required until FY05</b>
<b>Stitch, Mr. C. Donald</b>	<b>3/7/2003 9/30/2005</b>	<b>Town Moderator of Auburn</b>	<b>Not required until FY05</b>
<b>Szczesniak, Mr. Edward J.</b>	<b>3/7/2003 9/30/2005</b>	<b>Onondaga County Commissioner of Elections</b>	<b>Not required until FY05</b>
<b>Taitano, Mr. Gerald</b>	<b>9/30/2005</b>	<b>Executive Director</b>	<b>Not required until FY05</b>
<b>Takahashi, Mr. Glen</b>	<b>3/7/2003 9/30/2005</b>	<b>Election Administrator</b>	<b>Not required until FY05</b>
<b>Terwilliger, Mr. Bob</b>	<b>3/7/2003 9/30/2005</b>	<b>Snohomish County Auditor</b>	<b>Not required until FY05</b>
<b>Thomas, Ms. Natalie</b>	<b>3/7/2003 9/30/2005</b>	<b>Deputy Chairperson</b>	<b>Not required until FY05</b>
<b>Thompson, Ms. Brook</b>	<b>3/7/2003 9/30/2005</b>	<b>State Coordinator of Elections</b>	<b>Not required until FY05</b>
<b>Thornburgh, Secretary Ron</b>	<b>3/7/2003 9/30/2005</b>	<b>Secretary of State, Kansas</b>	<b>Not required until FY05</b>
<b>Toledo-Diaz, Mr.</b>	<b>3/7/2003 9/30/2005</b>	<b>Second Vice President</b>	<b>Not required</b>

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<b>Juan M.</b>			<b>until FY05</b>
<b>Tramontano, Ms. Rae</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>New Haven Registrar of Voters</b>
<b>Vigil-Giron, Secretary Rebecca</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Secretary of State, New Mexico</b>
<b>Warne, Ms. Kea</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>State Election Supervisor</b>
<b>Wesolowski, Ms. Sandi</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>City of Franklin Clerk</b>
<b>White, Mr. Daniel W.</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Executive Director, State Board of Elections</b>
<b>Wilfong, Ms. Debbie</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Clerk of the Upshur County Commission</b>
<b>Worley, Secretary Nancy L.</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Secretary of State, Alabama</b>
<b>Young, Mr. Regis</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Butler County Election Director</b>
<b>Zeier, Ms. Vickie</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Missoula County Clerk and Recorder/Treasurer</b>
<b>Zoucha, Mr. Robert</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Boone County Clerk</b>

Total Count of Committee Members

108

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## 2005 Current FY Report: Review of Federal Advisory Committee

Committee Menu
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5/7/2007 10:32:29 AM

1. Department or Agency

2. Fiscal Year

**Election Assistance Commission****2005**

3. Committee or SubCommittee

3b. GSA Committee No.

**EAC Board of Advisors****21504**

4. Is this New During Fiscal Year?

5. Current Charter

6. Expected Renewal Date

7. Expected Term Date

**No****6/15/2004****6/15/2006****5/24/2006**

8a. Was Terminated During FY?

8b. Specific Termination Authority

8c. Actual Termination Date

**No**

9. Agency Recommendation for Next FY

10a. Legislation Req to Terminate?

10b. Legislation Pending?

**Continue****No****Enacted**

11. Establishment Authority

**Statutory (Congress Created)**

12. Specific Establishment Authority

13. Effective Date

14. Committee Type

14c. Presidential?

**Public Law 107-252, Help America Vote Act of 2002****10/29/2002****Continuing****No**

15. Description of Committee

**National Policy Issue Advisory Board**

16a. Total Number of Reports

**3**

16b. Report Titles and Dates

**Executive Director Search****4/18/2005****Bylaws of the U.S. Election Assistance Commission - Board of Advisors****8/1/2005****Voluntary Voting Systems Guidelines (Although released 12/05, the Board submitted comments to the draft released in May 2005)****9/30/2005**

17a Open:

**1**17b. Closed: **0**17c. Partially Closed: **1**17d. Total Meetings **2**

Meeting Purposes and Dates

To give board members an update on EAC activities and to discuss strategy for reviewing and commenting on the draft of Voluntary Voting Systems Guidelines, scheduled to be released in May 2005.

**4/26/2005 4/28/2005**

Review and collect the board's comments on the Voluntary Voting System Guidelines so they could be finalized and submitted during the 90-day comment period ending on September 30, 2005.

**8/3/2005 8/5/2005**

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	Current Fiscal Year	Next Fiscal Year
18a(1) Personnel Pmts to Non-Federal Members	\$0	\$0
18a(2) Personnel Pmts to Federal Members	\$0	\$0
18a(3) Personnel Pmts to Federal Staff	\$6,498	\$7,000
18a(4) Personnel Pmts to Non-member Consultants	\$0	\$0
18b(1) Travel and Per Diem to Non-Federal Members	\$37,735	\$45,000
18b(2) Travel and Per Diem to Federal Members	\$4,299	\$5,600
18b(3) Travel and Per Diem to Federal Staff	\$16,086	\$16,000
18b(4) Travel and Per Diem to Non-Member Consultants	\$0	\$0
18c. Other (rents, user charges, graphics, printing, mail etc.)	\$35,932	\$45,000
18d Total	\$100,550	\$118,600
19. Federal Staff Support Years	0.4	1.0

20a. How does the Committee accomplish its purpose?

**The Board of Advisors provide valuable input and expertise in the formation of guidance and policy. Members are required to hold meetings at least once a year. They may hold hearings for the purpose of carrying out the requirements of HAVA. The Board of Advisor Chair may secure directly from any Federal department or agency any information deemed necessary to do the work of the Board.**

20b. How does the Committee balance its membership?

**The Board of Advisors consists of 37 members as required by the Help America Vote Act who were appointed by a number of non-profit groups and associations of elected officials. Also, the U.S. House and Senate, including the majority and minority leadership of both Houses, shall make appointments to the Board of Advisors.**

20c. How frequent and relevant are the Committee meetings?

**Estimated Number of Meetings per Year - 1 According to the Help America Vote Act, the Board of Advisors should hold a meeting of its members not less frequently than once every year for purposes of voting on the voluntary voting system guidelines.**

20d. Why can't the advice or information this committee provides be obtained elsewhere?

**CHARTER OF THE U.S. ELECTION ASSISTANCE COMMISSION BOARD OF ADVISORS** The U.S. Election Assistance Commission (EAC) hereby Charters the Board of Advisors established in title II section 211 of the Help America Vote Act of 2002 (HAVA) [Public Law 107-252] pursuant to the Federal Advisory Committee Act. **OBJECTIVES AND DUTIES** 1. The objective of the Board of Advisors (the Board) is to advise the EAC through review of the voluntary voting systems guidelines described in title II Part 3 of the HAVA; through review of the voluntary guidance described under title III of HAVA; and through the review of the best practices recommendations contained in the report submitted under Section 242(b) of title II (HAVA title II section 212). 2. The Board will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act. **MEMBERSHIP** 1. The Board shall consist of the following: -Two members appointed by the National Governors Association. -Two members appointed by the National Conference of State Legislatures. -Two members appointed by the National Association of Secretaries of State. -Two members appointed by the National Association of State Election Directors. -Two members appointed by the National Association of Counties. -Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks. -Two members appointed by the United States Conference of Mayors. -Two members appointed by the

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**Election Center. -Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers. -Two members appointed by the United States Commission on Civil Rights. -Two members appointed by the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). -The chief of the Office of Public Integrity of the Department of Justice, or the chief's designee. -The Chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee. -The director of the Federal Voting Assistance Program of the Department of Defense. -Four members representing professionals in the field of science and technology, of whom— (A) one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and (B) one each shall be appointed by the Majority Leader and the Minority Leader of the Senate. -Eight members representing voter interests, of whom— (A) four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and (B) four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member. (HAVA title II section 214 (a)). 2. Vacancy appointments shall be made in the same manner as the original appointments. 3. Members of the Board shall serve for a term of 2 years and may be reappointed. 4. The Board shall elect a Chair from among its members. ADMINISTRATIVE PROVISIONS 1. The Board will report to the EAC through the Advisory Committee Management Officer pursuant to 5 U.S.C. App.1 section 8 (b). This officer shall be an EAC Commissioner designated by the Chairman of the EAC. 2. The Board will meet a minimum of once a year for purposes of voting on the voluntary voting system guidelines. Additional meetings may be called at such other times as it considers appropriate for the purposes of conducting other business as it considers appropriate consistent with title II of HAVA. (HAVA title II, section 215 (a)(2)). 3. The EAC and GAO will provide clerical and other necessary support services to the Board. (HAVA title II, section 215 (d)). 4. Members of the Board will not be compensated for their services but will be reimbursed for travel expenses and subsistence. (HAVA title II section 215 (e)). 5. The Board may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government. (HAVA title II, section 215 (c)). 6. The annual cost for operating the Board is estimated at \$100,000 which includes one quarter staff year for support services. 7. The Board may establish such committees of its members as may be necessary subject to the provisions of the law. 8. The Board may, by simple majority vote, adopt resolutions and make recommendations. Such resolutions and recommendations will, however, be only advisory to the EAC and will be restricted to the EAC's activities described in title II section 212 of the Help America Vote Act of 2002. 9. The EAC will provide liaison services between the Board and the Advisory Panel Secretariat as required by the Federal Advisory Committee Act. DURATION This is a permanent committee as established in title II section 215 (f) of the Help America Vote Act of 2002.**

20e. Why is it necessary to close and/or partially close committee meetings?

**Meetings do not have to be closed.**

21. Remarks

**As a newly established commission, EAC had to convene a meeting for both boards in a short period of time. The meetings were held together, therefore, the cost figures for Federal Staff, Travel:Federal Staff, and Federal Staff Support are the same as those given for the Standards Board. One full-time staff member supported the activities of the board during FY2005, and it is estimated that this person spent about 10% of their time providing administrative support for the boards and their coordinating activities.**

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Designated Federal Official: **Ms. Gracia M. Hillman Chair, U.S. Election Assistance****Commission**

Committee Members	Start	End	Occupation	Member Designation
<b>Brunelli , Ms. Polli</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Director, Federal Voting Assistance Program United States Department of Defence</b>	<b>Regular Government Employee (RGE)</b>
<b>Buie , Ms. Sharon Turner</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Director of Elections, Kansas City (Missouri) Board of Election Commissioners</b>	<b>Representative</b>
<b>Carnahan , Honorable Robin</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Attorney at Law</b>	<b>Representative</b>
<b>Carnes , Mr. Jim</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Deputy Director, Ohio Department of Natural Resources</b>	<b>Representative</b>
<b>Crangle , Mr. Joseph</b>	<b>5/27/2004</b>	<b>5/27/2006</b>	<b>Attorney, Colucci &amp; Gallaher, P.C.</b>	<b>Representative</b>
<b>Dickson , Mr. James</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>V.P. for Governmental Affairs, American Association of People with Disabilities (AAPD)</b>	<b>Representative</b>
<b>Elekes , Mr. James</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Board Member U.S. Access Board</b>	<b>Special Government Employee (SGE)</b>
<b>Guess , Mr. Francis</b>	<b>8/17/2004</b>	<b>8/17/2006</b>	<b>Vice President, Danner Company</b>	<b>Representative</b>
<b>Gwadosky , Honorable Dan</b>	<b>6/28/2004</b>	<b>12/2/2004</b>	<b>Secretary of State</b>	<b>Representative</b>
<b>Hanaway , Ms. Catherine L.</b>	<b>6/23/2004</b>	<b>12/8/2004</b>	<b>Speaker of the Missouri House of Representatives</b>	<b>Representative</b>
<b>Harding , Mr. James R.</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Board Member, The U.S. Access Board</b>	<b>Special Government Employee (SGE)</b>
<b>Hawkins , Mr. Ernie</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Former Registrar of Voters, Sacramento County</b>	<b>Representative</b>
<b>Herrera , Ms. Mary</b>	<b>1/4/2005</b>	<b>1/4/2007</b>	<b>Bernalillo County Clerk</b>	<b>Representative</b>
<b>Hillman , Mr. Noel</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Chief, Office of Public Integrity, United States Department of Justice</b>	<b>Regular Government Employee (RGE)</b>
<b>Kaufman , Ms. Beverly</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Harris County Clerk</b>	<b>Representative</b>
<b>Kiffmeyer , Honorable Mary</b>	<b>12/3/2004</b>	<b>7/24/2005</b>	<b>Secretary of State</b>	<b>Representative</b>
<b>Kliner Jr., Mr. Wesley R.</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Attorney</b>	<b>Representative</b>
<b>Lewis , Mr. Doug</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Executive Director, The Election Center</b>	<b>Representative</b>
<b>Nelson , Honorable Chris</b>	<b>1/4/2005</b>	<b>1/4/2007</b>	<b>Secretary of State, South Dakota</b>	<b>Representative</b>

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Noren , Ms. Wendy	6/28/2004	6/28/2006	Boone County Clerk	Representative
Orr , Mr. David	6/28/2004	6/28/2006	Cook County Clerk	Representative
Palmer , Mr. Douglas	10/14/2004	10/14/2006	Mayor, Trenton, New Jersey	Representative
Purcell , Ms. Helen	6/28/2004	6/28/2006	Maricopa County Recorder	Representative
Rants , Mr. Christopher	6/28/2004	6/28/2006	Iowa Speaker of the House	Representative
Reed , Honorable Sam	8/19/2005	6/28/2006	Secretary of State, Washington	Representative
Sautermeister , Ms. Sue	6/28/2004	6/28/2006	Municipal Election Commissioner - City of Ridgeland	Representative
Shelton , Mr. Hilary	6/28/2004	6/28/2006	Director, Washington Bureau , NAACP	Representative
Shortbull , Mr. Thomas	5/27/2004	5/27/2006	President, Oglala Lakota College	Representative
Silver , Mr. Sheldon	6/28/2004	6/28/2006	Speaker, New York Assembly	Representative
Sirvello, III , Mr. Tony	6/28/2004	6/28/2006	IACREOT Executive Director (formerly Harris County Elections Administrator)	Representative
Somerville , Ms. Tamara	6/28/2004	6/28/2006	Senior V.P. for Governmental Affairs National Food Processors Assn.	Representative
Thomas , Mr. Christopher	6/28/2004	6/28/2006	Director of Elections, State of Michigan	Representative
Vigil-Giron , Honorable Rebecca	12/3/2004	6/28/2006	Secretary of State, New Mexico	Representative
von Spakovsky , Mr. Hans	6/28/2004	6/28/2006	Counsel to the Assistant Attorney General United States Department of Justice	Regular Government Employee (RGE)
Watts , Honorable JC	7/14/2004	7/14/2006	Former Congressman	Representative
Wilkey , Mr. Thomas	6/28/2004	5/31/2005	Former Executive Director, New York State Board of Elections	Representative
Wilson , Ms. Victoria	8/17/2004	8/17/2006	Vice President, Alfred A. Knopf Publishers	Representative

Total Count of Committee Members

37

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## 2005 Current FY Report: Review of Federal Advisory Committee

Committee Menu
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5/7/2007 10:32:39 AM

1. Department or Agency

**Election Assistance Commission**

2. Fiscal Year

**2005**

3. Committee or SubCommittee

**EAC Standards Board**

3b. GSA Committee No.

**21503**

4. Is this New During Fiscal Year?

**No**

5. Current Charter

**6/15/2004**

6. Expected Renewal Date

**6/15/2006**

7. Expected Term Date

**5/24/2006**

8a. Was Terminated During FY?

**No**

8b. Specific Termination Authority

8c. Actual Termination Date

9. Agency Recommendation for Next FY

**Continue**

10a. Legislation Req to Terminate?

**No**

10b. Legislation Pending?

**Enacted**

11. Establishment Authority

**Statutory(Congress Created)**

12. Specific Establishment Authority

**Public Law 107-252, Help America Vote Act of 2002**

13. Effective Date

**10/29/2002**

14. Committee Type

**Continuing**

14c. Presidential?

**No**

15. Description of Committee

**National Policy Issue Advisory Board**

16a. Total Number of Reports

**1**

16b. Report Titles and Dates

**Standards Board Recommendations for the VVSG Draft****9/28/2005**

17a Open:

**1**17b. Closed: **0**17c. Partially Closed: **1**17d. Total Meetings **2**

Meeting Purposes and Dates

**To form working groups relating to establishing bylaws, the Executive Director Search Committee, and selecting members for the Executive Board of the Standards Board. The Executive Director Search Committee meeting was not open to the public due to the discussion of selection criteria. Other agenda items included: Voting Systems Standards, Overseas Voting, Voter Registration, Provisional Voting, EAC Studies and Data Collection, and Other Election Concerns.**

**2/2/2005 2/4/2005**

**Appointment of Parliamentarian; Roll Call (Executive Board Secretary); Adoption of Agenda; Approval of Minutes of February Meeting; Review of Meeting Book Materials; Presentation and**

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**Adoption of Proposed Bylaws; Concurrent Session – Voluntary Voting System Guidelines (VVSG); Lunch – (Plaza Ballroom D) Commissioners' Update – Current EAC Activities; Discussion and Consideration of Resolutions Regarding Proposed Voluntary Voting System Guidelines; Potential Adoption of Voting System Guidelines.**

8/23/2005 8/25/2005

	Current Fiscal Year	Next Fiscal Year
18a(1) Personnel Pmts to Non-Federal Members	\$0	\$0
18a(2) Personnel Pmts to Federal Members	\$0	\$0
18a(3) Personnel Pmts to Federal Staff	\$7,431	\$0
18a(4) Personnel Pmts to Non-member Consultants	\$51,192	\$0
18b(1) Travel and Per Diem to Non-Federal Members	\$201,500	\$0
18b(2) Travel and Per Diem to Federal Members	\$0	\$0
18b(3) Travel and Per Diem to Federal Staff	\$11,000	\$0
18b(4) Travel and Per Diem to Non-Member Consultants	\$0	\$0
18c. Other (rents, user charges, graphics, printing, mail etc.)	\$81,133	\$0
18d Total	\$352,256	\$0
19. Federal Staff Support Years	1.0	0.0

20a. How does the Committee accomplish its purpose?

**The duties of the Standards Board are to review proposed voluntary voting system guidelines and EAC technical guidance. Members play a role in recommending candidates for the EAC Executive Director. They also may hold hearings and take testimony related to carrying out the provisions of the Help America Vote Act.**

20b. How does the Committee balance its membership?

**The Standards Board is comprised of 110 members: 55 State election officials selected by the chief State election official of each State and 55 local election officials selected by their peers. The two officials from each State may not be members of the same political party.**

20c. How frequent and relevant are the Committee meetings?

**Estimated Number of Meetings per Year - 1 According to the Help America Vote Act, the Standards Board should hold a meeting of its members not less frequently than once every year for purposes of voting on the voluntary voting system guidelines.**

20d. Why can't the advice or information this committee provides be obtained elsewhere?

**CHARTER OF THE U.S. ELECTION ASSISTANCE COMMISSION STANDARDS BOARD**  
**The U.S. Election Assistance Commission (EAC) hereby Charters the Standards Board established in title II section 211 of the Help America Vote Act of 2002 (HAVA) [Public Law 107-252] pursuant to the Federal Advisory Committee Act. OBJECTIVES AND DUTIES 1. The objective of the Standards Board (the Board) is to advise the EAC through review of the voluntary voting systems guidelines described in title II Part 3 of the HAVA; through review of the voluntary guidance described under title III of HAVA; and through the review of the best practices recommendations contained in the report submitted under Section 242(b) of title II (HAVA title II section 212). 2. The Board will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act. MEMBERSHIP 1. The Board shall consist of 110 members. 55 members shall be State election officials selected by the chief State election official of each State. 55 shall be local election officials selected under a**

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process supervised by the chief election official of the State. The 2 members of the Standards Board who represent the same State may not be members of the same political party. (HAVA title II section 213 (a)). Vacancy appointments shall be made in the same manner as the original appointments. 2. The Board shall select 9 of its members as an Executive Board of whom, not more than 5 may be State election officials; not more than 5 may be local election officials; and not more than 5 may be members of the same political party. Members of the Executive Board shall serve 2 year terms and may not serve more than 3 consecutive terms. Of the initial Executive Board, 3 members shall serve for 1 term; 3 shall serve for 2 consecutive terms; and 3 shall serve for 3 consecutive terms, as determined by lot at the time the members are first appointed (HAVA title II, section 213 (c)).

**ADMINISTRATIVE PROVISIONS**

1. The Board will report to the EAC through the Advisory Committee Management Officer pursuant to 5 U.S.C. App.1 section 8 (b). This officer shall be an EAC Commissioner designated by the Chairman of the EAC. 2. The Board will meet a minimum of once a year for purposes of voting on the voluntary voting system guidelines and not less frequently than once every 2 years for purposes of selecting the Executive Board. Additional meetings may be called at such other times as it considers appropriate for the purposes of conducting other business as it considers appropriate consistent with title II of HAVA. (HAVA title II, section 215 (a)(2)). 3. The EAC and GAO will provide clerical and other necessary support services to the Board. (HAVA title II, section 215 (d)). 4. Members of the Board will not be compensated for their services but will be reimbursed for travel expenses and subsistence. (HAVA title II section 215 (e)). 5. The Board may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government. (HAVA title II, section 215 (c)). 6. The annual cost for operating the Board is estimated at \$210,000 which includes one quarter staff year for support services. 7. The Board may establish such committees of its members as may be necessary subject to the provisions of the law. 8. The Board may, by simple majority vote, adopt resolutions and make recommendations. Such resolutions and recommendations will, however, be only advisory to the EAC and will be restricted to the EAC's activities described in title II section 212 of the Help America Vote Act of 2002. 9. The EAC will provide liaison services between the Board and the Advisory Panel Secretariat as required by the Federal Advisory Committee Act. **DURATION** This is a permanent committee as established in title II section 215 (f) of the Help America Vote Act of 2002.

20e. Why is it necessary to close and/or partially close committee meetings?

**Meetings are not closed.**

21. Remarks

As a newly established commission, EAC had to convene a meeting for both boards in a short period of time. The meetings were held together, therefore, the cost figures for Federal Staff, Travel:Federal Staff, and Federal Staff Support are the same as those given for the Board of Advisors. Two full-time staff members supported the activities of both boards during FY2004, and it is estimated that they spent about 10% of their time providing administrative support for the boards and their coordinating activities. Travel:Federal Staff amount includes airfare and per diem. The \$57,243.77 amount given for other costs reflects expenses incurred for sleeping rooms (\$20,793.00), food (\$18,302.76), equipment (\$7326.55), court recorder (\$2,485.95), photographer (\$1,470.00), Sign language interpreter (\$1,400.00), photocopying (\$465.52 - Houston), and Supplies/Courier/FedEX (\$5,000.00).

Designated Federal Official: **Mr. Ray Martinez III Commissioner, U.S. Election Assistance Commission**

Committee Members	Start	End	Occupation	Member Designation
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Anderson , Ms. Sharon K.	1/28/2005	1/31/2006	Cass County Auditor-Treasurer	Ex Officio
Andino , Ms. Marci	3/7/2003	9/30/2005	Executive Director, State Election Commission	Ex Officio
Armbruster , Ms. Joanne	3/7/2003	9/30/2005	Atlantic county Superintendent of Elections	Ex Officio
Atkins , Ms. Kim A.	3/7/2003	9/30/2005	Voter Registration Manager	Ex Officio
Avery , Ms. Marilyn	3/7/2003	9/30/2005	Election Commissioner, Hinds County	Ex Officio
Bailey , Ms. Lynn	3/7/2003	9/30/2005	Election Administrator, Richmond County Board of Elections	Ex Officio
Bartholomew , Ms. Tonni	3/7/2003	9/30/2005	Troy City Clerk	Ex Officio
Bernard , Mr. Louie	2/9/2005	2/7/2007	Elections Official	Representative
Bernard , Mr. Louie	3/7/2003	9/30/2005	Clerk of Court, Natchitoches Parish	Ex Officio
Blackwell , Secretary J. Kenneth	3/7/2003	9/30/2005	Secretary of State, Ohio	Ex Officio
Blevins , Mr. Don	3/7/2003	9/30/2005	Fayette County Clerk	Ex Officio
Brown , Secretary Bob	3/7/2003	9/30/2005	Secretary of State, Montana	Ex Officio
Bysiewicz , Secretary Susan	3/7/2003	9/30/2005	Secretary of State, Connecticut	Ex Officio
Calio , Mr. Frank B.	3/7/2003	9/30/2005	Commissioner of Elections	Ex Officio
Campbell , Mr. Bill	2/9/2005	2/7/2007	Woburn Town Clerk	Representative
Campbell , Mr. Hoyt	3/7/2003	9/30/2005	Director, Darlington County Registration and Elections	Ex Officio
Campbell , Mr. Willaim	3/7/2003	9/30/2005	City Clerk, city of Woburn	Ex Officio
Cappy , Ms. Annette	3/7/2003	9/30/2005	Town Clerk, Town of Brattleboro	Ex Officio
Clark , Mr. Bradley	3/7/2003	9/30/2005	Alameda County Registrar of Voters	Ex Officio
Clark , Secretary Eric	3/7/2003	9/30/2005	Secretary of State, Mississippi	Ex Officio
Clark , Ms. Marian	3/7/2003	9/30/2005	Chair, town of Jamestown Board of Canvessers	Ex Officio
Colon-Berlingeri , Mr. Nestor J.	3/7/2003	9/30/2005	First Vice President	Ex Officio
Connor , Secretary Geoffrey S.	3/7/2003	9/30/2005	Secretary of State, Texas	Ex Officio
Cooley , Mr. Luke	3/7/2003	9/30/2005	Judge of Probate, Houston County	Ex Officio

<b>Cooper , Ms. Kathie Chastain</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Director of Elections, Forsyth County</b>	<b>Ex Officio</b>
<b>Cortes , Secretary Pedro</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Secretary of the Commonwealth</b>	<b>Ex Officio</b>
<b>Cowen , Mr. Richard</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Chicago Board of Election Commissioners</b>	<b>Ex Officio</b>
<b>Cowles , Mr. Bill</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Supervisor of Elections, Orange County</b>	<b>Ex Officio</b>
<b>Culver , Secretary Chet</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Secretary of State, Iowa</b>	<b>Ex Officio</b>
<b>Daniels , Secretary Charlie</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Secretary of State, Arkansas</b>	<b>Ex Officio</b>
<b>Davidson , Secretary Donetta</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Secretary of State, Colorado</b>	<b>Ex Officio</b>
<b>DeBeauvoir , Ms, Dana</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Travis County Clerk</b>	<b>Ex Officio</b>
<b>English , Mr. Dan</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Kootenai County Clerk</b>	<b>Ex Officio</b>
<b>Enoch , Mr. Joe</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Dyer County Election Commissioner</b>	<b>Ex Officio</b>
<b>Etter , Mr. Mitch</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Assistant Elections Director</b>	<b>Ex Officio</b>
<b>Ewing , Mr. Dennis</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Tooele County Clerk</b>	<b>Ex Officio</b>
<b>Flynn , Ms. Julie</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Deputy Secretary of State</b>	<b>Ex Officio</b>
<b>Freese , Ms. Julie</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Fremont Coutny Clerk</b>	<b>Ex Officio</b>
<b>Fuimaono , Mr. Soliai</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Chief Election Officer</b>	<b>Ex Officio</b>
<b>Gale , Secretary John</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Secretary of State, Nebraska</b>	<b>Ex Officio</b>
<b>Galvin , Secretary William Francis</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Secretary of the Commenwealth</b>	<b>Ex Officio</b>
<b>Gardner , Secretary William</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Secretary of State, New Hampshire</b>	<b>Ex Officio</b>
<b>Glaiser , Secretary Laura A.</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Secretary of State, Alaska</b>	<b>Ex Officio</b>
<b>Growden , Ms. Shelly</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Division of Elections Regional III Supervisor</b>	<b>Ex Officio</b>
<b>Haggerty Jr., Mr. John</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Deputy Executive Director, Task Force on Election Modernization</b>	<b>Ex Officio</b>
<b>Handy , Mr. Nick</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Director of Elections, State of Washington</b>	<b>Ex Officio</b>
<b>Harrison Jr., Mr. Allen</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Chair, Arlington County Electoral Board</b>	<b>Ex Officio</b>
<b>Harvey , Mr. Peter C.</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Attorney General</b>	<b>Ex Officio</b>
<b>Heller , Secretary Dean</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Secretary of State, Nevada</b>	<b>Ex Officio</b>

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Hurst , Mr. Timothy	3/7/2003	9/30/2005	Chief Deputy, Secretary of State	Ex Officio
Hutton , Ms. Sandra	1/1/2005	1/2/2006	Municipal Town Clerk, City of Middletown	Ex Officio
Jensen , Ms. Jean	3/7/2003	9/30/2005	Secretary, State Board of Elections	Ex Officio
Johnson , Ms. Sarah Ball	3/7/2003	9/30/2005	Executive Director, State Board of Elections	Ex Officio
Johnson , Ms. Sarah Ball	2/9/2005	2/7/2007	State Election Director	Representative
Kauffman , Mr. John	3/7/2003	9/30/2005	Director, Multnomah County Elections	Ex Officio
Kennedy , Mr. Kevin J.	3/7/2003	9/30/2005	Executive Director, State Elections Board	Ex Officio
Kiffmeyer , Secretary Mary	3/7/2003	9/30/2005	Secretary of State, Minnesota	Ex Officio
Kunko , Mr. David	3/7/2003	9/30/2005	Chaues County Clerk	Ex Officio
Lamone , Ms. Linda H,	3/7/2003	9/30/2005	Administrator of Elections	Ex Officio
Land , Secretary Terri Lynn	3/7/2003	9/30/2005	Secretary of State, Michigan	Ex Officio
Lindback , MR. John	2/9/2005	2/7/2007	State Election Director OR	Representative
Lindback , Mr. John	3/7/2003	9/30/2005	Director, State of Oregon Elections Division	Ex Officio
Lomax , Mr. Harvard L.	3/7/2003	9/30/2005	Clark County Registrar of Voters	Ex Officio
Lomax , Mr. Larry	2/9/2005	2/7/2007	Clerk(Elections), Nevada	Representative
Mageo , Mr. Filivaa M.	3/7/2003	9/30/2005	Election Administrator	Ex Officio
Markowitz , Deborah	2/9/2005	2/7/2007	SOS NH	Representative
Markowitz , Secretary Deborah	3/7/2003	9/30/2005	Secretary of State, Vermont	Ex Officio
Marthia , Ms. Ethelyn	3/7/2003	9/30/2005	Town Clerk Kennebunk	Ex Officio
McClellan , Ms. Renee	3/7/2003	9/30/2005	Hardin County Auditor	Ex Officio
McFarlane , Ms. Jonda	3/7/2003	9/30/2005	DC Board of Elections and Ethics, Board Member	Ex Officio
McLean , Ms. Johnnie	3/7/2003	9/30/2005	Deputy Director	Ex Officio
Merriman , Mr. Donald	3/7/2003	9/30/2005	Saline County Clerk	Ex Officio
Miller , Ms. Alice P.	3/7/2003	9/30/2005	Executive Director, DC Board of Elections and Ethics	Ex Officio

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Montplaisir , Mr. Michael	3/7/2003	9/30/2005	County Auditor	Ex Officio
Naccarato , Ms. Amy	3/7/2003	9/30/2005	Director of Elections	Ex Officio
Nago , Mr. Scott	3/7/2003	9/30/2005	Section Head, Counting Center Operations	Ex Officio
Nighswonger , Ms. Peggy	2/8/2006	2/8/2007	State Elections Director	Representative
Nighswonger , Ms. Peggy	3/7/2003	9/30/2005	State Elections Director	Ex Officio
Parr , Mr. Clint	3/7/2003	9/30/2005	Vice Chairman, Tulsa County Election Board	Ex Officio
Plaskett , Ms. Corinne Halyard	3/7/2003	9/30/2005	Deputy Supervisor of Elections	Ex Officio
Ragsdale , Mr. Russ	3/7/2003	9/30/2005	City and County of Broomfield Clerk and Recorder	Ex Officio
Roberts , Ms. Dawn Kimmel	3/7/2003	9/30/2005	Director of the Division of Elections, Florida Department of State	Ex Officio
Rogers , Ms. Kathy	3/7/2003	9/30/2005	Director of Election Administration	Ex Officio
Rokita , Mr. Todd	2/9/2005	2/7/2007	SOS	Representative
Rokita , Secretary Todd	3/7/2003	9/30/2005	Secretary of State, Indiana	Ex Officio
Roust , Ms. Sue	3/7/2003	9/30/2005	Minnehaha County Auditor	Ex Officio
Ruggiero , Ms. Jan	3/7/2003	9/30/2005	Director of Elections	Ex Officio
Sciortino , Mr. Michael	3/7/2003	9/30/2005	Director, Mahoning County Board of Elections	Ex Officio
Shelley , Secretary Kevin	3/7/2003	9/30/2005	Secretary of State, California	Ex Officio
Sholl Jr., Mr. Howard	3/7/2003	9/30/2005	Deputy Administrative Director, Department of Elections for New Castle County	Ex Officio
Silrum , Mr. I. James	3/7/2003	9/30/2005	Deputy Secretary of State	Ex Officio
Slinkard , Ms. Mary Lou	3/7/2005	9/30/2005	Benton County Clerk	Ex Officio
Smith , Ms. Cindy	3/7/2003	9/30/2005	Team Leader of Elections	Ex Officio
Spencer-Norton , Ms. Merietta	3/7/2003	9/30/2005	General Counsel	Ex Officio
Spevak , Ms. Lynne	3/7/2003	9/30/2005	LaPorte County Clerk	Ex Officio
Stitch , Mr. C. Donald	3/7/2003	9/30/2005	Town Moderator of Auburn	Ex Officio
Struckhoff , Mr. Richard T.	1/27/2005	1/31/2007	County Clerk Green County	Ex Officio
Szczesniak , Mr. Edward J.	3/7/2003	9/30/2005	Onondaga County Commissioner of Elections	Ex Officio

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<b>Taitano , Mr. Gerald</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Executive Director</b>	<b>Ex Officio</b>
<b>Takahashi , Mr. Glen</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Election Administrator</b>	<b>Ex Officio</b>
<b>Terwilliger , Mr. Bob</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Snohomish County Auditor</b>	<b>Ex Officio</b>
<b>Thomas , Ms. Natalie</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Deputy Chairperson</b>	<b>Ex Officio</b>
<b>Thompson , Ms. Brook</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>State Coordinator of Elections</b>	<b>Ex Officio</b>
<b>Thornburgh , Secretary Ron</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Secretary of State, Kansas</b>	<b>Ex Officio</b>
<b>Toledo-Diaz , Mr. Juan M.</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Second Vice President</b>	<b>Ex Officio</b>
<b>Tyne , Mr. Kevin</b>	<b>12/23/2004</b>	<b>12/23/2006</b>	<b>Deputy Secretary of State, Arizona</b>	<b>Ex Officio</b>
<b>Vigil-Giron , Secretary Rebecca</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Secretary of State, New Mexico</b>	<b>Ex Officio</b>
<b>Warne , Ms. Kea</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>State Election Supervisor</b>	<b>Ex Officio</b>
<b>Wesolowski , Ms. Sandi</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>City of Franklin Clerk</b>	<b>Ex Officio</b>
<b>White , Mr. Daniel W.</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Executive Director, State Board of Elections</b>	<b>Ex Officio</b>
<b>Wilfong , Ms. Debbie</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Clerk of the Upshur County Commission</b>	<b>Ex Officio</b>
<b>Winslow , Ms. Leslye</b>	<b>1/18/2005</b>	<b>1/20/2006</b>	<b>Deputy Secretary of State</b>	<b>Ex Officio</b>
<b>Worley , Secretary Nancy L.</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Secretary of State, Alabama</b>	<b>Ex Officio</b>
<b>Young , Mr. Regis</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Butler County Election Director</b>	<b>Ex Officio</b>
<b>Zeier , Ms. Vickie</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Missoula County Clerk and Recorder/Treasurer</b>	<b>Ex Officio</b>
<b>Zoucha , Mr. Robert</b>	<b>3/7/2003</b>	<b>9/30/2005</b>	<b>Boone County Clerk</b>	<b>Ex Officio</b>

Total Count of Committee Members

116

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# 2005 Current FY Report: Review of Federal Advisory Committee

Committee Menu

5/7/2007 10:32:55 AM

1. Department or Agency

**Election Assistance Commission**

2. Fiscal Year

**2005**

3. Committee or SubCommittee

**Technical Guidelines Development Committee**

3b. GSA Committee No.

**21509**

4. Is this New During Fiscal Year?

**No**

5. Current Charter

**6/17/2004**

6. Expected Renewal Date

**6/17/2006**

7. Expected Term Date

**6/17/2008**

8a. Was Terminated During FY?

**No**

8b. Specific Termination Authority

8c. Actual Termination Date

9. Agency Recommendation for Next FY

**Continue**

10a. Legislation Req to Terminate?

10b. Legislation Pending?

11. Establishment Authority

**Statutory (Congress Created)**

12. Specific Establishment Authority

**Public Law 107-252, Help America Vote Act of 2002**

13. Effective Date

**10/29/2002**

14. Committee Type

**Continuing**

14c. Presidential?

**No**

15. Description of Committee

**Scientific Technical Program Advisory Board**

16a. Total Number of Reports

**2**

16b. Report Titles and Dates

**2004-2005 Adopted Resolutions**

**4/21/2005**

**Voluntary Voting System Guidelines Version 1 - TGDC Deliverable to the Election Assistance Commission**

**5/9/2005**

17a Open:

**65**

17b. Closed: **0**

17c. Partially Closed: **0**

17d. Total Meetings **65**

Meeting Purposes and Dates

**to meet goals of EAC as mandated through HAVA  
to meet goals of EAC as mandated through HAVA  
to meet goals of EAC as mandated through HAVA  
to meet goals of EAC as mandated through HAVA  
to meet goals of EAC as mandated through HAVA  
to meet goals of EAC as mandated through HAVA  
to meet goals of EAC as mandated through HAVA  
to meet goals of EAC as mandated through HAVA  
to meet goals of EAC as mandated through HAVA  
to meet goals of EAC as mandated through HAVA**

**11/3/2004 11/3/2004  
11/17/2004 11/17/2004  
11/18/2004 11/18/2004  
11/23/2004 11/23/2004  
11/30/2004 11/30/2004  
12/2/2004 12/2/2004  
12/6/2004 12/6/2004  
12/6/2004 12/6/2004  
12/6/2004 12/6/2004  
12/9/2004 12/9/2004**

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to meet goals of EAC as mandated through HAVA	12/14/2004 12/14/2004
to meet goals of EAC as mandated through HAVA	12/20/2004 12/20/2004
to meet goals of EAC as mandated through HAVA	1/4/2005 1/4/2005
to meet goals of EAC as mandated through HAVA	1/6/2005 1/6/2005
to meet goals of EAC as mandated through HAVA	1/6/2005 1/6/2005
to meet goals of EAC as mandated through HAVA	1/11/2005 1/11/2005
to meet goals of EAC as mandated through HAVA	1/13/2005 1/13/2005
to meet goals of EAC as mandated through HAVA	1/14/2005 1/14/2005
to meet goals of EAC as mandated through HAVA	1/14/2005 1/14/2005
To discuss work processes and framework for the April 2005 draft Voluntary Voting Systems Guidelines. A webcast of this meeting may be found at <a href="http://www.nist.gov/cgi-bin/exit_nist.cgi?url=http://www.eastbaymedia.com/tgdc-webcast">http://www.nist.gov/cgi-bin/exit_nist.cgi?url=http://www.eastbaymedia.com/tgdc-webcast</a> .	1/18/2005 1/19/2005
to meet goals of EAC as mandated through HAVA	2/1/2005 2/1/2005
to meet goals of EAC as mandated through HAVA	2/3/2005 2/3/2005
to meet goals of EAC as mandated through HAVA	2/3/2005 2/3/2005
to meet goals of EAC as mandated through HAVA	2/9/2005 2/9/2005
to meet goals of EAC as mandated through HAVA	2/16/2005 2/16/2005
to meet goals of EAC as mandated through HAVA	2/17/2005 2/17/2005
to meet goals of EAC as mandated through HAVA	2/17/2005 2/17/2005
to meet goals of EAC as mandated through HAVA	2/24/2005 2/24/2005
to meet goals of EAC as mandated through HAVA	3/1/2005 3/1/2005
to meet goals of EAC as mandated through HAVA	3/1/2005 3/1/2005
To discuss how National Institute of Standards and Technology ("NIST") staff have prioritized work product in response to the TGDC Resolutions adopted during previous TGDC meetings. A webcast of this meeting may be found at <a href="http://www.nist.gov/cgi-bin/exit_nist.cgi?url=http://www.eastbaymedia.com/tgdc-march/">http://www.nist.gov/cgi-bin/exit_nist.cgi?url=http://www.eastbaymedia.com/tgdc-march/</a> .	3/9/2005 3/9/2005
to meet goals of EAC as mandated through HAVA	3/17/2005 3/17/2005
to meet goals of EAC as mandated through HAVA	3/22/2005 3/22/2005
to meet goals of EAC as mandated through HAVA	3/24/2005 3/24/2005
to meet goals of EAC as mandated through HAVA	3/31/2005 3/31/2005
to meet goals of EAC as mandated through HAVA	4/1/2005 4/1/2005
to meet goals of EAC as mandated through HAVA	4/5/2005 4/5/2005
to meet goals of EAC as mandated through HAVA	4/6/2005 4/6/2005
to meet goals of EAC as mandated through HAVA	4/12/2005 4/12/2005
to meet goals of EAC as mandated through HAVA	4/12/2005 4/12/2005
To present and discuss the Final Draft of the Voluntary Voting Systems Guidelines. A webcast of this meeting may be found at <a href="http://www.eastbaymedia.com/nist/tgdc-april">http://www.eastbaymedia.com/nist/tgdc-april</a> .	4/20/2005 4/21/2005
to meet goals of EAC as mandated through HAVA	5/5/2005 5/5/2005

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to meet goals of EAC as mandated through HAVA 5/10/2005 5/10/2005  
to meet goals of EAC as mandated through HAVA 5/19/2005 5/19/2005  
to meet goals of EAC as mandated through HAVA 5/19/2005 5/19/2005  
to meet goals of EAC as mandated through HAVA 6/2/2005 6/2/2005  
to meet goals of EAC as mandated through HAVA 6/7/2005 6/7/2005  
to meet goals of EAC as mandated through HAVA 6/9/2005 6/9/2005  
to meet goals of EAC as mandated through HAVA 6/16/2005 6/16/2005  
to meet goals of EAC as mandated through HAVA 6/23/2005 6/23/2005  
to meet goals of EAC as mandated through HAVA 6/28/2005 6/28/2005  
to meet goals of EAC as mandated through HAVA 7/14/2005 7/14/2005  
to meet goals of EAC as mandated through HAVA 7/14/2005 7/14/2005  
to meet goals of EAC as mandated through HAVA 7/20/2005 7/20/2005  
to meet goals of EAC as mandated through HAVA 7/28/2005 7/28/2005  
to meet goals of EAC as mandated through HAVA 8/11/2005 8/11/2005  
to meet goals of EAC as mandated through HAVA 8/11/2005 8/11/2005  
to meet goals of EAC as mandated through HAVA 8/23/2005 8/23/2005  
to meet goals of EAC as mandated through HAVA 9/1/2005 9/1/2005  
to meet goals of EAC as mandated through HAVA 9/6/2005 9/6/2005  
to meet goals of EAC as mandated through HAVA 9/7/2005 9/7/2005  
to meet goals of EAC as mandated through HAVA 9/15/2005 9/15/2005  
to meet goals of EAC as mandated through HAVA 9/20/2005 9/20/2005  
to meet goals of EAC as mandated through HAVA 9/22/2005 9/22/2005  
**To discuss the outline and timeline of future iterations of the Voluntary Voting Systems Guidelines. A webcast of this meeting may be found at [http://www.nist.gov/cgi-bin/exit\\_nist.cgi?url=http://www.westream.tv/nist](http://www.nist.gov/cgi-bin/exit_nist.cgi?url=http://www.westream.tv/nist).** 9/29/2005 9/29/2005

	Current Fiscal Year	Next Fiscal Year
18a(1) Personnel Pmts to Non-Federal Members	\$0	\$0
18a(2) Personnel Pmts to Federal Members	\$0	\$0
18a(3) Personnel Pmts to Federal Staff	\$0	\$0
18a(4) Personnel Pmts to Non-member Consultants	\$0	\$0
18b(1) Travel and Per Diem to Non-Federal Members	\$32,160	\$33,000
18b(2) Travel and Per Diem to Federal Members	\$28,140	\$29,000
18b(3) Travel and Per Diem to Federal Staff	\$24,000	\$25,000
18b(4) Travel and Per Diem to Non-Member Consultants	\$0	\$0
18c. Other (rents, user charges, graphics, printing, mail etc.)	\$71,200	\$72,000
18d Total	\$155,500	\$159,000
19. Federal Staff Support Years	0.0	0.0

20a. How does the Committee accomplish its purpose?

**TGDC meets in plenary sessions to discuss, debate and pass resolutions that instruct the National Institute of Standards and Technology on the policy considerations for developing**

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**voluntary voting system guidelines. In addition, three subcommittees (Security and Transparency, Human Factors and Privacy, and Core Requirements and Testing) meet to discuss issues related to their subject matter and involving the development of testable guidelines for voting systems.**

20b. How does the Committee balance its membership?

**The membership of TGDC is established by Section 221 of the Help American Vote Act of 2002. All members and representatives were chosen in keeping with the provisions of that statute.**

20c. How frequent and relevant are the Committee meetings?

**TGDC has met in 4 plenary sessions over the past year. In addition, the subcommittees have met via teleconferences 61 times during the past year. These meetings are crucial to the development of comprehensive guidelines regarding the technical functioning of voting systems. It is anticipated that TGDC will continue to meet with the same frequency over the next year.**

20d. Why can't the advice or information this committee provides be obtained elsewhere?

**EAC is required by law (Section 221 of HAVA) to obtain advice from the TGDC. To use some other body or group to provide such advice would violate Federal law.**

20e. Why is it necessary to close and/or partially close committee meetings?

**All TGDC meetings have been open to the public. A webcast of each FY 2005 meeting may be found on the website <http://www.vote.nist.gov/>.**

## 21. Remarks

Designated Federal Official: **Mr. Paul S. DeGregorio Vice Chairman, U.S. Election Assistance Commission**

Committee Members	Start	End	Occupation	Member Designation
<b>Bement Jr., Dr. Arden L.</b>	<b>7/9/2004</b>	<b>12/1/2004</b>	<b>Director</b>	<b>Regular Government Employee (RGE)</b>
<b>Berger , Mr. H. Stephen</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>Chair, IEEE SEC 38 (Voting Syst. Stds.)</b>	<b>Representative</b>
<b>Caldas , Anne</b>	<b>7/9/2004</b>	<b>3/29/2005</b>	<b>Director, Procedures and Standards Administration, ANSI</b>	<b>Representative</b>
<b>Craft , Mr. Paul</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>Consultant</b>	<b>Representative</b>
<b>Davidson , Ms. Donetta</b>	<b>7/9/2004</b>	<b>7/28/2005</b>	<b>Colorado Secretary of State</b>	<b>Representative</b>
<b>Elekes , Mr. James</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>ACCESS Board Member</b>	<b>Representative</b>
<b>Gale , Mr. John</b>	<b>9/16/2005</b>	<b>9/16/2007</b>	<b>Nebraska Secretary of State</b>	<b>Representative</b>
<b>Gannon , Mr. Patrick</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>President and CEO, OASIS</b>	<b>Special Government Employee (SGE)</b>
<b>Harding , Dr. James</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>ACCESS Board Member</b>	<b>Representative</b>
<b>Jeffrey , Dr. William</b>	<b>7/25/2005</b>	<b>7/25/2007</b>	<b>Director</b>	<b>Regular Government Employee (RGE)</b>
<b>Karmol , Mr. David</b>	<b>5/2/2005</b>	<b>7/9/2006</b>	<b>Vice President, Policy and Government Affairs, ANSI</b>	<b>Representative</b>
<b>Miller , Ms. Alice</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>Director of Elections - District of Columbia</b>	<b>Representative</b>

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<b>Purcell , Ms. Helen</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>Maricopa County Recorder</b>	<b>Representative</b>
<b>Quesenbery , Ms. Whitney</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>President, Usability Professionals' Association</b>	<b>Special Government Employee (SGE)</b>
<b>Rivest , Dr. Ronald</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>Professor, Massachusetts Institute of Technology</b>	<b>Special Government Employee (SGE)</b>
<b>Schutzer , Dr. Daniel</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>Vice President &amp; Director of External Standards &amp; Advanced Technology, e-Citi, CitiGroup</b>	<b>Special Government Employee (SGE)</b>
<b>Semerjian , Dr. Hratch</b>	<b>12/1/2004</b>	<b>7/25/2005</b>	<b>Acting Director</b>	<b>Regular Government Employee (RGE)</b>
<b>Turner-Buie , Ms. Sharon</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>Director of Elections - Kansas City</b>	<b>Representative</b>
<b>Williams , Dr. Britain</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>Retired Professor, Kennesaw State University</b>	<b>Representative</b>

Total Count of Committee Members

19

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## 2006 Current FY Report: Review of Federal Advisory Committee

Committee Menu
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5/7/2007 10:33:34 AM

1. Department or Agency

2. Fiscal Year

**Election Assistance Commission****2006**

3. Committee or SubCommittee

3b. GSA Committee No.

**EAC Standards Board****21503**

4. Is this New During Fiscal Year?

5. Current Charter

6. Expected Renewal Date

7. Expected Term Date

**No****7/8/2006****7/8/2008****7/8/2008**

8a. Was Terminated During FY?

8b. Specific Termination Authority

8c. Actual Termination Date

**No**

9. Agency Recommendation for Next FY

10a. Legislation Req to Terminate?

10b. Legislation Pending?

**Continue****No****Enacted**

11. Establishment Authority

**Statutory(Congress Created)**

12. Specific Establishment Authority

13. Effective Date

14. Committee Type

14c. Presidential?

**Public Law 107-252, Help America Vote Act of 2002****10/29/2002****Continuing****No**

15. Description of Committee

**National Policy Issue Advisory Board**

16a. Total Number of Reports

**5**

16b. Report Titles and Dates

**Quick Start Election Management Guides - New Voting Systems****6/1/2006****Quick Start Election Management Guides - Poll Workers****9/1/2006****Quick Start Management Guide - Ballot Preparation/Printing & Pre-Election Testing****9/1/2006****Quick Start Election Management Guide - Voting System Security****9/1/2006****2006 Election Administration and Voting Survey****9/1/2006**

17a Open:

**1**17b. Closed: **0**17c. Partially Closed: **0**17d. Total Meetings **1**

Meeting Purposes and Dates

**Standards Board members met to conduct Board business, to review and provide comments on the four Quick Start Management Guides there issued before the November mid-term elections, and to assist in the development or the 2006 Election Administration & Voting Survey that will be sent to state and local election officials after the November elections. Board members also received information about on-going EAC**

**5/23/2006 5/24/2006****006130**

**activities including research projects.**

	Current Fiscal Year	Next Fiscal Year
18a(1) Personnel Pmts to Non-Federal Members	\$0	\$0
18a(2) Personnel Pmts to Federal Members	\$0	\$0
18a(3) Personnel Pmts to Federal Staff	\$8,775	\$9,003
18a(4) Personnel Pmts to Non-member Consultants	\$0	\$0
18b(1) Travel and Per Diem to Non-Federal Members	\$50,521	\$69,000
18b(2) Travel and Per Diem to Federal Members	\$0	\$0
18b(3) Travel and Per Diem to Federal Staff	\$0	\$5,000
18b(4) Travel and Per Diem to Non-Member Consultants	\$1,277	\$2,500
18c. Other (rents, user charges, graphics, printing, mail etc.)	\$65,932	\$50,000
18d Total	\$126,505	\$135,503
19. Federal Staff Support Years	1.0	0.0

20a. How does the Committee accomplish its purpose?

**The duties of the Standards Board are to review proposed voluntary voting system guidelines and EAC technical guidance. Members play a role in recommending candidates for the EAC Executive Director. They also may hold hearings and take testimony related to carrying out the provisions of the Help America Vote Act.**

20b. How does the Committee balance its membership?

**The Standards Board is comprised of 110 members: 55 State election officials selected by the chief State election official of each State and 55 local election officials selected by their peers. The two officials from each State may not be members of the same political party.**

20c. How frequent and relevant are the Committee meetings?

**Estimated Number of Meetings per Year - 1 According to the Help America Vote Act, the Standards Board should hold a meeting of its members not less frequently than once every year for purposes of voting on the voluntary voting system guidelines.**

20d. Why can't the advice or information this committee provides be obtained elsewhere?

**CHARTER OF THE U.S. ELECTION ASSISTANCE COMMISSION STANDARDS BOARD**  
**The U.S. Election Assistance Commission (EAC) hereby Charters the Standards Board established in title II section 211 of the Help America Vote Act of 2002 (HAVA) [Public Law 107-252] pursuant to the Federal Advisory Committee Act. OBJECTIVES AND DUTIES 1. The objective of the Standards Board (the Board) is to advise the EAC through review of the voluntary voting systems guidelines described in title II Part 3 of the HAVA; through review of the voluntary guidance described under title III of HAVA; and through the review of the best practices recommendations contained in the report submitted under Section 242(b) of title II (HAVA title II section 212). 2. The Board will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act. MEMBERSHIP 1. The Board shall consist of 110 members. 55 members shall be State election officials selected by the chief State election official of each State. 55 shall be local election officials selected under a process supervised by the chief election official of the State. The 2 members of the Standards Board who represent the same State may not be members of the same political party. (HAVA title II section 213 (a)). Vacancy appointments shall be made in the same manner as the original appointments. 2. The Board shall select 9 of its members as an Executive Board of whom, not more than 5 may be State election officials; not more than 5 may be local election officials; and not more than 5 may be members of the same political party. Members of the Executive Board**

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shall serve 2 year terms and may not serve more than 3 consecutive terms. Of the initial Executive Board, 3 members shall serve for 1 term; 3 shall serve for 2 consecutive terms; and 3 shall serve for 3 consecutive terms, as determined by lot at the time the members are first appointed (HAVA title II, section 213 (c)). ADMINISTRATIVE PROVISIONS 1. The Board will report to the EAC through the Advisory Committee Management Officer pursuant to 5 U.S.C. App.1 section 8 (b). This officer shall be an EAC Commissioner designated by the Chairman of the EAC. 2. The Board will meet a minimum of once a year for purposes of voting on the voluntary voting system guidelines and not less frequently than once every 2 years for purposes of selecting the Executive Board. Additional meetings may be called at such other times as it considers appropriate for the purposes of conducting other business as it considers appropriate consistent with title II of HAVA. (HAVA title II, section 215 (a)(2)). 3. The EAC and GAO will provide clerical and other necessary support services to the Board. (HAVA title II, section 215 (d)). 4. Members of the Board will not be compensated for their services but will be reimbursed for travel expenses and subsistence. (HAVA title II section 215 (e)). 5. The Board may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government. (HAVA title II, section 215 (c)). 6. The annual cost for operating the Board is estimated at \$210,000 which includes one quarter staff year for support services. 7. The Board may establish such committees of its members as may be necessary subject to the provisions of the law. 8. The Board may, by simple majority vote, adopt resolutions and make recommendations. Such resolutions and recommendations will, however, be only advisory to the EAC and will be restricted to the EAC's activities described in title II section 212 of the Help America Vote Act of 2002. 9. The EAC will provide liaison services between the Board and the Advisory Panel Secretariat as required by the Federal Advisory Committee Act. DURATION This is a permanent committee as established in title II section 215 (f) of the Help America Vote Act of 2002.

20e. Why is it necessary to close and/or partially close committee meetings?

Meetings are not closed.

21. Remarks

The Bad Dates for Members Report is the result of resignations and political turnovers, as a result of elections. Standards Board members' terms have ended and new appointments have been made. Subcommittees were established during FY06 but meetings and reports for these committees will occur in FY07.

Designated Federal Official: **Ms. Gracia Hillman Commissioner, U.S. Election Assistance Commission**

Committee Members	Start	End	Occupation	Member Designation
Anderson , Ms. Sharon K.	1/28/2005	12/31/2010	Cass County Auditor-Treasurer	Ex Officio
Andino , Ms. Marci	3/7/2003	12/31/2010	Executive Director, State Election Commission	Ex Officio
Armbruster , Ms. Joanne	3/7/2003	12/31/2010	Atlantic county Superintendent of Elections	Ex Officio
Atkins , Ms. Kim A.	3/7/2003	12/31/2010	Voter Registration Manager	Ex Officio
Avery , Ms. Marilyn	3/7/2003	12/31/2010	Election Commissioner, Hinds County	Ex Officio
Bailey , Ms. Lynn	3/7/2003	12/31/2010	Election Administrator, Richmond County Board of Elections	Ex Officio

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<b>Bartholomew , Ms. Tonni</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Troy City Clerk</b>	<b>Ex Officio</b>
<b>Bedford , Ms. Deborah</b>	<b>7/24/2006</b>	<b>12/31/2010</b>	<b>Director of Elections, Rutherford County Board of Elections</b>	<b>Ex Officio</b>
<b>Bernard , Mr. Louie</b>	<b>2/9/2005</b>	<b>2/7/2007</b>	<b>Elections Official</b>	<b>Representative</b>
<b>Bernard , Mr. Louie</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Clerk of Court, Natchitoches Parish</b>	<b>Ex Officio</b>
<b>Blackwell , Secretary J. Kenneth</b>	<b>3/7/2003</b>	<b>1/31/2007</b>	<b>Secretary of State, Ohio</b>	<b>Ex Officio</b>
<b>Blevins , Mr. Don</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Fayette County Clerk</b>	<b>Ex Officio</b>
<b>Bowers , Ms. Marilyn</b>	<b>1/31/2005</b>	<b>12/31/2010</b>	<b>Executive Director, Charleston County Board of Elections &amp; Voter Registration</b>	<b>Ex Officio</b>
<b>Brewster , Ms. Whitney</b>	<b>10/1/2005</b>	<b>12/31/2010</b>	<b>Director, Division of Elections</b>	<b>Ex Officio</b>
<b>Calio , Mr. Frank B.</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Commissioner of Elections</b>	<b>Ex Officio</b>
<b>Campbell , Mr. Bill</b>	<b>2/9/2005</b>	<b>2/7/2007</b>	<b>Woburn Town Clerk</b>	<b>Representative</b>
<b>Campbell , Mr. Willaim</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>City Clerk, city of Woburn</b>	<b>Ex Officio</b>
<b>Cappy , Ms. Annette</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Town Clerk, Town of Brattleboro</b>	<b>Ex Officio</b>
<b>Clark , Mr. Bradley</b>	<b>3/7/2003</b>	<b>7/31/2006</b>	<b>Alameda County Registrar of Voters</b>	<b>Ex Officio</b>
<b>Clark , Secretary Eric</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Secretary of State, Mississippi</b>	<b>Ex Officio</b>
<b>Clark , Ms. Marian</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Chair, town of Jamestown Board of Canvessers</b>	<b>Ex Officio</b>
<b>Colon-Berlingeri , Mr. Nestor J.</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>First Vice President</b>	<b>Ex Officio</b>
<b>Cooley , Judge Luke</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Judge of Probate, Houston County</b>	<b>Ex Officio</b>
<b>Cooper , Ms. Kathie Chastain</b>	<b>3/7/2003</b>	<b>6/30/2006</b>	<b>Director of Elections, Forsyth County</b>	<b>Ex Officio</b>
<b>Cortes , Secretary Pedro</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Secretary of the Commonwealth</b>	<b>Ex Officio</b>
<b>Cowen , Mr. Richard</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Chicago Board of Election Commissioners</b>	<b>Ex Officio</b>
<b>Cowles , Mr. Bill</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Supervisor of Elections, Orange County</b>	<b>Ex Officio</b>
<b>Cragun , Mr. Michael</b>	<b>2/4/2005</b>	<b>12/31/2010</b>	<b>Director of Elections</b>	<b>Ex Officio</b>
<b>Culver , Secretary Chet</b>	<b>3/7/2003</b>	<b>1/15/2007</b>	<b>Secretary of State, Iowa</b>	<b>Ex Officio</b>

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<b>Daniels , Secretary Charlie</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Secretary of State, Arkansas</b>	<b>Ex Officio</b>
<b>DeBeauvoir , Ms, Dana</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Travis County Clerk</b>	<b>Ex Officio</b>
<b>Dennis , Secretary Gigi</b>	<b>8/21/2005</b>	<b>1/15/2007</b>	<b>Colorado Secretary of State</b>	<b>Ex Officio</b>
<b>English , Mr. Dan</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Kootenai County Clerk</b>	<b>Ex Officio</b>
<b>Enoch , Mr. Joe</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Dyer County Election Commissioner</b>	<b>Ex Officio</b>
<b>Etter , Mr. Mitch</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Assistant Elections Director</b>	<b>Ex Officio</b>
<b>Flynn , Ms. Julie</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Deputy Secretary of State</b>	<b>Ex Officio</b>
<b>Freese , Ms. Julie</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Fremont Coutny Clerk</b>	<b>Ex Officio</b>
<b>Fuimaono , Mr. Soliai</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Chief Election Officer</b>	<b>Ex Officio</b>
<b>Gale , Secretary John</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Secretary of State, Nebraska</b>	<b>Ex Officio</b>
<b>Galvin , Secretary William Francis</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Secretary of the Commenwealth</b>	<b>Ex Officio</b>
<b>Graveley , Ms. Elaine</b>	<b>10/10/2005</b>	<b>12/31/2010</b>	<b>Deputy Secretary of State of Elections</b>	<b>Ex Officio</b>
<b>Green , Mr. Markus</b>	<b>10/1/2005</b>	<b>12/31/2010</b>	<b>Deputy Chief of Staff, Office of the Attorney General</b>	<b>Ex Officio</b>
<b>Growden , Ms. Shelly</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Division of Elections Regional III Supervisor</b>	<b>Ex Officio</b>
<b>Haggerty Jr., Mr. John</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Deputy Executive Director, Task Force on Election Modernization</b>	<b>Ex Officio</b>
<b>Harrison Jr., Mr. Allen</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Chair, Arlington County Electoral Board</b>	<b>Ex Officio</b>
<b>Heller , Secretary Dean</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Secretary of State, Nevada</b>	<b>Ex Officio</b>
<b>Hurst , Mr. Timothy</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Chief Deputy, Secretary of State</b>	<b>Ex Officio</b>
<b>Hutton , Ms. Sandra</b>	<b>1/1/2005</b>	<b>12/31/2010</b>	<b>Municipal Town Clerk, City of Middletown</b>	<b>Ex Officio</b>
<b>Jensen , Ms. Jean</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Secretary, State Board of Elections</b>	<b>Ex Officio</b>
<b>Johnson , Ms. Carol</b>	<b>10/1/2005</b>	<b>12/31/2010</b>	<b>Deputy City Clerk</b>	<b>Ex Officio</b>
<b>Johnson , Ms. Sarah Ball</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Executive Director, State Board of Elections</b>	<b>Ex Officio</b>
<b>Johnson , Ms. Sarah Ball</b>	<b>2/9/2005</b>	<b>2/7/2007</b>	<b>State Election Director</b>	<b>Representative</b>
<b>Kennedy , Mr. Kevin J.</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Executive Director, State Elections Board</b>	<b>Ex Officio</b>
<b>Kiffmeyer , Secretary Mary</b>	<b>3/7/2003</b>	<b>1/2/2007</b>	<b>Secretary of State, Minnesota</b>	<b>Ex Officio</b>
<b>Kozik , Mr.</b>	<b>10/24/2005</b>	<b>12/31/2010</b>	<b>Managing Attorney - Legislation</b>	<b>Ex Officio</b>

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<b>Michael</b>		<b>and Elections Administration Division</b>		
<b>Kunko , Mr. David</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Chaues County Clerk</b>	<b>Ex Officio</b>
<b>Lamone , Ms.</b>	<b>3/7/2003</b>	<b>11/17/2006</b>	<b>Administrator of Elections</b>	<b>Ex Officio</b>
<b>Linda H, Lindback , MR.</b>	<b>2/9/2005</b>	<b>2/7/2007</b>	<b>State Election Director OR</b>	<b>Representative</b>
<b>John Lindback , Mr.</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Director, State of Oregon Elections Division</b>	<b>Ex Officio</b>
<b>John Lomax , Mr.</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Clark County Registrar of Voters</b>	<b>Ex Officio</b>
<b>Harvard L. Lomax , Mr. Larry</b>	<b>2/9/2005</b>	<b>2/7/2007</b>	<b>Clerk(Elections), Nevada</b>	<b>Representative</b>
<b>Luitje , Mr.</b>	<b>10/1/2005</b>	<b>12/31/2010</b>	<b>Department Analyst</b>	<b>Ex Officio</b>
<b>Thomas Mageo , Mr. Filivaa</b>	<b>3/7/2003</b>	<b>11/6/2006</b>	<b>Election Administrator</b>	<b>Ex Officio</b>
<b>M. Markowitz ,</b>	<b>2/9/2005</b>	<b>2/7/2007</b>	<b>SOS NH</b>	<b>Representative</b>
<b>Deborah Markowitz ,</b>	<b>3/7/2003</b>	<b>12/11/2006</b>	<b>Secretary of State, Vermont</b>	<b>Ex Officio</b>
<b>Secretary Deborah Matherne , Ms.</b>	<b>10/1/2005</b>	<b>12/31/2010</b>	<b>City Clerk</b>	<b>Ex Officio</b>
<b>Clairma McClellan , Ms.</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Hardin County Auditor</b>	<b>Ex Officio</b>
<b>Renee McFarlane , Ms.</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>DC Board of Elections and Ethics, Board Member</b>	<b>Ex Officio</b>
<b>Jonda McLean , Ms.</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Deputy Director</b>	<b>Ex Officio</b>
<b>Johnnie Merriman , Mr.</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Saline County Clerk</b>	<b>Ex Officio</b>
<b>Donald Miller , Ms. Alice P.</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Executive Director, DC Board of Elections and Ethics</b>	<b>Ex Officio</b>
<b>Miller , Mr. Paul</b>	<b>10/1/2005</b>	<b>12/31/2010</b>	<b>Voting systems Certification Manager, State of Washington</b>	<b>Ex Officio</b>
<b>Montplaisir , Mr.</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>County Auditor</b>	<b>Ex Officio</b>
<b>Michael Nago , Mr. Scott</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Section Head, Counting Center Operations</b>	<b>Ex Officio</b>
<b>Nighswonger , Ms.</b>	<b>2/8/2006</b>	<b>2/8/2007</b>	<b>State Elections Director</b>	<b>Representative</b>
<b>Peggy Nighswonger , Ms.</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>State Elections Director</b>	<b>Ex Officio</b>
<b>Peggy Parr , Mr. Clint</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Vice Chairman, Tulsa County Election Board</b>	<b>Ex Officio</b>
<b>Pero , Mr. Robert</b>	<b>10/10/2005</b>	<b>12/31/2010</b>	<b>Carbon County Clerk</b>	<b>Ex Officio</b>

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<b>Plaskett , Ms. Corinne Halyard</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Deputy Supervisor of Elections</b>	<b>Ex Officio</b>
<b>Ragsdale , Mr. Russ</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>City and County of Broomfield Clerk and Recorder</b>	<b>Ex Officio</b>
<b>Roberts , Ms. Dawn Kimmel</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Director of the Division of Elections, Florida Department of State</b>	<b>Ex Officio</b>
<b>Rogers , Ms. Kathy</b>	<b>3/7/2003</b>	<b>9/30/2006</b>	<b>Director of Election Administration</b>	<b>Ex Officio</b>
<b>Rokita , Mr. Todd</b>	<b>2/9/2005</b>	<b>2/7/2007</b>	<b>SOS</b>	<b>Representative</b>
<b>Rokita , Secretary Todd</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Secretary of State, Indiana</b>	<b>Ex Officio</b>
<b>Roust , Ms. Sue</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Minnehaha County Auditor</b>	<b>Ex Officio</b>
<b>Ruggiero , Ms. Jan</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Director of Elections</b>	<b>Ex Officio</b>
<b>Sholl Jr., Mr. Howard</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Deputy Administrative Director, Department of Elections for New Castle County</b>	<b>Ex Officio</b>
<b>Silrum , Mr. I. James</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Deputy Secretary of State</b>	<b>Ex Officio</b>
<b>Slinkard , Ms. Mary Lou</b>	<b>3/7/2005</b>	<b>12/31/2010</b>	<b>Benton County Clerk</b>	<b>Ex Officio</b>
<b>Spencer-Norton , Ms. Merietta</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>General Counsel</b>	<b>Ex Officio</b>
<b>Spevak , Ms. Lynne</b>	<b>3/7/2003</b>	<b>4/11/2006</b>	<b>LaPorte County Clerk</b>	<b>Ex Officio</b>
<b>Stevens , Mr. Anthony</b>	<b>10/1/2001</b>	<b>12/31/2010</b>	<b>Assistant Secretary of State</b>	<b>Ex Officio</b>
<b>Struckhoff , Mr. Richard T.</b>	<b>1/27/2005</b>	<b>1/31/2007</b>	<b>County Clerk Green County</b>	<b>Ex Officio</b>
<b>Szczesniak , Mr. Edward J.</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Onondaga County Commissioner of Elections</b>	<b>Ex Officio</b>
<b>Taitano , Mr. Gerald</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Executive Director</b>	<b>Ex Officio</b>
<b>Takahashi , Mr. Glen</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Election Administrator</b>	<b>Ex Officio</b>
<b>Terwilliger , Mr. Bob</b>	<b>3/7/2003</b>	<b>9/30/2006</b>	<b>Snohomish County Auditor</b>	<b>Ex Officio</b>
<b>Thomas , Ms. Natalie</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Deputy Chairperson</b>	<b>Ex Officio</b>
<b>Thompson , Ms. Brook</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>State Coordinator of Elections</b>	<b>Ex Officio</b>
<b>Thornburgh , Secretary Ron</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Secretary of State, Kansas</b>	<b>Ex Officio</b>
<b>Toledo-Diaz , Mr. Juan M.</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Second Vice President</b>	<b>Ex Officio</b>
<b>Trainor , Mr. Trey</b>	<b>10/1/2005</b>	<b>10/1/2006</b>	<b>General Counsel, Office of the Secretary of State</b>	<b>Ex Officio</b>
<b>Tyne , Mr. Kevin</b>	<b>12/23/2004</b>	<b>12/31/2010</b>	<b>Deputy Secretary of State, Arizona</b>	<b>Ex Officio</b>

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<b>Vigil-Giron , Secretary Rebecca</b>	<b>3/7/2003</b>	<b>1/15/2007</b>	<b>Secretary of State, New Mexico</b>	<b>Ex Officio</b>
<b>Warne , Ms. Kea</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>State Election Supervisor</b>	<b>Ex Officio</b>
<b>Weisheit , Ms. Shannon</b>	<b>4/11/2006</b>	<b>12/31/2010</b>	<b>Warrick Circuit Court Clerk</b>	<b>Ex Officio</b>
<b>Wesolowski , Ms. Sandi</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>City of Franklin Clerk</b>	<b>Ex Officio</b>
<b>White , Mr. Daniel W.</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Executive Director, State Board of Elections</b>	<b>Ex Officio</b>
<b>Williams , Mr. Gary W.</b>	<b>8/24/2005</b>	<b>12/31/2010</b>	<b>Boone County Clerk</b>	<b>Ex Officio</b>
<b>Winslow , Ms. Leslye</b>	<b>1/18/2005</b>	<b>12/31/2010</b>	<b>Deputy Secretary of State</b>	<b>Ex Officio</b>
<b>Worley , Secretary Nancy L.</b>	<b>3/7/2003</b>	<b>1/2/2007</b>	<b>Secretary of State, Alabama</b>	<b>Ex Officio</b>
<b>Young , Mr. Regis</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Butler County Election Director</b>	<b>Ex Officio</b>
<b>Zeier , Ms. Vickie</b>	<b>3/7/2003</b>	<b>12/31/2010</b>	<b>Missoula County Clerk and Recorder/Treasurer</b>	<b>Ex Officio</b>
<b>Zoucha , Mr. Robert</b>	<b>3/7/2003</b>	<b>9/26/2006</b>	<b>Boone County Clerk</b>	<b>Ex Officio</b>

Total Count of Committee Members

114

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## 2006 Current FY Report: Review of Federal Advisory Committee

Committee Menu
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5/7/2007 10:33:20 AM

1. Department or Agency

2. Fiscal Year

**Election Assistance Commission****2006**

3. Committee or SubCommittee

3b. GSA Committee No.

**EAC Board of Advisors****21504**

4. Is this New During Fiscal Year?

5. Current Charter

6. Expected Renewal Date

7. Expected Term Date

**No****7/8/2006****7/8/2008****7/8/2006**

8a. Was Terminated During FY?

8b. Specific Termination Authority

8c. Actual Termination Date

**No**

9. Agency Recommendation for Next FY

10a. Legislation Req to Terminate?

10b. Legislation Pending?

**Continue****No****Enacted**

11. Establishment Authority

**Statutory(Congress Created)**

12. Specific Establishment Authority

13. Effective Date

14. Committee Type

14c. Presidential?

**Public Law 107-252, Help America Vote Act of 2002****10/29/2002****Continuing****No**

15. Description of Committee

**National Policy Issue Advisory Board**

16a. Total Number of Reports

**5**

16b. Report Titles and Dates

**Quick Start Management Guide for New Voting Systems****6/1/2006****Quick Start Management Guide for Ballot Preparation/Printing and Pre-Election Testing****9/1/2006****Quick Start Management Guide for Voting System Security****9/1/2006****Quick Start Management Guide for Poll Workers****9/1/2006****2006 Election Day Survey****9/1/2006**

17a Open:

**1**17b. Closed: **0**17c. Partially Closed: **0**17d. Total Meetings **1**

Meeting Purposes and Dates

**The first purpose was the introduction of new members and election of officers. Second, was to gain guidance and advice from the Board of Advisors on EAC's management guidelines and 2006 election day survey. Finally the Board was updated on EAC activities and ongoing research.**

**5/23/2006 5/24/2006**

Current Fiscal Year

Next Fiscal Year

18a(1) Personnel Pmts to Non-Federal Members

**\$0****\$0****006138**

18a(2) Personnel Pmts to Federal Members	\$0	\$0
18a(3) Personnel Pmts to Federal Staff	\$7,302	\$7,000
18a(4) Personnel Pmts to Non-member Consultants	\$2,786	\$2,700
18b(1) Travel and Per Diem to Non-Federal Members	\$15,692	\$16,000
18b(2) Travel and Per Diem to Federal Members	\$252	\$400
18b(3) Travel and Per Diem to Federal Staff	\$0	\$0
18b(4) Travel and Per Diem to Non-Member Consultants	\$1,293	\$1,300
18c. Other(rents,user charges,graphics,printing,mail etc.)	\$32,966	\$33,000
18d Total	\$60,291	\$60,400
19. Federal Staff Support Years	1.0	1.0

20a. How does the Committee accomplish its purpose?

**The Board of Advisors provide valuable input and expertise in the formation of guidance and policy. Members are required to hold meetings at least once a year. They may hold hearings for the purpose of carrying out the requirements of HAVA. The Board of Advisor Chair may secure directly from any Federal department or agency any information deemed necessary to do the work of the Board.**

20b. How does the Committee balance its membership?

**The Board of Advisors consists of 37 members as required by the Help America Vote Act who were appointed by a number of non-profit groups and associations of elected officials. Also, the U.S. House and Senate, including the majority and minority leadership of both Houses, shall make appointments to the Board of Advisors.**

20c. How frequent and relevant are the Committee meetings?

**Estimated Number of Meetings per Year - 1 According to the Help America Vote Act, the Board of Advisors should hold a meeting of its members not less frequently than once every year for purposes of voting on the voluntary voting system guidelines.**

20d. Why can't the advice or information this committee provides be obtained elsewhere?

**CHARTER OF THE U.S. ELECTION ASSISTANCE COMMISSION BOARD OF ADVISORS** The U.S. Election Assistance Commission (EAC) hereby Charters the Board of Advisors established in title II section 211 of the Help America Vote Act of 2002 (HAVA) [Public Law 107-252] pursuant to the Federal Advisory Committee Act. **OBJECTIVES AND DUTIES** 1. The objective of the Board of Advisors (the Board) is to advise the EAC through review of the voluntary voting systems guidelines described in title II Part 3 of the HAVA; through review of the voluntary guidance described under title III of HAVA; and through the review of the best practices recommendations contained in the report submitted under Section 242(b) of title II (HAVA title II section 212). 2. The Board will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act. **MEMBERSHIP** 1. The Board shall consist of the following: -Two members appointed by the National Governors Association. -Two members appointed by the National Conference of State Legislatures. -Two members appointed by the National Association of Secretaries of State. -Two members appointed by the National Association of State Election Directors. -Two members appointed by the National Association of Counties. -Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks. -Two members appointed by the United States Conference of Mayors. -Two members appointed by the Election Center. -Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers. -Two members appointed by the United States Commission on Civil Rights. -Two members appointed by the Architectural and

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**Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).** -The chief of the Office of Public Integrity of the Department of Justice, or the chief's designee. -The Chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee. -The director of the Federal Voting Assistance Program of the Department of Defense. -Four members representing professionals in the field of science and technology, of whom— (A) one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and (B) one each shall be appointed by the Majority Leader and the Minority Leader of the Senate. -Eight members representing voter interests, of whom— (A) four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and (B) four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member. (HAVA title II section 214 (a)). 2. Vacancy appointments shall be made in the same manner as the original appointments. 3. Members of the Board shall serve for a term of 2 years and may be reappointed. 4. The Board shall elect a Chair from among its members. **ADMINISTRATIVE PROVISIONS** 1. The Board will report to the EAC through the Advisory Committee Management Officer pursuant to 5 U.S.C. App.1 section 8 (b). This officer shall be an EAC Commissioner designated by the Chairman of the EAC. 2. The Board will meet a minimum of once a year for purposes of voting on the voluntary voting system guidelines. Additional meetings may be called at such other times as it considers appropriate for the purposes of conducting other business as it considers appropriate consistent with title II of HAVA. (HAVA title II, section 215 (a)(2)). 3. The EAC and GAO will provide clerical and other necessary support services to the Board. (HAVA title II, section 215 (d)). 4. Members of the Board will not be compensated for their services but will be reimbursed for travel expenses and subsistence. (HAVA title II section 215 (e)). 5. The Board may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government. (HAVA title II, section 215 (c)). 6. The annual cost for operating the Board is estimated at \$100,000 which includes one quarter staff year for support services. 7. The Board may establish such committees of its members as may be necessary subject to the provisions of the law. 8. The Board may, by simple majority vote, adopt resolutions and make recommendations. Such resolutions and recommendations will, however, be only advisory to the EAC and will be restricted to the EAC's activities described in title II section 212 of the Help America Vote Act of 2002. 9. The EAC will provide liaison services between the Board and the Advisory Panel Secretariat as required by the Federal Advisory Committee Act. **DURATION** This is a permanent committee as established in title II section 215 (f) of the Help America Vote Act of 2002.

20e. Why is it necessary to close and/or partially close committee meetings?

**Meetings do not have to be closed.**

#### 21. Remarks

**As a newly established commission, EAC had to convene a meeting for both boards in a short period of time. The meetings were held together, therefore, the cost figures for Federal Staff, Travel:Federal Staff, and Federal Staff Support are the same as those given for the Standards Board. One full-time staff member supported the activities of the board during FY2006, and it is estimated that this person spent about 10% of their time providing administrative support for the boards and their coordinating activities. Board of Advisors members serve two year terms. Several members were replaced by new members.**

Designated Federal Official: **Mr. Paul DeGregorio Chair, U.S. Election Assistance Commission**

Committee Members	Start	End	Occupation	Member Designation
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<b>Arnwine , Barbara</b>	<b>6/28/2006</b>	<b>6/28/2008</b>	<b>Executive Director, Lawyers Committee for Civil Rights Under Law</b>	<b>Representative</b>
<b>Brunelli , Ms. Polli</b>	<b>6/28/2004</b>	<b>6/28/2008</b>	<b>Director, Federal Voting Assistance Program United States Department of Defence</b>	<b>Regular Government Employee (RGE)</b>
<b>Buckingham , Michael</b>	<b>6/28/2006</b>	<b>6/28/2008</b>	<b>Representative, South Dakota State Legislature</b>	<b>Representative</b>
<b>Buie , Ms. Sharon Turner</b>	<b>6/28/2004</b>	<b>6/28/2008</b>	<b>Director of Elections, Kansas City (Missouri) Board of Election Commissioners</b>	<b>Representative</b>
<b>Carnahan , Honorable Robin</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Attorney at Law</b>	<b>Representative</b>
<b>Carnes , Mr. Jim</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Deputy Director, Ohio Department of Natural Resources</b>	<b>Representative</b>
<b>Crangle , Mr. Joseph</b>	<b>5/27/2006</b>	<b>5/27/2008</b>	<b>Attorney, Colucci &amp; Gallaher, P.C.</b>	<b>Representative</b>
<b>Cunningham , Keith</b>	<b>6/28/2006</b>	<b>6/28/2008</b>	<b>Board of Elections, Allen County, Ohio</b>	<b>Representative</b>
<b>Dickson , Mr. James</b>	<b>6/28/2004</b>	<b>6/28/2008</b>	<b>V.P. for Governmental Affairs, American Association of People with Disabilities (AAPD)</b>	<b>Representative</b>
<b>Donsanto , Craig</b>	<b>6/28/2006</b>	<b>6/28/2008</b>	<b>U.S. Department of Justice - Election Crimes Branch</b>	<b>Regular Government Employee (RGE)</b>
<b>Elekes , Mr. James</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Board Member U.S. Access Board</b>	<b>Special Government Employee (SGE)</b>
<b>Fuentes , Tom</b>	<b>6/28/2006</b>	<b>6/28/2008</b>	<b>The Claremont Institute</b>	<b>Representative</b>
<b>Guess , Mr. Francis</b>	<b>8/17/2004</b>	<b>8/17/2006</b>	<b>Vice President, Danner Company</b>	<b>Representative</b>
<b>Harding , Mr. James R.</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Board Member, The U.S. Access Board</b>	<b>Special Government Employee (SGE)</b>
<b>Hawkins , Mr. Ernie</b>	<b>6/28/2004</b>	<b>6/28/2008</b>	<b>Former Registrar of Voters, Sacramento County</b>	<b>Representative</b>
<b>Hegarty , Mary Therese</b>	<b>6/28/2006</b>	<b>6/28/2008</b>	<b>City Clerk, City of Grand Rapids</b>	<b>Representative</b>
<b>Herrera , Ms. Mary</b>	<b>1/4/2005</b>	<b>1/4/2007</b>	<b>Bernalillo County Clerk</b>	<b>Representative</b>
<b>Hillman , Mr. Noel</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Chief, Office of Public Integrity, United States Department of Justice</b>	<b>Regular Government Employee (RGE)</b>
<b>Kaufman , Ms. Beverly</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Harris County Clerk</b>	<b>Representative</b>
<b>Kliner Jr., Mr. Wesley R.</b>	<b>6/28/2004</b>	<b>6/28/2008</b>	<b>Attorney</b>	<b>Representative</b>

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Lamone , Linda H	6/28/2006	6/28/2008	Executive Director - Maryland Board of Elections	Representative
Lewis , Mr. Doug	6/28/2004	6/28/2008	Executive Director, The Election Center	Representative
Markowitz , Deborah	6/28/2006	6/28/2008	Vermont Secretary of State	Representative
Nelson , Honorable Chris	1/4/2005	1/4/2007	Secretary of State, South Dakota	Representative
Noren , Ms. Wendy	6/28/2006	6/28/2008	Boone County Clerk	Representative
Orr , Mr. David	6/28/2004	6/28/2006	Cook County Clerk	Representative
Overton , Spencer	6/28/2006	6/28/2008	Professor, George Washington University School of Law	Special Government Employee (SGE)
Palmer , Mr. Douglas	10/14/2004	10/14/2006	Mayor, Trenton, New Jersey	Representative
Purcell , Ms. Helen	6/28/2006	6/28/2008	Maricopa County Recorder	Representative
Quinn , Cameron	6/28/2006	6/28/2008	U.S. Department of Justice - Civil Rights Division	Representative
Rants , Mr. Christopher	6/28/2004	6/28/2006	Iowa Speaker of the House	Representative
Reed , Honorable Sam	8/19/2005	6/28/2006	Secretary of State, Washington	Representative
Reed , Hon. Sam	6/28/2006	6/28/2008	Washington Secretary of State	Representative
Sandoval , Edward	6/28/2006	6/28/2008	Representative, New Mexico State Legislature	Representative
Sautermeister , Ms. Sue	6/28/2004	6/28/2008	Municipal Election Commissioner - City of Ridgeland	Representative
Shelton , Mr. Hilary	6/28/2004	6/28/2006	Director, Washington Bureau , NAACP	Representative
Shortbull , Mr. Thomas	5/27/2004	5/27/2006	President, Oglala Lakota College	Representative
Silver , Mr. Sheldon	6/28/2004	6/28/2006	Speaker, New York Assembly	Representative
Sirvello, III , Mr. Tony	6/28/2006	6/28/2008	IACREOT Executive Director (formerly Harris County Elections Administrator)	Representative
Somerville , Ms. Tamara	6/28/2004	6/28/2006	Senior V.P. for Governmental Affairs National Food Processors Assn.	Representative
Taylor , Ashley	6/28/2006	6/28/2008	U.S. Commission on Civil Rights	Regular Government Employee (RGE)
Thernstrom , Abigail	6/28/2006	6/28/2008	U.S. Commission on Civil Rights	Regular Government Employee (RGE)

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<b>Thomas , Mr. Christopher</b>	<b>6/28/2006</b>	<b>6/28/2008</b>	<b>Director of Elections, State of Michigan</b>	<b>Representative</b>
<b>Vigil-Giron , Honorable Rebecca</b>	<b>12/3/2004</b>	<b>6/28/2006</b>	<b>Secretary of State, New Mexico</b>	<b>Representative</b>
<b>von Spakovsky , Mr. Hans</b>	<b>6/28/2004</b>	<b>6/28/2006</b>	<b>Counsel to the Assistant Attorney General United States Department of Justice</b>	<b>Regular Government Employee (RGE)</b>
<b>Watts , Ann</b>	<b>6/28/2006</b>	<b>6/28/2008</b>	<b>Senate Committee on Rules and Administration</b>	<b>Representative</b>
<b>Watts , Honorable JC</b>	<b>7/14/2004</b>	<b>7/14/2006</b>	<b>Former Congressman</b>	<b>Representative</b>
<b>Wilson , Ms. Victoria</b>	<b>8/17/2004</b>	<b>8/17/2006</b>	<b>Vice President, Alfred A. Knopf Publishers</b>	<b>Representative</b>
<b>Total Count of Committee Members</b>			<b>48</b>	

006143

# 2006 Current FY Report: Review of Federal Advisory Committee

Committee Menu

5/7/2007 10:36:26 AM

1. Department or Agency

**Election Assistance Commission**

2. Fiscal Year

**2006**

3. Committee or SubCommittee

3b. GSA Committee No.

**Technical Guidelines Development Committee**

**21509**

4. Is this New During Fiscal Year?

**No**

5. Current Charter

**8/9/2006**

6. Expected Renewal Date

**8/9/2008**

7. Expected Term Date

**8/9/2008**

8a. Was Terminated During FY?

**No**

8b. Specific Termination Authority

8c. Actual Termination Date

9. Agency Recommendation for Next FY

**Continue**

10a. Legislation Req to Terminate?

**No**

10b. Legislation Pending?

**Enacted**

11. Establishment Authority

**Statutory (Congress Created)**

12. Specific Establishment Authority

**Public Law 107-252, Help America Vote Act of 2002**

13. Effective Date

**10/29/2002**

14. Committee Type

**Continuing**

14c. Presidential?

**No**

15. Description of Committee

**Scientific Technical Program Advisory Board**

16a. Total Number of Reports

**No Reports for this Fiscal Year.**

17a Open:

**1**

17b. Closed: **0**

17c. Partially Closed: **0**

17d. Total Meetings **1**

Meeting Purposes and Dates

**to meet goals of EAC as mandated through HAVA**

**3/29/2006 3/29/2006**

	Current Fiscal Year	Next Fiscal Year
18a(1) Personnel Pmts to Non-Federal Members	<b>\$0</b>	<b>\$0</b>
18a(2) Personnel Pmts to Federal Members	<b>\$0</b>	<b>\$0</b>
18a(3) Personnel Pmts to Federal Staff	<b>\$0</b>	<b>\$0</b>
18a(4) Personnel Pmts to Non-member Consultants	<b>\$0</b>	<b>\$0</b>
18b(1) Travel and Per Diem to Non-Federal Members	<b>\$10,300</b>	<b>\$10,300</b>
18b(2) Travel and Per Diem to Federal Members	<b>\$0</b>	<b>\$0</b>
18b(3) Travel and Per Diem to Federal Staff	<b>\$0</b>	<b>\$0</b>
18b(4) Travel and Per Diem to Non-Member Consultants	<b>\$0</b>	<b>\$0</b>
18c. Other (rents, user charges, graphics, printing, mail etc.)	<b>\$6,500</b>	<b>\$0</b>
18d Total	<b>\$16,800</b>	<b>\$10,300</b>
19. Federal Staff Support Years	<b>0.0</b>	<b>0.0</b>

006144

20a. How does the Committee accomplish its purpose?

**TGDC meets in plenary sessions to discuss, debate and pass resolutions that instruct the National Institute of Standards and Technology on the policy considerations for developing voluntary voting system guidelines. In addition, three subcommittees (Security and Transparency, Human Factors and Privacy, and Core Requirements and Testing) meet to discuss issues related to their subject matter and involving the development of testable guidelines for voting systems.**

20b. How does the Committee balance its membership?

**The membership of TGDC is established by Section 221 of the Help American Vote Act of 2002. All members and representatives were chosen in keeping with the provisions of that statute.**

20c. How frequent and relevant are the Committee meetings?

**TGDC has met in 4 plenary sessions over the past year. In addition, the subcommittees have met via teleconferences 61 times during the past year. These meetings are crucial to the development of comprehensive guidelines regarding the technical functioning of voting systems. It is anticipated that TGDC will continue to meet with the same frequency over the next year.**

20d. Why can't the advice or information this committee provides be obtained elsewhere?

**EAC is required by law (Section 221 of HAVA) to obtain advice from the TGDC. To use some other body or group to provide such advice would violate Federal law.**

20e. Why is it necessary to close and/or partially close committee meetings?

**All TGDC meetings have been open to the public. A webcast of each FY 2006 meeting may be found on the website <http://www.vote.nist.gov/>.**

## 21. Remarks

Designated Federal Official: **Ms. Donetta Davidson Chair, U.S. Election Assistance Commission**

Committee Members	Start	End	Occupation	Member Designation
<b>Berger , Mr. H. Stephen</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>Chair, IEEE SEC 38 (Voting Syst. Stds.)</b>	<b>Representative</b>
<b>Craft , Mr. Paul</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>Consultant</b>	<b>Representative</b>
<b>Elekes , Mr. James</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>ACCESS Board Member</b>	<b>Representative</b>
<b>Gale , Mr. John</b>	<b>9/16/2005</b>	<b>9/16/2007</b>	<b>Nebraska Secretary of State</b>	<b>Representative</b>
<b>Gannon , Mr. Patrick</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>President and CEO, OASIS</b>	<b>Special Government Employee (SGE)</b>
<b>Harding , Dr. James</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>ACCESS Board Member</b>	<b>Representative</b>
<b>Jeffrey , Dr. William</b>	<b>7/25/2005</b>	<b>7/25/2007</b>	<b>Director</b>	<b>Regular Government Employee (RGE)</b>
<b>Karmol , Mr. David</b>	<b>5/2/2005</b>	<b>7/9/2006</b>	<b>Vice President, Policy and Government Affairs, ANSI</b>	<b>Representative</b>
<b>Miller , Ms. Alice</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>Director of Elections - District of Columbia</b>	<b>Representative</b>
<b>Purcell , Ms. Helen</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>Maricopa County Recorder</b>	<b>Representative</b>
<b>Quesenbery , Ms. Whitney</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>President, Usability Professionals' Association</b>	<b>Special Government Employee (SGE)</b>

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<b>Rivest , Dr. Ronald</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>Professor, Massachusetts Institute of Technology</b>	<b>Special Government Employee (SGE)</b>
<b>Schutzer , Dr. Daniel</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>Vice President &amp; Director of External Standards &amp; Advanced Technology, e-Citi, CitiGroup</b>	<b>Special Government Employee (SGE)</b>
<b>Turner-Buie , Ms. Sharon</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>Director of Elections - Kansas City</b>	<b>Representative</b>
<b>Williams , Dr. Britain</b>	<b>7/9/2004</b>	<b>7/9/2006</b>	<b>Retired Professor, Kennesaw State University</b>	<b>Representative</b>

Total Count of Committee Members

15

006146



Curtis Crider/EAC/GOV

04/25/2007 01:29 PM

To EAC Personnel

cc

bcc

Subject Investigation

The investigator's name is Eric Myers - sorry for the confusion.

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

Important: This electronic transmission is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law.

---

Mr. Eric Miller from the U.S. Department of the Interior, Office of Inspector General will be conducting the investigation of the EAC's handling of the voter fraud report and voter identification report. He will begin conducting interviews within the next couple of days. He will be assisted by Mr. Joe Ansnick.

If you have any questions concerning this matter, please feel free to contact me.

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

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006147

Curtis Crider /EAC/GOV

04/25/2007 01:26 PM

To EAC Personnel

cc

bcc

Subject Investigation

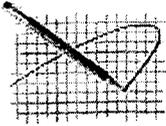
Mr. Eric Miller from the U.S. Department of the Interior, Office of Inspector General will be conducting the investigation of the EAC's handling of the voter fraud report and voter identification report. He will begin conducting interviews within the next couple of days. He will be assisted by Mr. Joe Ansnick.

If you have any questions concerning this matter, please feel free to contact me.

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Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

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006148



Curtis Crider /EAC/GOV

04/23/2007 02:33 PM

To EAC Personnel

cc

bcc

Subject documentation for evaluation

A question has been raised on the e-mails.

Q. Are these emails among staff, to recipients outside the office, or both?

A. We would like ALL e-mails including those among staff and recipients outside of the office.

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

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---

All:

The Office of Inspector General has initiated an evaluation of the contracting process used by the EAC for the voter fraud and voter intimidation projects. In order for us to complete our evaluation, we need copies of all e-mails or other documents that you have regarding either project. Electronic documents can be sent to an e-mail account that we have set up- [eaccon@eac.gov](mailto:eaccon@eac.gov). If you have any hard copy documents, please let me know.

If you do not have any documents or e-mails, please send me an e-mail to that effect.

Thank you,

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

Important: This electronic transmission is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law.

006149

Curtis Crider/EAC/GOV

04/23/2007 02:27 PM

To EAC Personnel

cc

bcc

Subject documentation for evaluation

All:

The Office of Inspector General has initiated an evaluation of the contracting process used by the EAC for the voter fraud and voter intimidation projects. In order for us to complete our evaluation, we need copies of all e-mails or other documents that you have regarding either project. Electronic documents can be sent to an e-mail account that we have set up- [eacon@eac.gov](mailto:eacon@eac.gov). If you have any hard copy documents, please let me know.

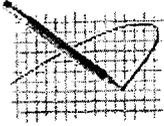
If you do not have any documents or e-mails, please send me an e-mail to that effect.

Thank you,

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

Important: This electronic transmission is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law.

006150



Curtis Crider /EAC/GOV

04/20/2007 11:46 AM

To Donetta L. Davidson/EAC/GOV@EAC, jhodgkins@eac.gov,  
Margaret Sims/EAC/GOV@EAC, Diana  
Scott/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,

cc

bcc

Subject evaluation of contracting

To complete our evaluation of the contracting process and related issues for the voter fraud research and voter intimidation and voter identification research projects, we will need copies of all e-mails and a number of documents related to the projects including copies of all of the various drafts (versions) of the reports. I am requesting that all EAC personnel be notified that they are to preserve all of the documents including e-mails related to the projects. We are in the process of setting up an e-mail account to receive the documents, it is imperative that all documents related to the projects be preserved. As soon as the account is set up we will notify you of the address.

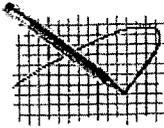
In addition, we are requesting access to the backup e-mail files maintained by GSA and EAC. As a result, we are requesting that no backup tapes or files be destroyed.

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

blackberry 202 725 0969

Important: This electronic transmission is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law.

006151



Edgardo Cortes /EAC/GOV

05/04/2007 02:08 PM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc

bcc

Subject Fw: Job Serebrov emails

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
[ecortes@eac.gov](mailto:ecortes@eac.gov)

-----Forwarded by Edgardo Cortes/EAC/GOV on 05/04/2007 02:07PM -----

>To: [eaccon@eac.gov](mailto:eaccon@eac.gov)  
>From: Edgardo Cortes/EAC/GOV  
>Date: 04/27/2007 10:38AM  
>Subject: Job Serebrov emails  
>  
>Edgardo Cortés  
>Election Research Specialist  
>U.S. Election Assistance Commission  
>1225 New York Ave. NW, Ste. 1100  
>Washington, DC 20005  
>866-747-1471 toll free  
>202-566-3126 direct  
>202-566-3127 fax  
>[ecortes@eac.gov](mailto:ecortes@eac.gov)  
>----- Forwarded by Edgardo Cortes/EAC/GOV on 04/27/2007 10:38 AM  
>-----  
>  
>"Job Serebrov" <[serebrov@sbcglobal.net](mailto:serebrov@sbcglobal.net)>  
>02/13/2006 03:57 PM  
>  
>To  
>[ecortes@eac.gov](mailto:ecortes@eac.gov), [wang@tcf.org](mailto:wang@tcf.org)  
>  
>  
>cc  
>  
>  
>  
>Subject  
>Re: Interviews  
>  
>  
>  
>Please add this one for 2 pm Eastern Standard Time on  
>Thursday 16th--Robin DeJarnette, Executive Director,

006152

>American Center for Voting Rights.  
>  
>Job  
>  
>  
>  
>----- Forwarded by Edgardo Cortes/EAC/GOV on 04/27/2007 10:38 AM  
>-----  
>  
>"Job Serebrov" <serebrov@sbcglobal.net>  
>02/15/2006 11:15 AM  
>  
>To  
>psims@eac.gov, wang@tcf.org  
>  
>  
>cc  
>serebrov@sbcglobal.net, ecortes@eac.gov  
>  
>  
>Subject  
>RE: Interview  
>  
>  
>  
>Peggy:  
>  
>He is not being paid and he is only aiding us as Tamar  
>(also not mentioned in the contract) did.  
>  
>I don't think there is a legal issue.  
>  
>Job  
>  
>--- psims@eac.gov wrote:  
>  
>> Tova:  
>> I am not permitted to authorize subcontractors or  
>> additional personnel not  
>> identified in the personal services contract.  
>> (Counsel's Office reminded  
>> me of that the other day.) It concerns me that if  
>> Edgardo or I call Alex  
>> into the teleconferences, we will be out of line.  
>> --- Peggy  
>>  
>>  
>>  
>>  
>>  
>> "Tova Wang" <wang@tcf.org>  
>> 02/15/2006 10:31 AM  
>>  
>> To  
>> psims@eac.gov  
>> cc

006153

>> serebrov@sbcglobal.net  
>> Subject  
>> RE: Interview  
>>  
>>  
>>  
>>  
>>  
>>  
>> He works with me, and Job and I have both agreed  
>> that it would be useful  
>> to have another set of ears and another person  
>> taking notes.  
>> -----Original Message-----  
>> From: psims@eac.gov [mailto:psims@eac.gov]  
>> Sent: Wednesday, February 15, 2006 10:29 AM  
>> To: wang@tcf.org  
>> Subject: RE: Interview  
>>  
>>  
>> Tova:  
>>  
>> Please refresh my memory. (Sorry about my pea  
>> brain.) Who is Alex and  
>> why is he or she to be included? --- Peggy  
>>  
>>  
>>  
>> "Tova Wang" <wang@tcf.org>  
>> 02/10/2006 09:45 AM  
>>  
>>  
>> To  
>> "Job Serebrov" <serebrov@sbcglobal.net>,  
>> psims@eac.gov  
>> cc  
>> baker@tcf.org  
>> Subject  
>> RE: Interview  
>>  
>>  
>>  
>>  
>>  
>>  
>>  
>> Can Alex Baker also be included in these calls  
>> please? He is at  
>> 212-452-7705. Thanks.  
>>  
>> -----Original Message-----  
>> From: Job Serebrov [mailto:serebrov@sbcglobal.net]  
>> Sent: Thursday, February 09, 2006 6:01 PM  
>> To: psims@eac.gov; wang@tcf.org  
>> Subject: Interview

006154

>>  
>>  
>> Peggy & Tova:  
>>  
>> We have an telephone interview with Douglas Webber  
>> from the Indiana Attorney General's Office on Feb 15  
>> at 2 pm EST.  
>>  
>> Job  
>>  
>>  
>>  
>>  
>>  
>>  
>  
>  
>----- Forwarded by Edgardo Cortes/EAC/GOV on 04/27/2007 10:38 AM  
>-----  
>  
>"Job Serebrov" <serebrov@sbcglobal.net>  
>02/14/2006 04:39 PM  
>  
>To  
>ecortes@eac.gov, wang@tcf.org  
>  
>  
>cc  
>psims@eac.gov  
>  
>  
>Subject  
>Doug Webber Call  
>  
>  
>  
>Douglas Webber will be at a funeral in Southern  
>Indiana early tomorrow so he asked if we could use his  
>cell number for the conference call. That is  
>317-373-4346.  
>  
>Thanks,  
>  
>Job  
>  
>----- Forwarded by Edgardo Cortes/EAC/GOV on 04/27/2007 10:38 AM  
>-----  
>  
>"Job Serebrov" <serebrov@sbcglobal.net>  
>02/10/2006 04:06 PM  
>  
>To  
>ecortes@eac.gov  
>  
>  
>cc

006155

>wang@tcf.org  
>  
>  
>Subject  
>Voter Fraud Project-Additions to the Interview Spreadsheet Schedule  
>  
>  
>  
>Edwardo:  
>  
>Can you please add these two interviews to the spread  
>sheet and arrange them.  
>  
>Douglas Webber, Indiana Assistant Attorney General,  
>Feb 15th at 2 pm Eastern Standard Time, telephone #  
>317-232-6224  
>  
>Evelyn Stratton, Justice Ohio Supreme Court, Feb 17th  
>at 3 pm Eastern Standard Time, telephone #  
>614-387-9050  
>  
>Thanks,  
>  
>Job  
>  
>----- Forwarded by Edgardo Cortes/EAC/GOV on 04/27/2007 10:38 AM  
>-----  
>  
>"Job Serebrov" <serebrov@sbcglobal.net>  
>02/13/2006 03:18 PM  
>  
>To  
>ecortes@eac.gov  
>  
>  
>cc  
>  
>  
>  
>Subject  
>Re: Interviews  
>  
>  
>  
>Edgardo:  
>  
>You missed Bill Groth, attorney for defendants in the  
>Indiana litigation, 4pm on the 22nd. His number is  
>317-353-9363.  
>  
>Thanks,  
>  
>Job  
>  
>---- ecortes@eac.gov wrote:  
>

006156

>> Tova and Job,  
>> Here is the updated schedule based on the info you  
>> both gave me. Tova will  
>> take care of tomorrow's call and Peggy or I will set  
>> up the calls the rest  
>> of this week. Let me know if you need anything else.  
>> Thanks.

>>  
>>  
>>

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

>  
>

>----- Forwarded by Edgardo Cortes/EAC/GOV on 04/27/2007 10:38 AM

>-----

>  
>"Job Serebrov" <serebrov@sbcglobal.net>  
>02/13/2006 04:00 PM

>

>To  
>ecortes@eac.gov, wang@tcf.org

>

>

>cc

>

>

>

>Subject

>Re: Interviews

>

>

>

>Robin's number is- 804-241-5368.

>

>Job

006157



Edgardo Cortes /EAC/GOV  
05/04/2007 02:08 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Additional Tova Wang email

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
[ecortes@eac.gov](mailto:ecortes@eac.gov)

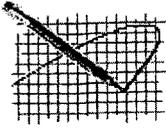
-----Forwarded by Edgardo Cortes/EAC/GOV on 05/04/2007 02:07PM -----

>To: [eacon@eac.gov](mailto:eacon@eac.gov)  
>From: Edgardo Cortes/EAC/GOV  
>Date: 04/27/2007 10:39AM  
>Subject: Additional Tova Wang email  
>  
>Edgardo Cortés  
>Election Research Specialist  
>U.S. Election Assistance Commission  
>1225 New York Ave. NW, Ste. 1100  
>Washington, DC 20005  
>866-747-1471 toll free  
>202-566-3126 direct  
>202-566-3127 fax  
>[ecortes@eac.gov](mailto:ecortes@eac.gov)  
>----- Forwarded by Edgardo Cortes/EAC/GOV on 04/27/2007 10:38 AM  
>-----  
>  
>[wang@tcf.org](mailto:wang@tcf.org)  
>02/13/2006 10:08 PM  
>  
>To  
>"Job Serebrov" , "Tova Wang" ,  
>[psims@eac.gov](mailto:psims@eac.gov)  
>  
>  
>cc  
>[ecortes@eac.gov](mailto:ecortes@eac.gov), [baker@tcf.org](mailto:baker@tcf.org)  
>  
>  
>Subject  
>Neil Bradley  
>  
>  
>  
>4 PM on Tuesday, the 21st. He's the lawyer for the plaintiffs in the

006158

>Georgia case. 404.523.2721 ext 217  
>Tova  
>PS -- No clue why this is in purple

006159



Edgardo Cortes /EAC/GOV  
05/04/2007 02:08 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: emails sent to Tova Wang

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
[ecortes@eac.gov](mailto:ecortes@eac.gov)

-----Forwarded by Edgardo Cortes/EAC/GOV on 05/04/2007 02:08PM -----

>To: [eaccon@eac.gov](mailto:eaccon@eac.gov)  
>From: Edgardo Cortes/EAC/GOV  
>Date: 04/27/2007 10:41AM  
>cc: Jeannie Layson/EAC/GOV  
>Subject: emails sent to Tova Wang  
>  
>Edgardo Cortés  
>Election Research Specialist  
>U.S. Election Assistance Commission  
>1225 New York Ave. NW, Ste. 1100  
>Washington, DC 20005  
>866-747-1471 toll free  
>202-566-3126 direct  
>202-566-3127 fax  
>[ecortes@eac.gov](mailto:ecortes@eac.gov)  
>----- Forwarded by Edgardo Cortes/EAC/GOV on 04/27/2007 10:40 AM  
>-----  
>  
>Edgardo Cortes/EAC/GOV  
>02/13/2006 03:05 PM  
>  
>To  
>"Tova Wang" @GSAEXTERNAL, "Job Serebrov"  
><[serebrov@sbcglobal.net](mailto:serebrov@sbcglobal.net)>  
>  
>  
>cc  
>Margaret Sims/EAC/GOV@EAC  
>  
>  
>Subject  
>Interviews  
>  
>  
>Tova and Job,

006160

>Here is the updated schedule based on the info you both gave me. Tova  
>will take care of tomorrow's call and Peggy or I will set up the  
>calls the rest of this week. Let me know if you need anything else.  
>Thanks.

>

>

>

>

>Edgardo Cortés

>Election Research Specialist

>U.S. Election Assistance Commission

>1225 New York Ave. NW, Ste. 1100

>Washington, DC 20005

>866-747-1471 toll free

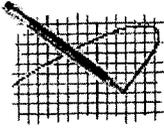
>202-566-3126 direct

>202-566-3127 fax

>ecortes@eac.gov

[attachment "Schedule of Interviews.xls" removed by Edgardo Cortes/EAC/GOV]

006161



Edgardo Cortes /EAC/GOV

05/04/2007 02:09 PM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc

bcc

Subject Fw: Peggy Sims emails

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
[ecortes@eac.gov](mailto:ecortes@eac.gov)

-----Forwarded by Edgardo Cortes/EAC/GOV on 05/04/2007 02:08PM -----

>To: [eacon@eac.gov](mailto:eacon@eac.gov)  
>From: Edgardo Cortes/EAC/GOV  
>Date: 04/27/2007 10:44AM  
>cc: Jeannie Layson/EAC/GOV  
>Subject: Peggy Sims emails  
>  
>Edgardo Cortés  
>Election Research Specialist  
>U.S. Election Assistance Commission  
>1225 New York Ave. NW, Ste. 1100  
>Washington, DC 20005  
>866-747-1471 toll free  
>202-566-3126 direct  
>202-566-3127 fax  
>[ecortes@eac.gov](mailto:ecortes@eac.gov)  
>----- Forwarded by Edgardo Cortes/EAC/GOV on 04/27/2007 10:44 AM  
>-----  
>  
>Margaret Sims/EAC/GOV  
>02/15/2006 10:19 AM  
>  
>To  
>[wang@tcf.org](mailto:wang@tcf.org), [serebrov@sbcglobal.net](mailto:serebrov@sbcglobal.net)  
>  
>  
>cc  
>Edgardo Cortes/EAC/GOV@EAC  
>  
>  
>Subject  
>Interview Schedule  
>  
>  
>Here is the latest schedule. --- Peggy  
>

006162

>----- Forwarded by Edgardo Cortes/EAC/GOV on 04/27/2007 10:44 AM

>-----

>

>Margaret Sims/EAC/GOV

>02/15/2006 11:09 AM

>

>To

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

>

>

>cc

>serebrov@sbcglobal.net, Edgardo Cortes/EAC/GOV@EAC

>

>

>Subject

>RE: Interview

>

>

>Tova:

>I am not permitted to authorize subcontractors or additional

>personnel not identified in the personal services contract.

>(Counsel's Office reminded me of that the other day.) It concerns me

>that if Edgardo or I call Alex into the teleconferences, we will be

>out of line. --- Peggy

>

>

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

>

>

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

>02/15/2006 10:31 AM

>

>To

>psims@eac.gov

>

>

>cc

>serebrov@sbcglobal.net

>

>

>Subject

>RE: Interview

>

>

>

>He works with me, and Job and I have both agreed that it would be

>useful to have another set of ears and another person taking notes.

>

>-----Original Message-----

>From: psims@eac.gov [mailto:psims@eac.gov]

>Sent: Wednesday, February 15, 2006 10:29 AM

>To: wang@tcf.org

>Subject: RE: Interview

>

>

>Tova:

006163

>  
>Please refresh my memory. (Sorry about my pea brain.) Who is Alex  
>and why is he or she to be included? -- Peggy

>  
>  
>"Tova Wang" <wang@tcf.org>  
>02/10/2006 09:45 AM To"Job Serebrov" ,  
>psims@eac.gov  
>ccbaker@tcf.org  
>SubjectRE: Interview

>  
>  
>  
>  
>  
>

>Can Alex Baker also be included in these calls please? He is at  
>212-452-7705. Thanks.

>  
>-----Original Message-----  
>From: Job Serebrov [mailto:serebrov@sbcglobal.net]  
>Sent: Thursday, February 09, 2006 6:01 PM  
>To: psims@eac.gov; wang@tcf.org  
>Subject: Interview

>  
>

>Peggy & Tova:

>  
>We have an telephone interview with Douglas Webber  
>from the Indiana Attorney General's Office on Feb 15  
>at 2 pm EST.

>  
>Job  
[attachment "Schedule of Interviews.xls" removed by Edgardo Cortes/EAC/GOV]

006164



Edgardo Cortes /EAC/GOV  
05/04/2007 02:09 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Peggy Sims more emails

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
[ecortes@eac.gov](mailto:ecortes@eac.gov)

-----Forwarded by Edgardo Cortes/EAC/GOV on 05/04/2007 02:09PM -----

>To: [eaccon@eac.gov](mailto:eaccon@eac.gov)  
>From: Edgardo Cortes/EAC/GOV  
>Date: 04/27/2007 10:47AM  
>cc: Jeannie Layson/EAC/GOV  
>Subject: Peggy Sims more emails  
>  
>Edgardo Cortés  
>Election Research Specialist  
>U.S. Election Assistance Commission  
>1225 New York Ave. NW, Ste. 1100  
>Washington, DC 20005  
>866-747-1471 toll free  
>202-566-3126 direct  
>202-566-3127 fax  
>[ecortes@eac.gov](mailto:ecortes@eac.gov)  
>----- Forwarded by Edgardo Cortes/EAC/GOV on 04/27/2007 10:46 AM  
>-----  
>  
>Margaret Sims/EAC/GOV  
>03/24/2006 05:05 PM  
>  
>To  
>Edgardo Cortes/EAC/GOV@EAC  
>  
>  
>cc  
>  
>  
>  
>Subject  
>Assignments for Devon  
>  
>  
>I've notified Diana that Devon should report to you after she gets  
>through the GSA process. See attached re assignments and priorities

006165

>for next week. Let me know if you have any questions. --- Peggy  
>  
>  
>----- Forwarded by Edgardo Cortes/EAC/GOV on 04/27/2007 10:46 AM  
>-----  
>  
>Margaret Sims/EAC/GOV  
>03/28/2006 06:41 PM  
>  
>To  
>wang@tcf.org, serebrov@sbcglobal.net  
>  
>  
>cc  
>Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC, Edgardo Cortes/EAC/GOV@EAC,  
>Devon E. Romig/CONTRACTOR/EAC/GOV@EAC  
>  
>  
>Subject  
>DOJ Training Materials  
>  
>  
>Dear Tova and Job:  
>  
>Devon has speedily reproduced the four DOJ training manuals provided  
>by Craig Donsanto, and has sent them to you via Federal Express.  
>Please remember that these internal working documents were provided  
>for our project in the spirit of interagency cooperation. They  
>cannot be reproduced or provided to others, except to you as EAC  
>consultants or EAC staff working on the Voting Fraud/Voter  
>Intimidation project, without prior written permission from DOJ.  
>Thanks.  
>  
>Peggy Sims  
>Election Research Specialist  
>U.S. Election Assistance Commission  
>1225 New York Ave, NW - Ste 1100  
>Washington, DC 20005  
>Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)  
>Fax: 202-566-3127  
>email: psims@eac.gov ----- Forwarded by Edgardo Cortes/EAC/GOV on  
>04/27/2007 10:46 AM -----  
>  
>Margaret Sims/EAC/GOV  
>02/15/2006 10:19 AM  
>  
>To  
>wang@tcf.org, serebrov@sbcglobal.net  
>  
>  
>cc  
>Edgardo Cortes/EAC/GOV@EAC  
>  
>  
>Subject  
>Interview Schedule

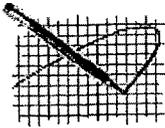
006166

>  
>  
>Here is the latest schedule. --- Peggy  
>  
>----- Forwarded by Edgardo Cortes/EAC/GOV on 04/27/2007 10:46 AM  
>-----  
>  
>Margaret Sims/EAC/GOV  
>02/15/2006 11:09 AM  
>  
>To  
>"Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
>  
>  
>cc  
>serebrov@sbcglobal.net, Edgardo Cortes/EAC/GOV@EAC  
>  
>  
>Subject  
>RE: Interview  
>  
>  
>Tova:  
>I am not permitted to authorize subcontractors or additional  
>personnel not identified in the personal services contract.  
>(Counsel's Office reminded me of that the other day.) It concerns me  
>that if Edgardo or I call Alex into the teleconferences, we will be  
>out of line. --- Peggy  
>  
>  
> "Tova Wang" <wang@tcf.org>  
>  
>  
>"Tova Wang" <wang@tcf.org>  
>02/15/2006 10:31 AM  
>  
>To  
>psims@eac.gov  
>  
>  
>cc  
>serebrov@sbcglobal.net  
>  
>  
>Subject  
>RE: Interview  
>  
>  
>  
>He works with me, and Job and I have both agreed that it would be  
>useful to have another set of ears and another person taking notes.  
>  
>-----Original Message-----  
>From: psims@eac.gov [mailto:psims@eac.gov]  
>Sent: Wednesday, February 15, 2006 10:29 AM  
>To: wang@tcf.org

006167

>Subject: RE: Interview  
>  
>  
>Tova:  
>  
>Please refresh my memory. (Sorry about my pea brain.) Who is Alex  
>and why is he or she to be included? --- Peggy  
>  
>  
>"Tova Wang" <wang@tcf.org>  
>02/10/2006 09:45 AM To:"Job Serebrov" ,  
>psims@eac.gov  
>ccbaker@tcf.org  
>SubjectRE: Interview  
>  
>  
>  
>  
>  
>  
>Can Alex Baker also be included in these calls please? He is at  
>212-452-7705. Thanks.  
>  
>-----Original Message-----  
>From: Job Serebrov [mailto:serebrov@sbcglobal.net]  
>Sent: Thursday, February 09, 2006 6:01 PM  
>To: psims@eac.gov; wang@tcf.org  
>Subject: Interview  
>  
>  
>Peggy & Tova:  
>  
>We have an telephone interview with Douglas Webber  
>from the Indiana Attorney General's Office on Feb 15  
>at 2 pm EST.  
>  
>Job  
[attachment "Assignments for Devon 3-24-06.doc" removed by Edgardo Cortes/EAC/GOV]  
[attachment "Schedule of Interviews.xls" removed by Edgardo Cortes/EAC/GOV]

006168



Edgardo Cortes /EAC/GOV  
05/04/2007 02:09 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: email sent to Peggy Sims

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
[ecortes@eac.gov](mailto:ecortes@eac.gov)

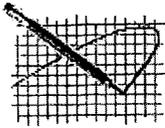
-----Forwarded by Edgardo Cortes/EAC/GOV on 05/04/2007 02:09PM -----

>To: [eacon@eac.gov](mailto:eacon@eac.gov)  
>From: Edgardo Cortes/EAC/GOV  
>Date: 04/27/2007 10:50AM  
>cc: Jeannie Layson/EAC/GOV  
>Subject: email sent to Peggy Sims  
>  
>Edgardo Cortés  
>Election Research Specialist  
>U.S. Election Assistance Commission  
>1225 New York Ave. NW, Ste. 1100  
>Washington, DC 20005  
>866-747-1471 toll free  
>202-566-3126 direct  
>202-566-3127 fax  
>[ecortes@eac.gov](mailto:ecortes@eac.gov)  
>----- Forwarded by Edgardo Cortes/EAC/GOV on 04/27/2007 10:49 AM  
>-----  
>  
>Edgardo Cortes/EAC/GOV  
>02/24/2006 10:38 AM  
>  
>To  
>Margaret Sims/EAC/GOV  
>  
>  
>cc  
>  
>  
>  
>Subject  
>Fw: new interview scheduled  
>  
>  
>Has this conference call been set up? If not, I can ask Nicole to set  
>it up. I have another conference call scheduled for the same time

006169

>with my contractors.  
>  
>Edgardo Cortés  
>Election Research Specialist  
>U.S. Election Assistance Commission  
>1225 New York Ave. NW, Ste. 1100  
>Washington, DC 20005  
>866-747-1471 toll free  
>202-566-3126 direct  
>202-566-3127 fax  
>ecortes@eac.gov  
>----- Forwarded by Edgardo Cortes/EAC/GOV on 02/24/2006 10:35 AM  
>-----  
>  
>"Tova Wang" <wang@tcf.org>  
>02/21/2006 05:19 PM  
>  
>To  
>psims@eac.gov, "Job Serebrov" <serebrov@sbcglobal.net>  
>  
>  
>cc  
>ecortes@eac.gov  
>  
>  
>Subject  
>new interview scheduled  
>  
>  
>  
>Harry VanSickle, Director of Elections for PA, Wednesday, March 1 at  
>11 AM EST.  
>  
>Should I just tell him the usual call in number and pass code?  
>  
>Thanks  
>  
>Tova Andrea Wang  
>Senior Program Officer and Democracy Fellow  
>The Century Foundation  
>41 East 70th Street - New York, NY 10021  
>phone: 212-452-7704 fax: 212-535-7534  
>Visit our Web site, [www.tcf.org](http://www.tcf.org) , for the latest news, analysis,  
>opinions, and events.  
>  
>  
>Click here to receive our weekly e-mail updates.  
>

006170



Edgardo Cortes /EAC/GOV

05/04/2007 02:10 PM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc

bcc

Subject Fw: additional Peggy Sims email

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
[ecortes@eac.gov](mailto:ecortes@eac.gov)

-----Forwarded by Edgardo Cortes/EAC/GOV on 05/04/2007 02:09PM -----

>To: [eacon@eac.gov](mailto:eacon@eac.gov)  
>From: Edgardo Cortes/EAC/GOV  
>Date: 04/27/2007 10:54AM  
>cc: Jeannie Layson/EAC/GOV  
>Subject: additional Peggy Sims email  
>  
>Edgardo Cortés  
>Election Research Specialist  
>U.S. Election Assistance Commission  
>1225 New York Ave. NW, Ste. 1100  
>Washington, DC 20005  
>866-747-1471 toll free  
>202-566-3126 direct  
>202-566-3127 fax  
>[ecortes@eac.gov](mailto:ecortes@eac.gov)  
>----- Forwarded by Edgardo Cortes/EAC/GOV on 04/27/2007 10:53 AM  
>-----  
>  
>Edgardo Cortes/EAC/GOV  
>04/18/2006 10:13 AM  
>  
>To  
>Margaret Sims/EAC/GOV, Diana Scott/EAC/GOV, Bola Olu/EAC/GOV  
>  
>  
>cc  
>[Devon E. Romig/EAC/GOV@EAC](mailto:Devon.E.Romig@EAC.GOV)  
>  
>  
>Subject  
>Re: Voting Fraud-Voter Intimidation Teleconference 4-19-06  
>  
>  
>What is the contact info for our conference call provider in case we  
>run into trouble at the start of the call? Nicole used to handle

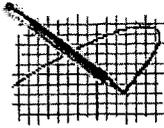
006171

>conference calls and I am not sure who I would speak to in that  
>instance. Please let me know. Thanks.  
>  
>Edgardo Cortés  
>Election Research Specialist  
>U.S. Election Assistance Commission  
>1225 New York Ave. NW, Ste. 1100  
>Washington, DC 20005  
>866-747-1471 toll free  
>202-566-3126 direct  
>202-566-3127 fax  
>ecortes@eac.gov  
> Margaret Sims/EAC/GOV  
>  
>  
>Margaret Sims/EAC/GOV  
>04/17/2006 04:33 PM  
>  
>To  
>sarahball.johnson@ky.gov  
>  
>  
>cc  
>serebrov@sbcglobal.net, wang@tcf.org, ecortes@eac.gov  
>  
>  
>Subject  
>Voting Fraud-Voter Intimidation Teleconference 4-19-06  
>  
>  
>  
>Hi, Sarah:  
>  
>Thank you for agreeing to be interviewed on Wednesday, April 19, by  
>the consultants for EAC's initial research on voting fraud and voter  
>intimidation, Job Serebrov and Tova Wang . Our consultants are  
>conducting interviews as part of preliminary research to determine  
>how EAC may best meet the requirements of Section 241(b)6 and 7 of  
>the Help America Vote Act of 2002. As you may recall, Section 241  
>requires EAC to conduct research on election administration issues,  
>including the development of:  
>nationwide statistics and methods of identifying, deterring, and  
>investigating voting fraud in elections for Federal office; and  
>methods of identifying, deterring, and investigating methods of voter  
>intimidation.  
>  
>This is what I need you (and the Secretary, if he is available) to  
>do:  
>At approximately 11 AM EST on April 19 , call 1-866-222-9044 .  
>At the prompt for the pass code, enter 62209 .  
>  
>Tova and Job will join you on the line. We have arranged for the  
>line to be open for an hour, with 10 minutes extra on the front end  
>(for folks who have not synchronized their watches).  
>

006172

>You mentioned that Secretary Grayson may be using a cell phone. Our  
>teleconference provider has given us the following information  
>regarding the use of cell phones during the teleconference:  
>Signals are often in and out and the audio bridging equipment cannot  
>compensate fast enough by adjusting the signal. This affects all  
>participants connected. If participants must use a cell phone - they  
>should be stationary in a location where they can pick up the other  
>participants , moving while using a cell phone causes the signal to  
>go in and out and often will pick up extraneous electrical signals  
>that will cause heavy static on the call.  
>The cell phone should be well charged and muted, if possible, until  
>the individual is ready to speak .  
>If there is a problem , anybody who dials into a conference can  
>contact the operator/technicians by simply pressing \*0 (star zero) .  
>This information is part of the recording when individuals are  
>dialing in.  
>  
>If you have any problems accessing the teleconference, please call  
>Edgardo Cort é s. You can reach him at 1-866-747-1471 (toll-free) or  
>202-566-3126. He can contact our service provider to correct any  
>problems. (I will be on my way to Seattle and unable to help.)  
>  
>Thanks, again!  
>  
>Peggy Sims  
>Election Research Specialist  
>U.S. Election Assistance Commission  
>1225 New York Ave, NW - Ste 1100  
>Washington, DC 20005  
>Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)  
>Fax: 202-566-3127  
>email: psims@eac.gov

006173



Edgardo Cortes /EAC/GOV  
05/04/2007 02:10 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Peggy Sims email - 1 more

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
[ecortes@eac.gov](mailto:ecortes@eac.gov)

-----Forwarded by Edgardo Cortes/EAC/GOV on 05/04/2007 02:10PM -----

>To: [eacon@eac.gov](mailto:eacon@eac.gov)  
>From: Edgardo Cortes/EAC/GOV  
>Date: 04/27/2007 10:56AM  
>cc: Jeannie Layson/EAC/GOV  
>Subject: Peggy Sims email - 1 more  
>  
>Edgardo Cortés  
>Election Research Specialist  
>U.S. Election Assistance Commission  
>1225 New York Ave. NW, Ste. 1100  
>Washington, DC 20005  
>866-747-1471 toll free  
>202-566-3126 direct  
>202-566-3127 fax  
>[ecortes@eac.gov](mailto:ecortes@eac.gov)  
>----- Forwarded by Edgardo Cortes/EAC/GOV on 04/27/2007 10:56 AM  
>-----  
>  
>Margaret Sims/EAC/GOV  
>04/06/2006 03:33 PM  
>  
>To  
>[ecortes@eac.gov](mailto:ecortes@eac.gov)  
>  
>  
>cc  
>  
>  
>  
>Subject  
>Interview for Voting Fraud/Voter Intimidation Project  
>  
>  
>  
>

006174

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

>

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

>

>Thanks! --- Peggy

006175

Jeannie Layson/EAC/GOV  
11/28/2006 10:27 AM

To EAC Personnel  
cc  
bcc  
Subject FOIA Request

Hello everyone,

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

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

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

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

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

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

006176

Jeannie Layson/EAC/GOV

04/27/2007 04:54 PM

To EAC Personnel

cc

bcc

Subject Voter ID and Vote Fraud and Voter Intimidation IG Review Update

Hello everyone,

The chair wanted to distribute the attached memo from the IG, which contains guidance about how we proceed during the review of the voter ID and the vote fraud and voter intimidation research projects. She will continue to keep staff informed as this review moves forward, and she thanks everyone for their continued cooperation and hard work.



IG Memo to Chair on Review of Studies ( 4-27-07 ).pdf

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

006177



U.S. ELECTION ASSISTANCE COMMISSION  
OFFICE OF INSPECTOR GENERAL  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

April 27, 2007

Memorandum

To: Donetta Davidson  
Chair, U.S. Elections Commission

From: Curtis Crider *Curtis Crider*  
Inspector General

Subject: U.S. Election Assistance Commission Activities Pending the Office of Inspector  
General Investigation of the Voting Fraud and Voter Intimidation Report

In your letter of April 23, 2007, you requested my comments concerning several activities that the Election Assistance Commission (EAC) was considering to undertake pending our review of the Voting Fraud and Voter Intimidation Study and on related questions. My responses to your proposed activities and questions follow:

1. The EAC would like to prepare a summary of the differences between the draft report prepared by the consultants and the final report adopted by the EAC.

Answer: We believe that such a summary will be helpful to our investigation. Please provide us with a copy of the summary of differences upon it is completion.

2. Would there be any prohibition against the Director of Communications speaking with EAC employees, consultants or working group members when questions arise from members of the press or under the Freedom of Information Act?

Answer: We are not aware of any prohibition. However, we suggest that EAC not comment or limit its comments on this matter because of the ongoing investigation. Any FOIA requests should be promptly responded to stating that the matter is under investigation. Once the investigation is completed, appropriate information should be made available to the FOIA requester.

3. Would there be any prohibition against EAC briefing members of the EAC Standards Board and the EAC Board of Advisors.

Answer: We are not aware of any prohibition. Our preference, however, would be that EAC allow the investigation to be completed before conducting any briefings.

4. Would there be any prohibition against gathering information related to this project in order to respond to inquiries that have been made by members of Congress?

006178

Answer: We are not aware of any prohibition. As previously stated, our preference is that there are no public comments while the investigation is in process or that comments be limited. However, we appreciate the sensitivity of Congressional requests, EAC must decide how best to proceed in this matter. We ask that you share any proposed responses with us prior to their release and that you provide us with a copy of final responses and any attachments.

5. Would there be any prohibition against responding to an inquiry that the Commission has received from an attorney engaged by one of the consultants?

Answer: It is the EAC's decision whether to respond to the attorney for the consultant. We prefer that the consultants not be released from the confidentiality clause of their contracts until the OIG has completed its investigations.

We understand that EAC will want to respond to criticism of its handling of the Voter Fraud and Intimidation Study, and that management must ultimately decide how best to proceed. Our preference would be that you attempt to defer commenting until we have finished our investigation.

I appreciate you raising these matters to me before acting. Please feel free to contact me if you have any questions about this memorandum.

006179



**LAWYERS' COMMITTEE FOR  
CIVIL RIGHTS  
UNDER LAW**

1401 New York Avenue, NW Tel: 202.662.8600  
Suite 400 Fax: 202.783.0857  
Washington, DC 20005-2124 www.lawyerscommittee.org

VIA FACSIMILE

October 6, 2006

Chairman Paul S. DeGregorio  
Commissioner Donetta L. Davidson  
Commissioner Gracia M. Hillman  
United States Election Assistance Commission  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005  
FAX: (202) 566-3127

**Co-Chairs**  
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**Western Region**  
Nora Crogan  
Heasley S. Phillips  
Paul F. Fekawa  
**Chesapeake Region**  
Jonathan L. Greenblatt  
Kim Keenan

Dear Commissioners,

As a member of the Election Assistance Commission (EAC) Board of Advisors and a member of the EAC's Working Group on Voter Fraud and Voter Intimidation, I write requesting the release of the EAC's Voter Fraud and Voter Intimidation Report. This report was commissioned over a year ago and has yet to be released. In May, 2006 the Working Group met to discuss the project and was told that the final report would be released shortly thereafter. Five months later, and on the heels of another national election, election officials, policy makers and advocates are without guidance from the EAC on this critical subject. Across the country and at all levels of government, legislative and judicial debates that should be informed by the report's findings continue. The EAC has had ample time to research and release this critical report. There is no reasonable explanation for this delay.

Please immediately release the Election Assistance Commission's Voter Fraud and Voter Intimidation report. If immediate release is not possible, please provide me with an explanation of the delay and a detailed time line for the report's release.

Thank You.

Barbara R. Arnwine  
Executive Director  
Lawyers' Committee for Civil Rights Under Law

cc: Hon. Trent Lott, Chairman, Senate Committee on Rules and Administration  
Hon. Christopher J. Dodd, Ranking Member, Senate Committee on Rules and Administration  
Hon. Vernon Ehlers, Chairman, Committee on House Administration  
Hon. Juanita Millender-McDonald, Ranking Member, Committee on House Administration




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**FACSIMILE TRANSMITTAL SHEET**

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**FROM: RALPH G. NEAS  
PRESIDENT, PEOPLE FOR THE AMERICAN WAY FOUNDATION**

**DATE: 10/18/06**

**TOTAL NO. OF PAGES INCLUDING COVER: 3**

**RE: REPORT COMMISSIONED BY THE EAC ON VOTER FRAUD**

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URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

---



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**NOTES/COMMENTS:**

Cc: USPS Mail

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---

**2000 M STREET, NW ♦ SUITE 400 ♦ WASHINGTON, DC 20036  
TELEPHONE 202-467-4999 ♦ FAX 202-293-2672 ♦ EMAIL pfaw@pfaw.org 006181**



October 18, 2006

Chairman Paul DeGregorio  
Commissioner Donetta L. Davidson  
Commissioner Gracia M. Hillman  
United States Election Assistance Commission  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005  
Fax: (202) 566-3127

Dear Commissioners,

On October 11<sup>th</sup>, *USA Today* published an article describing the report commissioned by the EAC on voter fraud. We write today to urge the EAC to release this report.

As a 25 year old civil rights and civil liberties organization, People For the American Way Foundation (PFAWF) and our sister organization, People For the American Way (PFAW) have long been dedicated to ensuring the integrity of our elections. In particular in the years since the 2000 election, PFAWF and other principle partners such as the NAACP and the Lawyers' Committee for Civil Rights Under Law, have carried out a program called Election Protection to ensure that all eligible voters are able to vote and have that vote counted as cast.

We know that voter fraud and intimidation occur- we've seen the long lines, the erroneous purges, the misleading flyers and phone calls. And yet there seems to be little attention to these matters on the state and federal level.

Instead, a disproportionate amount of time and energy are spent on measures that purport to curb voter fraud by requiring voters to produce proof of citizenship and identity to vote. In actuality, these measures do little to secure the elections and much to disenfranchise otherwise eligible voters. Indeed we are weeks away from an election where thousands of eligible voters may be disenfranchised by overly restrictive voter identification laws. That presents a real threat to the integrity of our elections and the health of our democracy.

The report that the EAC commissioned from voting experts would make a vitally important contribution to the national discourse on the reality of voter fraud. In light of the numerous claims regarding the prevalence of voter fraud, this report provides a much

needed analysis about the state of our electoral process. While media reports indicate that this tax-payer funded report is final, even if there are outstanding concerns within the EAC, we implore you to move forward with releasing the report as is, and to hold a public hearing to address any potential issues. Again, the importance of the information in this report is paramount and the public deserves such full disclosure. The report should be released immediately so that those who are concerned about ensuring the integrity of elections can benefit from its findings.

Sincerely,



Ralph G. Neas

President, People For the American Way Foundation

Cc: Senate Majority Leader Bill Frist  
Senate Minority Leader Harry Reid  
Senator Trent Lott, Chair, Senate Rules and Administration  
Senator Chris Dodd, Ranking Member, Senate Rules and Administration  
House Majority Leader John Boehner  
House Minority Leader Nancy Pelosi  
Representative Vernon Ehlers, Chair, House Administration  
Representative Juanita Millender-McDonald, Ranking Member, House Administration

006183

October 19, 2006

The Honorable Rush Holt  
1019 Longworth Building  
Washington, DC 20515

**Via Facsimile Transmission ONLY**  
**202-225-6025**

RE: October 16, 2006 Letter

Dear Congressman Holt:

Your letter of October 16, 2006 requests the release of EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

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

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

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

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

Sincerely,

Paul S. DeGregorio  
Chairman

006184

October 19, 2006

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

**Via Facsimile Transmission ONLY**  
**202-293-2672**

RE: October 18, 2006 Letter

Dear Mr. Neas:

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

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

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

Sincerely,

Paul S. DeGregorio  
Chairman

006185



UNITED STATES COMMISSION ON CIVIL RIGHTS  
WASHINGTON, D.C. 20435

OFFICE OF STAFF DIRECTOR

# FACSIMILE COVER SHEET

DATE: 10-19-06

TO: U.S. ELECTION ASSISTANCE COMMISSION

ATTN: CHAIRMAN PAUL DE GREGORIO

FROM: OFFICE OF THE STAFF DIRECTOR

COMMENTS:

NUMBER OF PAGES INCLUDING COVER PAGE: \_\_\_\_\_

PERSON TO CONTACT IF PROBLEM:

OFFICE OF THE STAFF DIRECTOR  
(202) 376-7700  
FACSIMILE NO.: (202) 376-7672



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425

[www.usccr.gov](http://www.usccr.gov)

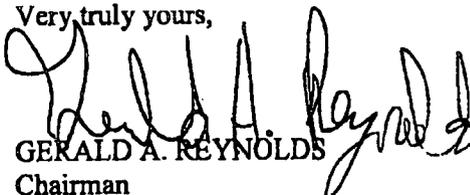
October 19, 2006

The Honorable Paul S. DeGregorio  
Chairman  
United States Election Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, DC 20005

Dear Chairman DeGregorio:

On behalf of the U.S. Commission on Civil Rights, I write to inquire about the status of a report on voter fraud allegedly produced by the Election Assistance Commission. The U.S. Commission on Civil Rights held a briefing on October 13, 2006 on voter fraud and voter intimidation. During this briefing, a panelist cited media reports that the Election Assistance Commission had produced a report on voter fraud but had not yet released it to the public. It would be useful to know the status of this report as Election Day approaches. Any information provided by the Election Assistance Commission would be of great value to all voters seeking to effectively exercise their right to vote.

Very truly yours,

  
GERALD A. REYNOLDS  
Chairman

006187



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

OFFICE OF THE CHAIRMAN

October 24, 2006

Gerald A Reynolds  
Chairman, United States Commission on Civil Rights  
624 9<sup>th</sup> Street, NW  
Washington, DC 20425

**Via Facsimile Transmission ONLY**  
**202-376-7672**

RE: October 19, 2006 Letter

Dear Mr. Reynolds:

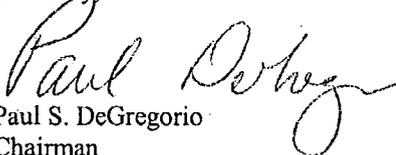
Your letter of October 19, 2006 requests the status on the EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

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

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

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

Sincerely,

  
Paul S. DeGregorio  
Chairman

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**U.S. ELECTION ASSISTANCE COMMISSION**

**Status Report on the  
Voting Fraud-Voter Intimidation Research  
Project**

**May 17, 2006**

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## INTRODUCTION

Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

## FOCUS OF CURRENT RESEARCH

In September 2005, the Commission hired two consultants with expertise in this subject matter, Job Serebrov and Tova Wang, to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

As of the date of this report, the consultants have drafted a definition of election fraud, reviewed relevant literature and reports, interviewed persons from government and private sectors with subject matter expertise, analyzed news reports of alleged election fraud, reviewed case law, and established a project working group.

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## DEFINITION OF ELECTION FRAUD

The consultants drafted a definition of election fraud that includes numerous aspects of voting fraud (including voter intimidation, which is considered a subset of voting fraud) and voter registration fraud, but excludes campaign finance violations and election administration mistakes. This draft will be discussed and probably refined by the project working group, which is scheduled to convene on May 18, 2006.

## LITERATURE REVIEW

The consultants found many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. They found little research that is truly systematic or scientific. The most systematic look at fraud appears to be the report written by Lori Minnite, entitled "Securing the Vote: An Analysis of Election Fraud". The most systematic look at voter intimidation appears to be the report by Laughlin McDonald, entitled "The New Poll Tax". The consultants found that books written about this subject all seem to have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Moreover, the consultants found that reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book, "Stealing Elections".

Consultants found that researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate; but some reports say it is a major problem, albeit hard to identify.

- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

### **Recommendations**

The consultants recommend that subsequent EAC research include a follow up study of allegations made in reports, books and newspaper articles. They also suggest that the research should focus on filling the gap between the lack of reports based on methodical studies by social or political scientists and the numerous, but less scientific, reports published by advocacy groups.

### **INTERVIEWS**

The consultants jointly selected experts from the public and private sector for interviews. The consultants' analysis of their discussions with these members of the legal, election official, advocacy, and academic communities follows.

### **Common Themes**

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, "dead" voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud,

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although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.

- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate that, for various reasons, DOJ is bringing fewer voter intimidation and suppression cases now, and has increased its focus on matters such as noncitizen voting, double voting, and felon voting. Interviews with DOJ personnel indicate that the Voting Section, Civil Rights Division, focuses on systemic patterns of malfeasance in this area. While the Election Crimes Branch, Public Integrity Section, continues to maintain an aggressive pursuit of systematic schemes to corrupt the electoral process (including voter suppression), it also has increased prosecutions of individual instances of felon, alien, and double voting.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

#### **Common Recommendations:**

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed.
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.

- With respect to DOJ's Voting Section, Civil Rights Division, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and his office has not pursued any such cases.
- Craig Donsanto of DOJ's Election Crimes Branch, Public Integrity Section, says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases DOJ is investigating and the number of indictments his office is pursuing are both up dramatically. Since 2002, in addition to pursuing systematic election corruption schemes, DOJ has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so that his agency can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment.
- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill.
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected as non partisan officials, they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas are a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.

- A few recommend returning to allowing use of absentee ballots “for cause” only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the proposal in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

## NEWS ARTICLES

Consultants conducted a Nexis search of related news articles published between January 1, 2001 and January 1, 2006. A systematic, numerical analysis of the data collected during this review is currently being prepared. What follows is an overview of these articles provided by the consultants.

### Absentee Ballots

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters.
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased.
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times.

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

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## **Voter Registration Fraud**

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people;
- Fake names and other information on voter registration forms;
- Illegitimate addresses used on voter registration forms;
- Voters being tricked into registering for a particular party under false pretenses; and
- Destruction of voter registration forms depending on the party the voter registered with.

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota, and Wisconsin.

## **Voter Intimidation and Suppression**

This is the area which had the most articles, in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places;
- Improper demands for identification;

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- Poll watchers harassing voters;
- Poll workers being hostile to or aggressively challenging voters;
- Disproportionate police presence;
- Poll watchers wearing clothes with messages that seemed intended to intimidate; and
- Insufficient voting machines and unmanageably long lines.

Although the incidents reported on occurred everywhere, not surprisingly, many came from “battleground” states. There were several such reports out of Florida, Ohio, and Pennsylvania.

### **“Dead Voters and Multiple Voting”**

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials, and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person took criminal advantage of that. In total, the San Francisco Chronicle found five such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

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As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### **Vote Buying**

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations concentrated in three states (Illinois, Kentucky, and West Virginia). There were more official investigations, indictments and convictions/pleas in this area.

### **Deceptive Practices**

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of completed voter registration applications. There were no reports of prosecutions or any other legal proceeding.

### **Non-citizen Voting**

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case, charges were filed against ten individuals. In another case, a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this Nexis search, remained just allegations of noncitizen voting.

### **Felon Voting**

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem was the large number of ineligible felons that remained on the voting list.

### **Election Official Fraud**

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one

instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### **Recommendation**

The consultants recommend that subsequent EAC research should include a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

## **CASE LAW RESEARCH**

After reviewing over 40,000 cases from 2000 to the present, the majority of which came from appeals courts, the consultants found comparatively few applicable to this study. Of those that were applicable, the consultants found that no apparent thematic pattern emerges. However, it appears to them that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

### **Recommendation**

Because so few cases provided a picture of these current problems, consultants suggest that subsequent EAC research include a review of state trial-level decisions.

## **PROJECT WORKING GROUP**

Consultants and EAC worked together to select members for the Voting Fraud-Voter Intimidation Working Group that included election officials and representatives of advocacy groups and the legal community who have an interest and expertise in the subject matter. (See Attachment A for a list of members.) The working group is scheduled to convene at EAC offices on May 18, 2006 to consider the results of the preliminary research and to offer ideas for future EAC activities concerning this subject.

## **FINAL REPORT**

After convening the project working group, the consultants will draft a final report summarizing the results of their research and the working group deliberations. This report will include recommendations for future EAC research related to this subject matter. The draft report will be reviewed by EAC and, after obtaining any clarifications or corrections deemed necessary, will be made available to the EAC Standards Board and EAC Board of Advisors for review and comment. Following this, a final report will be prepared.

**Attachment A**

**Voting Fraud-Voter Intimidation Project Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State  
Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

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

**J.R. Perez**

Guadalupe County Elections Administrator, TX

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law  
Leader of Election Protection Coalition  
*(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)*

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, DC  
National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP  
Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, MO  
National Counsel to the American Center for Voting Rights

**Barry Weinberg**

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

*EAC Invited Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

## **TALLY VOTE MEMORANDUM**

TO: EAC Commissioners Hillman, DeGregorio, Martinez, Davidson  
FROM: Thomas Wilkey, EAC Executive Director  
DATE: September 16, 2005  
RE: Consulting assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project

### **Background**

“On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b)” Sections 241(b) (6) and (7) list the following election administration issues:

(6) Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices.

(7) Identifying, deterring and investigating methods of voter intimidation.

Building on this HAVA reference to studies of voting fraud and voter intimidation, the EAC Board of Advisors has indicated that further study of these issues, to determine how the EAC might respond to them, is a high priority.

The U.S. Election Assistance Commission (EAC) has identified two senior-level project consultants to develop various project activities and studies related to voting fraud and voter intimidation affecting Federal elections. The consultants, whose contracts would run for the period September-February, 2005, would be responsible for helping the EAC identify what constitutes voting fraud and voter intimidation affecting Federal elections.

To accomplish this the consultants will: perform background research, including Federal and state-by state administrative and case law review related to voting fraud and voter intimidation, along with a review of current voting fraud and voter intimidation activities taking place with key government agencies, civic and advocacy organizations; in consultation with EAC, identify and convene, a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation; develop an EAC project scope of work and a project work plan related to voting fraud and voter intimidation and; author a report summarizing the key findings of this preliminary study of voting fraud and voter intimidation.

### **Recommendation**

Attached is the Statement of Work for the voting fraud and voter intimidation project consultants. The consultant contract fees total \$110,000 (\$55,000 per person). An additional \$10,000 is allotted for the voting fraud and intimidation project working group. The total project amount is \$120,000.

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## Existing Research Analysis

There are many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. There is little research that is truly systematic or scientific. The most systematic look at fraud is the report written by Lori Minnite. The most systematic look at voter intimidation is the report by Laughlin McDonald. Books written about this subject seem to all have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists. It is hoped that this gap will be filled in the "second phase" of this EAC project.

Moreover, reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book. Again, this is something that it is hoped will be addressed in the "second phase" of this EAC project by doing follow up research on allegations made in reports, books and newspaper articles.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate, but some reports say it is a major problem, albeit hard to identify.
- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.

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- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

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**Presentation to the  
U. S. Election Assistance Commission  
February 8, 2007**

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Summarizing a report on  
Best Practices to Improve Voter Identification Requirements  
Pursuant to the  
HELP AMERICA VOTE ACT OF 2002  
Public Law 107-252  
Submitted on June 28, 2006  
by  
The Eagleton Institute of Politics, Rutgers, The State University of New Jersey  
The Moritz College of Law, The Ohio State University

Thomas M. O'Neill  
Project Director  
And  
Tim Vercellotti  
Assistant Research Professor  
Assistant Director, Center for Public Interest Polling

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

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Introduction

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Our report, submitted to the EAC last June, provided information on voter identification practices in the 2004 election. It made recommendations for best practices to evaluate future proposals for voter ID requirements. In particular, we recommended a concerted, systematic effort to collect and evaluate information on voter ID requirements and turnout from the states. This report was a companion to our report on Provisional Voting, submitted to the EAC in November 2005.

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The research was conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University under a contract with the EAC, dated May 24, 2005. Unfortunately, our colleagues from Moritz could not be with us today because of teaching obligations.

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Our work included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election.

Voter ID requirements are just one set of election rules that may affect turnout. Social scientists have long studied how election rules affect participation in elections. The general view today is that the individual citizen chooses whether to vote by comparing costs and benefits. The benefits of voting are fairly stable --and hard to specify given the remote probability that any one vote will make a difference in an election. But whatever the benefit may be, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decreases.

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We conducted our research before last year's election, when the debate over voter ID requirements was sharp and polarized. We took seriously our charge from the EAC, which was not to enter the national debate, but rather to explore if an empirical study could suggest how we might estimate the effects of different voter ID requirements on turnout. That analysis, of course, would be a sensible first step to assess tradeoffs between ballot security and ballot access and provide valuable information for all parties to the debate.

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A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the net integrity of the ballot may not have been improved.

A key part of our work was a statistical analysis to examine how turnout may vary under different voter identification requirements. We used this statistical study to develop a model to illuminate the relationships between voter ID requirements and turnout. The model's findings and limitations suggest avenues for further research and analysis that may assist the EAC and the states as they explore policies to balance the goals of ballot integrity and ballot access.

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Tim Vercellotti led that phase of our research and will describe his methods and conclusions.

Results of Statistical Analysis

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Our research included an examination of variation in turnout based on voter ID requirements in the 50 states and the District of Columbia. We examined this question using aggregate data at

the county level gathered from the U.S. Census and other sources, and individual-level data from the November 2004 Current Population Survey.

Drawing from the research conducted by the Moritz College of Law, we were able to classify the states into one of five voter ID categories. Voters either had to:

1. state their name,
2. sign their name,
3. match their signatures to those already on file,
4. provide a non-photo ID,
5. provide a photo ID.

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But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity. The five categories for minimum requirements were:

1. stating one's name,
2. signing one's name,
3. matching one's signature to a signature on file,
4. providing a non-photo identification, or
5. swearing an affidavit.

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Analysis of the aggregate data showed that the average turnout in states requiring photo identification as a maximum requirement was 58.1 percent compared to 64.2 percent in states that required voters to give their name as the maximum requirement. The differences were slightly smaller when we examined states in terms of their minimum requirements, with 60.1 percent of voters turning out in states that required an affidavit compared to 63 percent in states that required voters to give their name as the minimum requirement.

The analyses of aggregate data also included models that controlled for other factors that might influence turnout, such as whether a county was in a presidential battleground state, the length of time between the close of the registration period and Election Day, and the demographic composition of the county in terms of race and ethnicity, age, and household income. Controlling for those factors, the maximum requirements of providing a signature match or a non-photo identification showed a negative effect on voter turnout when compared to counties in states that only required voters to give their names. None of the voter identification requirements showed an effect on turnout, however, in the model that coded counties according to the states' minimum requirements.

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Analyses of the individual-level data from the November 2004 Current Population Survey also indicated relationships between voter ID requirements and turnout. Controlling for contextual factors, such as whether a voter resided in a presidential battleground state, and demographic characteristics, such as a voter's gender, race, ethnicity, age, and education, the data showed that registered voters in states that require photo identification as a maximum requirement were 2.9 percent less likely to say they had voted compared to registered voters in states that required voters to state their names. Examining states within the context of minimum identification requirements showed that registered voters in states requiring affidavits were four

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percent less likely to say they had voted compared to registered voters in states that required individuals to give their names at the polling place.

Breaking down the Current Population Survey sample by race and ethnicity also revealed interesting patterns. Photo identification and affidavit requirements were negatively associated with whether white registered voters said they voted compared to their counterparts in states requiring registered voters to give their names. But African-American, Hispanic, and Asian-American registered voters in states that required photo identification as the maximum requirement or an affidavit as the minimum requirement were no less likely to say they had voted than their racial or ethnic counterparts in states that simply required voters to give their names.

The most consistent difference emerged in states that required non-photo identification as a maximum or a minimum requirement. In five of six statistical models, African-American, Hispanic, and Asian-American registered voters in non-photo identification states were less likely to say they had voted in November 2004 than their racial or ethnic counterparts in states that required voters to state their names as a maximum or minimum identification requirement.

That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements. This observation does not answer the question as to why photo identification requirements did not have a more uniform effect across groups in 2004. Of course, photo identification was a maximum requirement in only five states, and each of those states accepted another type of identification as a minimum requirement. But the finding that photo identification requirements were associated with a lower probability that white registered voters said they had voted, and the absence of a similar relationship within other racial and ethnic groups, runs counter to concerns expressed by some in the debate over voter ID. This finding points up the need for further research in this area, perhaps with a view to comparing turnout rates over time before and after a photo identification requirement takes effect, to further isolate potential relationships between photo ID requirements and turnout.

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In examining the link between voter identification requirements and turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements.

### Conclusions from the Research

The statistical analysis suggests that stricter voter ID requirements can be associated with lower turnout. It was not designed, however, to look at the other side of the balance equation: do tighter ID requirements reduce multiple voting or voting by ineligible voters? The scope of our research as defined by the EAC excluded assessing the dynamics and incidence of vote fraud.

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We believe, however, that sound policy on voter ID should begin with an examination of the tradeoffs between ballot security and ballot access.

The existing evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification, is not sufficient to evaluate those tradeoffs. The EAC's recent study<sup>1</sup> of election crimes found, for example, that there has never been a comprehensive, nationwide study of voting fraud and intimidation.

Without a better understanding of the incidence of vote fraud and its relationship to voter ID, for now, best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility. Election law should provide the clarity and certainty needed to forestall destabilizing challenges to election outcomes. Absent a sound, empirical basis for striking a wise balance between voter ID and ballot access, legal challenges may increase, not just to the process but to electoral outcomes.

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The analysis of litigation conducted by the Moritz College of Law for our research suggests that the courts will look more strictly at requirements that voters produce a photo ID in order to cast a regular ballot, than at non-photo ID laws. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting Social Security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents.

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To strike that balance requires a more precise understanding of how voter ID requirements affect turnout. A first step in that direction would be to encourage or require states to collect and report additional data, including:

- The reasons potential voters are required to cast a provisional ballot and
- The reasons for rejecting provisional ballots.

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Recommendations for consideration and action by the EAC

1. Encourage or sponsor further research to clarify the connection between voter ID requirements and the number of potential voters able to cast a ballot that is counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements. The analysis will help focus the attention of the public and policy-makers on the tradeoff between ballot access and ballot security. A "Voter Impact Statement," to be drafted and offered for public review and comment before the adoption of new identity requirements, would estimate the number and demographics of:
  - Eligible, potential voters who may be kept from the polls or permitted to cast a provisional ballot by a stricter ID requirement; and
  - Assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.

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The data collection and analysis recommended in this report would help make feasible an empirically-based assessment of the effects on voter participation of proposed identification requirements. That assessment could improve the quality of the debate on this polarizing topic.

<sup>1</sup> U. S. Election Assistance Commission, *Election Crimes: An Initial Review and Recommendations for Future Study*, December 2006.

3. Encourage or require the states to collect and report reliable, credible information on the relationship between ballot access and ballot security. A compilation by EAC of this information would provide a factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
4. Encourage or require states to sponsor surveys of voters to be conducted by local election officials. Such surveys would determine why those who cast a provisional ballot were found ineligible to cast a regular ballot and illuminate the frequency with which ID issues divert voters into the provisional ballot line. The connection between Voter ID requirements and provisional ballots is, of course, close. Voters who lack required ID will likely vote provisionally, thus placing greater demands on a system that may be hard pressed to meet those demands. Asking voters what they know about ID requirements would also provide useful context for evaluating the effect of those requirements on electoral participation.<sup>2</sup>
5. Recommend as a best practice that state election officials conduct spot checks on how the identification process actually works at polling places. These spot checks could provide information on how closely actual practice tracks statutory or regulatory requirements.
6. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In 11 states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots, and the safe harbor provision in presidential elections.

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#### A final thought

A voting system that requires voters to produce an ID may prevent the ineligible from voting. It may also prevent some eligible voters from casting a ballot. If the ID requirements block a few ineligible voters from the polls at the cost of preventing an equal or greater number of eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

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Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and what form that requirement should take) will weigh value judgments as well as available factual evidence. We did our work on the premise that increased understanding of the facts relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

<sup>2</sup> Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it.

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We hope that premise is realistic, and we also hope that this research has helped the Commissioners and the interested public to clarify their thinking on this polarizing topic.

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On behalf of the Eagleton – Moritz research team, we thank you for the opportunity to contribute to the national debate.

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**Election Official Misconduct:**

- A person commits Election Official misconduct if while an election official the person:
  - Intentionally fails to perform an election duty, or knowingly does an unauthorized act with the intent to effect the election.
  - Knowingly permits, makes, or attempts to make a false count of election returns.
  - Intentionally conceals, withholds, or destroys election returns or attempts to do so.
  - Opens a ballot received from a voter at an election, unless otherwise permitted.
  - Marks a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time.
  - Otherwise attempts to learn how a voter marked a ballot.
  - Distributes or attempts to distribute election material knowing it to be fraudulent.
  - Knowingly refuses to register a person who is entitled to register under the rules of that jurisdiction.

**Petition Subscription:**

- A person commits a crime of improper subscription to a petition or referendum if:
  - He signs a name other than his own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office.
  - Knowingly signs more than once for the proposition, question, or candidate at one election.
  - Signs a petition proposing an initiative or referendum while knowingly not being a qualified voter.
  - Solicits, accepts, or agrees to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative.

**Campaign misconduct:**

- A person commits a crime of campaign misconduct if he knowingly makes a communication:
  - Containing false factual information relating to a candidate for an election that the person knows to be false and that a person could reasonably construe as damaging to the candidate's reputation for honesty or integrity, or to the candidate's qualifications to serve if elected to office.
  - Knowingly removes, alters, defaces or covers any political sign of any candidate for public office for a prescribed period prior to and following the election.

**Unlawful Interference with Voting:**

- A person commits the crime of unlawful interference with voting when the person:

- Uses, threatens to use, or causes to be used force, coercion, violence, restraint, or inflicts, threatens to inflict, or causes to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting.
- Knowingly pays, offers to pay, or causes to be paid money or other valuable thing to a person to vote or refrain from voting for a candidate at an election or for an election proposition or question.
- Has an official ballot in possession outside the voting room, unless the person is an election official or other person authorized by law or local ordinance.
- Makes, or knowingly has in possession, a counterfeit of an official election ballot.
- Knowingly solicits or encourages a registered voter who is no longer qualified to vote in an election.
- Fraudulently alters or changes the vote of any elector, by which such elector is prevented from voting as he intended.
- Knowingly causes to be mailed or distributed, or knowingly mails or distributes, literature that includes a designation of the voter's precinct polling place other than a precinct polling place listed for that voter in an official precinct polling list that constituted the latest official precinct polling list.
- Knowingly challenges a person's right to vote without probable cause or on fraudulent grounds, or who engages in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or delay the process of voting.
- As an employer, attempts by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his vote in any election, or who requires or demands an examination or inspection by himself or another of an employee's ballot.
- Removes or destroys any of the supplies or other conveniences placed in the voting booths or compartments for the purpose of enabling the voter to prepare his or her ballot.
- Removes, tears down, or defaces the cards printed for the instruction of voters.
- Removes, tears down, marks or otherwise defaces any voter index with the intent to falsify or prevent others from readily ascertaining the name, address, or political affiliation of an voter, or the fact that a voter has or has not voted.

### **Voter Misconduct**

- A voter commits voter misconduct if the person:
  - Votes or attempts to vote in the name of another person or in a name other than person's own.
  - Votes or attempts to vote more than once at the same election with the intent that the person's vote be counted more than once.
  - Intentionally makes a false affidavit, swears falsely, or falsely affirms under an oath required by a statute regarding their voting status.
  - Knowingly solicits a person to vote after the polls are closed with the intent that the vote be counted.

- Registers to vote without being entitled to register.
- Knowingly makes a material false statement while applying for voter registration or reregistration.
- Voters or attempts to vote in an election after being disqualified.

**Unlawful Interference With an Election**

- A person commits the crime of unlawful interference with an election if the person:
  - Induces or attempts to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward.
  - Intentionally changes, attempts to change, or causes to be changed an official election document including ballots, tallies, and returns.
  - Intentionally delays, attempts to delay, or causes to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.
  - Directly or through any other person advances, pays, solicits, or receives or causes to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office.



Tamar Nedzar/EAC/GOV  
11/28/2006 11:32 AM

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

Jeannie,

I have a ton of files for you. I sent to Tova and Job the results of searches I did for them on Lexis. I don't have the emails anymore as my archives were erased when we migrated. However, all of the files I sent them are located at T:\RESEARCH IN PROGRESS\Law Clerk '06 Projects\Tamar\Tova and Job Searches.

If you need help locating the files, please let me know.

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-1707  
<http://www.eac.gov>  
TNedzar@eac.gov  
Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV  
11/28/2006 10:27 AM

To EAC Personnel  
cc  
Subject FOIA Request

Hello everyone,

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

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

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

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

006216

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

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

006215

**BYLAWS COMMITTEE**

**AGENDA**

**Wednesday, October 4, 2006**

- |                   |  |   |
|-------------------|--|---|
| <b>8:30 a.m.</b>  | Review of Committee Members<br>& Introductions               | Tonni Bartholomew and<br>All Members      |
| <b>8:45 a.m.</b>  | Overview of Purpose/History of the<br>Bylaws Committee       | Commissioner Hillman                      |
| <b>9:00 a.m.</b>  | Committee Timeline   | Tonni Bartholomew                         |
| <b>9:10 a.m.</b>  | Setting Protocols for How Committee<br>Will Conduct Its Work | Tonni Bartholomew<br>Commissioner Hillman |
| <b>9:40 a.m.</b>  | Work Groups/Task Distribution                                | Tonni Bartholomew                         |
| <b>10:00 a.m.</b> | Review of Bylaws   | All Members                               |
|                   | <b>12:00 (noon)</b>  | <b>LUNCH</b>                              |
| <b>2:15 p.m.</b>  | Wrap Up  | Tonni Bartholomew                         |
|                   | <b>3:00 p.m.</b>   | <b>ADJOURN</b>                            |

006216

**Bylaws  
of  
The Standards Board  
of  
The U.S. Election Assistance  
Commission**



006217

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## **BYLAWS**

### **UNITED STATES ELECTION ASSISTANCE COMMISSION STANDARDS BOARD**

The U.S. Election Assistance Commission Standards Board, hereinafter referred to as Standards Board, embodies the vision of Congress to forge a partnership among federal, state and local election officials whose goal is to promote public confidence in the conduct of federal elections in the United States.

#### **Article I. Authority**

1. Pursuant to the Federal Advisory Committee Act and the Help America Vote Act of 2002 (HAVA) [Public Law 107-252], as such statutes may be amended from time to time, the Standards Board has been granted its authority through its charter with the United States Election Assistance Commission (EAC) (as first filed with Congress on June 14, 2004, and renewed every two (2) years). The Standards Board, Executive Board and the committees of the Standards Board will comply fully with the provisions of the Federal Advisory Committee Act (FACA); and all other applicable Federal laws

#### **Article II. Objectives**

The Standards Board will:

1. Advise EAC through review of the voluntary voting system guidelines described in Title II Part 3 of HAVA; through review of the voluntary guidance described under Title III of HAVA; and through the review of the best practices recommendations described in Section 241 of Title II of HAVA, as required by HAVA or as may be developed by EAC.
2. Provide guidance and advice to EAC on a variety of topics related to the administration of elections for Federal office.
3. Make recommendations to EAC. Neither the Executive Board nor any subcommittees of the Standards Board may make recommendations to EAC without the consideration and approval of the Standards Board.
4. Function solely as an advisory body.

#### **Article III. Standards Board Membership**

1. Pursuant to Section 213(a) of HAVA, the Standards Board shall consist of 110 members, as follows:
  - a. Fifty-five (55) shall be state election officials selected by the chief State election official of each State.
  - b. Fifty-five (55) shall be local election officials selected as follows:
    - i. Each state's local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select a representative local election official from the state in a process supervised by the chief election official of the state.
    - ii. In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an

individual to serve as a local election official. The individual selected under such a procedure may not be a member of the same political party as the chief election official.

- c. The two (2) Standards Board members who represent the same state may not be members of the same political party.

#### **Article IV. Standards Board Member Vacancies**

1. The chief election official of each state shall notify EAC and the Executive Board of the Standards Board within five (5) business days of any vacancy or membership changes to the Standards Board.
2. Vacancy appointments to the Standards Board shall be made in accordance with Section 213(a) of HAVA, as follows:
  - a. Fifty-five (55) shall be state election officials selected by the chief State election official of each State.
  - b. Fifty-five (55) shall be local election officials selected as follows:
    - i. Each state's local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select a representative local election official from the state in a process supervised by the chief election official of the state.
    - ii. In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official. The individual selected under such a procedure may not be a member of the same political party as the chief election official.
  - c. The two (2) Standards Board members who represent the same state may not be members of the same political party.
3. In December of each year, EAC shall notify the appointing authority of each state or territory as to who represents their state or territory on the Standards Board.

#### **Article V. Executive Board of the Standards Board**

1. Pursuant to Section 213(c) of HAVA, the Standards Board shall select nine (9) of its members to serve as the Executive Board of the Standards Board as follows:
  - a. Membership.
    - i. Not more than five (5) members of the Executive Board may be state election officials.
    - ii. Not more than five (5) members of the Executive Board may be local election officials.
    - iii. Not more than five (5) members of the Executive Board may be of the same political party.
  - b. Nominations.
    - i. Expired Terms.
      - (a) The Nominating Committee shall solicit nominations for the Executive Board from Standards Board members. The Nominating Committee shall send to Standards Board members a solicitation no

later than December 1<sup>st</sup> immediately prior to the expiration of any Executive Board member's term. The solicitations shall designate the address and form for submitting nominations.

- (b) Standards Board members may nominate themselves or other Standards Board members by responding to the solicitation.
  - (c) Nominations shall be submitted to the Standards Board's Designated Federal Officer (DFO) in writing and may be submitted electronically no later than January 15<sup>th</sup> immediately prior to the expiration of any Executive Board member's term. In the event that January 15<sup>th</sup> is a federal holiday, nominations are due no later than January 16<sup>th</sup>.
  - (d) Upon receipt of nominations, the Nominating Committee shall prepare ballot information to be distributed to the Standards Board at least fifteen (15) days prior to the date of the Standards Board meeting immediately following the submission deadline.
- ii. Vacancies Before the End of a Term.
- (a) In the event of a vacancy on the Executive Board prior to the expiration of a member's term on the Executive Board, the Nominating Committee shall send to Standards Board members a solicitation no later than sixty (60) days before the next meeting of the Standards Board. The solicitations shall designate the address and form for submitting nominations.
  - (b) Standards Board members may nominate themselves or other Standards Board members by responding to the solicitation.
  - (c) Nominations shall be submitted to the Standards Board's Designated Federal Officer (DFO) in writing and may be submitted electronically no later than the date indicated on the solicitation.
  - (d) Upon receipt of nominations, the Nominating Committee shall prepare ballot information to be distributed to the Standards Board at least fifteen (15) days prior to the date of the Standards Board meeting immediately following the submission deadline.
- c. Elections.
- i. Elections to the Executive Board shall be by secret ballot and shall take place at a meeting of the Standards Board.
  - ii. The ballot shall be designed to enable Standards Board members to select candidates based on the following: (1) The Candidate's political party affiliation, (2) whether the candidate is a state or local election official, (3) which state or territory the candidate represents, (4) whether the candidate was elected or appointed, and (5) in the case of state election officials, what position the candidate holds. Concise biographical information for each candidate shall be provided to each Standards Board member in advance of the election.
  - iii. For elections following the first election (2005), not including any special elections to fill unexpired terms, two (2) of the three (3) positions shall be for local election officials. For elections following the second election (2007), two (2) of the (3) three positions shall be for state election officials.

- The number of positions for state and local election officials on the Executive Board shall continue to alternate in subsequent elections.
- iv. Within thirty (30) days of an Executive Board election, the Executive Board members shall convene to elect a Chair, Vice-Chair, and Secretary.
  - v. In the event that the Standards Board is unable to meet for elections before the end of an Executive Board member's term, the sitting members of the Executive Board shall remain in their elected capacity until such time as the Standards Board is able to meet again and a new member is elected.
- d. Executive Board Members Terms of Service and Vacancies.
- i. Generally.
    - (a) The Chair of the Executive Board shall notify EAC and the Nominating Committee Chair within five (5) business days of any vacancy on the Executive Board.
    - (b) The Chair, Vice-Chair, and Secretary, shall serve for a term of not more than one (1) year. An Executive Board member shall not serve for two (2) consecutive terms for the same office, except in the case of a member serving the unexpired term of an office, in which case the member may be elected to the same office for the succeeding term.
    - (c) An Executive Board member may be removed from the Executive Board, for cause, by a vote of two-thirds (2/3) of Standards Board members at a Standards Board meeting.
    - (d) In the event of a vacancy on the Executive Board, the remaining members of the Executive Board may appoint an interim member of the Executive Board until the next Standards Board meeting.
  - ii. Initial Term.
    - (a) Pursuant to Section 213(c)(3) of HAVA, of the members first selected to serve on the Executive Board of the Standards Board:
      - (i) Three (3) shall serve for one (1) term.
      - (ii) Three (3) shall serve for two (2) consecutive terms.
      - (iii) Three (3) shall serve for three (3) consecutive terms.
  - iii. Subsequent Terms.
    - (a) Pursuant to Section 213(c)(2) of HAVA, members of the Executive Board shall serve for a term of two (2) years and may not serve for more than three (3) consecutive terms.
    - (b) Members of the Standards Board who have previously served on the Executive Board shall be eligible to be nominated to the Executive Board no sooner than two (2) years from the last term in which they served on the Executive Board.
- e. Meetings.
- i. Any two (2) members of the Executive Board may call an Executive Board meeting by filing the original call of the meeting with and obtaining approval from the DFO, including the stated reason for calling the meeting, and the date and time of the meeting. Such meetings include, but are not limited to meetings by conference call and virtual (electronic media) meetings. These meetings must allow each Executive

Board member to include their comments and hear or view others' comments.

ii. A majority of Executive Board Members shall be present for a quorum.

iii. The Executive Board shall agree to actions by a majority roll call vote of seated members of the Executive Board.

iv.

Proxy voting shall not be allowed in Executive Board votes.

v. Any member of the Standards Board may attend and at the discretion of the Chair, may participate in any and all discussions at an Executive Board meeting, but may not vote.

## Article VI. Executive Board Duties

1. Chair. The Chair shall:
  - a. Preside over all meetings of the Executive Board and Standards Board.
  - b. Appoint the chair of standing committees and any ad hoc committees of the Standards Board.
  - c. Establish the agenda for meetings of the Executive Board and Standards Board in consultation with the DFO.
  - d. Call meetings of the Executive Board and Standards Board in consultation with the DFO.
  - e. Act as the official liaison between the Standards Board and EAC for all resolutions, recommendations, and information requests.
  - f. Serve as an *ex officio* member of all committees.
  - g. Appoint a Parliamentarian to preside over all Standards Board meetings in order to advise and assist the Chair in running all meetings in accordance with Roberts Rules of Order.
2. Vice-Chair. The Vice-Chair shall:
  - a. Preside over meetings of the Executive Board and Standards Board in the Chair's absence.
  - b. Perform other duties as may be appropriate in the Chair's absence.
  - c. Assist the Chair, from time to time, as the Chair may designate.
  - d. In the event of a vacancy before the completion of the Chair's term, serve as the Chair.
3. Secretary. The Secretary shall:
  - a. Review Board minutes before distribution to Standards Board members.
  - b. Ensure, with assistance from the DFO, that meeting minutes are properly on file at EAC.
  - c. Assist the Chair at meetings and, from time to time, as the Chair may designate.
4. Executive Board, Generally. The Executive Board shall:
  - a. Perform all duties required under HAVA and other applicable Federal laws.
  - b. Appoint the membership of appropriate standing committees and ad hoc committees by soliciting interest from the Standards Board membership.
  - c. Meet as necessary to address issues of concern in between Standards Board meetings.
  - d. Convene Standards Board meetings, including, but not limited to, meetings by conference call and virtual (electronic media) meetings. Such meetings must allow each Standards Board member to include their comments and view or hear others' comments. Such meetings shall be held in accordance with all applicable federal laws.

- e. Consult with the DFO to ensure compliance with federal statutes and other applicable regulations.
  - f. Attend Executive Board meetings, including, but not limited to, meetings by conference call and virtual meetings, in accordance with these bylaws.
  - g. As soon as possible and in consultation with the DFO, provide Standards Board Members all proposed guidelines to be adopted pursuant to Section 222(b)(3) of HAVA. Executive Board recommendations to the Standards Board pursuant to Section 222(b)(3) of HAVA shall include an appendix of all dissenting comments from Executive Board members.
  - h. Perform all other duties as from time to time the Standards Board may delegate to the Executive Board.
  - i. Immediately upon notice of an Executive Board meeting, the Executive Board shall notify the Standards Board of the Executive Board meeting.
5. Designated Federal Officer (DFO). The DFO shall:
- a. Serve as the government's agent for all Standards Board activities.
  - b. Approve or call Standards Board meetings.
  - c. Approve agendas proposed by the Executive Committee.
  - d. Attend all Standards Board and Executive Board meetings.
  - e. Adjourn Standards Board and Executive Board meetings when such adjournment is in the public interest.
  - f. Provide adequate staff support to the Standards Board, to assist with:
    - i. Notice. The DFO shall:
      - (a) Notify members of the time and place for each meeting of the Standards Board and the Executive Board.
      - (b) Notify the public of time and place for the meeting of the Standards Board.
      - (c) Notify appointing authorities of any and all vacancies on the Standards Board.
      - (d) Perform other duties as required in these Bylaws.
    - ii. Recordkeeping and Administration. The DFO shall:
      - (a) Maintain records for all meetings, including subgroup or working group activities, as required by law.
      - (b) Maintain the roll.
      - (c) Assure that minutes of all Standards Board meetings are prepared and distributed.
      - (d) Maintain and house at EAC all official Standards Board records, including subgroup and working group activities.
      - (e) File all papers and submissions prepared for or by the Standards Board, including those items generated by subgroups and working groups.
      - (f) Respond to official correspondence.
      - (g) Prepare and handle all reports, including the annual report as required by FACA.
      - (h) Act as the Standard Board's agent to collect, validate, and pay all vouchers for pre-approved expenditures.

## Article VII. Meetings

1. Consistent with the requirements of HAVA 215(a)(2), the Standards Board shall meet on an annual basis or otherwise as requested by EAC to address its responsibilities under HAVA and attend to other issues presented by EAC. Such meetings include, but are not limited to, meetings by conference call and virtual (electronic media) meetings. These meetings must allow each Standards Board member to include their comments and view or hear others' comments. Such meetings shall be held in accordance with all applicable Federal laws.
2. Meetings shall be called by the DFO in consultation with the Executive Board.
3. The DFO shall approve the agenda for all meetings. EAC shall distribute the agenda to Standards Board members prior to each meeting and shall publish notice of the meeting in the Federal Register as required by FACA.
4. Standards Board members and members of the public may submit agenda items to the DFO or Executive Board Chair.
5. Meetings.
  - a. Open Meetings.
    - i. Unless otherwise determined in advance, all Standards Board meetings shall be open to the public.
    - ii. Members of the public may attend any meeting or portion of a meeting that is not closed to the public and may, at the determination of the Chair, offer oral comment at such meeting. The Chair may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register will note that oral comment from the public is excluded. In such a case, the Standards Board will accept written comments as an alternative. In addition, members of the public may submit written statements to EAC at any time.
    - iii. All materials brought before, or presented to, the Board during the conduct of an open meeting, including, but not limited to, the minutes of the proceedings of the previous open meeting, will be available to the public for review or copying at the time of the scheduled meeting.
    - iv. Minutes of open meetings shall be available to the public upon request.
    - v. Once an open meeting has begun, it will not be closed to the public unless prior approval of the closure has been obtained and proper notice of the closed meeting has been given to the public.
    - vi. If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Chair will order such discussion to cease and will schedule it for a closed meeting.
  - b. Closed Sessions.
    - i. Notices regarding portions of meetings to be closed (to be referred to as sessions hereinafter) will be published in the Federal Register at least fifteen (15) calendar days in advance.
    - ii. Standards Board sessions will be closed to the public only in limited circumstances and in accordance with applicable law. The Standards Board must obtain prior approval to conduct a closed session. Requests

for closed sessions must be submitted by the DFO to EAC's Office of General Counsel a minimum of forty-five (45) days in advance of the proposed closed session.

- iii. Where the DFO, in conjunction with the Office of General Counsel, has determined in advance that discussions during a Standards Board meeting will involve matters about which public disclosure would be harmful to the interests of the government, industry, or others, an advance notice of a closed session, citing the applicable exemptions of the Government in the Sunshine Act (GISA), shall be published in the Federal Register. The notice may announce the closing of all or just part of a meeting.
- iv. Minutes of closed sessions are not available to the public, and as a result, not subject to the Freedom of Information Act (FOIA).

6. Minutes.

- a. The DFO, or his or her designee, shall assure that detailed minutes of each meeting are prepared and distributed to Standards Board members.
- b. Meeting minutes shall include the following: (1) Time, (2) date, (3) location, (4) record of persons present, including the names of Standards Board members, EAC Commissioners and staff, and the names of members of the public making written or oral presentations, (5) a complete and accurate description of the matters discussed and conclusions reached, and (6) copies of all reports received, issued, or approved by the Standards Board.
- c. Meeting minutes are considered part of the official government record.
- d. All documents, reports, or other materials prepared by or for the Standards Board constitute official government records and shall be housed at EAC and maintained according to the Federal Records Act.

**Article VIII. Quorum and Proxy Voting**

1. Quorum.

- a. A quorum shall be established when 56 Standards Board members are present for a meeting as determined by a roll call or quorum call of the Standards Board members.

2. Proxy Votes.

- a. Proxy designations may be submitted in writing to the Chair up to the day of the Standards Board meeting by the designated meeting start time established via the meeting agenda.
- b. Proxy votes may only be cast by Standards Board members, provided proxy designations have been timely filed in advance with the Chair clearly identifying the Standards Board member selected to cast an absent member's proxy vote.
- c. The Chair shall appoint a proxy committee to verify the eligibility of a member(s) designating a proxy vote and of the member(s) designated to cast a proxy vote(s) on behalf of absent Standard's Board members.

3. Voting Generally.

- a. The Standards Board shall agree to actions by majority vote of those present

- and voting unless otherwise specified by these bylaws.
- b. Votes by the Standard Board on recommendations to EAC shall have the ayes, nays, and abstentions recorded.
  - c. Votes taken during meetings conducted by conference call and through virtual (electronic media) means shall have a quorum established prior to voting.

## **Article IX. Committees**

In appointing members to committees, the Standards Board shall pay particular attention to ensuring diverse membership. Accordingly, the Executive Board shall do due diligence to ensure that committee members (1) affiliate with diverse parties, (2) are representative of both state and local election officials, (3) represent different states and territories, and (4) are representative of both elected and appointed officials.

1. Meetings.
  - a. All committees may meet informally at any time for the purpose of conducting their business, including telephonically or through electronic media.
2. Standing Committees.
  - a. Nominating Committee. The Nominating Committee shall:
    - i. Be comprised of five (5) members.
    - ii. Solicit nominations for the Executive Board from Standards Board members.
    - iii. Prepare and distribute to Standards Board members ballots that include all the information listed in Article V, section 1, subsection c, paragraph ii of these Bylaws.
  - b. Bylaws Committee. The Bylaws Committee shall:
    - i. Be comprised of seven (7) members.
    - ii. Submit a report with all recommended bylaws amendments to the Executive Board for a seven (7) day comment period before submitting recommendations to the Standards Board for resolution and adoption.
3. Ad-Hoc Committees.
  - a. A Standards Board member wishing to establish an ad-hoc committee must present to the Standards Board the reason(s) he/she is requesting the committee.
  - b. The Standards Board may, at any time, by majority vote, establish an ad-hoc committee.
  - c. Once an ad-hoc committee has been established, the Executive Board shall appoint members to the ad-hoc committee.

## **Article X. Amendments**

1. The Standards Board's Bylaws Committee shall promulgate a form for proposing an amendment to the Standards Board's Bylaws.
  - a. The form shall require the specific language of the proposed amendment to be included, identify the author of the amendment, and be designed to elicit the rationale and impact of the proposed amendment.
2. All proposed bylaw changes must be submitted in writing to the DFO:
  - a. No later than December 1st; or

- b. Within the seventy (70) day timeframe established by the Executive Board at the time of the call of the Standards Board Meeting; with immediate notification to all Standards Board members to be issued by the DFO.
3. After receiving proposed bylaw changes, the DFO shall forward the proposed changes to the Standards Board Bylaws Committee and EAC's General Counsel.
  - a. The General Counsel shall report in an expeditious manner to the Bylaws Committee and the Executive Board whether or not a proposed change to the Bylaws is consistent with federal law and/or rules.
  - b. The Bylaws Committee shall transmit a report containing the proposed bylaw changes to the Executive Board.
  - c. The Standards Board's Executive Board shall place the report on the proposed change to the Standards Board's Bylaws on the agenda for the next meeting of the Standards Board.
4. The Executive Board shall forward all proposed changes to Standards Board members at least thirty (30) days prior to the next meeting of the Standards Board via email and U.S. Mail to the applicable address of record on file with EAC. The Executive Board shall request that EAC post the proposed change to the bylaws and all supporting material on EAC's website at least thirty (30) days prior to the next meeting of the Standards Board.
5. The bylaws may be amended by a two-thirds (2/3) vote of the members present and voting at any Standards Board meeting.

#### **Article XI. Expenses and Reimbursement**

1. Expenses related to Standards Board operations will be borne by EAC.
2. Expenditures of any kind must be approved in advance by the DFO.
3. Standards Board members shall not receive any compensation for their services, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of federal agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in performance of their services for the Standards Board.

#### **Article XII. Parliamentary Authority**

1. The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Standards Board in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order the Standards Board may adopt.
2. Voting procedures for the Standards Board, the Executive Board, and the subcommittees shall follow the accepted procedure according to Robert's Rules of Order.

**Article XIII. Effective Date**

1. These By-Laws are effective upon adoption by the Standards Board.

**Article XIV. Transition Procedures and Ratification**

1. The adoption of the bylaws has no effect on the selection, terms or appointment of the officers or members of the Standards Board, the Executive Board, or a committee of the Board serving on the effective date of these bylaws.
2. All acts of the Standards Board, the Executive Board, or a committee of the Board are hereby ratified, except to the extent that an act does not conform with a resolution adopted by the Standards Board before the effective date of these bylaws.

*Joni G. Bartholomew*

Chair

March 2, 2007

Date

*Juanita M. Helman*

DFO

March 2, 2007

Date

These bylaws were adopted February 23, 2007, and supersede all previous versions.



U.S. ELECTION ASSISTANCE COMMISSION  
BOARD of ADVISORS

RESOLUTION 2007-[#]

**Whereas**, the Election Assistance Commission is an agency of the United States federal government created by the Help America Vote Act; and

**Whereas**, the working group met in May 2006 and heard an initial verbal presentation of information to be included in a report on Voter Fraud and Voter Intimidation and made specific recommendations for the content of the report;

**Whereas**, the Voter Fraud and Intimidation Report was submitted to the EAC on or about July 2006, but was not released to the public.

**Whereas**, on or about October 2006, Barbara Arnwine wrote a letter of complaint regarding the failure to timely release this Report noting that these issues are of utmost importance to the fair administration of elections; and

**Whereas**, the EAC released in December 2006, a severely edited version of the Voter Fraud and Intimidation Report to the public; and

**Whereas**, these issues of Voter Fraud and Intimidation have become the justification for many states' passage of voter identification and citizenship laws.

**Now Therefore, Be It Resolved** that the Board of Advisors recommends to the United States Election Assistance Commission that it release the original Voter Fraud and Intimidation Report to the public; and,

**In the Alternative, Be It Resolved** that the Board of Advisors recommends to the United States Election Assistance Commission that the EAC release the Voter Fraud and Intimidation Report to the EAC Board of Advisors for its review.

**A True Record Attest:**

\_\_\_\_\_  
**Christopher M. Thomas**  
Chair of the Board of Advisors

Submitted by Barbara Arnwine

Approved as to Form by Resolution committee \_\_\_\_\_

Passed on \_\_\_\_\_ by a vote of \_\_\_\_\_ with \_\_\_\_\_ members not voting.

002900



**U.S. ELECTION ASSISTANCE COMMISSION  
BOARD of ADVISORS**

**RESOLUTION 2006-01**

Whereas, The Election Assistance Commission has commissioned a study of provisional voting;

And Whereas, The Election Assistance Commission Board of Advisors heard a presentation on the draft report on provisional voting;

And Whereas, the draft report failed to account for differences in how states utilize or do not utilize provisional ballots for NVRA fail-safe voting;

And Whereas, the draft report contains an unsubstantiated estimate of the number of voters who failed to receive provisional ballots yet the report contains a conclusion based on that unsubstantiated estimate;

Be It Resolved, that the Board of Advisors recommends that the Election Assistance Commission not accept the study of provisional voting for the time being; in such event that the Commission decides to go forward with this particular study,

Then, Be It Resolved, that the Board of Advisors recommends that the Election Assistance Commission not publish this report until the report is revised to account for differences in how states implement fail-safe voting and the removal of unsubstantiated estimates from the report;

And, Be It Further Resolved, that the Election Assistance Commission Board of Advisors appoints a subcommittee to review a revised draft report on provisional voting prior to publication by the Election Assistance Commission.

006231



**U.S. ELECTION ASSISTANCE COMMISSION  
BOARD of ADVISORS**

**RESOLUTION 2006-02**

Whereas, The Election Assistance Commission's important role in election research needs to be with research that fairly and equitably and bipartisanship published studies on various election issues;

And Whereas, any study conducted by the Election Assistance Commission needs to provide an opportunity for, and a method of, review of controlled studies so that alternative viewpoints are included and published as a part of the contracted study in order to assure that official studies of the Election Assistance Commission do have balance when published;

And Whereas, this is not intended to direct the Election Assistance Commission to publish studies on which the Commission cannot reach consensus;

Therefore, Be It Resolved, that the Board of Advisors recommends to the Election Assistance Commission that it require all studies to be reviewed by the Advisory Board and the Standards Board and on any study where there is substantial concern, that the studies be withheld until such time as representatives of those bodies can develop and deliver alternative viewpoints included with the studies.

006232



**U.S. ELECTION ASSISTANCE COMMISSION  
STANDARDS BOARD**

**RESOLUTION 2006-01**

WHEREAS, the U.S. Election Assistance Commission is conducting studies and research on a wide variety of subjects related to elections.

RESOLVED that the Standards Board recommends—

- The EAC carefully review each study and recommendation of researchers to ensure that findings are based on facts that are clearly defended by quantitative data, rather than suspicions or assumptions;
- The EAC require researchers to study and report on the practicality and expense of implementing each recommendation;
- Election Day survey questions be considered and completed and noticed to states no later than two years before the election in which the data is to be collected.



**U.S. ELECTION ASSISTANCE COMMISSION  
STANDARDS BOARD**

**RESOLUTION 2006-03**

WHEREAS, the Help America Vote Act requires the EAC to report on finite and specific topics that are clearly listed in the law;

WHEREAS, Taxpayer dollars are being used to prepare these reports at a great deal of expense in terms of funding and time,

WHEREAS, the EAC itself is not performing the Research, but instead contracting out such research to various individuals, policy institutes, think tanks, and/or activist groups,

RESOLVED that the Standards Board recommends:

- That the EAC adhere strictly to the plain language meaning of the Help America Vote Act, where it clearly lists the specific topics that are to be reported on and the parameters thereof, without assuming tangential issues or taking action that would lead to an increased project scope;
- That the EAC recognize that the wide disparity of state election laws may make quantitative analysis difficult depending on the subject being discussed. As a result, there is value in recognizing this fact alone and where this is the case, federal and taxpayer funds should not be used in making assumptions that cannot be carried in a nationwide forum;

- That the EAC has a role in promulgating limited guidance in those areas specifically enumerated in Title III of HAVA, and otherwise the EAC is simply acting as a nationwide clearinghouse of state election practices. These EAC roles should be clearly enunciated on all EAC final and interim reports (through, for example; preambulatory language or “Draft” watermarks on each page) and should be clearly emphasized to the media and public in any statements or communication made by the EAC or its Commissioners.



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

Margaret Sims/EAC/GOV

05/11/2006 03:46 PM

To "Job Serebrov"

cc

Subject Re: Literature Summary

Do you have text to replace the corrupted text in paragraph 4? --- Peggy

"Job Serebrov"



"Job Serebrov"

05/11/2006 03:17 PM

To psims@eac.gov

cc

Subject Re: Literature Summary



Fed Crime Election Fraud.doc

--- psims@eac.gov wrote:

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

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

Devon E. Romig/EAC/GOV

05/02/2006 09:45 AM

To wang@tcf.org

cc Margaret Sims/EAC/GOV@EAC

Subject Voting Fraud/Voter Intimidation Project Working Group

Dear Tova,

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

I would appreciate any help that you could provide in this matter.

006237

Sincerely,

Devon Romig  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite #1100  
Washington, D.C. 20005  
(202)566-2377

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

Margaret Sims/EAC/GOV

05/09/2006 11:13 AM

To "Job Serebrov"

<serebrov@sbcglobal.net>@GSAEXTERNAL

cc wang@tcf.org

Subject Re: Working Group-Perez 

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

Any experienced Texas election official will be familiar with voting fraud and voter intimidation schemes used in that State. Mr. Perez has over 13 years experience as a county Election Administrator in Texas. You won't find many news articles mentioning him because he has kept his nose clean. (The Texas press, as in many other parts of the country, prefers to report bad news.) Mr. Perez is plugged into the association of Texas election officials and the two largest organizations of election officials in this country: the International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT); and The Election Center. He is a past President and past Chairman of the Legislative Committee for the Texas Association of Election Administrators. He currently serves on IACREOT's Election Officials Committee, which plans the educational sessions for election officials that are conducted at that organization's conferences. His peers in IACREOT and The Election Center have selected his submissions on web presentations (IACREOT) and his professional practices papers (Election Center) for awards. Mr. Perez also has access to information from other States through his membership in IACREOT and The Election Center. He also has a sense of humor, which you will note if you access the staff web page on the Guadalupe County Elections web site and hear the Mission Impossible theme .. something that might be useful in the upcoming meeting.

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

--- Peggy



tx elec admin-appt-partisan restrictions.doc

006238

"Job Serebrov" <serebrov@sbcglobal.net>



"Job Serebrov"  
<serebrov@sbcglobal.net>  
05/08/2006 11:30 PM

To psims@eac.gov  
cc  
Subject Re: Working Group

Peggy:

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

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

Job

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



Devon E. Romig/EAC/GOV  
04/24/2006 04:41 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Updated scheduling list and Contact info

Peggy,

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



Work Group Contact-Availability Info.xls

Thanks,

Devon Romig  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite #1100  
Washington, D.C. 20005  
(202)566-2377

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



"Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov>  
>  
05/16/2006 01:41 PM

To psims@eac.gov  
cc  
Subject RE: Your Materials

006239



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

---

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

Craig:

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

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

05/16/2006 12:06 PM

Topsims@eac.gov  
cc  
SubjectRE: Your Materials

Thank you, Peg. This stuff is very interesting.

---

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

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

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

006240

05/16/2006 10:46 AM

Topsims@eac.gov  
cc  
Subject: Your Materials

Peg - -

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

I have only one correction:

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

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

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



"Job Serebrov"  
<serebrov@sbcglobal.net>  
05/15/2006 09:54 AM

To psims@eac.gov  
cc  
Subject Re: research summary

Peggy:

006241

What about my question on gas receipts?

Job

--- psims@eac.gov wrote:

> I can email this out to our participants after I get  
> back to the office, and we can have copies available  
> at the meeting.

> Peggy

>

> -----

> Sent from my BlackBerry Wireless Handheld

>

>

> ----- Original Message -----

> From: wang

> Sent: 05/13/2006 10:54 AM

> To: psims@eac.gov

> Cc: "Job Serebrov" [REDACTED]

> Subject: Fw: research summary

>

> Job found it. I'm assuming its too late to include

> so as I said I'll just

> present it if thats OK. Thanks again Job. T

> ----- Original Message -----

> From: "Job Serebrov" [REDACTED]

> To: [REDACTED]

> Sent: Saturday, May 13, 2006 10:12 AM

> Subject: Re: research summary

>

>

> > T~

> >

> > Are you talking about this?

> >

> > J~

> >

> > --- [REDACTED]

> >

> >> In the middle of the night I got the feeling that

> >> you may be right, that I did do a summary of the

> >> existing literature review (that Job, you

> >> approved)

> >> . I'll have to look for it on Monday (unless I go

> >> into the office over the weekend, which is

> >> possible). I may be hallucinating, but if not,

> >> I'll

> >> just present it at the meeting rather than try to

> >> get it to them ahead of time. Tova

>

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



"Tova Wang"  
<wang@tcf.org>

05/22/2006 06:07 PM

To psims@eac.gov

cc

006242



Subject RE: PowerPoint Presentation to EAC Boards

I don't know if its too late, but in the interview summary we actually said There is widespread but not unanimous agreement that there is little polling place fraud. Thats quite different than saying, as you do here, that there is disagreement.

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

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

**Sent:** Monday, May 22, 2006 3:56 PM

**To:** [REDACTED]

**Subject:** PowerPoint Presentation to EAC Boards

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

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



Devon E. Romig/EAC/GOV

05/25/2006 02:37 PM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Summary for VFVI working group meeting

Peggy,

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

Thanks!

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



VFVI Meeting Summary.doc

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

Margaret Sims/EAC/GOV

05/16/2006 02:47 PM

To "Donsanto, Craig"

<Craig.Donsanto@usdoj.gov>@GSAEXTERNAL

cc

006243

Subject RE: Your Materials

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

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

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



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

05/16/2006 01:41 PM

To psims@eac.gov

cc

Subject RE: Your Materials

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

---

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

**Sent:** Tuesday, May 16, 2006 12:34 PM

**To:** Donsanto, Craig

**Subject:** RE: Your Materials

Craig:

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

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

05/16/2006 12:06 PM

Topsims@eac.gov

cc

Subject RE: Your Materials

006244

Thank you, Peg. This stuff is very interesting.

---

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

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

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

05/16/2006 10:46 AM

Topsims@eac.gov  
cc  
SubjectYour Materials

Peg - -

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

I have only one correction:

I did not say that offenders who receive target letters routinely request - - or routinely receive - - audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an

006245

election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

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

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



[REDACTED]  
05/12/2006 09:48 PM

To psims@eac.gov  
cc  
Subject Re: Fraud Definition

How about specifying Section 2 and 203 of the VRA?

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

**From:** psims@eac.gov

**To:** [REDACTED]

**Sent:** Friday, May 12, 2006 1:34 PM

**Subject:** RE: Fraud Definition

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

[REDACTED]  
05/12/2006 12:45 PM

To psims@eac.gov, [REDACTED]  
cc  
Subject RE: Fraud Definition

Upon first reading, my only comment would be that I would like to restore "failing to follow the

006246

requirements of the Voting Rights Act"

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

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

**Sent:** Friday, May 12, 2006 9:20 AM

**To:** [REDACTED]

**Subject:** Fraud Definition

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

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

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



"Donsanto, Craig"

<Craig.Donsanto@usdoj.gov

To psims@eac.gov

>

cc

05/16/2006 02:55 PM

Subject RE: Your Materials

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

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

---

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

**Sent:** Tuesday, May 16, 2006 2:47 PM

**To:** Donsanto, Craig

**Subject:** RE: Your Materials

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

006247

went out.

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

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

05/16/2006 01:41 PM

Topsims@eac.gov  
cc  
SubjectRE: Your Materials

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

---

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**Sent:** Tuesday, May 16, 2006 12:34 PM  
**To:** Donsanto, Craig  
**Subject:** RE: Your Materials

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

05/16/2006 12:06 PM

Topsims@eac.gov  
cc  
SubjectRE: Your Materials

006248

Thank you, Peg. This stuff is very interesting.

---

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

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

05/16/2006 10:46 AM

Topsims@eac.gov  
cc  
SubjectYour Materials

006249

Peg - -

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I have only one correction:

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

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

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

Margaret Sims/EAC/GOV

05/16/2006 02:37 PM

To Elieen L. Collver/EAC/GOV

cc dromig@eac.gov

Subject Re: Tent Cards 

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



Working Group Attendees 5-18-06.doc

Elieen L. Collver/EAC/GOV



Elieen L. Collver/EAC/GOV

05/16/2006 01:38 PM

To Margaret Sims/EAC/GOV@EAC

cc dromig@eac.gov

Subject Re: Tent Cards 

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

Elle L.K Collver

006250

U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, D.C. 20005  
office: (202) 566-2256  
blackberry: (202) 294-9251  
www.eac.gov  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV  
05/16/2006 01:36 PM

To Elieen L. Collver/EAC/GOV@EAC  
cc dromig@eac.gov  
Subject Tent Cards

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

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



"Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov  
>  
05/23/2006 02:49 PM

To psims@eac.gov, "Voris, Natalie (USAEO)"  
<Natalie.Voris@usdoj.gov>, "Hillman, Noel"  
<Noel.Hillman@usdoj.gov>, "Simmons, Nancy"  
<Nancy.Simmons@usdoj.gov>  
cc

Subject Request to interview AUSAs

Peg --

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

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

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

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

Ms. Voris' message follows:

Per the USAM, all requests for interviews/surveys/research projects that involve USAOs must be approved by EOUSA. I am pasting the provision

006251

below - the contact name needs to be updated. Requests should come to me, as the Acting Counsel to the Director.

Thanks,  
Natalie

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

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

Margaret Sims/EAC/GOV

05/24/2006 03:17 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL

cc Jeannie Layson/EAC/GOV@EAC, bwhitener@eac.gov

Subject Re: press interview 

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

"Tova Wang" <wang@tcf.org>



"Tova Wang"  
<wang@tcf.org>

05/24/2006 02:52 PM

To psims@eac.gov

cc

Subject press interview

Hi Peg,

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

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

Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest news, analysis, opinions, and events.

[Click here](#) to receive our weekly e-mail updates.

---

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



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

>

To psims@eac.gov

cc "Hillman, Noel" <Noel.Hillman@usdoj.gov>, "Simmons,

006252



05/16/2006 09:43 AM

Nancy" <Nancy.Simmons@usdoj.gov>, "Campbell, Benton"  
<Benton.Campbell@usdoj.gov>  
Subject RE: Voting Fraud-Voter Intimidation Working Group

Thank you for this, Peg.

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

---

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

Here is the content of the email attachment:

### **Existing Research Analysis**

There are many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. There is little research that is truly systematic or scientific. The most systematic look at fraud is the report written by Lori Minnite. The most systematic look at voter intimidation is the report by Laughlin McDonald. Books written about this subject seem to all have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists. It is hoped that this gap will be filled in the "second phase" of this EAC project.

Moreover, reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book. Again, this is something that it is hoped will be addressed in the "second phase" of this EAC project by doing follow up research on allegations made in reports, books and newspaper articles.

Other items of note:

006253

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate, but some reports say it is a major problem, albeit hard to identify.
- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

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

05/15/2006 04:53 PM

Topsims@eac.gov

cc

SubjectRe: Voting Fraud-Voter Intimidation Working Group

Peggy --

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

Can you paste it to an e-mail perhaps?

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

006254





"Job Serebrov"  
 <serebrov@sbcglobal.net>  
 05/16/2006 09:25 AM

To psims@eac.gov, wang@tcf.org  
 cc  
 Subject Re: Date Ranges for Research

Cases were from 2000 to the present.

--- psims@eac.gov wrote:

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

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



"Job Serebrov"  
 <serebrov@sbcglobal.net>  
 05/15/2006 09:56 AM

To psims@eac.gov  
 cc  
 Subject Re: Question

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

--- psims@eac.gov wrote:

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

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

> ----- Original Message -----

- > From: "[REDACTED]"
- > Sent: 05/12/2006 09:05 PM
- > To: psims@eac.gov
- > Subject: Question

006256

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

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

Margaret Sims/EAC/GOV

05/24/2006 04:57 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL

cc

Subject RE: presentation 

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





"Tova Wang"

  
05/24/2006 04:50 PM

To psims@eac.gov

cc

Subject RE: presentation

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

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

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

**Sent:** Wednesday, May 24, 2006 3:43 PM

**To:** wang@tcf.org

**Subject:** RE: presentation

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

Given today's roast, I will take another look at what we have now to highlight remarks that might

006257

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

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

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

[REDACTED]  
05/24/2006 03:27 PM

To psims@eac.gov  
cc  
Subject RE: presentation

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

Thanks Peg. Tova

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

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

**Sent:** Wednesday, May 24, 2006 2:16 PM

**To:** [REDACTED]

**Subject:** Re: presentation

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

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

006258

in vote buying schemes to photograph the ballot being cast at the poll) and how the agency will research voter intimidation/suppression involving voters with disabilities (advocates want to pass on complaints received).

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

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

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

  
05/24/2006 09:14 AM

To psims@eac.gov  
cc  
Subject presentation

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

Tova Andrea Wang  
Democracy Fellow  
The Century Foundation

006259

41 East 70th Street - New York, NY 10021  
phone: 212-452-7704 fax: 212-535-7534

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[Click here](#) to receive our weekly e-mail updates.

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



Elieen L. Collver/EAC/GOV

05/15/2006 12:19 PM

To Margaret Sims/EAC/GOV@EAC

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

Subject working group

Peggy,

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

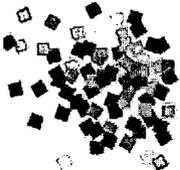
Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

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

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



Devon E. Romig/EAC/GOV

05/15/2006 02:25 PM

To Elieen L. Collver/EAC/GOV@EAC

cc Laiza N. Otero/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC

Subject Re: working group

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

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

006260



Meeting Participants for VFVI Working Group.doc

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



Elieen L. Collver/EAC/GOV  
05/15/2006 12:19 PM

To Margaret Sims/EAC/GOV@EAC  
cc Laiza N. Otero/EAC/GOV@EAC, dromig@eac.gov@EAC  
Subject working group

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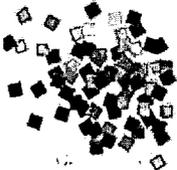
Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

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



Devon E. Romig/EAC/GOV  
05/15/2006 03:28 PM

To Elieen L. Collver/EAC/GOV@EAC  
cc Margaret Sims/EAC/GOV@EAC  
Subject Re: working group

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

Devon Romig

006261

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



Elieen L. Collver/EAC/GOV  
05/15/2006 03:19 PM

To Margaret Sims/EAC/GOV@EAC  
cc dromig@eac.gov  
Subject Re: working group 

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

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

Elle

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

Margaret Sims/EAC/GOV

05/15/2006 02:48 PM

To Elieen L. Collver/EAC/GOV@EAC  
cc dromig@eac.gov  
Subject Re: working group [Link](#)

Elle:

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

006262

to do in preparation. --- Peggy

Eileen L. Colver/EAC/GOV

05/15/2006 12:19 PM

To Margaret Sims/EAC/GOV@EAC  
cc Laiza N. Otero/EAC/GOV@EAC, dromig@eac.gov@EAC  
Subject working group

Peggy,

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

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

Thanks!

Elle

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www.eac.gov

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



"Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov  
>  
05/17/2006 10:59 AM

To psims@eac.gov  
cc  
Subject RE: Report on Voting Fraud-Voter Intimidation Research

Peg --

006263

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

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

---

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

Craig:

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

Several people indicate - including representatives from DOJ -- that for various reasons, the Department of Justice is bringing fewer voter intimidation and suppression cases now, and has increased its focus on matters such as noncitizen voting, double voting, and felon voting. While the Voting Section of the Civil Rights Division focuses on systemic patterns of malfeasance, the Election Crimes Branch of the Public Integrity Section has increased prosecutions of individual instances of felon, alien, and double voting while also maintaining an aggressive pursuit of systematic schemes to corrupt the electoral process.

Please suggest any changes that you think would further clarify the current approach. --- Peggy  
--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---



Eileen L. Collver/EAC/GOV

05/15/2006 03:35 PM

To Devon E. Romig/EAC/GOV@EAC, gvogel@eac.gov@EAC

cc Margaret Sims/EAC/GOV@EAC

Subject Re: working group

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

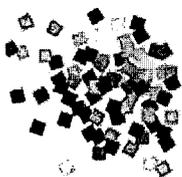
GAYLIN-Adam said that you had looked into the way of getting reimbursed for paying for the break

006264

foods/coffees that are provided at these meetings? Any ideas?

Thanks,  
Elle

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



Devon E. Romig/EAC/GOV  
05/15/2006 03:28 PM

To Elieen L. Collver/EAC/GOV@EAC  
cc Margaret Sims/EAC/GOV@EAC  
Subject Re: working group 

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Elieen L. Collver/EAC/GOV



Elieen L. Collver/EAC/GOV  
05/15/2006 03:19 PM

To Margaret Sims/EAC/GOV@EAC  
cc dromig@eac.gov  
Subject Re: working group 

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

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

Elle

006265

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

Margaret Sims/EAC/GOV

05/15/2006 02:48 PM

To Eileen L. Collver/EAC/GOV@EAC  
cc dromig@eac.gov  
Subject Re: working group Link

Elle:

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

Eileen L. Collver/EAC/GOV

05/15/2006 12:19 PM

To Margaret Sims/EAC/GOV@EAC  
cc Laiza N. Otero/EAC/GOV@EAC, dromig@eac.gov@EAC  
Subject working group

Peggy,

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

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

006266

Thanks!

Elle

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

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

Margaret Sims/EAC/GOV

05/22/2006 05:01 PM

To Cortes, Romig, Collver, Tamar Nedzar/EAC/GOV, Laiza N. Otero

cc

Subject Voting Fraud-Voter Intimidation Working Group Meeting

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

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

Margaret Sims/EAC/GOV

05/15/2006 04:37 PM

To Voting Fraud-Voter Intimidation Working Group

cc

  
Craig.Donsanto@usdoj.gov

Subject Voting Fraud-Voter Intimidation Working Group

Dear Working Group Members and Participants:

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

Regards,

Peggy Sims  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave, NW - Ste 1100

006267

Washington, DC 20005  
Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)  
Fax: 202-566-3127  
email: psims@eac.gov



DOCvf\_vilitanalysis.pdf

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

Gaylin Vogel/EAC/GOV

05/15/2006 03:39 PM

To Elieen L. Collver/EAC/GOV@EAC

cc Devon E. Romig/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC

Subject Re: working group

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

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



Elieen L. Collver/EAC/GOV

05/15/2006 03:35 PM

To Devon E. Romig/EAC/GOV@EAC, gvogel@eac.gov@EAC

cc Margaret Sims/EAC/GOV@EAC

Subject Re: working group

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

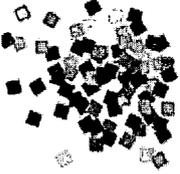
GAYLIN-Adam said that you had looked into the way of getting reimbursed for paying for the break foods/coffees that are provided at these meetings? Any ideas?

Thanks,  
Elle

Elle L.K Collver  
U.S. Election Assistance Commission

006268

1225 New York Avenue, Suite 1100  
Washington, D.C. 20005  
office: (202) 566-2256  
blackberry: (202) 294-9251  
www.eac.gov  
Devon E. Romig/EAC/GOV



Devon E. Romig/EAC/GOV  
05/15/2006 03:28 PM

To Elieen L. Collver/EAC/GOV@EAC  
cc Margaret Sims/EAC/GOV@EAC  
Subject Re: working group 

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

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



Elieen L. Collver/EAC/GOV  
05/15/2006 03:19 PM

To Margaret Sims/EAC/GOV@EAC  
cc dromig@eac.gov  
Subject Re: working group 

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

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

Elle

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

006269

Margaret Sims/EAC/GOV

05/15/2006 02:48 PM

To Eileen L. Collver/EAC/GOV@EAC  
cc dromig@eac.gov  
Subject Re: working group Link

Elle:

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

Eileen L. Collver/EAC/GOV

05/15/2006 12:19 PM

To Margaret Sims/EAC/GOV@EAC  
cc Laiza N. Otero/EAC/GOV@EAC, dromig@eac.gov@EAC  
Subject working group

Peggy,

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

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

Thanks!

Elle

Elle L.K Collver  
U.S. Election Assistance Commission

006270

1225 New York Avenue, Suite 1100  
Washington, D.C. 20005  
office: (202) 566-2256  
blackberry: (202) 294-9251  
www.eac.gov

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

Margaret Sims/EAC/GOV

05/15/2006 03:52 PM

To Gaylin Vogel/EAC/GOV

cc Devon E. Romig/EAC/GOV@EAC, Elieen L.  
Collver/EAC/GOV@EAC

Subject Re: working group

The contracts for the two consultants on this project do not cover such costs. --- Peggy

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

Margaret Sims/EAC/GOV

05/19/2006 03:30 PM

To Tova Andrea Wang, Job Serebrov

cc

Subject Monday Teleconference

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

#### Recommendations for Future Research

- Bipartisan observers/poll watchers
  - To collect data
  - To deter fraud/intimidation
  
- Surveys
  - State laws
  - State election offices
  - Specific states
  - Local election officials
  - Voters (this suggestion was rejected by the panel)
  - State implementation of administrative complaint procedures (applies only to HAVA Title III violations) to ID examples of procedures for other than HAVA Title III complaints
  
- Follow up on initial reports of fraud/intimidation from the Nexis search of news articles and literature review
  
- Research absentee balloting process issues
  - Methodology of "for cause" absentee voting
  
- Risk-analysis for voting fraud

006271

- Who?
- What part of process?
- Ease of committing the fraud
- Which elections?
  
- Analyze
  - Phone logs from toll-free lines for election concerns
  - Federal observer reports
  - Local newspapers
  
- Academic statistical research
  
- Search and match procedures for voter registration list maintenance (subject to confirmation) to identify potential avenues for vote fraud
  
- Research State district court actions
  
- Broaden scope of interviews to local officials and district attorneys
  
- Explore the concept of election courts
  
- Model statutes

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



Devon E. Romig/EAC/GOV

05/19/2006 10:15 AM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Summary of notes for VFVI meeting

Peggy,

Here are the notes from the meeting.



Summary of VFVI Meeting.doc

Thanks!

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

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



"Job Serebrov"

05/23/2006 09:17 AM

To psims@eac.gov

cc

Subject Re: Payment Vouchers

006272

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

--- psims@eac.gov wrote:

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

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

Margaret Sims/EAC/GOV

05/23/2006 11:11 AM

To "Job Serebrov"

<serebrov@sbcglobal.net>@GSAEXTERNAL

cc

Subject Re: Payment Vouchers 

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

"Job Serebrov" 



"Job Serebrov"

  
05/23/2006 09:17 AM

To psims@eac.gov

cc

Subject Re: Payment Vouchers

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

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> morning. --- Peggy

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

Margaret Sims/EAC/GOV

05/23/2006 09:16 AM

To Job Serebrov, Tova Andrea Wang

cc

Subject Payment Vouchers

006273

I signed and submitted your personal services payment vouchers this morning. --- Peggy  
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----



"Tova Wang"  
[REDACTED]  
05/22/2006 09:24 AM

To psims@eac.gov  
cc  
Subject voucher

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

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

Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest news, analysis, opinions, and events.

[Click here](#) to receive our weekly e-mail updates.



voucher 4-23 --5-20.doc

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

Margaret Sims/EAC/GOV  
05/22/2006 03:30 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
cc  
Subject Re: voucher

Tova:

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



Tova voucher 4-23 --5-20 rev.doc

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



"Tova Wang"  
<wang@tcf.org>  
05/16/2006 09:14 AM

To psims@eac.gov, [REDACTED]  
cc

006274



Subject RE: Date Ranges for Research

January 1, 2001 - January 1, 2006

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

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

**Sent:** Tuesday, May 16, 2006 7:41 AM

**To:** wang@tcf.org; serebrov@sbcglobal.net

**Subject:** Date Ranges for Research

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

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

Margaret Sims/EAC/GOV

05/15/2006 02:48 PM

To Elieen L. Collver/EAC/GOV

cc dromig@eac.gov

Subject Re: working group

Elle:

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Elieen L. Collver/EAC/GOV



Elieen L. Collver/EAC/GOV

05/15/2006 12:19 PM

To Margaret Sims/EAC/GOV@EAC

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

Subject working group

Peggy,

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Thanks!

Elle

006275

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

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



Elieen L. Collver/EAC/GOV  
05/15/2006 03:19 PM

To Margaret Sims/EAC/GOV@EAC  
cc dromig@eac.gov  
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www.eac.gov  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV  
05/15/2006 02:48 PM

To Elieen L. Collver/EAC/GOV@EAC  
cc dromig@eac.gov  
Subject Re: working group 

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Elieen L. Collver/EAC/GOV

006276



Elleen L. Collver/EAC/GOV

05/15/2006 12:19 PM

To Margaret Sims/EAC/GOV@EAC

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

Subject working group

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

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

Margaret Sims/EAC/GOV

05/15/2006 06:41 PM

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

cc

Subject Re: Voting Fraud-Voter Intimidation Working Group

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

The attachment is a pdf file, but I have access to a Word version that I can use to insert text in an email tomorrow. I don,t have access to the attachment from my Berry.

Peggy

-----  
Sent from my BlackBerry Wireless Handheld

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

From: "Donsanto, Craig" [Craig.Donsanto@usdoj.gov]

006277



cc  
Subject Replacement Handout for EAC Board

I found some typos in the Status Report. Please replace the one I gave you with the attached. Thanks. ---  
Peggy



EAC Boards VF-VI Status Report.doc  
--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---

Margaret Sims/EAC/GOV  
05/23/2006 08:45 AM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
cc  
Subject RE: PowerPoint Presentation to EAC Boards

I know --- I'll have to cover that in my oral presentation, along with some other points. The audience will have a copy of the paper I put together using Job's and your summaries and findings. The paper provides a lot more detail. We did not plan to provide a copy of the PowerPoint presentation, which is just meant to keep me on track and them interested in the presentation. --- Peggy  
--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---



"Tova Wang"  
<wang@tcf.org>  
05/26/2006 10:41 AM

To psims@eac.gov,   
cc  
Subject RE: Request to interview AUSAs

I still think we should include the recommendations in the report

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

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

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

Peggy

006279

Sent from my BlackBerry Wireless Handheld

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

From: "Donsanto, Craig" [Craig.Donsanto@usdoj.gov]  
Sent: 05/23/2006 02:49 PM  
To: psims@eac.gov; "Voris, Natalie (USAE0)" <Natalie.Voris@usdoj.gov>;  
"Hillman, Noel" <Noel.Hillman@usdoj.gov>; "Simmons, Nancy"  
<Nancy.Simmons@usdoj.gov>  
Subject: Request to interview AUSAs

Peg --

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

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

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

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

Ms. Voris' message follows:

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

Thanks,  
Natalie

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

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

Margaret Sims/EAC/GOV

05/16/2006 03:50 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL

cc

Subject Re: board of advisers presentation

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

006280



EAC Board Status Report.doc

"Tova Wang" <[redacted]>



"Tova Wang"  
<[redacted]>  
05/16/2006 03:47 PM

To psims@eac.gov  
cc  
Subject board of advisers presentation

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

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

Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest news, analysis, opinions, and events.

[Click here](#) to receive our weekly e-mail updates.

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



"Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov>  
>  
05/17/2006 03:24 PM

To psims@eac.gov  
cc  
Subject RE: Status Report on Voting Fraud-Voter Intimidation Project

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

---

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

Craig:

This is what I was working on for the upcoming meetings of the EAC Board of Advisors and EAC

006291

Standards Board. --- Peggy

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



"Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov  
>  
05/17/2006 01:23 PM

To psims@eac.gov  
cc  
Subject Re: Report on Voting Fraud-Voter Intimidation Research

Peggy -- can you call me about this in about an hour?

202-514-1421.

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

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

From: psims@eac.gov <psims@eac.gov>  
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>  
Sent: Wed May 17 09:56:39 2006  
Subject: Report on Voting Fraud-Voter Intimidation Research

Craig:

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

Several people indicate - including representatives from DOJ -- that for various reasons, the Department of Justice is bringing fewer voter intimidation and suppression cases now, and has increased its focus on matters such as noncitizen voting, double voting, and felon voting. While the Voting Section of the Civil Rights Division focuses on systemic patterns of malfeasance, the Election Crimes Branch of the Public Integrity Section has increased prosecutions of individual instances of felon, alien, and double voting while also maintaining an aggressive pursuit of systematic schemes to corrupt the electoral process.

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

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

Margaret Sims/EAC/GOV  
05/17/2006 02:13 PM

To "Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov>@GSAEXTERNAL  
cc  
Subject Re: Report on Voting Fraud-Voter Intimidation Research

006282

Shall I call you at about 2:30 PM? -- Peggy

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

Margaret Sims/EAC/GOV

05/15/2006 05:09 PM

To Job Serebrov

cc

Subject Mileage Rate for POV

Job:

The federal mileage rate for POVs is **\$ .445 per mile** (see

[http://www.gsa.gov/Portal/gsa/ep/contentView.do?programId=9299&channelId=-13224&oid=10359&contentId=9646&pageTypeId=8203&contentType=GSA\\_BASIC&programPage=%2Fep%2Fprogram%2FgsaBasic.jsp&P=MTT](http://www.gsa.gov/Portal/gsa/ep/contentView.do?programId=9299&channelId=-13224&oid=10359&contentId=9646&pageTypeId=8203&contentType=GSA_BASIC&programPage=%2Fep%2Fprogram%2FgsaBasic.jsp&P=MTT)). Write down the number on your odometer at the beginning (starting at home) and end of the trip (when you arrive back home). The difference should be your total mileage, unless you make any side trips for personal convenience. The mileage for side trips should be deleted from the total. --- Peggy

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

Margaret Sims/EAC/GOV

05/24/2006 03:16 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL

cc

Subject Re: presentation 

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

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

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

The dueling approaches of these boards may give us heartburn when the time comes for them to review

006283

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

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

"Tova Wang" <wang@tcf.org>



"Tova Wang"

05/24/2006 09:14 AM

To psims@eac.gov

cc

Subject presentation

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

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

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[Click here](#) to receive our weekly e-mail updates.

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



"Tova Wang"

05/24/2006 03:27 PM

To psims@eac.gov

cc

Subject RE: presentation

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

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

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

**Sent:** Wednesday, May 24, 2006 2:16 PM

**To:** wang@tcf.org

**Subject:** Re: presentation

006284

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

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

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

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

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

"Tova Wang" <wang@tcf.org>

05/24/2006 09:14 AM

To psims@eac.gov  
cc  
Subject presentation

006285

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

Tova Andrea Wang  
Democracy Fellow  
**The Century Foundation**  
41 East 70th Street - New York, NY 10021  
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---

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



"Tova Wang"

[REDACTED]  
05/16/2006 05:08 PM

To psims@eac.gov  
cc

Subject RE: board of advisers presentation

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

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

**From:** psims@eac.gov [mailto:psims@eac.gov]  
**Sent:** Tuesday, May 16, 2006 2:51 PM  
**To:** [REDACTED]  
**Subject:** Re: board of advisers presentation

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

"Tova Wang" <wang@tcf.org>

05/16/2006 03:47 PM

To psims@eac.gov  
cc  
Subject board of advisers presentation

006286

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

Tova Andrea Wang  
Democracy Fellow  
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[Click here](#) to receive our weekly e-mail updates.

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



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

To psims@eac.gov

>

cc

05/16/2006 12:06 PM

Subject RE: Your Materials

Thank you, Peg. This stuff is very interesting.

---

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

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

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

05/16/2006 10:46 AM

Topsims@eac.gov

cc

SubjectYour Materials

006287

Peg - -

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

I have only one correction:

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

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

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



"Job Serebrov"

05/16/2006 11:13 AM

To "Tova Wang" [redacted] psims@eac.gov

cc

Subject Corrections

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

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



"Tova Wang"

05/16/2006 11:34 AM

To psims@eac.gov, [redacted]

cc

Subject RE: Corrections

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

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

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

**Sent:** Tuesday, May 16, 2006 10:30 AM

**To:** serebrov@sbcglobal.net

006288

**Cc:** wang@tcf.org  
**Subject:** Re: Corrections

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

"Job Serebrov" [REDACTED]

05/16/2006 11:13 AM

To "Tova Wang" [REDACTED] psims@eac.gov  
cc  
Subject Corrections

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

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

Margaret Sims/EAC/GOV  
05/16/2006 11:30 AM

To "Job Serebrov"  
[REDACTED]@GSAEXTERNAL  
cc wang@tcf.org  
Subject Re: Corrections [REDACTED]

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

"Job Serebrov" [REDACTED]



"Job Serebrov"  
[REDACTED]  
05/16/2006 11:13 AM

To "Tova Wang" [REDACTED] psims@eac.gov  
cc  
Subject Corrections

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

006289

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



"Job Serebrov"  
<serebrov@sbcglobal.net>  
05/16/2006 11:06 AM

To psims@eac.gov  
cc

Subject Re: Question

OK. Weather is not going to be great in DC Thursday. I hope that does not delay me.

--- psims@eac.gov wrote:

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

>  
>  
>

> [REDACTED]

> 05/15/2006 09:56 AM

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

>  
>  
>  
>  
>

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

> --- psims@eac.gov wrote:

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

006290





votebuyingsummary.doc

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



"Tova Wang"

05/16/2006 05:04 PM

To psims@eac.gov

cc

Subject RE: board of advisers presentation

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

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

Is that what you need?

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

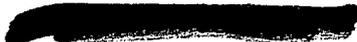
**From:** psims@eac.gov [mailto:psims@eac.gov]

**Sent:** Tuesday, May 16, 2006 2:51 PM

**To:** [REDACTED]

**Subject:** Re: board of advisers presentation

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



05/16/2006 03:47 PM

To psims@eac.gov

cc

Subject board of advisers presentation

Hi Peg, Have you tried to send me the presentation? I haven't gotten it, but I think we may be

006292

having email problems. Let me know. I'd need to look at it today since I'll be tied up tomorrow.  
Tova

**Tova Andrea Wang**  
Democracy Fellow  
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[Click here](#) to receive our weekly e-mail updates.

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



"Job Serebroy"

05/15/2006 09:28 AM

To psims@eac.gov

cc

Subject Re: Fw: New Working Group Member

Excellent!

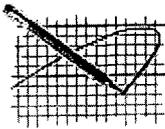
--- psims@eac.gov wrote:

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

006293

>  
> FYI - The person I mentioned as a replacement for  
> David Norcross, who was  
> unavailable, could not attend or Voting Fraud-Voter  
> Intimidation Working  
> Group meeting. Our consultant, Job Serebrov,  
> suggested Benjamin Ginsberg,  
> who is willing. I'm sorry I could not check with  
> you on this beforehand  
> --- things happened so fast! --- Peggy

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



Laiza N. Otero/EAC/GOV

05/15/2006 06:24 PM

To Elieen L. Collver/EAC/GOV@EAC

cc Margaret Sims/EAC/GOV@EAC, Devon E.  
Romig/EAC/GOV@EAC

Subject Re: working group

Hello to all,

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

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

-----Elieen L. Collver/EAC/GOV wrote: -----

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

Peggy,

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

006294

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

Thanks!

Elle

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

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

Margaret Sims/EAC/GOV

05/22/2006 04:55 PM

To Tova Andrea Wang, Job Serebrov

cc

Subject PowerPoint Presentation to EAC Boards

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



VF-VI Project Presentation.ppt

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

Tamar Nedzar/EAC/GOV

05/18/2006 04:36 PM

To cdonsanto@usdoj.gov, [REDACTED]  
assistant@sos.in.gov, krogers@sos.state.ga.us,

cc Margaret Sims/EAC/GOV@EAC, Edgardo  
Cortes/EAC/GOV@EAC, Juliet E.  
Thompson-Hodgkins/EAC/GOV@EAC

Subject Senate and House Conference Reports

All,

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

006295

Kind Regards,

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



House Conference Report.doc



Senate Conference Report.doc

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

"Tova Wang"



05/23/2006 09:23 AM

To psims@eac.gov

cc

Subject RE: PowerPoint Presentation to EAC Boards

OK, thanks

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

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

**Sent:** Tuesday, May 23, 2006 7:46 AM

**To:** wang@tcf.org

**Subject:** RE: PowerPoint Presentation to EAC Boards

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

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

"Tova Wang"



05/22/2006 03:43 PM

To psims@eac.gov

cc

Subject RE: voucher

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

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

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

006296

**Sent:** Monday, May 22, 2006 2:30 PM  
**To:** wang@tcf.org  
**Subject:** Re: voucher

Tova:

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

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

Margaret Sims/EAC/GOV

05/22/2006 03:58 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL

cc

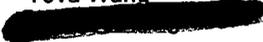
Subject RE: voucher 

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

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



"Tova Wang"

  
05/19/2006 04:34 PM

To psims@eac.gov

cc

Subject Re: Monday Teleconference

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

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

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

From: psims@eac.gov

To: 

Date: Fri, 19 May 2006 15:30:59 -0400

Subject: Monday Teleconference

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

Recommendations for Future Research

006297

- Bipartisan observers/poll watchers
  - To collect data
  - To deter fraud/intimidation
  
- Surveys
  - State laws
  - State election offices
  - Specific states
  - Local election officials
  - Voters (this suggestion was rejected by the panel)
  - State implementation of administrative complaint procedures (applies only to HAVA Title III violations) to ID examples of procedures for other than HAVA Title III complaints
  
- Follow up on initial reports of fraud/intimidation from the Nexis search of news articles and literature review
  
- Research absentee balloting process issues
  - Methodology of "for cause" absentee voting
  
- Risk-analysis for voting fraud
  - Who?
  - What part of process?
  - Ease of committing the fraud
  - Which elections?
  
- Analyze
  - Phone logs from toll-free lines for election concerns
  - Federal observer reports
  - Local newspapers
  
- Academic statistical research
  
- Search and match procedures for voter registration list maintenance (subject to confirmation) to identify potential avenues for vote fraud
  
- Research State district court actions
  
- Broaden scope of interviews to local officials and district attorneys
  
- Explore the concept of election courts
  
- Model statutes

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



"Weinberg and Utrecht"

05/15/2006 01:53 PM

To psims@eac.gov

cc

006298



Subject Re: Voting Fraud-Voter Intimidation

Peggy:

The package came today. Thanks. See you Thursday.

Barry

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

Margaret Sims/EAC/GOV

05/15/2006 01:56 PM

To "Weinberg and Utrecht"

cc [REDACTED]@GSAEXTERNAL

Subject Re: Voting Fraud-Voter Intimidation 

Barry:

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

--- Peggy

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



"Weinberg and Utrecht"

[REDACTED]  
05/15/2006 01:53 PM

To psims@eac.gov

cc

Subject Re: Voting Fraud-Voter Intimidation

Peggy:

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Barry

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

Margaret Sims/EAC/GOV

05/16/2006 11:27 AM

To "Donsanto, Craig"

<Craig.Donsanto@usdoj.gov>@GSAEXTERNAL

cc

Subject Re: Your Materials 

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006299

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



"Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov  
>  
05/16/2006 10:46 AM

To psims@eac.gov  
cc  
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I have only one correction:

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

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

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



"Tova Wang"  
[REDACTED]  
05/16/2006 03:53 PM

To psims@eac.gov  
cc  
Subject RE: board of advisers presentation

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

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

**From:** psims@eac.gov [mailto:psims@eac.gov]  
**Sent:** Tuesday, May 16, 2006 2:51 PM  
**To:** [REDACTED]  
**Subject:** Re: board of advisers presentation

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

006300

"Tova Wang" <wang@tcf.org>

05/16/2006 03:47 PM

To psims@eac.gov  
cc  
Subject board of advisers presentation

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

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

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[Click here](#) to receive our weekly e-mail updates.

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



"Job Serebrov"

05/16/2006 12:09 PM

To "Tova Wang" [redacted]@psims@eac.gov  
cc [redacted]  
Subject RE: Corrections

I agree!

--- Tova Wang [redacted] note:

> I still think its sufficient for him to raise the  
> points verbally. All of  
> the interview summaries reflect what Job and I both  
> understood the  
> interviewees to say. This really opens to the door  
> to people making, as Job  
> says, "corrections"

> -----Original Message-----

> From: psims@eac.gov [mailto:psims@eac.gov]

006301

> Sent: Tuesday, May 16, 2006 10:47 AM  
> To: [REDACTED]  
> Cc: [REDACTED]  
> Subject: RE: Corrections  
>  
>  
>  
> Might not be a bad idea before the final report is  
> prepared, but I would not  
> worry about it for Thursday's meeting. I'm only  
> concerned with the Donsanto  
> interview summary because he will be attending the  
> meeting. --- Peggy  
>  
>

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



"Job Serebrov"  
[REDACTED]

05/15/2006 09:55 AM

To psims@eac.gov

cc

Subject Re: Question

Ok

--- psims@eac.gov wrote:

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

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

> ----- Original Message -----

> From: "Job Serebrov" [REDACTED]  
> Sent: 05/12/2006 09:05 PM  
> To: psims@eac.gov  
> Subject: Question

> Peg:

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

006302

>  
> Job  
>  
>  
>

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



"Tova Wang"

[REDACTED]  
05/15/2006 09:56 AM

To dromig@eac.gov  
cc psims@eac.gov  
Subject RE: I'm sorry

Great -- thanks so much and apologies for the false alarm.

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

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

**Sent:** Monday, May 15, 2006 8:51 AM

**To:** [REDACTED]

**Cc:** psims@eac.gov

**Subject:** RE: I'm sorry

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

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

"Tova Wang" <wang@tcf.org>

05/15/2006 09:26 AM

To psims@eac.gov  
cc dromig@eac.gov  
Subject RE: I'm sorry

Thats good. I'm probably just getting crazy, trying to make sure everything is perfect. Devon, maybe you can check? Otherwise I'll check it when it comes. Thanks. And be well Peg.

006303

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

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

**Sent:** Monday, May 15, 2006 8:23 AM

**To:** Tova Andrea Wang

**Subject:** Re: I'm sorry

Tova:

I think you did send this --- or is this a revised version of one you sent earlier? It should be on the CD in the packet you should receive today.. (Can't check that right now as I am at the clinic.) If I put anything on the CD that you want to highlight at the meeting, let me know and we'll make copies for those attending.

Peggy

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** "Tova Wang" [REDACTED]

**Sent:** 05/15/2006 09:07 AM

**To:** Margaret Sims

**Cc:** Devon Romig

**Subject:** I'm sorry

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

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

Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest news, analysis, opinions, and events.

[Click here](#) to receive our weekly e-mail updates.

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



"Donsanto, Craig"

<Craig.Donsanto@usdoj.gov

To psims@eac.gov

>

cc

05/15/2006 04:53 PM

Subject Re: Voting Fraud-Voter Intimidation Working Group

Peggy --

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

006304



## **Existing Research Analysis**

There are many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. There is little research that is truly systematic or scientific. The most systematic look at fraud is the report written by Lori Minnite. The most systematic look at voter intimidation is the report by Laughlin McDonald. Books written about this subject seem to all have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists. It is hoped that this gap will be filled in the "second phase" of this EAC project.

Moreover, reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book. Again, this is something that it is hoped will be addressed in the "second phase" of this EAC project by doing follow up research on allegations made in reports, books and newspaper articles.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate, but some reports say it is a major problem, albeit hard to identify.
- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.

006306

- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

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



"Donsanto, Craig"  
 <Craig.Donsanto@usdoj.gov  
 >  
 05/15/2006 04:53 PM

To psims@eac.gov  
 cc  
 Subject Re: Voting Fraud-Voter Intimidation Working Group

Peggy --

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

Can you paste it to an e-mail perhaps?

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

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

From: psims@eac.gov <psims@eac.gov>  
 To: [REDACTED]  
 Rhayon@perkinscoie.com <Rhayon@perkinscoie.com>  
 [REDACTED]  
 [REDACTED]  
 krogers@sos.state.ga.us <krogers@sos.state.ga.us>; assistant@sos.in.gov  
 <assistant@sos.in.gov>; [REDACTED]  
 CC: [REDACTED]  
 [REDACTED]  
 [REDACTED]@perkinscoie.com <[REDACTED]@perkinscoie.com>;  
 [REDACTED]@perkinscoie.com <[REDACTED]@perkinscoie.com>  
 Donsanto, Craig  
 <Craig.Donsanto@crm.usdoj.gov>  
 Sent: Mon May 15 16:37:48 2006  
 Subject: Voting Fraud-Voter Intimidation Working Group

Dear Working Group Members and Participants:

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

Regards,

006307

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

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

Margaret Sims/EAC/GOV

05/19/2006 02:51 PM

To Craig Donsanto

cc

Subject Voting Fraud-Voter Intimidation Project-Nexis Word Search

Craig;

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

Election and fraud  
Voter and fraud  
Vote and fraud  
Voter and challenge  
Vote and challenge  
Election and challenge  
Election and irregularity  
Election and irregularities  
Election and violation  
Election and stealing  
Ballot box and tampering  
Ballot box and theft  
Ballot box and stealing  
Election and officers  
Election and Sheriff  
Miscount and votes  
Election and crime  
Election and criminal  
Vote and crime  
Vote and criminal  
Double voting  
Multiple voting  
Dead and voting  
Election and counting and violation

006308

Election and counting and error  
Vote and counting and violation  
Vote and counting and error  
Voter and intimidation  
Voter and intimidating  
Vote and intimidation  
Denial and voter and registration  
Voter identification  
Vote and identification  
Voter and racial profiling  
Vote and racial profiling  
Voter and racial  
Vote and racial  
Voter and racial and challenge  
Vote and racial and challenge  
Voter and deny and racial  
Vote and deny and racial  
Voter and deny and challenge  
Vote and deny and challenge  
Voter and deny and black  
Vote and deny and black  
Voter and black and challenge  
Vote and black and challenge  
Voter and deny and African American  
Vote and deny and African American  
Voter and African American and challenge  
Vote and African American and challenge  
Election and black and challenge  
Election and African American and challenge  
Voter and deny and Hispanic  
Voter and deny and Latino  
Vote and deny and Hispanic  
Vote and deny and Latino  
Voter and Hispanic and challenge  
Voter and Latino and challenge  
Vote and Hispanic and challenge  
Vote and Latino and challenge  
Election and Hispanic and challenge  
Election and Latino and challenge  
Voter and deny and Native American  
Vote and deny and Native American  
Voter and Native American and challenge  
Vote and Native American and challenge  
Election and Native American and challenge  
Voter and deny and Asian American

006309

Vote and deny and Asian American  
Voter and Asian American and challenge  
Vote and Asian American and challenge  
Voter and Asian American and challenge  
Election and Asian American and challenge  
Voter and deny and Indian  
Vote and deny and Indian  
Voter and Indian and challenge  
Vote and Indian and challenge  
Election and Indian and challenge  
Poll tax  
Voting and test  
Absentee ballot and deny  
Absentee ballot and reject  
Absentee ballot and challenge  
Vote and challenge  
Voter and challenge  
Election and challenge  
Vote and police  
Voter and police  
Poll and police  
Vote and law enforcement  
Voter and law enforcement  
Poll and law enforcement  
Vote and deceptive practices  
Voter and deceptive practices  
Election and deceptive practices  
Voter and deceive  
Voter and false information  
Dirty tricks  
Vote and felon  
Vote and ex-felon  
Disenfranchisement  
Disenfranchise  
Law and election and manipulation  
Vote and purging  
Vote and purge  
Registration and removal  
Registration and purging  
Registration and purge  
Vote buying  
Vote and noncitizen  
Voter and noncitizen  
Vote and selective enforcement  
Identification and selective

006310

Election and misinformation  
Registration and restrictions  
Election and administrator and fraud  
Election and official and fraud  
Provisional ballot and deny  
Provisional ballot and denial  
Affidavit ballot and deny  
Affidavit ballot and denial  
Absentee ballot and coerce  
Absentee ballot and coercion  
Registration and destruction  
Voter and deter  
Vote and deterrence  
Voter and deterrence  
Ballot integrity  
Ballot security  
Ballot security and minority  
Ballot security and black  
Ballot security and African American  
Ballot security and Latino  
Ballot security and Hispanic  
Ballot security and Native American  
Ballot security and Indian  
Vote and suppression  
Minority and vote and suppression  
Black and vote and suppression  
African American and vote and suppression  
Latino and vote and suppression  
Hispanic and vote and suppression  
Native American and vote and suppression  
Vote and suppress  
Minority and vote and suppress  
African American and vote and suppress  
Latino and vote and suppress  
Native American and vote and suppress  
Vote and depress  
Jim Crow  
Literacy test  
Voter and harass  
Voter and harassment  
Vote and mail and fraud  
Poll and guards  
Election and consent decree  
Vote and barrier  
Voting and barrier

006311

Voter and barrier  
Election and long line  
Voter and long line

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

006312

Election judge and threatening  
Election monitor and challenge  
Election monitor and intimidate  
Election monitor and intimidating  
Election monitor and intimidation  
Election monitor and abusive  
Election monitor and threatening  
Election observer and challenge  
Election observer and intimidate  
Election observer and intimidating  
Election observer and intimidation  
Election observer and abusive  
Election observer and threatening

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

Margaret Sims/EAC/GOV

05/16/2006 03:37 PM

To "Donsanto, Craig"

<Craig.Donsanto@usdoj.gov>@GSAEXTERNAL

cc

Subject RE: Your Materials 

OK. --- Peg

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



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

>

05/16/2006 03:17 PM

To psims@eac.gov

cc

Subject RE: Your Materials

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

---

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

**Sent:** Tuesday, May 16, 2006 3:14 PM

**To:** Donsanto, Craig

**Subject:** RE: Your Materials

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

006313

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

05/16/2006 02:55 PM

Topsims@eac.gov  
cc  
SubjectRE: Your Materials

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

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

---

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

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

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

006314

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

05/16/2006 01:41 PM

Topsims@eac.gov  
cc  
SubjectRE: Your Materials

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

---

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

Craig:

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

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

05/16/2006 12:06 PM

Topsims@eac.gov  
cc

006315

SubjectRE: Your Materials

Thank you, Peg. This stuff is very interesting.

---

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

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

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

05/16/2006 10:46 AM

Topsims@eac.gov  
cc  
SubjectYour Materials

006316

Peg - -

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

I have only one correction:

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

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

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

Margaret Sims/EAC/GOV

05/15/2006 03:51 PM

To Paul DeGregorio, Ray Martinez, Donetta Davidson, Gracia Hillman

cc twilkey@eac.gov, jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC, ecortes@eac.gov, Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Elieen L. Colver/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC

Subject Voting Fraud-Voter Intimidation Project Briefing

006317

Dear Commissioners:

Attached is our consultants' analysis of the literature reviewed for the Voting Fraud-Voter Intimidation preliminary research project. It was not included in the information packets delivered to you on Friday, May 12, because we did not receive it until today. I thought you might be interested in having it. prior to tomorrow's briefing.

Peggy Sims  
Election Research Specialist



Literature-Report Review Summary.doc

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



"Tova Wang"  
<wang@tcf.org>  
05/16/2006 11:03 AM

To psims@eac.gov [REDACTED]

cc

Subject RE: Your Materials

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

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

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

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

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

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

05/16/2006 10:46 AM

To psims@eac.gov

cc

Subject Your Materials

Peg --

006318

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

I have only one correction:

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

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

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



"Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov  
>  
05/19/2006 03:17 PM

To psims@eac.gov  
cc "Simmons, Nancy" <Nancy.Simmons@usdoj.gov>  
Subject Re: Voting Fraud-Voter Intimidation Project-Nexis Word Search

Peggy --

I was just thinking of you!

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

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

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

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

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

Craig;

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

Election and fraud  
Voter and fraud  
Vote and fraud

006319

Voter and challenge  
Vote and challenge  
Election and challenge  
Election and irregularity  
Election and irregularities  
Election and violation  
Election and stealing  
Ballot box and tampering  
Ballot box and theft  
Ballot box and stealing  
Election and officers  
Election and Sheriff  
Miscount and votes  
Election and crime  
Election and criminal  
Vote and crime  
Vote and criminal  
Double voting  
Multiple voting  
Dead and voting  
Election and counting and violation  
Election and counting and error  
Vote and counting and violation  
Vote and counting and error  
Voter and intimidation  
Voter and intimidating  
Vote and intimidation  
Denial and voter and registration  
Voter identification  
Vote and identification  
Voter and racial profiling  
Vote and racial profiling  
Voter and racial  
Vote and racial  
Voter and racial and challenge  
Vote and racial and challenge  
Voter and deny and racial  
Vote and deny and racial  
Voter and deny and challenge  
Vote and deny and challenge  
Voter and deny and black  
Vote and deny and black  
Voter and black and challenge  
Vote and black and challenge  
Voter and deny and African American  
Vote and deny and African American  
Voter and African American and challenge  
Vote and African American and challenge  
Election and black and challenge  
Election and African American and challenge  
Voter and deny and Hispanic  
Voter and deny and Latino  
Vote and deny and Hispanic  
Vote and deny and Latino  
Voter and Hispanic and challenge  
Voter and Latino and challenge  
Vote and Hispanic and challenge  
Vote and Latino and challenge  
Election and Hispanic and challenge  
Election and Latino and challenge  
Voter and deny and Native American

006320

Vote and deny and Native American  
Voter and Native American and challenge  
Vote and Native American and challenge  
Election and Native American and challenge  
Voter and deny and Asian American  
Vote and deny and Asian American  
Voter and Asian American and challenge  
Vote and Asian American and challenge  
Voter and Asian American and challenge  
Election and Asian American and challenge  
Voter and deny and Indian  
Vote and deny and Indian  
Voter and Indian and challenge  
Vote and Indian and challenge  
Election and Indian and challenge  
Poll tax  
Voting and test  
Absentee ballot and deny  
Absentee ballot and reject  
Absentee ballot and challenge  
Vote and challenge  
Voter and challenge  
Election and challenge  
Vote and police  
Voter and police  
Poll and police  
Vote and law enforcement  
Voter and law enforcement  
Poll and law enforcement  
Vote and deceptive practices  
Voter and deceptive practices  
Election and deceptive practices  
Voter and deceive  
Voter and false information  
Dirty tricks  
Vote and felon  
Vote and ex-felon  
Disenfranchisement  
Disenfranchise  
Law and election and manipulation  
Vote and purging  
Vote and purge  
Registration and removal  
Registration and purging  
Registration and purge  
Vote buying  
Vote and noncitizen  
Voter and noncitizen  
Vote and selective enforcement  
Identification and selective  
Election and misinformation  
Registration and restrictions  
Election and administrator and fraud  
Election and official and fraud  
Provisional ballot and deny  
Provisional ballot and denial  
Affidavit ballot and deny  
Affidavit ballot and denial  
Absentee ballot and coerce  
Absentee ballot and coercion  
Registration and destruction

006321

Voter and deter  
Vote and deterrence  
Voter and deterrence  
Ballot integrity  
Ballot security  
Ballot security and minority  
Ballot security and black  
Ballot security and African American  
Ballot security and Latino  
Ballot security and Hispanic  
Ballot security and Native American  
Ballot security and Indian  
Vote and suppression  
Minority and vote and suppression  
Black and vote and suppression  
African American and vote and suppression  
Latino and vote and suppression  
Hispanic and vote and suppression  
Native American and vote and suppression  
Vote and suppress  
Minority and vote and suppress  
African American and vote and suppress  
Latino and vote and suppress  
Native American and vote and suppress  
Vote and depress  
Jim Crow  
Literacy test  
Voter and harass  
Voter and harassment  
Vote and mail and fraud  
Poll and guards  
Election and consent decree  
Vote and barrier  
Voting and barrier  
Voter and barrier  
Election and long line  
Voter and long line

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

006322

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

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



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

To psims@eac.gov  
cc

Subject RE: Fraud Definition

Sounds good. Thanks.

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

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

Election and stealing  
Ballot box and tampering  
Ballot box and theft  
Ballot box and stealing  
Election and officers  
Election and Sheriff  
Miscount and votes

006323

Election and crime  
Election and criminal  
Vote and crime  
Vote and criminal  
Double voting  
Multiple voting  
Dead and voting  
Election and counting and violation  
Election and counting and error  
Vote and counting and violation  
Vote and counting and error  
Voter and intimidation  
Voter and intimidating  
Vote and intimidation  
Denial and voter and registration  
Voter identification  
Vote and identification  
Voter and racial profiling  
Vote and racial profiling  
Voter and racial  
Vote and racial  
Voter and racial and challenge  
Vote and racial and challenge  
Voter and deny and racial  
Vote and deny and racial  
Voter and deny and challenge  
Vote and deny and challenge  
Voter and deny and black  
Vote and deny and black  
Voter and black and challenge  
Vote and black and challenge  
Voter and deny and African American  
Vote and deny and African American  
Voter and African American and challenge  
Vote and African American and challenge  
Election and black and challenge  
Election and African American and challenge  
Voter and deny and Hispanic  
Voter and deny and Latino  
Vote and deny and Hispanic  
Vote and deny and Latino  
Voter and Hispanic and challenge  
Voter and Latino and challenge  
Vote and Hispanic and challenge  
Vote and Latino and challenge

006324

Election and Hispanic and challenge  
Election and Latino and challenge  
Voter and deny and Native American  
Vote and deny and Native American  
Voter and Native American and challenge  
Vote and Native American and challenge  
Election and Native American and challenge  
Voter and deny and Asian American  
Vote and deny and Asian American  
Voter and Asian American and challenge  
Vote and Asian American and challenge  
Voter and Asian American and challenge  
Election and Asian American and challenge  
Voter and deny and Indian  
Vote and deny and Indian  
Voter and Indian and challenge  
Vote and Indian and challenge  
Election and Indian and challenge  
Poll tax  
Voting and test  
Absentee ballot and deny  
Absentee ballot and reject  
Absentee ballot and challenge  
Vote and challenge  
Voter and challenge  
Election and challenge  
Vote and police  
Voter and police  
Poll and police  
Vote and law enforcement  
Voter and law enforcement  
Poll and law enforcement  
Vote and deceptive practices  
Voter and deceptive practices  
Election and deceptive practices  
Voter and deceive  
Voter and false information  
Dirty tricks  
Vote and felon  
Vote and ex-felon  
Disenfranchisement  
Disenfranchise  
Law and election and manipulation  
Vote and purging  
Vote and purge

006325

Registration and removal  
Registration and purging  
Registration and purge  
Vote buying  
Vote and noncitizen  
Voter and noncitizen  
Vote and selective enforcement  
Identification and selective  
Election and misinformation  
Registration and restrictions  
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Provisional ballot and deny  
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Affidavit ballot and denial  
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Voter and deter  
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Ballot integrity  
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Ballot security and minority  
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Ballot security and Indian  
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Minority and vote and suppression  
Black and vote and suppression  
African American and vote and suppression  
Latino and vote and suppression  
Hispanic and vote and suppression  
Native American and vote and suppression  
Vote and suppress  
Minority and vote and suppress  
African American and vote and suppress  
Latino and vote and suppress  
Native American and vote and suppress  
Vote and depress  
Jim Crow

006326

Literacy test  
Voter and harass  
Voter and harassment  
Vote and mail and fraud  
Poll and guards  
Election and consent decree  
Vote and barrier  
Voting and barrier  
Voter and barrier  
Election and long line  
Voter and long line

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

006327

Poll monitor and intimidation  
Poll monitor and abusive  
Poll monitor and threatening  
Election judge and challenge  
Election judge and intimidate  
Election judge and intimidating  
Election judge and intimidation  
Election judge and abusive  
Election judge and threatening  
Election monitor and challenge  
Election monitor and intimidate  
Election monitor and intimidating  
Election monitor and intimidation  
Election monitor and abusive  
Election monitor and threatening  
Election observer and challenge  
Election observer and intimidate  
Election observer and intimidating  
Election observer and intimidation  
Election observer and abusive  
Election observer and threatening

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

Margaret Sims/EAC/GOV  
05/16/2006 03:37 PM

To "Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov>@GSAEXTERNAL  
cc  
Subject RE: Your Materials 

OK. --- Peg

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



"Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov  
>  
05/16/2006 03:17 PM

To psims@eac.gov  
cc  
Subject RE: Your Materials

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

006328

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

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

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

05/16/2006 02:55 PM

Topsims@eac.gov  
cc  
SubjectRE: Your Materials

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

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

---

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

I think they are panicking because they are preparing to travel tomorrow and may not have time to submit a revised version. They also are resisting changes to their interview summaries because the summaries

006329

represent what they think they heard. I was there at the interview and I heard what you said. I'm not sure that either of them heard everything (including the nuances) because so much of the information was new to them and it was one of their earlier interviews. I'm sorry I did not catch the defects before the summary went out.

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

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

05/16/2006 01:41 PM

Topsims@eac.gov  
cc  
SubjectRE: Your Materials

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

---

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

Craig:

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

006330

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

05/16/2006 12:06 PM

Topsims@eac.gov  
cc  
SubjectRE: Your Materials

Thank you, Peg. This stuff is very interesting.

---

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

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

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

005331

05/16/2006 10:46 AM

Topsims@eac.gov  
cc  
SubjectYour Materials

Peg - -

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

I have only one correction:

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

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

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

Margaret Sims/EAC/GOV

05/15/2006 03:51 PM

To Paul DeGregorio, Ray Martinez, Donetta Davidson, Gracia Hillman

• 006332

cc twilkey@eac.gov, jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC, ecortes@eac.gov, Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogio/EAC/GOV@EAC, Elieen L. Coliver/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC  
Subject Voting Fraud-Voter Intimidation Project Briefing

Dear Commissioners:

Attached is our consultants' analysis of the literature reviewed for the Voting Fraud-Voter Intimidation preliminary research project. It was not included in the information packets delivered to you on Friday, May 12, because we did not receive it until today. I thought you might be interested in having it. prior to tomorrow's briefing.

Peggy Sims  
Election Research Specialist



Literature-Report Review Summary.doc

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



"Tova Wang"

05/16/2006 11:03 AM

To psims@eac.gov

cc

Subject RE: Your Materials

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

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

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

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

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

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

05/16/2006 10:46 AM

To psims@eac.gov

cc

Subject Your Materials

006333

Peg --

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

I have only one correction:

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

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

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



"Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov  
>  
05/19/2006 03:17 PM

To psims@eac.gov  
cc "Simmons, Nancy" <Nancy.Simmons@usdoj.gov>  
Subject Re: Voting Fraud-Voter Intimidation Project-Nexis Word Search

Peggy --

I was just thinking of you!

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

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

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

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

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

006334

Craig;

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

Election and fraud  
Voter and fraud  
Vote and fraud  
Voter and challenge  
Vote and challenge  
Election and challenge  
Election and irregularity  
Election and irregularities  
Election and violation  
Election and stealing  
Ballot box and tampering  
Ballot box and theft  
Ballot box and stealing  
Election and officers  
Election and Sheriff  
Miscount and votes  
Election and crime  
Election and criminal  
Vote and crime  
Vote and criminal  
Double voting  
Multiple voting  
Dead and voting  
Election and counting and violation  
Election and counting and error  
Vote and counting and violation  
Vote and counting and error  
Voter and intimidation  
Voter and intimidating  
Vote and intimidation  
Denial and voter and registration  
Voter identification  
Vote and identification  
Voter and racial profiling  
Vote and racial profiling  
Voter and racial  
Vote and racial  
Voter and racial and challenge  
Vote and racial and challenge  
Voter and deny and racial  
Vote and deny and racial  
Voter and deny and challenge  
Vote and deny and challenge  
Voter and deny and black  
Vote and deny and black  
Voter and black and challenge  
Vote and black and challenge  
Voter and deny and African American  
Vote and deny and African American  
Voter and African American and challenge  
Vote and African American and challenge  
Election and black and challenge  
Election and African American and challenge  
Voter and deny and Hispanic  
Voter and deny and Latino  
Vote and deny and Hispanic

006335

Vote and deny and Latino  
Voter and Hispanic and challenge  
Voter and Latino and challenge  
Vote and Hispanic and challenge  
Vote and Latino and challenge  
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Election and Latino and challenge  
Voter and deny and Native American  
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Poll tax  
Voting and test  
Absentee ballot and deny  
Absentee ballot and reject  
Absentee ballot and challenge  
Vote and challenge  
Voter and challenge  
Election and challenge  
Vote and police  
Voter and police  
Poll and police  
Vote and law enforcement  
Voter and law enforcement  
Poll and law enforcement  
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Voter and deceptive practices  
Election and deceptive practices  
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Voter and false information  
Dirty tricks  
Vote and felon  
Vote and ex-felon  
Disenfranchisement  
Disenfranchise  
Law and election and manipulation  
Vote and purging  
Vote and purge  
Registration and removal  
Registration and purging  
Registration and purge  
Vote buying  
Vote and noncitizen  
Voter and noncitizen  
Vote and selective enforcement  
Identification and selective  
Election and misinformation  
Registration and restrictions  
Election and administrator and fraud

006336

Election and official and fraud  
Provisional ballot and deny  
Provisional ballot and denial  
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Poll worker and challenge  
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Poll worker and intimidation  
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Poll worker and abusive  
Election official and challenge  
Election official and intimidate  
Election official and intimidation  
Election official and intimidating  
Election official and threatening  
Election official and abusive  
Poll watcher and challenge  
Poll watcher and intimidate  
Poll watcher and intimidating

006337

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

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



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

To psims@eac.gov  
cc

Subject RE: Fraud Definition

Sounds good. Thanks.

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

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

000338

Ballot box and tampering  
Ballot box and theft  
Ballot box and stealing  
Election and officers  
Election and Sheriff  
Miscount and votes  
Election and crime  
Election and criminal  
Vote and crime  
Vote and criminal  
Double voting  
Multiple voting  
Dead and voting  
Election and counting and violation  
Election and counting and error  
Vote and counting and violation  
Vote and counting and error  
Voter and intimidation  
Voter and intimidating  
Vote and intimidation  
Denial and voter and registration  
Voter identification  
Vote and identification  
Voter and racial profiling  
Vote and racial profiling  
Voter and racial  
Vote and racial  
Voter and racial and challenge  
Vote and racial and challenge  
Voter and deny and racial  
Vote and deny and racial  
Voter and deny and challenge  
Vote and deny and challenge  
Voter and deny and black  
Vote and deny and black  
Voter and black and challenge  
Vote and black and challenge  
Voter and deny and African American  
Vote and deny and African American  
Voter and African American and challenge  
Vote and African American and challenge  
Election and black and challenge  
Election and African American and challenge  
Voter and deny and Hispanic  
Voter and deny and Latino

Vote and deny and Hispanic  
Vote and deny and Latino  
Voter and Hispanic and challenge  
Voter and Latino and challenge  
Vote and Hispanic and challenge  
Vote and Latino and challenge  
Election and Hispanic and challenge  
Election and Latino and challenge  
Voter and deny and Native American  
Vote and deny and Native American  
Voter and Native American and challenge  
Vote and Native American and challenge  
Election and Native American and challenge  
Voter and deny and Asian American  
Vote and deny and Asian American  
Voter and Asian American and challenge  
Vote and Asian American and challenge  
Voter and Asian American and challenge  
Election and Asian American and challenge  
Voter and deny and Indian  
Vote and deny and Indian  
Voter and Indian and challenge  
Vote and Indian and challenge  
Election and Indian and challenge  
Poll tax  
Voting and test  
Absentee ballot and deny  
Absentee ballot and reject  
Absentee ballot and challenge  
Vote and challenge  
Voter and challenge  
Election and challenge  
Vote and police  
Voter and police  
Poll and police  
Vote and law enforcement  
Voter and law enforcement  
Poll and law enforcement  
Vote and deceptive practices  
Voter and deceptive practices  
Election and deceptive practices  
Voter and deceive  
Voter and false information  
Dirty tricks  
Vote and felon

000340

Vote and ex-felon  
Disenfranchisement  
Disenfranchise  
Law and election and manipulation  
Vote and purging  
Vote and purge  
Registration and removal  
Registration and purging  
Registration and purge  
Vote buying  
Vote and noncitizen  
Voter and noncitizen  
Vote and selective enforcement  
Identification and selective  
Election and misinformation  
Registration and restrictions  
Election and administrator and fraud  
Election and official and fraud  
Provisional ballot and deny  
Provisional ballot and denial  
Affidavit ballot and deny  
Affidavit ballot and denial  
Absentee ballot and coerce  
Absentee ballot and coercion  
Registration and destruction  
Voter and deter  
Vote and deterrence  
Voter and deterrence  
Ballot integrity  
Ballot security  
Ballot security and minority  
Ballot security and black  
Ballot security and African American  
Ballot security and Latino  
Ballot security and Hispanic  
Ballot security and Native American  
Ballot security and Indian  
Vote and suppression  
Minority and vote and suppression  
Black and vote and suppression  
African American and vote and suppression  
Latino and vote and suppression  
Hispanic and vote and suppression  
Native American and vote and suppression  
Vote and suppress

Minority and vote and suppress  
African American and vote and suppress  
Latino and vote and suppress  
Native American and vote and suppress  
Vote and depress  
Jim Crow  
Literacy test  
Voter and harass  
Voter and harassment  
Vote and mail and fraud  
Poll and guards  
Election and consent decree  
Vote and barrier  
Voting and barrier  
Voter and barrier  
Election and long line  
Voter and long line

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

006342

Poll judge and intimidation  
Poll judge and abusive  
Poll judge and threatening  
Poll monitor and challenge  
Poll monitor and intimidate  
Poll monitor and intimidating  
Poll monitor and intimidation  
Poll monitor and abusive  
Poll monitor and threatening  
Election judge and challenge  
Election judge and intimidate  
Election judge and intimidating  
Election judge and intimidation  
Election judge and abusive  
Election judge and threatening  
Election monitor and challenge  
Election monitor and intimidate  
Election monitor and intimidating  
Election monitor and intimidation  
Election monitor and abusive  
Election monitor and threatening  
Election observer and challenge  
Election observer and intimidate  
Election observer and intimidating  
Election observer and intimidation  
Election observer and abusive  
Election observer and threatening

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

Margaret Sims/EAC/GOV

05/16/2006 03:37 PM

To "Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov>@GSAEXTERNAL  
cc

Subject RE: Your Materials 

OK. --- Peg

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



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

>  
05/16/2006 03:17 PM

To psims@eac.gov

cc

Subject RE: Your Materials

006343

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

---

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

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

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

05/16/2006 02:55 PM

Topsims@eac.gov  
cc  
SubjectRE: Your Materials

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

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

---

**From:** psims@eac.gov [mailto:psims@eac.gov]  
**Sent:** Tuesday, May 16, 2006 2:47 PM

006344

**To:** Donsanto, Craig  
**Subject:** RE: Your Materials

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

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

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

05/16/2006 01:41 PM

Topsims@eac.gov  
cc  
SubjectRE: Your Materials

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

---

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

006345

Craig:

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

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

05/16/2006 12:06 PM

Topsims@eac.gov  
cc  
SubjectRE: Your Materials

Thank you, Peg. This stuff is very interesting.

---

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

I have forwarded your message to our consultants and have requested a corrected version for distribution

006346

at the WG meeting. --- Peggy

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

05/16/2006 10:46 AM

Topsims@eac.gov  
cc  
SubjectYour Materials

Peg - -

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

I have only one correction:

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

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in

006347

New Hampshire growing out of the jamming of get0-out-the-vote phone bank lines attest.

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

Margaret Sims/EAC/GOV

05/15/2006 03:51 PM

To Paul DeGregorio, Ray Martinez, Donetta Davidson, Gracia Hillman

cc twilkey@eac.gov, jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC, ecortes@eac.gov, Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC

Subject Voting Fraud-Voter Intimidation Project Briefing

Dear Commissioners:

Attached is our consultants' analysis of the literature reviewed for the Voting Fraud-Voter Intimidation preliminary research project. It was not included in the information packets delivered to you on Friday, May 12, because we did not receive it until today. I thought you might be interested in having it. prior to tomorrow's briefing.

Peggy Sims  
Election Research Specialist



Literature-Report Review Summary.doc

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



"Tova Wang"

05/16/2006 11:03 AM

To psims@eac.gov [REDACTED]

cc

Subject RE: Your Materials

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

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

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

**Sent:** Tuesday, May 16, 2006 9:59 AM

**To:** wang@tcf.org; serebrov@sbcglobal.net

**Subject:** Fw: Your Materials

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

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

006348

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

05/16/2006 10:46 AM

To psims@eac.gov  
cc  
Subject Your Materials

Peg - -

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

I have only one correction:

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

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

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



"Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov  
>  
05/19/2006 03:17 PM

To psims@eac.gov  
cc "Simmons, Nancy" <Nancy.Simmons@usdoj.gov>  
Subject Re: Voting Fraud-Voter Intimidation Project-Nexis Word Search

Peggy --

I was just thinking of you!

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

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

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

006349

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

From: psims@eac.gov <psims@eac.gov>

To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>

Sent: Fri May 19 14:51:21 2006

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

Craig;

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

Election and fraud  
Voter and fraud  
Vote and fraud  
Voter and challenge  
Vote and challenge  
Election and challenge  
Election and irregularity  
Election and irregularities  
Election and violation  
Election and stealing  
Ballot box and tampering  
Ballot box and theft  
Ballot box and stealing  
Election and officers  
Election and Sheriff  
Miscount and votes  
Election and crime  
Election and criminal  
Vote and crime  
Vote and criminal  
Double voting  
Multiple voting  
Dead and voting  
Election and counting and violation  
Election and counting and error  
Vote and counting and violation  
Vote and counting and error  
Voter and intimidation  
Voter and intimidating  
Vote and intimidation  
Denial and voter and registration  
Voter identification  
Vote and identification  
Voter and racial profiling  
Vote and racial profiling  
Voter and racial  
Vote and racial  
Voter and racial and challenge  
Vote and racial and challenge  
Voter and deny and racial  
Vote and deny and racial  
Voter and deny and challenge  
Vote and deny and challenge  
Voter and deny and black  
Vote and deny and black  
Voter and black and challenge  
Vote and black and challenge

006350

Voter and deny and African American  
Vote and deny and African American  
Voter and African American and challenge  
Vote and African American and challenge  
Election and black and challenge  
Election and African American and challenge  
Voter and deny and Hispanic  
Voter and deny and Latino  
Vote and deny and Hispanic  
Vote and deny and Latino  
Voter and Hispanic and challenge  
Voter and Latino and challenge  
Vote and Hispanic and challenge  
Vote and Latino and challenge  
Election and Hispanic and challenge  
Election and Latino and challenge  
Voter and deny and Native American  
Vote and deny and Native American  
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Vote and Native American and challenge  
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Vote and deny and Asian American  
Voter and Asian American and challenge  
Vote and Asian American and challenge  
Voter and Asian American and challenge  
Election and Asian American and challenge  
Voter and deny and Indian  
Vote and deny and Indian  
Voter and Indian and challenge  
Vote and Indian and challenge  
Election and Indian and challenge  
Poll tax  
Voting and test  
Absentee ballot and deny  
Absentee ballot and reject  
Absentee ballot and challenge  
Vote and challenge  
Voter and challenge  
Election and challenge  
Vote and police  
Voter and police  
Poll and police  
Vote and law enforcement  
Voter and law enforcement  
Poll and law enforcement  
Vote and deceptive practices  
Voter and deceptive practices  
Election and deceptive practices  
Voter and deceive  
Voter and false information  
Dirty tricks  
Vote and felon  
Vote and ex-felon  
Disenfranchisement  
Disenfranchise  
Law and election and manipulation  
Vote and purging  
Vote and purge  
Registration and removal  
Registration and purging

006351

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

006352

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

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



"Tova Wang"

05/15/2006 05:05 PM

To psims@eac.gov

cc

Subject RE: Fraud Definition

005053

Sounds good. Thanks.

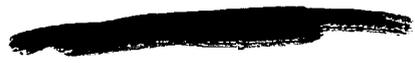
-----Original Message-----

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

Tova:

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

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



05/12/2006 09:48  
PM

psims@eac.gov

To

cc

Subject

Re: Fraud Definition

How about specifying Section 2 and 203 of the VRA?

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

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

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

000354

is not treated as election fraud, though it is actionable. --- Peggy

"Tova Wang" [REDACTED]

05/12/2006 12:45 PM

psims@eac.gov,  
serebrov@sbcglobal.net

To

cc

Subject

RE: Fraud Definition

Upon first reading, my only comment would be that I would like to restore "failing to follow the requirements of the Voting Rights Act" -----Original Message-----

From: psims@eac.gov [mailto:psims@eac.gov]

Sent: Friday, May 12, 2006 9:20 AM

To: [REDACTED]

Subject: Fraud Definition

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

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

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

Margaret Sims/EAC/GOV

05/17/2006 09:56 AM

To Craig Donsanto

cc

Subject Report on Voting Fraud-Voter Intimidation Research

000355

Craig:

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

Several people indicate - including representatives from DOJ -- that for various reasons, the Department of Justice is bringing fewer voter intimidation and suppression cases now, and has increased its focus on matters such as noncitizen voting, double voting, and felon voting. While the Voting Section of the Civil Rights Division focuses on systemic patterns of malfeasance, the Election Crimes Branch of the Public Integrity Section has increased prosecutions of individual instances of felon, alien, and double voting while also maintaining an aggressive pursuit of systematic schemes to corrupt the electoral process.

Please suggest any changes that you think would further clarify the current approach. --- Peggy  
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----

Margaret Sims/EAC/GOV

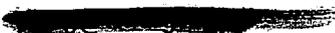
05/15/2006 01:09 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL

cc

Subject Re: Thursday

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

"Tova Wang" 



"Tova Wang"

  
05/15/2006 11:36 AM

To psims@eac.gov

cc

Subject thursday

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

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

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006356

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



"Tova Wang"

06/01/2006 03:04 PM

To psims@eac.gov

cc

Subject RE: Travel Reimbursement

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

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

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

**Sent:** Thursday, June 01, 2006 1:50 PM

**To:** wang@tcf.org

**Subject:** Travel Reimbursement

Tova:

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

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



"Craig C. Donsanto"  
<cdonsanto@yahoo.com>

05/30/2006 11:02 PM

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

cc

Subject Fwd: Re: Article to your secondary e-mail address

--- "Craig C. Donsanto" <cdonsanto@yahoo.com> wrote:

> Date: Tue, 30 May 2006 19:57:36 -0700 (PDT)  
> From: "Craig C. Donsanto" [REDACTED]  
> Subject: Re: Article to your secondary e-mail  
> address  
> To: "Elliott, Michael (LA) (IC)"  
> <Michael.Elliott@ic.fbi.gov>  
>  
> Mike - -  
>  
> As we say back where I come from: this article is  
> "wicked pissah"!  
>  
> The woman mentioned in this piece towards the end  
> has

006357

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

> And greetings from Hilton Head, South Carolina - -

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

> > Craig,

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

> > <http://thehill.com/thehill/export/TheHill/News/Frontpage/052506/news4.ht>

> > ml

> > Michael

> > SSA Michael B. Elliott

> > Public Corruption/Governmental Fraud Unit

> > FBIHQ, Room 3975

> > 202-324-4687 (Office)

> > 310-210-8511 (Cellular)

> > Craig C. Donsanto

006358

>  
>  
> Do You Yahoo!?  
> Tired of spam? Yahoo! Mail has the best spam  
> protection around  
> http://mail.yahoo.com  
>

Craig C. Donsanto  


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Do You Yahoo!?  
Tired of spam? Yahoo! Mail has the best spam protection around  
http://mail.yahoo.com

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



"Tova Wang"

  
06/01/2006 03:04 PM

To psims@eac.gov  
cc

Subject FW: Expedia travel confirmation - Washington, DC - May 17,  
2006 - (Itin# 116272039590)

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

**From:** travel@expedia.com [mailto:travel@expedia.com]

**Sent:** Tuesday, May 09, 2006 4:55 PM

**To:** wang@tcf.org

**Subject:** Expedia travel confirmation - Washington, DC - May 17, 2006 - (Itin# 116272039590)

## Travel Confirmation

Thank you for booking your trip with Expedia.com. [View this itinerary online](#) for the most up-to-date information. Our [interactive demo](#) can show you how easy it is to get information about your itinerary.

**Need a hotel or a car or an activity or service in Washington DC? Here are some options we've found for you.**

[Connecticut Avenue Days Inn \\$666.00](#) per night  
[Renaissance Mayflower Hotel \\$459.00](#) per night  
[Comfort Inn Largo/Fed Ex Field \\$96.00](#) per night  
[Car Rental - Economy Midsize Full Size](#)  
[Activities & Services - Sightseeing Dining options Ground](#)  
[transportation Attraction passes](#)

[Search for more hotels](#)  
[Search for more cars](#)  
[Search for more activities & services](#)

[Receive Expedia.com newsletters](#)

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**Booked items**

006359

Thank you for choosing Expedia.com

Don't Just Travel. Travel Right. <http://www.expedia.com>

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



"Job Serebrov"

05/31/2006 01:34 PM

To psims@eac.gov

cc

Subject Re: Working Group Notes

Peggy:

I will not be home from Las Vegas until Saturday. I was given an offer for a career clerking position with a federal judge and accepted. I will be relocating in December.

Job

*psims@eac.gov* wrote:

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

"Tova Wang" <wang@tcf.org>

05/31/2006 11:26 AM

To psims@eac.gov

cc

Subject notes

Hi Peg,

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

006360

Thanks. Tova

Tova Andrea Wang

Democracy Fellow

**The Century Foundation**

41 East 70th Street - New York, NY 10021

phone: 212-452-7704 fax: 212-535-7534

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[Click here](#) to receive our weekly e-mail updates.

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



"Tova Wang"  
[Redacted]  
05/31/2006 01:50 PM

To psims@eac.gov  
cc [Redacted]  
Subject RE: Working Group Notes

Peg, I'm sorry, but this is really not helpful. Its another outline. I guess we have to wait for the transcript. I wish now I had taken notes myself! Thanks anyway. Tova

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

**From:** psims@eac.gov [mailto:psims@eac.gov]  
**Sent:** Wednesday, May 31, 2006 12:31 PM  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Subject:** Re: Working Group Notes

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

"Tova Wang" [Redacted]

05/31/2006 11:26 AM

To psims@eac.gov  
cc  
Subject notes

006361



Gracia Hillman/EAC/GOV

10/30/2006 01:48 PM

To Thomas R. Wilkey/EAC/GOV@EAC

cc pdegregorio@eac.gov, Ddavidson@eac.gov, Juliet E.  
Hodgkins/EAC/GOV@EAC, jlayson@eac.gov

bcc

Subject The "Fraud/Intimidation" Report

Tom:

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

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

Thank you,  
Gracia

006362

**Briefing for  
U. S. Election Assistance Commission**

Thomas O'Neill, Project Director  
Eggleton Institute of Politics

Dan Tokaji, Assistant Professor of Law  
Moritz College of Law,

Tim Vercellotti, Assistant Research Professor  
Eggleton Institute of Politics

April 3, 2006

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**Analytic Tasks**

- Identify how voter ID requirements were implemented around the county to provide a baseline for consideration of other approaches.
- Diagnose the problems and challenges of voter ID and hypothesize alternative approaches.
- Recommend alternative approaches
- Identify appropriate policy objectives by which to assess alternative approaches to voter ID

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**Focus**

- HAVA's narrow ID requirements drew attention to the issue and helped spark the current debate.
- National debate now goes beyond HAVA to focus on stricter ID for all would-be voters.
- Therefore our work takes a broad view of the issue.

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**Voter ID and Ballot Integrity**

- Voter ID – a critical step in protecting the integrity of the ballot by checking that the potential voter is eligible and permitting the voter to cast a ballot and one ballot only.
- Ensuring ballot integrity requires a perspective that takes in the entire voting process.
- Requires more than preventing the ineligible from voting.
- Also should ensure that all those who are eligible and want to vote can cast a ballot that counts.

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**Vote Fraud Excluded From This Analysis**

- Assessing the effectiveness of voter ID in preventing vote fraud should logically include an estimate of the nature and frequency of vote fraud.
- EAC commissioned a separate analysis of the incidence of vote fraud.
- Our analysis does not take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

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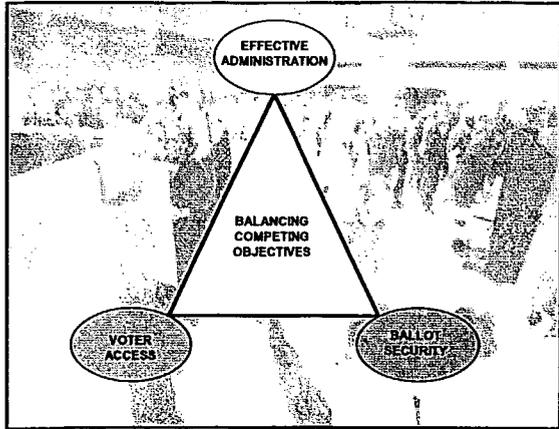
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**Method of analysis**

- Collected and analyzed state statutes and regulations & classified states by their ID requirements in 2004.
- Tested the assumption that voter ID requirements would prove to be increasingly demanding on the voter with providing photo ID the most rigorous.
- County-level turnout data and Current Population Survey results
- Analyzed litigation for trends in judicial decisions
- Revised our work based on comments of PRG

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**Categories of Voter ID in the states, 2004**

1. Give Name
2. Sign Name
3. Match Signature
4. Present ID
5. Photo ID

In 2004 no states required photo ID as the only ID to cast regular ballot.  
May not reflect actual practice at the polling place.

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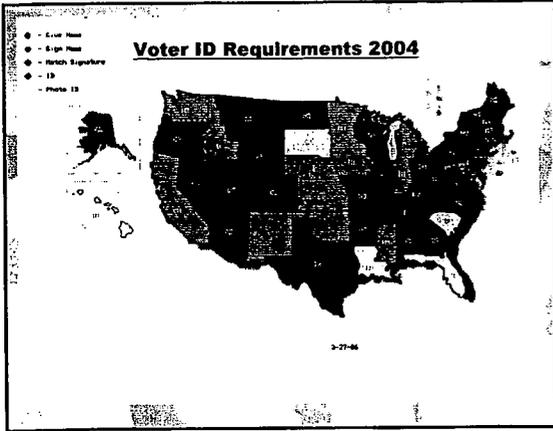
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**Limitations of the data**

- 2004 data do not permit conclusions about the effect of stricter photo ID laws such as those recently passed in Georgia and Indiana.
- The 5 states that required photo ID in 2004 allowed voters who signed an affidavit or provided another form of identification to cast a regular ballot.

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**Analysis of Turnout and  
Voter ID Requirements**

**Tim Vercellotti**

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**Reports from the voters**

- CPS in November 2004 asked respondents about their experience voting.
- Stricter ID requirements exert a negative effect on whether survey respondents said they voted.
- Decline from *Signing Name* to *Photo ID* was 2.5%.
- Small negative effect persists when controlling for other variables, such as battleground state and demographics.

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**Effect of Stricter Voter ID requirements**

Significant reduction in probability of voting by:

- Hispanic Voters (minus 9.7%)
- Voters below the poverty line
- Voters with less than a high-school education (-7.4%)
- Young voters (18-24)

No effect on the probability of voting by:

- African-American voters
- Voters with some college education

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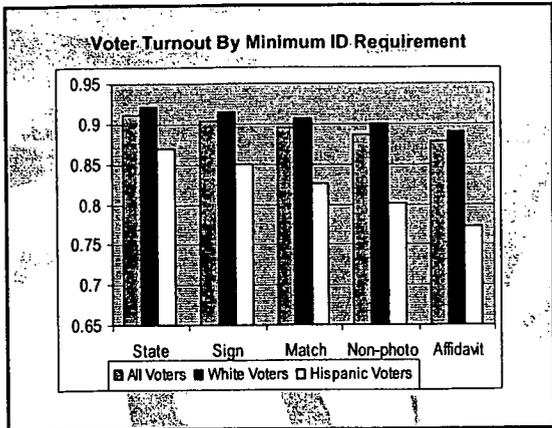
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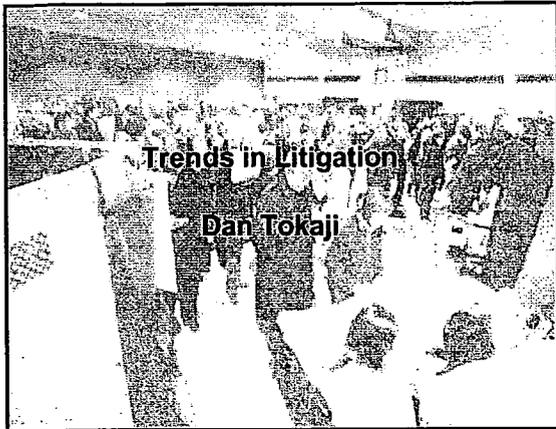
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## Trends in Litigation

Dan Tokaji

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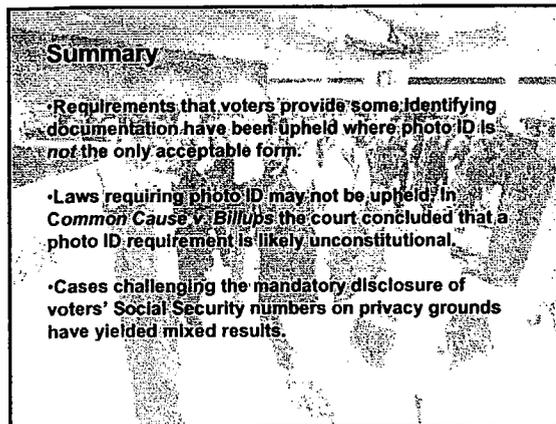
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## Summary

• Requirements that voters provide some identifying documentation have been upheld where photo ID is not the only acceptable form.

• Laws requiring photo ID may not be upheld. In *Common Cause v. Billups* the court concluded that a photo ID requirement is likely unconstitutional.

• Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

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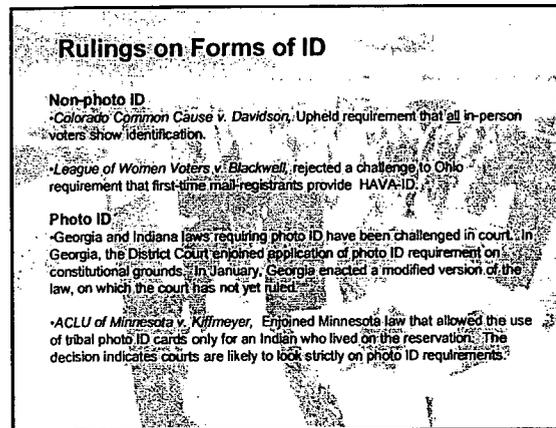
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## Rulings on Forms of ID

### Non-photo ID

• *Colorado Common Cause v. Davidson*, Upheld requirement that all in-person voters show identification.

• *League of Women Voters v. Blackwell*, rejected a challenge to Ohio requirement that first-time mail-registrants provide HAVA-ID.

### Photo ID

• Georgia and Indiana laws requiring photo ID have been challenged in court. In Georgia, the District Court enjoined application of photo ID requirement on constitutional grounds. In January, Georgia enacted a modified version of the law, on which the court has not yet ruled.

• *ACLU of Minnesota v. Kilmeyer*, Enjoined Minnesota law that allowed the use of tribal photo ID cards only for an Indian who lived on the reservation. The decision indicates courts are likely to look strictly on photo ID requirements.

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## Privacy

*Greninger v. Davis*, (4th Cir. 1993) struck down on due process grounds a Virginia requirement that voters provide Social Security numbers to register. Public disclosure of the social security numbers was not necessary to prevent fraud.

BUT *McKay v. Thompson*, (6th Cir. 2000) rejected privacy challenges based to a Tennessee law requiring Social Security numbers for voter registration.

NVRA permits requiring only the minimum information needed to prevent duplicate voter registration and determine eligibility. The distinction between the two cases appears to be between the use of Social Security numbers for internal purposes, which was deemed permissible, and the disclosure of those numbers to the public, which took place in Virginia.

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## Conclusions

Courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot.

Courts will balance the legitimate interest in preventing election fraud against:

- Citizen's right to privacy
- Reasonableness of requirements for identify documents.

To forestall destabilizing challenges to election outcomes, voter ID requirements should be limited to the minimum needed to prevent duplicate registration and ensure eligibility.

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## Conclusions, Recommendations and Discussion

Tom O'Neill

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**Policy Perspective**

If the ID requirements that block ineligible voters from the polls also prevent eligible voters from casting a ballot because they lack ID, the integrity of the ballot may not have been improved.

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**Policy Perspective Questions**

- Are voter ID requirements based on valid studies of the incidence of the vote fraud they aim to prevent?
- Is the increase in ballot security promised by stricter ID requirements reasonably proportional to the costs measured in both monetary and other terms?
- Can all citizens comply with the requirements easily?
- If a requirement is likely to reduce turnout of eligible voters, what steps can or will be taken to ameliorate the adverse consequences?
- Do the requirements have a neutral result on the composition of the qualified electorate?

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**Continuing uncertainty**

- Dynamics of Voter ID requirements, that is how they work in practice, are not well understood.
- Policy process should recognize this uncertainty - less certainty, more humility.
- Improve debate by additional research sponsored by the EAC.

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**Conclusions**

More information is needed about:

- The kinds of vote fraud that could be prevented by more rigorous voter ID so that it is possible to evaluate tradeoffs between ballot access and ballot integrity.
- Why potential voters may be required to cast a provisional ballot?
- The ID-related reasons for rejecting provisional ballots during the 2006 and subsequent elections.
- The experience of voters in meeting ID requirements.

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**The EAC should :**

A. Recommend the publication of a "Voting Impact Statement" by states considering changing their voter ID requirements. It would estimate the number and demographics of

1. Eligible potential voters that a proposed stricter ID requirement may keep away from the polls or be permitted to cast only a provisional ballot; and
2. Assess the number of ineligible voters who will be prevented from voting by stricter ID requirements.

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**The EAC should:**

B. Encourage or require the states to:

1. Collect and report reliable, credible information on the relationship between ballot access and ballot security.
2. Survey provisional voters (anonymously) to determine why they were unable to cast a regular ballot.
3. Conduct pre-election polling to ask voters what they know about the voter ID requirements.

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4. Examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. Consider 3 factors:

- a. Convenience of voters;
- b. Total time allowed to evaluate ballots;
- c. Safe harbor provision in presidential elections.

Time period	Number of States	% PB Counted
< 1 week	14	35.4%
1 - 2 weeks	15	47.1%
> 2 weeks	14	60.8%

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C. Advise the states that to forestall destabilizing challenges to election outcomes, voter ID requirements should be limited to the minimum needed to prevent duplicate registration and ensure eligibility.

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Briefing for

**U. S. Election Assistance Commission**

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April 3, 2006

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## REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

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### 1. Introduction and Report Background

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

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

### 2. Voter Identification –Background and Approach of the Study

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

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

FINAL D R A F T

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

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

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

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

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

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

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

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

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

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

<sup>4</sup> See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

## FINAL D R A F T

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

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

### Summary of findings and conclusions

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

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

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

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

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

Recommendations for consideration and action by the EAC

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

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

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

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

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

**3. Voter ID and Turnout**

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

**TABLE 1 -- Voter ID Requirements**

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

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

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

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

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

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

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

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

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

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

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

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

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

### Effect of Voter ID requirements on Turnout

#### Summary of Findings and Conclusions

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

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

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

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<sup>9</sup> See Appendix \_\_\_ for the full report on voter ID and turnout.

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

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

### Methods and Findings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Discussion and Conclusions of the Analysis

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

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- Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary from stating one's name to attesting to one's identity in an affidavit.
- Self-reported registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.
- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.
- Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the elderly, while they would be slightly less likely to vote as requirements range from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

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

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

#### 4. Litigation over Voter ID Requirements

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

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

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

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

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

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

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

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## 5. Developments since 2004

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

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

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

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

### State Voter Databases and Voter ID

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

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

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

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

## 6. Conclusions

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

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

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

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

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**Appendices**

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

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

Court Decisions

**Summary of Relevant Cases:**

**Challenges Prevailed:**

*American Civil Liberties Union of Minnesota v. Kiffmeyer*, 2004

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

*Greidinger v. Davis*, 1993

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

**Challenges Rejected:**

*League of Women Voters v. Blackwell*, 2004.

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

*Colorado Common Clause v. Davidson*, 2004

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

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

### *McKay v. Thompson, 2000*

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

### *Kemp v. Tucker, 1975*

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

### *Perez v. Riddlehoover, 1966*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Current Litigation Concerning Voter ID Issues<sup>12</sup>**

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

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

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<sup>12</sup> As of January 2, 2006

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

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

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

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

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

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

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

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

<sup>14</sup> GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19; 2005.

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

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

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

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

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

**APPENDIX**

**Annotated Bibliography on Voter Identification Issues**

Law Journals

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

**Historical articles:**

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

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

### **Marginally relevant/limited discussion of Voter ID issues**

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

906412

**Deliberative Process  
Privilege**

Paul DeGregorio /EAC/GOV  
03/27/2006 01:02 PM

To Juliet E. Thompson/EAC/GOV

cc

bcc

Subject Fw: Comments regarding the Eagleton Report on Voter ID

fyi

----- Forwarded by Paul DeGregorio/EAC/GOV on 03/27/2006 01:01 PM -----

Paul DeGregorio /EAC/GOV  
03/26/2006 08:34 PM

To Karen Lynn-Dyson

cc Thomas R. Wilkey/EAC/GOV, Amie J. Sherrill/EAC/GOV

Subject Comments regarding the Eagleton Report on Voter ID

Karen,

As you requested, here are my comments regarding the final draft Eagleton report on Voter ID.

While the report is generally acceptable, I don't believe the current draft is ready to be released.

I found some parts of the report to be misleading and, at times, appearing biased to support a view that imposing ID requirements at the polls should be discouraged. As an example, on the first page they write about poll workers facing "long lines and limited time," suggesting that may be a problem for the workers to check ID. I am not sure what their point may be, as poll workers in states that require ID checking will still have to do so, no matter how long the voter lines they have. Many states and their polling places may not have long lines at the polls, and thus voters may not have the "limited time" suggested in the report. They don't support their suggestion with hard data on long voter lines and time limits on poll workers.

They selectively quote the Carter-Baker Commission study to suggest that "photographic ID requirements for in-person voting do little to address the problem of registration by mail" even though the Carter-Baker study actually promotes the idea of a photographic ID requirement at the polls. To be fair, they need to state that fact and the reasons why the Carter-Baker Commission comes to that conclusion.

Their table on page 7 indicates that Missouri's current ID requirement for first-time voters relies on HAVA requirements. It is my understanding that Missouri law requires that all voters must show some type of ID at the polls (therefore it should state "Provide ID" as they did in listing CO, CN and LA requirements).

On page 9 and on subsequent pages they make reference to "voting age population" (VAP) data issued by the Census Bureau. Is all the data they represent in their analysis based on the VAP or do they take into consideration the Citizen Voting Age Population (CVAP), which takes into account the number of non-citizens who may be included in the VAP? It is not clear from the report. You may remember that Kim Brace discussed the VAP vs. CVAP issue with us extensively, and he indicated that the CVAP figure is always the better one to use when analyzing Census Bureau data against voting data. He also said that many of the non-citizens included in the VAP figures tend to be Hispanic. And since the Eagleton study is making conclusions that indicate that more stringent ID requirements may tend to reduce Hispanic voter turnout, it becomes important to understand which figures Eagleton uses, as Kim told us that VAP figures do not compensate for the non-citizen Hispanic voters that are included at a higher rate in the VAP (because as Kim stated most of the non-citizen population in the USA tends to be Hispanic).

I would like to know if the new Census report data on the 2004 election released on March 15, 2006 changes any of their perspectives. <http://www.census.gov/prod/2006pubs/p20-556.pdf>

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On page 12 they make reference to the CPS data and indicate that it reported a voter turnout rate of 89%, which is much higher than other data reported (which is also explained in their narrative). However, while the report indicates that the CPS data is "widely-accepted," it does make clear by whom. I think for credibility reasons they need more supporting language since there is a significant difference between a self-reported turnout of 89% and the reality of 63%.

Considering that the beginning of the document reveals a bias towards lesser ID requirements, I believe that it is important to highlight earlier in the report the conclusion found on page 14 that concerns by critics of voter identification requirements for African-American and elderly voters "are not borne out by the results." This will provide at least some balance to the reader.

On page 20 they indicate they lack good data on why voters must cast their ballots provisionally. I thought that our Election Day Survey captured some of that data.

It appears that a preponderance of their citations are from organizations or groups that support liberal positions on election issues, or take selective information from reports to support a more liberal interpretation of views on voter ID issues. Examples would include: Carter-Baker on page 1; Tova Wang on page 4; Carter-Baker on page 4; Brennan Center page 20. While many of published articles cited on pages 30 and 31 provide relatively neutral information, those that appear to take positions (read from the description of the articles) appear to favor a liberal position on most ID issues. I would have hoped they would have provided a more balanced approach. I don't see conservative writers, such as Thor Hearne, of the American Center for Voting Rights, quoted or cited once in the report. Mr. Hearne has testified before Congress and has had several articles that address voter identification issues.

I was pleased that they cited (on page 5) a recent March 15, 2006 article from the Arizona Republic that indicated that their stricter voter ID law went smoothly in its first use.

They might want to be aware (and perhaps mention) that the recommendation from Edward Foley cited on the bottom of page 21 was actually used in Haiti's recent February 7, 2006 presidential election. In addition to each voter being provided a picture ID by the election commission, that same picture was found next to the voters' name on the voter rolls that were used at the polling places. Perhaps they want to contact Scott Lansell of IFES for confirmation. The picture ID project for Haiti's election was financed and implemented by the Organization for American States (OAS). I believe turnout for that election was over 60% of those eligible.

Please let me know if you or anyone from Eagleton has questions regarding these comments. Thanks.

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006414

**Minutes of the Standards Board Meeting  
United States Election Assistance Commission  
May 23-24, 2006**

The following are the Minutes of the Standards Board Meeting of the United States Election Assistance Commission ("EAC") held on May 24, 2006, at the Hamilton Crowne Plaza Hotel, Hamilton Ballroom, 1001 14<sup>th</sup> Street, Washington, D.C. 20005. The meeting on May 23<sup>rd</sup> convened at 12:00 noon and ended at 5:30 p.m. The May 24<sup>th</sup> meeting convened at 10:00a.m. and convened at 3:40 p.m.

**Call to order:**

Chair called the meeting to order at 12:00 noon.

**STANDARDS BOARD MEETING**

Staff

Brian Hancock, Director of Voting System Testing & Certification  
Peggy Simms, Election Research Specialist  
Laiza Otero, EAC Research Associate  
Karen Lynn-Dyson, EAC Research Manager  
Juliet Thompson-Hodgkins, General Counsel  
Edgardo Cortés, EAC Election Research Specialist

Presenters

Connie Schmidt, EAC consultant; Brit Williams, EAC consultant; Dr. Thad Hall, University of Utah; Doug Chapin, electionline.org

**Proceedings:**

**Brief opening remarks from Vice Chairman Ray Martinez**

- Goal of the meetings is to give a full briefing of all the research projects that the EAC is working on.

**EAC Staff/Consultants Presentations:**

**Legal On-Line Information Clearinghouse**

Presenter: Julie Thompson-Hodgkins, EAC General Counsel

Ms. Hodgkins discussed the need for a website to provide public access to centralized legal materials related to elections. It will give information on current statutes and cases in a user friendly format. The focus will be anything in the

state or federal legislative arena that would impact the legislations process. The cases will be briefed by the contractors so the person doing the search does not have to read the whole case. It will be a link to the EAC home page.

### **Design for Democracy**

Presenter: Rick Korfe, American Institute of Graphic Art

The project is about effective design in election administration with a focus on clear communication and increasing citizen participation. The project aims at building expertise and using new research to create models for optical scan ballots and polling place signage. The group set up a room so that they may gain input from the attendees of the standards board.

### **Public Access Portals & Spanish and Asian Language Working Groups**

Presenter: Edgardo Cortes, EAC Research Specialist

Publius.org:

EAC awarded a contract to Publius.org to conduct a study which will examine and create a best practices document about Public Access Portals. They reviewed 425 jurisdictions and started looking at what kind of information they provided on their websites. They have also conducted interviews with personnel and administrators that run those sites. From the research they found the most popular function was people wanting to check their registration status and their polling place site. The draft should be ready by mid to late summer.

Spanish and Asian Languages:

There have been many demographic changes throughout the country and pursuant to the Voting Rights Act, under Section 203, many jurisdictions who didn't before, now must provide information in alternate languages. The Commission decided to bring together working groups consisting of election administrators, advocacy groups and other individuals who deal with these issues first hand.

- First project was the Hispanic working group, as Spanish is the largest alternative language with which jurisdictions are dealing
- The second project was the Asian and Pacific Islander working group including: Japanese, Chinese, Korean, Vietnamese and Tagalog.
- Hopefully next year we will begin working on Native American languages
- Working on translation dictionaries
- Dialects have been a challenge, with regional translations for the same term.

**Roll Call and welcoming of members and staff at 1:35 p.m.**

**Standards Board Plenary Session** (Hamilton Ballroom), Chaired by Peggy Nighswonger, Chair, Executive Board

- Appointment of Parliamentarian
  - Secretary Kiffmeyer (MN) appointed
- Adoption of the agenda
- Review of Meeting Book Materials
- Briefing on re-adoption of Standards Board Charter
  - Motion for adoption by Rebecca Vigil Gorom
  - Kevin Kennedy seconds, motion is carried
- Election of Executive Board Vacancy

**Afternoon Presentations**

**Draft Report on Provisional Voting (Hamilton Ballroom)**

Presenters: Thomas O'Neill, Provisional Voting/Voter Identification Study; Tim Vercollotti, Eagleton Institute; Edward Foley, Election Law at Moritz (Ohio State University)

Surveyed 400 local officials and reviewed the EAC Election Day Survey. With that information analysis was done to find the issues that the states had with Provisional Voting and the litigation that ensued. HAVA allows considerable latitude on how to implement provisional voting and the variation among the states is enormous. The time taken to evaluate the ballots increased the accuracy and therefore the percentage of ballots actually counted.

- Lack of adequate staffing was found to be a problem with the smaller, lower income jurisdictions, and they reported more provisional ballots cast
- Difference between the rules on the books and the rules as they were enforced in practice.
- Most received provisional voting instructions from the states, but training and procedures was found to be lacking, ie: not going back to the original voter registration cards
- About 1.2 million (1% of the turnout) voted by provisional vote

**Interim announcement after the afternoon break:**

With 66 votes, Tonni Bartholomew, City Clerk of Troy, MI, was voted in as the newest member of the Executive Board to fill the vacancy.

**Research on Poll Worker recruitment, training and retention (including college poll workers (Hamilton Ballroom))**

Presenters: Jennifer Collins-Foley, IFES; Abby Horn, Cleveland State University

IFES is an International program offering technical systems to jurisdictions in the US, and vice versa. Foley has been working as the President of the Poll Worker Institute. They have been working with Cleveland State University over the past 13 months to compile 50 state laws as they apply to poll workers to compile field-tested practices in poll worker recruiting, training and retention.

- Conducted focus groups with the League of Women Voters and are developing a how-to practical guide book.
- Two major hindering factors to bringing in new poll workers are the age requirement and the residency requirement.
- League of Women Voters in a 3 month period did 19 focus groups in 17 jurisdictions. Their analysis came back with results stating that election officials often work on shoe string budgets, have limited staff and work in an environment which historically, before HAVA, didn't require much change.
- Found it was difficult to recruit poll workers in both low and very high income areas.
- It was also especially difficult to find tech savvy poll workers in economically disadvantaged areas.
- They will be testing this guidebook in 3 jurisdictions this summer: Hamilton County, OH; Santa Fe, NM; and Milwaukee, WI

Abigail Horn from the Centre for Election Integrity, Cleveland State University:

There are several reasons why getting college students involved is an ideal situation. Besides that fact that they are tech savvy, with flexible schedules, there is also the idea that if you get them involved at an early age, there is a good chance that they will remain in a real way in the democratic process. It may not be as a poll worker, but perhaps in other ways. There are some serious hurdles to overcome in implementing these programs, however.

- Students not registered in the same state or in the county (or precinct in some places) where they are living and where their college is.
  - In 2004 the EAC provided grants to 15 different colleges and non profits to run college poll worker programs.
  - They looked at statutory law in all 50 states and territories with all case law pertaining to college poll workers
  - Also looked at the administrative code and state constitutions

- An idea was building a course around citizenship or giving extra credit for the project.
- Another problem is retention and sustainability in college poll worker programs.
  - It's difficult to plan on having students having excused absences for working on election day. That can be a major administrative problem that would need to be planned 9-10 months ahead of time
- Training on campus should be very hands-on with an emphasis on intergenerational communication.
- Getting commitments from college students is somewhat challenging as sometimes last minute projects come up and they are unable to work.

Comments from the Board members--and shortly after the meeting was adjourned by Chair Nighswonger at 5:35 p.m.

## **DAY 2 OF THE STANDARDS BOARD MEETING**

**Meeting convened at 8:30 a.m. by Chair Nighswonger in the Hamilton Ballroom at the Crowne Plaza Hotel in Washington, DC.**

### **Election Management Guidelines (intro by Brian Hancock, EAC)**

Presenters: Connie Schmidt, Johnson County, KS election commissioner; Brit Williams, NASED Board

B. Hancock:

Up to this point there have been three editions of standards or guidelines for voting systems or voting equipment. NASED has been calling for the development of Election Management Guidelines to compliment the voting systems standards. The EAC agrees that this effort is overdue and we have entered into a contract with several groups that will spearhead a three year project.

C. Schmidt:

Need to define exactly what Election Management Guidelines are. We don't want to invent something, but rather collect information that's already in place out there and create a resource book for all of you and every local election and state administrator in the country. It should be a rather generic guidebook with which you can voluntarily implement pieces and parts.

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A project that will be distributed is the Quick Start Guide for Voting Systems Management which highlights some priority items.

### **Research on vote count/recount (Hamilton Ballroom)**

Presenters: Dr. Thad Hall, University of Utah; Doug Chapin, Electionline.org

Vote counting systems should incorporate eight fundamental principles of vote counting: transparency, security, professionalism, accuracy, secrecy, timeliness, accountability and equality.

Recounts should perceive final certification of the result. They determine whether or not the numbers at the bottom of the page are the correct numbers for one of more given races. Procedures vary across the country and can be triggered either automatically, by request, by a candidate's party, or advocates or the others. And there is also variation on who pays for the recounts.

Using "benchmarking", they are looking for the most efficient practices to create baseline.

One major problem is that there are so many judges and clerks who have never read the election law which they have on the books, and when a highly contentious dispute comes along, it could be a difficult resolution.

### **Draft EAC Election Day Survey**

Presenter: Laiza Otero, EAC Research Associate

In 2004 the EAC conducted the Election Day Survey (EDS) and also administered a survey on the impact of the National Voter Registration Act (NVRA) and on the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA). Each of the three surveys was administered to all 50 states, the District of Columbia, and the four U.S. Territories. The NVRA study was inherited from the Federal Election Commission when the EAC was created, but this was the first time the Election Day Survey was administered. The UOCAVA survey was only 10 questions and was required by the Help America Vote Act (HAVA).

- Some challenges for the UOCAVA study included states not responding to some question, creating some issues with data quality and the inability to have good analysis.
- The next version of the EDS will be available online so that states may respond in that way.

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- Question 4 of the UOCAVA survey will be omitted this time, and will probably be back on in 2008.

(Break in the program, time before the next presenter)  
Bill Campbell offers an amendment to the minutes”

“I want to add that we affixed to that the resolutions that were adopted by the Standards Board in the meeting in August either as an appendix or just an extension of minutes”

Chair Nighswonger: No objections. Amendment was added.

### **Research on Voting Fraud/Voter Intimidation**

Presenter: Margaret Peggy Simms, EAC Research Specialist

This research is being done under HAVA's mandate and among the tasks listed in this statute is the development of nationwide statistics and methods of identifying, deterring, and investigating voter fraud in elections for federal office and investigating methods of voter intimidation.

EAC put together a bipartisan team of Joe Serebrov from Little Rock, AK and Tova Wang from the Century Foundation to conduct the background research.

- Research found that the literature on voter fraud is not truly systematic or scientific and the books and documents have little follow-up and many have political biases.
- Literature suggests that much of the intimidation is focused on minority communities.
- Upon interviewing members of the private and public sector involved in these issues agreed that absentee ballot fraud is the biggest problem.
- According to federal statutes, in order to prosecute intimidation, there has to be an economic or physical threat attached, where the consultants wanted to look at situations in which voters are being made to feel uncomfortable.
- Also mentioned were cases of voting by the deceased; vote buying (investigations concentrated in KY, IL, and WV), and misinformation campaigns
- The working group which gathered at the EAC suggested conducting risk analysis for voting fraud and voter intimidation.

### **Afternoon session: Resolutions**

HAVA specifies that the Executive Board make recommendations to the full board on resolutions regarding standard support business. Adam Ambrogi read the resolution aloud to the Board.

**Draft Resolution 2006-01:** Resolved that the Standards Board recommends the EAC carefully review each study and recommendation of researchers to ensure that findings are based on facts that are clearly defended by quantitative data rather than suspicions or assumptions. Also, the EAC requires researchers to study and report on the practicality and expense of implementing such changes.

**Draft Resolution 2006-02:** The EAC Standards Board charter states that the annual cost for operating the Standards Board includes one quarter year staff for support and it has been determined that a need for such staffing is present. It is resolved that the EAC adhere to the provision of the charter and dedicate staff support. The EAC staff person shall provide early and timely notice to the Board relative to proposed meetings to allow active participation of such meetings.

**Draft Resolution 2006-03:** HAVA requires the EAC to report on finite and specific topics that are clearly listed in the law; whereas taxpayer dollars are being used to prepare these reports at a great deal of expense in terms of funding and time. These reports are funded to contractors. Resolved that the Standards Board recommends that the EAC adhere strictly to the plain language meaning of HAVA where it clearly lists specific topics that are to be reported on and the parameters thereof without assuming tangential issues or taking action that would lead to an increased project scope.

- Draft Resolution 2006-01 adopted
- Draft Resolution 2006-02 adopted
- Draft Resolution 2006-03 adopted with a quorum of 59

**Draft Resolution 2006-04:** Whereas the internet can be used to train poll workers, resolved that the EAC develop an internet training template that state and local jurisdictions can use to create and manage internet based poll worker training programs.

- Amendment: change "resolved" to say "resolved that the Standards Board recommends the US Election Assistance Commission development"
- Amendment adopted to the resolution
- The motion **fails** 30 to 25.

Meeting adjourned at 3:40 p.m.

006422

DRAFT

006423

U.S. ELECTION ASSISTANCE COMMISSION STANDARDS BOARD

Proposed Bylaws Change Instructions

The attached form is to be used for proposing changes to the U.S. Election Assistance Commission (EAC) Standards Board Bylaws. All proposed changes must be received by midnight, (*specific date will be inserted*) in order to be considered at the February 20 – 23, 2007 Standards Board meeting. Changes received after the cutoff date will be considered in the following meeting.

1. All proposed changes are to be made to the redraft Bylaws document, dated \_\_\_\_\_, as recommended by the Bylaws Committee and submitted with these instructions.
2. Complete the proposed bylaws change form. If necessary, use additional 8 1/2" x 11" sheets.
3. All submissions must be typed. The Standards Board Bylaws Committee assumes no responsibility for unclear or illegible submissions.
4. Submissions may be sent by email, postal mail or fax.
5. Proof read your submission carefully. Your change may be ruled improperly submitted if you quote the current document inaccurately. Also, if you are proposing a new section or subsection, give it the proper numerical or alphabetical designation.
6. ***You must submit each change on a separate form*** in order to propose changes to more than one section. If you are proposing a new article, it should be submitted in its entirety, rather than each section separately. This form may be photocopied as needed.
7. If the proposed change conflicts with or changes other sections, submit separate changes for all sections affected.
8. You may attach up to five pages of supporting documentation.
9. Submit the section or subsection to be revised in its entirety. Do not leave out unchanged paragraphs. Strike through all wording to be deleted. Underscore all wording to be added.
10. ***Failure to follow any of these instructions may result in your change being ruled improperly submitted.*** Please contact the EAC Designated Federal Officer (DFO) if you have questions about these instructions.

Submit proposed changes to:  
Commissioner Gracia Hillman, DFO  
United States Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, DC 20005  
Phone: (202) 566-1392 Fax: (202) 566-3128

006424

**STANDARDS BOARD  
Proposed Bylaws Change Form**

This form is to be used for proposing changes to the EAC Standards Board Bylaws redraft document dated \_\_\_\_\_. All proposed changes must be received by midnight, (*specific date will be inserted*) in order to be considered at the February 20 – 23, 2007 Standards Board meeting. Changes received after the cutoff date will be considered at the following meeting.

An article is not subject to amendment by change, addition or repeal, until it has been approved by vote of the Standards Board.

\_\_\_\_\_  
Member's Name

\_\_\_\_\_  
Member's Contact Information

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Email

\_\_\_\_\_  
If amending an existing clause, please provide Article, Section [i.e. Article VI, Section 2(h)]

\_\_\_\_\_  
If proposing a new provision, cite where it should be placed in the current bylaws, and please provide Article, Section [i.e. Article VI, Section 2(h)]

THE FOLLOWING CHANGE OR ADDITION IS SUBMITTED:

REASON FOR CHANGE:

DESCRIBE SUPPORTING DOCUMENTATION SUBMITTED (if any):

IMPACT OF THE PROPOSED CHANGE:

11/09/06

006425

**Bylaws Changes At A Glance 10/16/06**

**Article IV.**

- Removed "Terms of Service" from Article title.
- Removed former paragraph 2.
- Added language from section 213(a) to last paragraph.

**Article V.**

- Reorganized nominations section into "Expired Terms" and "Vacancies Before the End of a Term."
- Fixed enumeration under c. Elections.
- Reorganized Executive Board Members Terms of Services and Vacancies into three sections: "Generally," "Initial Term," and "Subsequent Terms."
- Under meetings section, removed "simple" and "full" from paragraphs.
- Added clause concerning FACA.

**Article VI.**

- Removed Parliamentary section.
- Added Parliamentary language to Chair's duties.
- Re-worded Secretary's duties.
- Added notification duties to DFO Description and reorganized.

**Article VII.**

- Reorganized and changed language to track section 215 of HAVA.
- Removed Roberts Rules language.
- Reorganized section so that open meetings and closed meetings are in separate sections.
- Added clause indicating that minutes are part of the official government record.

**Article VIII.**

- Reorganized Article.

**Article IX.**

- Removed section 2bii. Changed time limitation in former 2biii from two days to seven.
- Removed paragraph 3d.

**Article X.**

- Changed language in former paragraph 1.
- Reorganized article.

**Article XII.**

- Renumbered and added language from page 561 of Roberts Rules.

**Article XIII.**

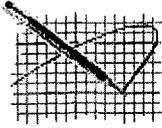
- Renamed from “Section” and renumbered.

**Article XIV.**

- Renamed from “Section.”

**Generally:** Added signature block for Chair and DFO. Added an update date block after the signature block.

**Deliberative Process  
Privilege**



Tamar Nedzar /EAC/GOV

10/16/2006 01:17 PM

To Gracia Hillman/EAC/GOV@EAC

cc Sheila A. Banks/EAC/GOV@EAC

bcc

Subject Standards Board Bylaws

Commissioner Hillman,

Attached please find:

- 1) The latest draft of the Standards Board Bylaws.
- 2) An "At A Glance" document detailing the changes to the previous draft.
- 3) A draft resolution for the Standards Board to meet once a year.

I am still looking into how to describe the new draft without calling it a substitution.

Please let me know if there are additional edits the Bylaws Committee would like me to make. I will be in the office tomorrow, Thursday, and Friday, but am available by phone and email in the interim.

Thank you,

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-1707  
<http://www.eac.gov>  
[TNedzar@eac.gov](mailto:TNedzar@eac.gov)



Draft Bylaws 10116006\_TN.doc



Bylaws Changes At A Glance 10\_16\_06.doc



Bylaws Resolution 10162006.doc

006428

**Deliberative Process  
Privilege**



Tamar Nedzar /EAC/GOV

09/05/2006 01:27 PM

To Sheila A. Banks/EAC/GOV@EAC

cc

bcc

Subject Executive Board Nominations Process

Sheila,

Commissioner Hillman expressed some concern about the language in one of the clauses that discusses procedures for nominating replacements for the Executive Board. I agree that the language as it is written may be unworkable for the Board. I suggest changing the language in Article V, Section 1, paragraph b, clause ii to:

In the event of a vacancy on the Executive Board prior to the expiration of a member's term on the Executive Board, the Nominating Committee shall send to Standards Board members a solicitation no later than sixty (60) days before the next meeting of the Standards Board. The solicitations shall designate the address and form for submitting nominations.

Any thoughts?

Thanks,

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-1707  
<http://www.eac.gov>  
[TNedzar@eac.gov](mailto:TNedzar@eac.gov)

006429

To: Juliet Hodgkins, General Counsel  
From: Tamar Nedzar  
Date: 1/20/07  
Subject: Guidance for CFR Submissions

---

**I. Background:**

This memorandum reviews the actions necessary to reserve and publish the United States Election Assistance Commission's (EAC) administrative and program regulations in the Code of Federal Regulations (CFR).

**II. Establishment:**

Agencies wishing to publish in the CFR must consult with personnel at the Federal Register (FR) to reserve sections of the code for their use. The EAC has been given an assignment in Title 11, Chapter 2, Parts 9400-9499 of the CFR. Chapter 2 of Title 11 currently houses the Federal Election Commission (FEC) and its regulations. To accept the designation, the EAC must send a letter to FR on the EAC Executive Director's letterhead formalizing its placement and designating three primary and three alternate officers to work with FR staff.<sup>1</sup>

The EAC must designate a minimum of one liaison officer, one certifying officer, and one authorizing officer; in addition to a minimum of one alternate for each position. All officers must be federal employees and may not be contract employees. The same person may fill several positions as long as the primary and alternate positions for one category are not filled by the same person. For example, the General Counsel could be the liaison officer, alternate certifying officer, and authorizing officer. The General Counsel could not, however be both the primary and alternate liaison officer.

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<sup>1</sup> A draft of EAC's acceptance letter is available on the T: drive.

The following is a description of each officer's duties:

- A. Liaison Officer: The person holding this position acts as the agency's official voice with FR for publication matters. All special handling requests, including emergencies, deferred, or immediate publishing, must go through the liaison officer or alternate liaison officer. The liaison officer is also required to resolve document questions and ensure that agency documents meet FR publication requirements<sup>2</sup>.
- B. Certifying Officer: The person holding this position certifies that any copies of originals submitted to FR are exact copies. In addition, for electronic submissions, the certifying officer certifies that electronic files are exact and official copies of documents.
- C. Authorizing Officer: The person holding this position distributes paper copies to EAC employees when necessary and handles all requests for hard copies.

### **III. Structure:**

The FR issued a handbook that instructs federal agencies on how to structure CFR regulations and format documents for inclusion in the FR<sup>3</sup>. The CFR units from most general to most specific are Title, Chapter, Part, and Section. A section can further be divided by six levels<sup>4</sup>:

Level 1: (a), (b), (c)

Level 2: (1), (2), (3)

Level 3: (i), (ii), (iii)

Level 4: (A), (B), (C)

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<sup>2</sup> See 1 CFR 16.1.

<sup>3</sup> <http://www.archives.gov/federal-register/write/handbook/>

<sup>4</sup> The FR *strongly* recommends that agencies do not use more than three levels below the section level.

Level 5: (1), (2), (3)

Level 6: (i), (ii), (iii)

The FR does not permit the use of hyphenated numbers (ex. 117-2.1) or numbers with alpha characters (ex. part 115a). Any deviation from the standard CFR structure must be approved in writing before publication.

The FR recommends that agencies reserve parts in between initial designations as it is extremely difficult to go back and re-number parts once they are assigned. For example, the EAC could call part 9401 “Administration,” label parts 9402-9404 as “Reserved,” and call part 9405 “Voting Systems,” therefore keeping open the unused numbers for future additions if logic dictates that program areas should be located after Administration and before Voting Systems. The EAC may wish to reference regulations issued by the Department of Homeland Security for examples of how a new agency has numbered its parts.

#### **IV. National Voter Registration Act of 1993:**

Section 802 of the Help America Vote Act transferred functions previously performed by the Federal Election Commission (FEC) under the National Voter Registration Act of 1993 (NVRA) to the EAC. Accordingly, the EAC must publish regulations relating to NVRA in its section of the CFR.

The preferred method for moving regulations previously under another section is to do a joint rulemaking. To remove NVRA from Chapter 1 and add it to Chapter 2, an authorized official from each agency must sign a jointly issued or common rule document. The EAC’s liaison officer must consult with FR staff in advance for assistance in preparing jointly issued documents.

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Simultaneously with the joint rulemaking moving NVRA regulations, the EAC can amend NVRA to reflect agency decisions and changes to NVRA regulations since the EAC was granted authority under the Act. The EAC may wish to reference regulations issued by the Presidio Trust for an example of a joint rulemaking that removes parts and places them elsewhere.

#### **V. Voluntary Voting System Guidelines and Similar Guidance:**

In 2005, the EAC adopted its first version of the Voluntary Voting System Guidelines (VVSG), which revised the FEC's Voting System Standards. The VVSG makes hardware and software recommendations for voting systems based on existing law and best practices. While the guidance is voluntary, some states make compliance with VVSG recommendations a requirement by statute or rule. In addition, the EAC's Voting System Certification Program will only allow voting systems to receive EAC certification if they conform to the VVSG. It is possible that several versions of the VVSG may be acceptable for EAC certification purposes at the same time. Therefore, the EAC must have some manner of including all "live" versions of the VVSG in the CFR.

There are two ways to the EAC may wish to include the VVSG in the CFR. First, the EAC can reformat the VVSG and re-submit it for publication to conform to FR's numbering scheme. The benefit of resubmitting the VVSG would be that once the document is re-formatted and re-published, any amendments to the document may be done in a piece-meal fashion instead of having to re-publish each version. However, this may cause confusion as to which version of the VVSG is live at any given time. In addition, re-formatting and re-publishing will be costly to the agency.

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The EAC may instead wish to incorporate the VVSG by reference. The benefit of incorporating the VVSG by reference is that amendments to the document can be noted by amending the incorporation by reference statement instead of re-publishing each change. The EAC may wish to reference regulations issued by the Federal Aviation Administration for examples of incorporation by reference and codification of certification programs.

**VI. Recommendations:**

- 1) The EAC should designate personnel to the three types of officer positions and send a letter to the FR accepting its sections in the CFR.
- 2) The EAC should make a list of program areas for publication in the CFR and create a superstructure for its parts and subparts.
- 3) The EAC should contact the General Counsel's office at FEC to coordinate removing NVRA regulations from their 11 CFR 1 to 11 CFR 2. The removal should coincide with amendments to NVRA regulations that EAC deems appropriate and necessary.
- 4) The EAC should conference with the FR's general counsel to obtain guidance concerning incorporation by reference and the best way to proceed with large guidance documents such as the VVSG.

006434

**BYLAWS**  
**OF THE UNITED STATES ELECTION ASSISTANCE COMMISSION STANDARDS**  
**BOARD**

**STANDARDS BOARD**

The Standards Board embodies the vision of Congress to forge a partnership among federal, state and local election officials whose goal is to promote public confidence in the conduct of federal elections in the United States.

**Article I: Authority**

1. Pursuant to the Federal Advisory Committee Act and the Help America Vote Act of 2002 (HAVA) [Public Law 107-252], the Standards Board has been granted its authority through its charter with the United States Election Assistance Commission (EAC) (filed with Congress on June 14, 2004).

**Article II: Objectives:**

The Standards Board will:

1. Advise the EAC through review of the voluntary voting system guidelines described in Title II Part 3 of HAVA; through review of the voluntary guidance described under Title III of HAVA; and through the review of the best practices recommendations contained in the report submitted under Section 242(b) of Title II of HAVA.
2. Provide guidance and advice to the EAC on a variety of topics related to the administration of elections for Federal office.
3. Function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act (FACA); and all other applicable Federal laws.

**Article III: Membership of the Standards Board**

1. Pursuant to Section 213(a) of HAVA, the Standards Board shall consist of 110 members, as follows:
  - a. Fifty-five (55) shall be state election officials selected by the chief State election official of each State.
  - b. Fifty-five (55) shall be local election officials selected as follows:
    - ii. Each state's local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select a representative local election official from the state in a process supervised by the chief election official of the state.
    - iii. In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official. The individual selected under such a procedure may not be a member of the same political party

- as the chief election official.
- c. The two Standards Board members who represent the same state may not be members of the same political party.

#### **Article IV. Standards Board Member Terms of Service and Vacancies**

1. The chief election official of each state shall notify the EAC and Executive Board of the Standards Board within five (5) business days of any vacancy or membership changes to the Standards Board.
2. Members of the Standards Board shall serve for a term of two (2) years and may be reappointed.
3. Vacancy appointments to the Standards Board shall be made in the same manner as the original appointment pursuant to HAVA.

#### **Article V: Executive Board of the Standards Board**

1. Pursuant to Section 213(c) of HAVA, the Standards Board shall select nine (9) of its members to serve as the Executive Board of the Standards Board as follows:
  - a. Membership.
    - i. Not more than five (5) members of the Executive Board may be state election officials.
    - ii. Not more than five (5) members of the Executive Board may be local election officials.
    - iii. Not more than five (5) members of the Executive Board may be of the same political party.
  - b. Nominations.
    - i. The Nominating Committee shall solicit nominations for the Executive Board from Standards Board members. The Nominating Committee shall send to Standards Board members a solicitation no later than December 1<sup>st</sup> immediately prior to the expiration of any Executive Board member's term. The solicitations shall designate the address and form for submitting nominations.
    - ii. In the event of a vacancy on the Executive Board prior to the expiration of a member's term on the Executive Board, the Nominating Committee shall send to Standards Board members a solicitation no later than sixty (60) days before the next meeting of the Standards Board. The solicitations shall designate the address and form for submitting nominations.
    - iii. Standards Board members may nominate themselves or other Standards Board members by responding to the solicitation.
    - iv. Nominations shall be submitted to the Standards Board's Designated Federal Officer (DFO) no later than January 15 or in the event of a vacancy, the date indicated on the solicitation.
    - v. Upon receipt of nominations, the Nominating Committee shall prepare a ballot to be distributed at the Standards Board meeting immediately following the submission deadline.
  - c. Elections.

- i. Elections to the Executive Board shall be by secret ballot and shall take place at a meeting of the Standards Board.
  - ii. The ballot shall be designed to enable Standards Board members to select candidates based on the following: (1) With which party the candidate affiliates, (2) whether the candidate is a state or local election official, (3) which state or territory the candidate represents, (4) whether the candidate was elected or appointed, and (5) in the case of state election officials, whether the candidate is a Secretary of State or part of a Citizen Board. The ballot shall also include concise biographical information for each candidate.
  - iii. Within thirty (30) days of an Executive Board election, the Executive Board members shall convene to elect a Chair, Vice-Chair, Secretary, and Parliamentarian.
- d. Executive Board Members Terms of Service and Vacancies.
- i. The Chair of the Executive Board shall notify the EAC and Nominations Committee Chair within five (5) business days of any vacancy on the Executive Board.
  - ii. Members of the Executive Board shall serve for a term of two (2) years and may not serve for more than three (3) consecutive terms.
  - iii. Members of the Standards Board who have previously served on the Executive Board shall be eligible to be nominated to the Executive Board no sooner than two (2) years from the last term in which they served on the Executive Board.
  - iv. The Chair, Vice-Chair, Secretary, and Parliamentarian shall not serve for a term of more than one (1) year. An Executive Board member shall not serve for two (2) consecutive terms for the same office, except in the case of a member serving the unexpired term of an office, in which case the member may be elected to the same office for the succeeding term.
  - v. In the event of a vacancy in the Executive Board, the remaining members of the Executive Board may appoint an interim member of the Executive Board until the next Standards Board meeting.
  - vi. An Executive Board member may be removed from the Executive Board by a vote of two-thirds (2/3) of Standards Board members at a Standards Board meeting.

## **Article VI. Executive Board Duties**

1. Chair. The Chair shall:
  - a. Preside over all meetings of the Executive Board and Standards Board.
  - b. Appoint the chair of standing committees and any ad hoc committees of the Standards Board.
  - c. Establish the agenda for meetings of the Executive Board and Standards Board in consultation with the EAC.
  - d. Call meetings of the Executive Board and Standards Board in consultation with the EAC.
  - e. Act as the official liaison between the Standards Board and the EAC for all

- resolutions, recommendations, and information requests.
- f. Serve as an *ex officio* member of all committees.
2. Vice-Chair. The Vice-Chair shall:
- Preside over meetings of the Executive Board and Standards Board in the Chair's absence.
  - Perform other duties as may be appropriate in the Chair's absence.
  - Assist the Chair from time to time as the Chair may designate.
  - In the event of a vacancy before the completion of the Chair's term, serve as the Chair.
3. Secretary. The Secretary shall:
- Notify Standards Board members of meetings and pending Standards Board business matters.
  - Maintain the minutes at Executive Board and Standards Board meetings, with assistance from the DFO.
  - Transmit a copy of Executive Board and Standards Board meeting minutes to the EAC for recordkeeping and storage.
  - Assist the Chair at meetings and from time to time as the Chair may designate.
4. Parliamentarian. The Parliamentarian shall:
- Ensure that all meetings are run in accordance with Roberts Rules of Order.
  - Fulfill the Secretary's duties in his or her absence.
  - Be responsible for time limitations on agenda items and holding speakers accountable to keep on time as listed (if at all) on the agenda.
  - Serve as the Chair of the Bylaws Committee.
5. Executive Board, Generally. The Executive Board shall:
- Perform all duties required under HAVA and other applicable Federal law.
  - Appoint the membership of appropriate standing committees and ad hoc committees by soliciting interest from the Standards Board membership.
  - Meet as necessary to address issues of concern in between Standards Board meetings.
  - Approve the minutes of the Executive Board meetings.
  - Convene Standards Board meetings, including, but not limited to, meetings by conference call and virtual meetings. Such meetings must allow each Standards Board member to include their comments and view or hear others' comments.
  - Consult with the DFO to ensure compliance with federal statutes and other applicable regulations.
  - Attend Executive Board meetings, including, but not limited to, meetings by conference call and virtual meetings, in accordance with section (5), subsection (d) of this Article. In the event that an Executive Board member fails to attend or participate in a minimum of twenty-five percent (25%) of Executive Board meetings within the preceding twelve (12) month period, such Executive Board member shall forfeit his or her position on the Executive Board.
  - As soon as possible, provide Standards Board Members all guidelines proposed to be adopted pursuant to Section 222(b)(3) of HAVA. Executive Board recommendations to the Standards Board pursuant to Section 222(b)(3) of HAVA shall include an appendix of all dissenting comments from Executive Board members.
  - Perform all other duties as from time to time the Standards Board may delegate to the Executive Board.
6. Designated Federal Officer (DFO). The DFO shall:

- a. Serve as the government's agent for all Standards Board activities.
- b. Approve or call Standards Board meetings.
- c. Approve agendas proposed by the Executive Committee.
- d. Attend all Standards Board and Executive Board meetings.
- e. Adjourn Standards Board and Executive Board meetings when such adjournment is in the public interest.
- f. Provide adequate staff support to the Standards Board, to assist with:
  - i. Notifying members of the time and place for each meeting.
  - ii. Maintaining records for all meetings, including subgroup or working group activities, as required by law.
  - iii. Maintaining the roll.
  - iv. Assuring that minutes of all Standards Board and Executive Board meetings, including subgroup and working group activities are prepared and distributed.
  - v. Housing at the EAC and maintaining official Standards Board records, including subgroup and working group activities.
  - vi. Filing all papers and submissions prepared for or by the Standards Board, including those items generated by subgroups and working groups.
  - vii. Responding to official correspondence.
  - viii. Acting as the Standard Board's agent to collect, validate, and pay all vouchers for pre-approved expenditures.
  - ix. Preparing and handling all reports, including the annual report as required by FACA.

## Article VII. Meetings

### 1. Standards Board Meetings.

- a. The Standards Board shall meet as required, but in no event less than two (2) times in each calendar year. Meetings shall be called by the DFO in consultation with the Executive Board.
  - b. The DFO shall approve the agenda for all meetings. The EAC shall distribute the agenda to Standards Board members prior to each meeting and shall publish notice of the meeting in the Federal Register as required by FACA.
  - c. Standards Board members and members of the public may submit agenda items to the DFO or Executive Board Chair.
  - d. All meetings of the Standards Board shall be conducted in accordance with Roberts Rules of Order.
  - e.
- F. Unless otherwise determined in advance, all meetings of the Standards Board will be open to the public. Once an open meeting has begun, it will not be closed unless prior approval of the closure has been obtained and proper notice of the closed session has been given to the public. All materials brought before, or presented to, the Board during the conduct of an open meeting, including the minutes of the proceedings of the previous open meeting, will be available to the public for review or copying at the time of the scheduled meeting.

Members of the public may attend any meeting or portion of a meeting that is not closed to the public and may, at the determination of the Chair, offer oral comment at such meeting. The Chair may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register will note that oral comment from the public is excluded and will invite written comment as an alternative. Members of the public may submit written statements to the EAC at any time.

- G. Meetings of the Standards Board will be closed only in limited circumstances and in accordance with applicable law. The Standards Board must obtain prior approval to conduct a closed session. Requests for closed meetings must be submitted to EAC's Office of General Counsel 45 days in advance of the proposed closed session.

Where the DFO, in conjunction with the Office of General Counsel, has determined in advance that discussions during a Standards Board meeting will involve matters about which public disclosure would be harmful to the interests of the government, industry, or others, an advance notice of a closed meeting, citing the applicable exemptions of the Government in the Sunshine Act (GISA), will be published in the Federal Register. The notice may announce the closing of all or just part of a meeting. If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Chair will order such discussion to cease and will schedule it for closed session. Notices of closed meetings will be published in the Federal Register at least 15 calendar days in advance.

- f. Minutes.
- i. The DFO, or his or her designee, shall assure that detailed minutes of each minute are prepared and distributed to Standards Board members.
  - ii. Minutes of open meetings shall be available to the public upon request. Minutes of closed meetings shall be available to the public upon request, subject to the Freedom of Information Act (FOIA).
  - iv. Meeting minutes shall include the following: (1) Time, (2) date, (3) location, (4) record of persons present, including the names of Standards Board members, staff, and the names of members of the public making written or oral presentations, (5) a complete and accurate description of the matters discussed and conclusions reached, and (6) copies of all reports received, issued, or approved by the Standards Board.
  - v. All documents, reports, or other materials prepared by or for the Standards Board constitute official government records and will be maintained according to the Federal Records Act.
2. Executive Board of the Standards Board Meetings.
- a.

**Executive Board Meetings:**

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2. Have authority to call a Executive Board meeting in writing by two members' filing the original call of the meeting with the DFO, including the stated reason for calling the meeting.

1. A majority of the members of the Executive Board shall be present for a quorum.

2. Actions of the Executive Board shall be made by majority vote of the full membership of the Executive Board. Proxy voting will not be allowed in Executive Board member may attend and participate in any and all discussions but may not vote.

### Article VIII. Quorum and Proxy Voting

A. A quorum shall be established when fifty percent plus one of the membership of the Standards Board is present for the meeting or are present by proxy.

A. Actions taken by the Standards Board shall be by majority vote of those present and voting unless otherwise specified in these bylaws.

B. 1. Proxy designations must be submitted in writing to the Chair up to the day of the meeting of the Standards Board.

2. Proxy votes may be cast by members of the Standards Board or other designee provided the proxy designations have been timely filed in advance with the Chair clearly identifying the Board member or other designee to cast his proxy vote.

3. The Chair shall appoint a proxy committee to verify eligibility of proxy votes.

C. Voting procedures for the Standards Board, the Executive Board, and the subcommittees will follow the accepted procedure, in the latest edition of Robert's Rules of Order. Votes by the Standard Board on recommendations to EAC shall have the ayes, nays, and abstentions recorded.

### Article IX. Standing Committees

Clause about including diverse groups (from nominations section above) here.

The current standing committees are the Nominating Committee which shall be comprised of five (5) members and the By-Laws Committee which shall be comprised of seven (7) members.

As deemed necessary, the Standards Board may convene hearings or subcommittees to support

the Board's functions.

Ad-Hoc Committees. Standards Board member proposes resolution, once accepted by Standards Board, Executive Board can appoint.

## Article X. Amendments

### Section VII: Bylaws

#### A. General

1. The general membership of the EAC's Standards Board shall have the exclusive right to repeal and/or amend the organization's bylaws.
2. The bylaws may be amended by a two-thirds vote of the members present and voting at any Standards Board meeting for which legal notice has been given to the Standards Board, where a quorum is present, and when at least 30 days prior notice of the vote has been given to the Standards Board members.

#### B. Procedures

1. The Standards Board's Bylaws Committee shall promulgate a form for proposing an amendment to the Standards Board's Bylaws. The form shall require the specific language of the proposed amendment to be included, shall identify the author of the amendment, and shall be designed to elicit the rationale and impact statement.
2. Proposed changes to the Standards Board's bylaws submitted fewer than 60 days prior to a scheduled meeting of the Standards Board shall be deferred until the meeting following that meeting of the Standards Board.
3. Proposed changes to the Standards Board's Bylaws shall be submitted to the Standards Board's Designated Federal Officer who shall then expeditiously forward the proposed changes to the Standard's Board's Bylaws Committee and to the EAC's General Counsel.
4. The General Counsel shall report in an expeditious manner to the Bylaws Committee and the Executive Board whether or not a proposed change to the Bylaws is consistent with federal law and/or rules.
5. The Standards Board's Bylaws Committee shall prepare and forward to the Standards Board's Executive Committee the General Counsel's report on the legality of the proposed change, an analysis of the impact of a proposed change and a recommendation for disposition at least 45 days prior to the next Standards Board meeting.

6. The Standards Board's Executive Committee shall place the report on the proposed change to the Standards Board's Bylaws on the agenda for the meeting of the Standards Board.
7. The Standards Board's Executive Board shall forward all proposed changes along with rationale for or against the proposed change to all Standards Board members at least 35 days prior to the next meeting of the Standards Board via email and U.S. Mail to the applicable address of record on file with the EAC. The Executive Board shall request EAC post the proposed change to the bylaws and all supporting material on EAC's website at least 35 days prior to the next meeting of the Standards Board.

#### **Section VIII: Expenses and Reimbursement.**

Expenses related to the operation of the Standards Board will be borne by the EAC. Expenditures of any kind must be approved in advance by the DFO.

2. Members of the Standards Board shall not receive any compensation for their services, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the board.

#### **Section IX: Effective Date**

1. These By-Laws are effective upon adoption by the Standards Board.

#### **Section X: Transition Procedures and Ratification**

- A. The adoption of the By-Laws has no effect on the selection, terms or appointment of the officers or member of the Standards Board, the Executive Board, or a subcommittee of a Board serving on the effective date of these By-Laws.
- B. All acts of the Standards Board, the Executive Board or a subcommittee of a Board are hereby ratified, except to the extent that an act does not conform with a resolution adopted by the Standards Board before the effective date of these By-Laws.

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## **BYLAWS**

### **UNITED STATES ELECTION ASSISTANCE COMMISSION STANDARDS BOARD**

The U.S. Election Assistance Commission Standards Board, hereinafter referred to as Standards Board, embodies the vision of Congress to forge a partnership among federal, state and local election officials whose goal is to promote public confidence in the conduct of federal elections in the United States.

#### **Article I. Authority**

1. Pursuant to the Federal Advisory Committee Act and the Help America Vote Act of 2002 (HAVA) [Public Law 107-252], as such statutes may be amended from time to time, the Standards Board has been granted its authority through its charter with the United States Election Assistance Commission (EAC) (filed with Congress on June 14, 2004).

#### **Article II. Objectives:**

The Standards Board will:

1. Advise the EAC through review of the voluntary voting system guidelines described in Title II Part 3 of HAVA; through review of the voluntary guidance described under Title III of HAVA; and through the review of the best practices recommendations described in Section 241 of Title II of HAVA, as required by HAVA or as may be developed by EAC.
2. Provide guidance and advice to the EAC on a variety of topics related to the administration of elections for Federal office.
3. Function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act (FACA); and all other applicable Federal laws.

#### **Article III. Standards Board Membership**

1. Pursuant to Section 213(a) of HAVA, the Standards Board shall consist of 110 members, as follows:
  - a. Fifty-five (55) shall be state election officials selected by the chief State election official of each State.
  - b. Fifty-five (55) shall be local election officials selected as follows:
    - ii. Each state's local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select a representative local election official from the state in a process supervised by the chief election official of the state.
    - iii. In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official. The individual selected under such a procedure may not be a member of the same political party as the chief election official.

- c. The two Standards Board members who represent the same state may not be members of the same political party.

#### **Article IV. Standards Board Member Vacancies**

1. The chief election official of each state shall notify the EAC and Executive Board of the Standards Board within five (5) business days of any vacancy or membership changes to the Standards Board.
2. Vacancy appointments to the Standards Board shall be made in accordance with Section 213(a) of HAVA:
  - a. Fifty-five (55) shall be state election officials selected by the chief State election official of each State.
  - b. Fifty-five (55) shall be local election officials selected as follows:
    - iv. Each state's local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select a representative local election official from the state in a process supervised by the chief election official of the state.
    - v. In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official. The individual selected under such a procedure may not be a member of the same political party as the chief election official.
  - c. The two Standards Board members who represent the same state may not be members of the same political party.
3. In December of each year, the EAC shall notify the appointing authority of each state or territory who represents their state or territory on the Standards Board.

#### **Article V. Executive Board of the Standards Board**

1. Pursuant to Section 213(c) of HAVA, the Standards Board shall select nine (9) of its members to serve as the Executive Board of the Standards Board as follows:
  - a. Membership.
    - i. Not more than five (5) members of the Executive Board may be state election officials.
    - ii. Not more than five (5) members of the Executive Board may be local election officials.
    - iii. Not more than five (5) members of the Executive Board may be of the same political party.
  - b. Nominations.
    - i. Expired Terms.
      - (a) The Nominating Committee shall solicit nominations for the Executive Board from Standards Board members. The Nominating Committee shall send to Standards Board members a solicitation no later than December 1<sup>st</sup> immediately prior to the expiration of any Executive Board member's term. The solicitations shall designate the address and form for submitting nominations.

- (b) Standards Board members may nominate themselves or other Standards Board members by responding to the solicitation.
  - (c) Nominations shall be submitted to the Standards Board's Designated Federal Officer (DFO) in writing and may be submitted electronically no later than January 15.
  - (d) Upon receipt of nominations, the Nominating Committee shall prepare a ballot to be distributed to the Standards Board at least 15 days prior to the date of the Standards Board meeting immediately following the submission deadline.
- ii. Vacancies Before the End of a Term.
- (a) In the event of a vacancy on the Executive Board prior to the expiration of a member's term on the Executive Board, the Nominating Committee shall send to Standards Board members a solicitation no later than sixty (60) days before the next meeting of the Standards Board. The solicitations shall designate the address and form for submitting nominations.
  - (b) Standards Board members may nominate themselves or other Standards Board members by responding to the solicitation.
  - (c) Nominations shall be submitted to the Standards Board's Designated Federal Officer (DFO) in writing and may be submitted electronically no later than the date indicated on the solicitation.
  - (d) Upon receipt of nominations, the Nominating Committee shall prepare a ballot to be distributed to the Standards Board at least 15 days prior to the date of the Standards Board meeting immediately following the submission deadline.
- c. Elections
- i. Elections to the Executive Board shall be by secret ballot and shall take place at a meeting of the Standards Board.
  - ii. The ballot shall be designed to enable Standards Board members to select candidates based on the following: (1) With which party the candidate affiliates, (2) whether the candidate is a state or local election official, (3) which state or territory the candidate represents, (4) whether the candidate was elected or appointed, and (5) in the case of state election officials, whether the candidate is a Secretary of State, a member of a Citizen Board, or a State Election Director. The ballot shall also include concise biographical information for each candidate.
  - iii. For nominations following the first election (2005), not including any special elections to fill unexpired terms, two (2) of the three positions shall be local election officials. For nominations following the second election (2007), two of the three positions shall be for state election officials. The number of state and local nominations shall continue to alternate in subsequent elections.
  - iv. Within thirty (30) days of an Executive Board election, the Executive Board members shall convene to elect a Chair, Vice-Chair, Secretary, and Parliamentarian.
- d. Executive Board Members Terms of Service and Vacancies.

- i. Generally.
    - (a) The Chair of the Executive Board shall notify the EAC and Nominations Committee Chair within five (5) business days of any vacancy on the Executive Board.
    - (b) The Chair, Vice-Chair, and Secretary, shall not serve for a term of more than one (1) year. An Executive Board member shall not serve for two (2) consecutive terms for the same office, except in the case of a member serving the unexpired term of an office, in which case the member may be elected to the same office for the succeeding terms.
    - (c) An Executive Board member may be removed from the Executive Board for cause by a vote of two-thirds (2/3) of Standards Board members at a Standards Board meeting.
    - (d) In the event of a vacancy in the Executive Board, the remaining members of the Executive Board may appoint an interim member of the Executive Board until the next Standards Board meeting.
    - (e)
  - ii. Initial Term.
    - (a) Pursuant to Section 213(c)(3) of HAVA, of the members first selected to serve on the Executive Board of the Standards Board:
      - (i) Three (3) shall serve for one (1) term.
      - (ii) Three (3) shall serve for two (2) consecutive terms.
      - (iii) Three (3) shall serve for three (3) consecutive terms.
  - iii. Subsequent Terms.
    - (a) Pursuant to Section 213(c)(2) of HAVA, members of the Executive Board shall serve for a term of two (2) years and may not serve for more than three (3) consecutive terms.
    - (b) Members of the Standards Board who have previously served on the Executive Board shall be eligible to be nominated to the Executive Board no sooner than two (2) years from the last term in which they served on the Executive Board.
- e. Meetings.
- i. Any two members of the Executive Board may call an Executive Board meeting by filing the original call of the meeting with the DFO, including the stated reason for calling the meeting.
  - ii. A majority of Executive Board Members shall be present for a quorum.
  - iii. The Executive Board shall agree to actions by a majority vote of the Executive Board.
  - iv. Proxy voting will not be allowed in Executive Board votes.
  - v. Any member of the Standards Board may attend and at the discretion of the Chair, may participate in any and all discussions at an Executive Board meeting, but may not vote.
  - vi. If the Executive Board decides to hold an open meeting, it shall do so in accordance with the requirements FACA.

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## Article VI. Executive Board Duties

1. Chair. The Chair shall:
  - a. Preside over all meetings of the Executive Board and Standards Board.
  - b. Appoint the chair of standing committees and any ad hoc committees of the Standards Board.
  - c. Establish the agenda for meetings of the Executive Board and Standards Board in consultation with the DFO.
  - d. Call meetings of the Executive Board and Standards Board in consultation with the DFO.
  - e. Act as the official liaison between the Standards Board and the EAC for all resolutions, recommendations, and information requests.
  - f. Serve as an *ex officio* member of all committees.
  - g. Appoint a Parliamentarian to preside over all Standards Board meetings.
    - i. The Parliamentarian shall provide advice and assistance to the Chair so that the Chair can run all meetings in accordance with Roberts Rules of Order.
2. Vice-Chair. The Vice-Chair shall:
  - a. Preside over meetings of the Executive Board and Standards Board in the Chair's absence.
  - b. Perform other duties as may be appropriate in the Chair's absence.
  - c. Assist the Chair from time to time as the Chair may designate.
  - d. In the event of a vacancy before the completion of the Chair's term, serve as the Chair.
3. Secretary. The Secretary shall:
  - a. Review Executive Board minutes before distribution to Standards Board members.
  - b. Ensure, with assistance from the DFO, that meeting minutes are properly on file.
  - c. Assist the Chair at meetings and from time to time as the Chair may designate.
4. Executive Board, Generally. The Executive Board shall:
  - a. Perform all duties required under HAVA and other applicable Federal law.
  - b. Appoint the membership of appropriate standing committees and ad hoc committees by soliciting interest from the Standards Board membership.
  - c. Meet as necessary to address issues of concern in between Standards Board meetings.
  - d. Approve the minutes of the Executive Board meetings.
  - e. Convene Standards Board meetings, including, but not limited to, meetings by conference call and virtual meetings. Such meetings must allow each Standards Board member to include their comments and view or hear others' comments.
  - f. Consult with the DFO to ensure compliance with federal statutes and other applicable regulations.
  - g. Attend Executive Board meetings, including, but not limited to, meetings by conference call and virtual meetings, in accordance with these bylaws. In the event that an Executive Board member fails to attend or participate in at least one (1) Executive Board meeting within the the preceding twelve (12) month period, such Executive Board member shall forfeit his or her position on the Executive Board, thereby creating a vacancy. Such vacancy shall be filled in accordance with these bylaws.
  - h. As soon as possible, provide Standards Board Members all guidelines proposed to be adopted pursuant to Section 222(b)(3) of HAVA. Executive Board recommendations to the Standards Board pursuant to Section 222(b)(3) of HAVA shall include an

- appendix of all dissenting comments from Executive Board members.
- i. Perform all other duties as from time to time the Standards Board may delegate to the Executive Board.
  - j. Upon notice of an Executive Board meeting, the Executive Board shall notify the Standards Board of the Executive Board meeting.
5. Designated Federal Officer (DFO). The DFO shall:
- a. Serve as the government's agent for all Standards Board activities.
  - b. Approve or call Standards Board meetings.
  - c. Approve agendas proposed by the Executive Committee.
  - d. Attend all Standards Board and Executive Board meetings.
  - e. Adjourn Standards Board and Executive Board meetings when such adjournment is in the public interest.
  - f. Provide adequate staff support to the Standards Board, to assist with:
    - i. Notice. The DFO shall:
      - (a) Notify members of the time and place for each meeting.
      - (b) Upon notice of an open Executive Board meeting, notify the Standards Board and public of time and place for the meeting.
      - (c) Notify appointing authorities of any and all vacancies on the Standards Board.
    - ii. Recordkeeping and Administration. The DFO shall:
      - (a) Maintain records for all meetings, including subgroup or working group activities, as required by law.
      - (b) Maintain the roll.
      - (c) Assure that minutes of all Standards Board and Executive Board meetings, including subgroup and working group activities are prepared and distributed.
      - (d) House at the EAC and maintain official Standards Board records, including subgroup and working group activities.
      - (e) Filing all papers and submissions prepared for or by the Standards Board, including those items generated by subgroups and working groups.
      - (f) Respond to official correspondence.
      - (g) Prepare and handle all reports, including the annual report as required by FACA.
      - (h) Acting as the Standard Board's agent to collect, validate, and pay all vouchers for pre-approved expenditures.

## Article VII. Meetings

1. Pursuant to Sections 215(a)-(c) of HAVA, the Standards Board shall hold a meeting of its members:
  - a. At such times as it considers appropriate for the purposes of conducting such business as it considers appropriate under HAVA.
  - b. In any event, not less frequently than once every two (2) years for purposes of selecting the Executive Board.
  - c. For the purposes of voting on voluntary voting system guidelines referred to it

under Section 222 of HAVA, not less frequently than once every year.

2. Meetings shall be called by the DFO in consultation with the Executive Board.
3. The DFO shall approve the agenda for all meetings. The EAC shall distribute the agenda to Standards Board members prior to each meeting and shall publish notice of the meeting in the Federal Register as required by FACA.
4. Standards Board members and members of the public may submit agenda items to the DFO or Executive Board Chair.
5. Meetings.
  - a. Open Meetings.
    - i. Unless otherwise determined in advance, all Standards Board meetings will be open to the public.
    - ii. Members of the public may attend any meeting or portion of a meeting that is not closed to the public and may, at the determination of the Chair, offer oral comment at such meeting. The Chair may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register will note that oral comment from the public is excluded. In such a case, the Standards Board will accept written comments as an alternative. In addition, members of the public may submit written statements to the EAC at any time.
    - iii. All materials brought before, or presented to, the Board during the conduct of an open meeting, including, but not limited to, the minutes of the proceedings of the previous open meeting, will be available to the public for review or copying at the time of the scheduled meeting.
    - iv. Minutes of open meetings shall be available to the public upon request.
    - v. Once an open meeting has begun, it will not be closed unless prior approval of the closure has been obtained and proper notice of the closed session has been given to the public.
    - vi. If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Chair will order such discussion to cease and will schedule it for closed session.
  - b. Closed Meetings.
    - i. Notices of closed meetings will be published in the Federal Register at least 15 calendar days in advance.
    - ii. Standards Board meetings will be closed only in limited circumstances and in accordance with applicable law. The Standards Board must obtain prior approval to conduct a closed session. Requests for closed meetings must be submitted to EAC's Office of General Counsel a minimum of 45 days in advance of the proposed closed session.
    - iii. Where the DFO, in conjunction with the Office of General Counsel, has determined in advance that discussions during a Standards Board meeting will involve matters about which public disclosure would be harmful to the interests of the government, industry, or others, an advance notice of a closed meeting, citing the applicable exemptions of the Government in the Sunshine Act (GISA), shall be published in the Federal Register. The notice may announce the closing of all or just part

- of a meeting.
- iv. Minutes of closed meetings shall be available to the public upon request, subject to the Freedom of Information Act (FOIA).
6. Minutes.
- a. The DFO, or his or her designee, shall assure that detailed minutes of each minute are prepared and distributed to Standards Board members.
  - b. Meeting minutes shall include the following: (1) Time, (2) date, (3) location, (4) record of persons present, including the names of Standards Board members, staff, and the names of members of the public making written or oral presentations, (5) a complete and accurate description of the matters discussed and conclusions reached, and (6) copies of all reports received, issued, or approved by the Standards Board.
  - c. All documents, reports, or other materials prepared by or for the Standards Board constitute official government records and will be housed at the EAC and maintained according to the Federal Records Act.
  - d. Meeting minutes are considered part of the official government record.

#### **Article VIII. Quorum and Proxy Voting**

1. Quorum:
  - a. A quorum shall be established when fifty percent (50%) plus one of Standards Board members is present for a meeting or are present by proxy.
  - b. Proxy designations may be submitted in writing to the Chair up to the day of the Standards Board meeting.
2. Proxy Votes.
  - a. Proxy votes may only be cast by Standards Board members, provided proxy designations have been timely filed in advance with the Chair clearly identifying the Standards Board member to cast an absent member's proxy vote.
  - b. The Chair shall appoint a proxy committee to verify the eligibility of proxy votes.
3. Voting Generally.
  - a. The Standards Board shall agree to actions by majority vote of those present and voting unless otherwise specified by these bylaws.
  - b. Votes by the Standard Board on recommendations to EAC shall have the ayes, nays, and abstentions recorded.

#### **Article IX. Committees**

In appointing members to committees, the Standards Board shall pay particular attention to ensuring diverse membership. Accordingly, the Executive Board shall do due diligence to ensure that committee members (1) affiliate with diverse parties, (2) are representative of both state and local election officials, (3) represent different states and territories, and (4) representative of both elected and appointed officials.

1. Meetings.
  - a. All committees may meet informally at any time for the purpose of conducting

- their business, including telephonically or through electronic media.
2. Standing Committees.
    - a. Nominating Committee. The Nominating Committee shall:
      - i. Be comprised of five (5) members.
      - ii. Solicit nominations for the Executive Board from Standards Board members.
      - iii. Prepare and distribute to Standards Board members ballots that include all the information listed in Article V, section 1, subsection c, paragraph ii of these Bylaws.
    - b. Bylaws Committee. The Bylaws Committee shall:
      - i. Be comprised of seven (7) members.
      - ii. Submit a report with all recommended amendments to the Executive Board for a seven (7) day comment period before submitting recommendations to the Standards Board for resolution and adoption.
  3. Ad-Hoc Committees.
    - a. The Standards Board may, at any time, by majority vote, establish an ad-hoc committee.
    - b. The Standards Board member wishing to establish an ad-hoc committee must present to the Standards Board the reason(s) he/she is requesting the committee.
    - c. Once an ad-hoc committee has been established, the Executive Board shall appoint members to the ad-hoc committee.

#### **Article X. Amendments**

1. The Standards Board's Bylaws Committee shall promulgate a form for proposing an amendment to the Standards Board's Bylaws.
  - a. The form shall require the specific language of the proposed amendment to be included, identify the author of the amendment, and be designed to elicit the rationale and impact of the proposed amendment.
2. All proposed bylaw changes must be submitted in writing to the DFO:
  - a. No later than December 1; or
  - b. Within the seventy (70) day timeframe provided by the Executive Committee.
3. After receiving proposed bylaw changes, the DFO shall forward the proposed changes to the Standards Board Bylaws Committee and the EAC's General Counsel.
  - c. The General Counsel shall report in an expeditious manner to the Bylaws Committee and the Executive Board whether or not a proposed change to the Bylaws is consistent with federal law and/or rules.
  - d. The Bylaws Committee shall transmit a report containing the proposed bylaws to the Executive Board.
  - e. The Standards Board's Executive Committee shall place the report on the proposed change to the Standards Board's Bylaws on the agenda for the next meeting of the Standards Board.
3. The Executive Board shall forward all proposed changes to Standards Board members at least thirty (30) days prior to the next meeting of the Standards Board via email and U.S. Mail to the applicable address of record on file with the EAC. The Executive Board shall request that EAC post the proposed change to the bylaws and all

supporting material on EAC's website at least thirty (30) days prior to the next meeting of the Standards Board.

4. The bylaws may be amended by on a two-thirds (2/3) vote of the members present and voting at any Standards Board meeting.

**Article XI. Expenses and Reimbursement.**

1. Expenses related to Standards Board operations will be borne by the EAC.
2. Expenditures of any kind must be approved in advance by the DFO.
3. Standards Board members shall not receive any compensation for their services, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of federal agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in performance of their services for the Standards Board.

**Article XII. Roberts Rules**

1. The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Standards Board in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order the Standards Board may adopt.
2. Voting procedures for the Standards Board, the Executive Board, and the subcommittees shall follow the accepted procedure, in the latest edition of Robert's Rules of Order.

**Article XIII. Effective Date**

1. These By-Laws are effective upon adoption by the Standards Board.

**Article XIV. Transition Procedures and Ratification**

1. The adoption of the bylaws has no effect on the selection, terms or appointment of the officers or members of the Standards Board, the Executive Board, or a committee of the Board serving on the effective date of these bylaws.
2. All acts of the Standards Board, the Executive Board, or a committee of the Board are hereby ratified, except to the extent that an act does not conform with a resolution adopted by the Standards Board before the effective date of these bylaws.

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
DFO

\_\_\_\_\_  
Date

These bylaws were last updated on \_\_\_\_\_, 20\_\_, and supersede all previous versions.

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BYLAWS

UNITED STATES ELECTION ASSISTANCE COMMISSION STANDARDS BOARD

The U.S. Election Assistance Commission Standards Board, hereinafter referred to as Standards Board, embodies the vision of Congress to forge a partnership among federal, state and local election officials whose goal is to promote public confidence in the conduct of federal elections in the United States.

Article I. Authority

1. Pursuant to the Federal Advisory Committee Act and the Help America Vote Act of 2002 (HAVA) [Public Law 107-252], as such statutes may be amended from time to time, the Standards Board has been granted its authority through its charter with the United States Election Assistance Commission (EAC) (filed with Congress on June 14, 2004).

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1. Advise the EAC through review of the voluntary voting system guidelines described in Title II Part 3 of HAVA; through review of the voluntary guidance described under Title III of HAVA; and through the review of the best practices recommendations described in Section 241 of Title II of HAVA, as required by HAVA or as may be developed by EAC.
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  - b. Fifty-five (55) shall be local election officials selected as follows:
    - ii. Each state's local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select a representative local election official from the state in a process supervised by the chief election official of the state.
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  - c. The two Standards Board members who represent the same state may not be members of the same political party.
3. In December of each year, the EAC shall notify the appointing authority of each state or territory who represents their state or territory on the Standards Board.

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1. Pursuant to Section 213(c) of HAVA, the Standards Board shall select nine (9) of its members to serve as the Executive Board of the Standards Board as follows:
  - a. Membership.
    - i. Not more than five (5) members of the Executive Board may be state election officials.
    - ii. Not more than five (5) members of the Executive Board may be local election officials.
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  - b. Nominations.

- i. Expired Terms.
  - (a) The Nominating Committee shall solicit nominations for the \_\_\_\_\_ Executive Board from Standards Board members. The Nominating Committee shall send to Standards Board members a solicitation no later than December 1<sup>st</sup> immediately prior to the expiration of any \_\_\_\_\_ Executive Board member's term. The solicitations shall designate \_\_\_\_\_ the address and form for submitting nominations.

- (b) Standards Board members may nominate themselves or other Standards Board members by responding to the solicitation.
  - (c) Nominations shall be submitted to the Standards Board's Designated Federal Officer (DFO) in writing and may be submitted electronically no later than January 15.
  - (d) Upon receipt of nominations, the Nominating Committee shall prepare a ballot to be distributed to the Standards Board at least 15 days prior to the date of the Standards Board meeting immediately following the submission deadline.
- ii. Vacancies Before the End of a Term.
  - (a) In the event of a vacancy on the Executive Board prior to the expiration of a member's term on the Executive Board, the Nominating Committee shall send to Standards Board members a solicitation no later than sixty (60) days before the next meeting of the Standards Board. The solicitations shall designate the address and form for submitting nominations.
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  - (c) Nominations shall be submitted to the Standards Board's Designated Federal Officer (DFO) in writing and may be submitted electronically no later than the date indicated on the solicitation.
  - (d) Upon receipt of nominations, the Nominating Committee shall prepare a ballot to be distributed to the Standards Board at least 15 days prior to the date of the Standards Board meeting immediately following the submission deadline.
- c. Elections.
  - i. Elections to the Executive Board shall be by secret ballot and shall take place at a meeting of the Standards Board.
  - ii. The ballot shall be designed to enable Standards Board members to select candidates based on the following: (1) With which party the candidate affiliates, (2) whether the candidate is a state or local election official, (3) which state or territory the candidate represents, (4) whether the candidate was elected or appointed, and (5) in the case of state election officials, whether the candidate is a Secretary of State, a member of a Citizen Board, or a State Election Director. The ballot shall also include concise biographical information for each candidate.
  - iii. For nominations following the first election (2005), not including any special elections to fill unexpired terms, two (2) of the three positions shall be local election officials. For nominations following the second election (2007), two of the three positions shall be for state election officials. The number of state and local nominations shall continue to alternate in subsequent elections.
  - iv. Within thirty (30) days of an Executive Board election, the Executive Board members shall convene to elect a Chair, Vice-Chair, Secretary, and Parliamentarian.
- d. Executive Board Members Terms of Service and Vacancies.

i. Generally.

- (a) The Chair of the Executive Board shall notify the EAC and Nominations Committee Chair within five (5) business days of any vacancy on the Executive Board.
- (b) The Chair, Vice-Chair, and Secretary, shall not serve for a term of more than one (1) year. An Executive Board member shall not serve for two (2) consecutive terms for the same office, except in the case of a member serving the unexpired term of an office, in which case the member may be elected to the same office for the succeeding terms.
- (c) An Executive Board member may be removed from the Executive Board for cause by a vote of two-thirds (2/3) of Standards Board members at a Standards Board meeting.
- (d) In the event of a vacancy in the Executive Board, the remaining members of the Executive Board may appoint an interim member of the Executive Board until the next Standards Board meeting.
- (e)

ii. Initial Term.

- (a) Pursuant to Section 213(c)(3) of HAVA, of the members first selected to serve on the Executive Board of the Standards Board:
  - (i) Three (3) shall serve for one (1) term.
  - (ii) Three (3) shall serve for two (2) consecutive terms.
  - (iii) Three (3) shall serve for three (3) consecutive terms.

iii. Subsequent Terms.

- (a) Pursuant to Section 213(c)(2) of HAVA, members of the Executive Board shall serve for a term of two (2) years and may not serve for more than three (3) consecutive terms.
- (b) Members of the Standards Board who have previously served on the Executive Board shall be eligible to be nominated to the Executive Board no sooner than two (2) years from the last term in which they served on the Executive Board.

e. Meetings.

- i. Any two members of the Executive Board may call an Executive Board meeting by filing the original call of the meeting with the DFO, including the stated reason for calling the meeting.
- ii. A majority of Executive Board Members shall be present for a quorum.
- iii. The Executive Board shall agree to actions by a majority vote of the Executive Board.
- iv. Proxy voting will not be allowed in Executive Board votes.
- v. Any member of the Standards Board may attend and at the discretion of the Chair, may participate in any and all discussions at an Executive Board meeting, but may not vote.
- vi. If the Executive Board decides to hold an open meeting, it shall do so in accordance with the requirements FACA.

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**Article VI. Executive Board Duties**

1. Chair. The Chair shall:
  - a. Preside over all meetings of the Executive Board and Standards Board.
  - b. Appoint the chair of standing committees and any ad hoc committees of the Standards Board.
  - c. Establish the agenda for meetings of the Executive Board and Standards Board in consultation with the DFO.
  - d. Call meetings of the Executive Board and Standards Board in consultation with the DFO.
  - e. Act as the official liaison between the Standards Board and the EAC for all resolutions, recommendations, and information requests.
  - f. Serve as an *ex officio* member of all committees.
  - g. Appoint a Parliamentarian to preside over all Standards Board meetings.
    - i. The Parliamentarian shall provide advice and assistance to the Chair so that the Chair can run all meetings in accordance with Roberts Rules of Order.
2. Vice-Chair. The Vice-Chair shall:
  - a. Preside over meetings of the Executive Board and Standards Board in the Chair's absence.
  - b. Perform other duties as may be appropriate in the Chair's absence.
  - c. Assist the Chair from time to time as the Chair may designate.
  - d. In the event of a vacancy before the completion of the Chair's term, serve as the Chair.
3. Secretary. The Secretary shall:
  - a. Review Executive Board minutes before distribution to Standards Board members.
  - b. Ensure, with assistance from the DFO, that meeting minutes are properly on file.
  - c. Assist the Chair at meetings and from time to time as the Chair may designate.
4. Executive Board, Generally. The Executive Board shall:
  - a. Perform all duties required under HAVA and other applicable Federal law.
  - b. Appoint the membership of appropriate standing committees and ad hoc committees by soliciting interest from the Standards Board membership.
  - c. Meet as necessary to address issues of concern in between Standards Board meetings.
  - d. Approve the minutes of the Executive Board meetings.
  - e. Convene Standards Board meetings, including, but not limited to, meetings by conference call and virtual meetings. Such meetings must allow each Standards Board member to include their comments and view or hear others' comments.
  - f. Consult with the DFO to ensure compliance with federal statutes and other applicable regulations.
  - g. Attend Executive Board meetings, including, but not limited to, meetings by conference call and virtual meetings, in accordance with these bylaws. In the event that an Executive Board member fails to attend or participate in at least one (1) Executive Board meeting within the the preceding twelve (12) month period, such Executive Board member shall forfeit his or her position on the Executive Board, thereby creating a vacancy. Such vacancy shall be filled in accordance with these bylaws.
  - h. As soon as possible, provide Standards Board Members all guidelines proposed to be adopted pursuant to Section 222(b)(3) of HAVA. Executive Board recommendations to the Standards Board pursuant to Section 222(b)(3) of HAVA shall include an appendix of all dissenting comments from Executive Board members.

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- i. Perform all other duties as from time to time the Standards Board may delegate to the Executive Board.
  - j. Upon notice of an Executive Board meeting, the Executive Board shall notify the Standards Board of the Executive Board meeting.
5. Designated Federal Officer (DFO). The DFO shall:
- a. Serve as the government's agent for all Standards Board activities.
  - b. Approve or call Standards Board meetings.
  - c. Approve agendas proposed by the Executive Committee.
  - d. Attend all Standards Board and Executive Board meetings.
  - e. Adjourn Standards Board and Executive Board meetings when such adjournment is in the public interest.
  - f. Provide adequate staff support to the Standards Board, to assist with:
    - i. Notice. The DFO shall:
      - (a) Notify members of the time and place for each meeting.
      - (b) Upon notice of an open Executive Board meeting, notify the Standards Board and public of time and place for the meeting.
      - (c) Notify appointing authorities of any and all vacancies on the Standards Board.
    - ii. Recordkeeping and Administration. The DFO shall:
      - (a) Maintain records for all meetings, including subgroup or working group activities, as required by law.
      - (b) Maintain the roll.
      - (c) Assure that minutes of all Standards Board and Executive Board meetings, including subgroup and working group activities are prepared and distributed.
      - (d) House at the EAC and maintain official Standards Board records, including subgroup and working group activities.
      - (e) Filing all papers and submissions prepared for or by the Standards Board, including those items generated by subgroups and working groups.
      - (f) Respond to official correspondence.
      - (g) Prepare and handle all reports, including the annual report as required by FACA.
      - (h) Acting as the Standard Board's agent to collect, validate, and pay vouchers for pre-approved expenditures.

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Maintaining records for all meetings, including subgroup or working group activities, as required by law.

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**Article VII. Meetings**

- 1. Pursuant to Sections 215(a)-(c) of HAVA, the Standards Board shall hold a meeting of its members:
  - a. At such times as it considers appropriate for the purposes of conducting such business as it considers appropriate under HAVA.
  - b. In any event, not less frequently than once every two (2) years for purposes of selecting the Executive Board.
  - c. For the purposes of voting on voluntary voting system guidelines referred to it under Section 222 of HAVA, not less frequently than once every year.

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<#>Acting as the Standard Board's agent to collect, validate, and pay all vouchers for pre-approved expenditures. ¶  
<#>Preparing and handling all reports, including the annual report as required by FACA. ¶

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2. Meetings shall be called by the DFO in consultation with the Executive Board.
3. The DFO shall approve the agenda for all meetings. The EAC shall distribute the agenda to Standards Board members prior to each meeting and shall publish notice of the meeting in the Federal Register as required by FACA.
4. Standards Board members and members of the public may submit agenda items to the DFO or Executive Board Chair.
5. Meetings.

a. Open Meetings.

- i. Unless otherwise determined in advance, all Standards Board meetings will be open to the public.
- ii. Members of the public may attend any meeting or portion of a meeting that is not closed to the public and may, at the determination of the Chair, offer oral comment at such meeting. The Chair may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register will note that oral comment from the public is excluded. In such a case, the Standards Board will accept written comments as an alternative. In addition, members of the public may submit written statements to the EAC at any time.
- iii. All materials brought before, or presented to, the Board during the conduct of an open meeting, including, but not limited to, the minutes of the proceedings of the previous open meeting, will be available to the public for review or copying at the time of the scheduled meeting.
- iv. Minutes of open meetings shall be available to the public upon request.
- v. Once an open meeting has begun, it will not be closed unless prior approval of the closure has been obtained and proper notice of the closed session has been given to the public.
- vi. If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Chair will order such discussion to cease and will schedule it for closed session.

b. Closed Meetings.

- i. Notices of closed meetings will be published in the Federal Register at least 15 calendar days in advance.
- ii. Standards Board meetings will be closed only in limited circumstances and in accordance with applicable law. The Standards Board must obtain prior approval to conduct a closed session. Requests for closed meetings must be submitted to EAC's Office of General Counsel a minimum of 45 days in advance of the proposed closed session.
- iii. Where the DFO, in conjunction with the Office of General Counsel, has determined in advance that discussions during a Standards Board meeting will involve matters about which public disclosure would be harmful to the interests of the government, industry, or others, an advance notice of a closed meeting, citing the applicable exemptions of the Government in the Sunshine Act (GISA), shall be published in the Federal Register. The notice may announce the closing of all or just part of a meeting.

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iv. Minutes of closed meetings shall be available to the public upon request, subject to the Freedom of Information Act (FOIA).

6. Minutes.

- a. The DFO, or his or her designee, shall assure that detailed minutes of each minute are prepared and distributed to Standards Board members.
- b. Meeting minutes shall include the following: (1) Time, (2) date, (3) location, (4) record of persons present, including the names of Standards Board members, staff, and the names of members of the public making written or oral presentations, (5) a complete and accurate description of the matters discussed and conclusions reached, and (6) copies of all reports received, issued, or approved by the Standards Board.
- c. All documents, reports, or other materials prepared by or for the Standards Board constitute official government records and will housed at the EAC and maintained according to the Federal Records Act.
- d. Meeting minutes are considered part of the official government record.

**Article VIII. Quorum and Proxy Voting**

1. Quorum:

- a. A quorum shall be established when fifty percent (50%) plus one of Standards Board members is present for a meeting or are present by proxy.
- b. Proxy designations may be submitted in writing to the Chair up to the day of the Standards Board meeting.

2. Proxy Votes.

- a. Proxy votes may only be cast by Standards Board members, provided proxy designations have been timely filed in advance with the Chair clearly identifying the Standards Board member to cast an absent member's proxy vote.
- b. The Chair shall appoint a proxy committee to verify the eligibility of proxy votes.

3. Voting Generally.

- a. The Standards Board shall agree to actions by majority vote of those present and voting unless otherwise specified by these bylaws.
- b. Votes by the Standard Board on recommendations to EAC shall have the ayes, nays, and abstentions recorded.

**Article IX. Committees**

In appointing members to committees, the Standards Board shall pay particular attention to ensuring diverse membership. Accordingly, the Executive Board shall do due diligence to ensure that committee members (1) affiliate with diverse parties, (2) are representative of both state and local election officials, (3) represent different states and territories, and (4) representative of both elected and appointed officials.

1. Meetings.

- a. All committees may meet informally at any time for the purpose of conducting

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Once an open meeting has begun, it will not be closed unless prior approval of the closure has been obtained and proper notice of the closed session has been given to the public.¶

Notices of closed meetings will be published in the Federal Register at least 15 calendar days in advance.¶

If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Chair will order such discussion to cease and will schedule it for closed session.¶

All materials brought before, or presented to, the Board during the conduct of an open meeting, including, but not limited to, the minutes of the proceedings of the previous open meeting, will be available to the public for review or copying at the time of the scheduled meeting.¶

<#>Members of the public may attend any meeting or portion of a meeting that is not closed to the public and may, at the determination of the Chair, offer oral comment at such meeting. The Chair may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register will note that oral comment from the public is excluded. In such a case, the Standards Board will accept written comments as an alternative. In addition, members of the public may submit written statements to the EAC at any time.¶

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- their business, including telephonically or through electronic media.
2. Standing Committees.
    - a. Nominating Committee. The Nominating Committee shall:
      - i. Be comprised of five (5) members.
      - ii. Solicit nominations for the Executive Board from Standards Board members.
      - iii. Prepare and distribute to Standards Board members ballots that include all the information listed in Article V, section 1, subsection c, paragraph ii of these Bylaws.
    - b. Bylaws Committee. The Bylaws Committee shall:
      - i. Be comprised of seven (7) members.
      - ii. Submit a report with all recommended amendments to the Executive Board for a seven (7) day comment period before submitting recommendations to the Standards Board for resolution and adoption.
  3. Ad-Hoc Committees.
    - a. The Standards Board may, at any time, by majority vote, establish an ad-hoc committee.
    - b. The Standards Board member wishing to establish an ad-hoc committee must present to the Standards Board the reason(s) he/she is requesting the committee.
    - c. Once an ad-hoc committee has been established, the Executive Board shall appoint members to the ad-hoc committee.

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**Article X. Amendments**

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1. The Standards Board's Bylaws Committee shall promulgate a form for proposing an amendment to the Standards Board's Bylaws.
  - a. The form shall require the specific language of the proposed amendment to be included, identify the author of the amendment, and be designed to elicit the rationale and impact of the proposed amendment.
2. All proposed bylaw changes must be submitted in writing to the DFO:
  - a. No later than December 1; or
  - b. Within the seventy (70) day timeframe provided by the Executive Committee.
3. After receiving proposed bylaw changes, the DFO shall forward the proposed changes to the Standards Board Bylaws Committee and the EAC's General Counsel.
  - c. The General Counsel shall report in an expeditious manner to the Bylaws Committee and the Executive Board whether or not a proposed change to the Bylaws is consistent with federal law and/or rules.
  - d. The Bylaws Committee shall transmit a report containing the proposed bylaws to the Executive Board.
  - e. The Standards Board's Executive Committee shall place the report on the proposed change to the Standards Board's Bylaws on the agenda for the next meeting of the Standards Board.
3. The Executive Board shall forward all proposed changes to Standards Board members at least thirty (30) days prior to the next meeting of the Standards Board via email and U.S. Mail to the applicable address of record on file with the EAC. The Executive Board shall request that EAC post the proposed change to the bylaws and all

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**<#>**The Standards Board's Bylaws Committee shall promulgate a form for proposing an amendment to the Standards Board's Bylaws. The form shall require the specific language of the proposed amendment to be included, identify the author of the amendment, and be designed to elicit the rationale and impact statement. ¶

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supporting material on EAC's website at least thirty, (30) days prior to the next meeting of the Standards Board.

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- 4. The bylaws may be amended by on a two-thirds (2/3) vote of the members present and voting at any Standards Board meeting.

**Article XI. Expenses and Reimbursement.**

- 1. Expenses related to Standards Board operations will be borne by the EAC.
- 2. Expenditures of any kind must be approved in advance by the DFO.
- 3. Standards Board members shall not receive any compensation for their services, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of federal agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in performance of their services for the Standards Board.

**Article XII. Roberts Rules**

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- 1. The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Standards Board in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order the Standards Board may adopt.
- 2. Voting procedures for the Standards Board, the Executive Board, and the subcommittees shall follow the accepted procedure, in the latest edition of Robert's Rules of Order.

**Article XIII. Effective Date**

- 1. These By-Laws are effective upon adoption by the Standards Board.

**Article XIV. Transition Procedures and Ratification**

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- 1. The adoption of the bylaws has no effect on the selection, terms or appointment of the officers or members of the Standards Board, the Executive Board, or a committee of the Board serving on the effective date of these bylaws.
- 2. All acts of the Standards Board, the Executive Board, or a committee of the Board are hereby ratified, except to the extent that an act does not conform with a resolution adopted by the Standards Board before the effective date of these bylaws.

\_\_\_\_\_  
Chair Date

\_\_\_\_\_  
DFO Date

These bylaws were last updated on \_\_\_\_\_, 20\_\_\_, and supersede all previous versions.

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Unless otherwise determined in advance, all Standards Board meetings will be open to the public.

Once an open meeting has begun, it will not be closed unless prior approval of the closure has been obtained and proper notice of the closed session has been given to the public.

Notices of closed meetings will be published in the Federal Register at least 15 calendar days in advance.

If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Chair will order such discussion to cease and will schedule it for closed session.

All materials brought before, or presented to, the Board during the conduct of an open meeting, including, but not limited to, the minutes of the proceedings of the previous open meeting, will be available to the public for review or copying at the time of the scheduled meeting.

Members of the public may attend any meeting or portion of a meeting that is not closed to the public and may, at the determination of the Chair, offer oral comment at such meeting. The Chair may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register will note that oral comment from the public is excluded. In such a case, the Standards Board will accept written comments as an alternative. In addition, members of the public may submit written statements to the EAC at any time.

Standards Board meetings will be closed only in limited circumstances and in accordance with applicable law. The Standards Board must obtain prior approval to conduct a closed session. Requests for closed meetings must be submitted to EAC's Office of General Counsel a minimum of 45 days in advance of the proposed closed session.

Where the DFO, in conjunction with the Office of General Counsel, has determined in advance that discussions during a Standards Board meeting will involve matters about which public disclosure would be harmful to the interests of the government, industry, or others, an advance notice of a closed meeting, citing the applicable exemptions of the Government in the Sunshine Act (GISA), shall be published in the Federal Register. The notice may announce the closing of all or just part of a meeting.

Minutes of open meetings shall be available to the public upon request. Minutes of closed meetings shall be available to the public upon request, subject to the Freedom of Information Act (FOIA).

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BYLAWS

UNITED STATES ELECTION ASSISTANCE COMMISSION STANDARDS BOARD

The U.S. Election Assistance Commission Standards Board, hereinafter referred to as Standards Board, embodies the vision of Congress to forge a partnership among federal, state and local election officials whose goal is to promote public confidence in the conduct of federal elections in the United States.

Article I. Authority

1. Pursuant to the Federal Advisory Committee Act and the Help America Vote Act of 2002 (HAVA) [Public Law 107-252], as such statutes may be amended from time to time, the Standards Board has been granted its authority through its charter with the United States Election Assistance Commission (EAC) (filed with Congress on June 14, 2004).

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Article II. Objectives:

The Standards Board will:

1. Advise the EAC through review of the voluntary voting system guidelines described in Title II Part 3 of HAVA; through review of the voluntary guidance described under Title III of HAVA; and through the review of the best practices recommendations described in Section 241 of Title II of HAVA, as required by HAVA or as may be developed by EAC.
2. Provide guidance and advice to the EAC on a variety of topics related to the administration of elections for Federal office.
3. Function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act (FACA), and all other applicable Federal laws.

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Article III. Standards Board Membership

1. Pursuant to Section 213(a) of HAVA, the Standards Board shall consist of 110 members, as follows:
  - a. Fifty-five (55) shall be state election officials selected by the chief State election official of each State.
  - b. Fifty-five (55) shall be local election officials selected as follows:
    - ii. Each state's local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select a representative local election official from the state in a process supervised by the chief election official of the state.
    - iii. In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official. The individual selected under such a procedure may not be a member of the same political party as the chief election official.

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- c. The two Standards Board members who represent the same state may not be members of the same political party.

**Article IV. Standards Board Member Vacancies**

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- 1. The chief election official of each state shall notify the EAC and Executive Board of the Standards Board within five (5) business days of any vacancy or membership changes to the Standards Board.
- 2. Vacancy appointments to the Standards Board shall be made in accordance with Section 213(a) of HAVA.

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**Article V. Executive Board of the Standards Board**

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- 1. Pursuant to Section 213(c) of HAVA, the Standards Board shall select nine (9) of its members to serve as the Executive Board of the Standards Board as follows:
  - a. Membership.
    - i. Not more than five (5) members of the Executive Board may be state election officials.
    - ii. Not more than five (5) members of the Executive Board may be local election officials.
    - iii. Not more than five (5) members of the Executive Board may be of the same political party.
  - b. Nominations.

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- i. Expired Terms.
  - (a) The Nominating Committee shall solicit nominations for the Executive Board from Standards Board members. The Nominating Committee shall send to Standards Board members a solicitation no later than December 1<sup>st</sup> immediately prior to the expiration of any Executive Board member's term. The solicitations shall designate the address and form for submitting nominations.
  - (b) Standards Board members may nominate themselves or other Standards Board members by responding to the solicitation.
  - (c) Nominations shall be submitted to the Standards Board's Designated Federal Officer (DFO) in writing and may be submitted electronically no later than January 15.
  - (d) Upon receipt of nominations, the Nominating Committee shall prepare a ballot to be distributed to the Standards Board at least 15 days prior to the date of the Standards Board meeting immediately following the submission deadline.

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- ii. Vacancies Before the End of a Term.
  - (a) In the event of a vacancy on the Executive Board prior to the expiration of a member's term on the Executive Board, the Nominating Committee shall send to Standards Board members a solicitation no later than sixty (60) days before the next meeting of the Standards Board. The solicitations shall designate the address and form for submitting nominations.

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- (b) Standards Board members may nominate themselves or other Standards Board members by responding to the solicitation.
- (c) Nominations shall be submitted to the Standards Board's Designated Federal Officer (DFO) in writing and may be submitted electronically no later than the date indicated on the solicitation.
- (d) Upon receipt of nominations, the Nominating Committee shall prepare a ballot to be distributed to the Standards Board at least 15 days prior to the date of the Standards Board meeting immediately following the submission deadline.

c. Elections.

- i. Elections to the Executive Board shall be by secret ballot and shall take place at a meeting of the Standards Board.
- ii. The ballot shall be designed to enable Standards Board members to select candidates based on the following: (1) With which party the candidate affiliates, (2) whether the candidate is a state or local election official, (3) which state or territory the candidate represents, (4) whether the candidate was elected or appointed, and (5) in the case of state election officials, whether the candidate is a Secretary of State, a member of a Citizen Board, or a State Election Director. The ballot shall also include concise biographical information for each candidate.
- iii. For nominations following the first election (2005), not including any special elections to fill unexpired terms, two (2) of the three positions shall be local election officials. For nominations following the second election (2007), two of the three positions shall be for state election officials. The number of state and local nominations shall continue to alternate in subsequent elections.
- iv. Within thirty (30) days of an Executive Board election, the Executive Board members shall convene to elect a Chair, Vice-Chair, Secretary, and Parliamentarian.

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d. Executive Board Members Terms of Service and Vacancies.

- i. Generally.
  - (a) The Chair of the Executive Board shall notify the EAC and Nominations Committee Chair within five (5) business days of any vacancy on the Executive Board.
  - (b) The Chair, Vice-Chair, and Secretary, shall not serve for a term of more than one (1) year. An Executive Board member shall not serve for two (2) consecutive terms for the same office, except in the case of a member serving the unexpired term of an office, in which case the member may be elected to the same office for the succeeding terms.
  - (c) An Executive Board member may be removed from the Executive Board for cause by a vote of two-thirds (2/3) of Standards Board members at a Standards Board meeting.
  - (d) In the event of a vacancy in the Executive Board, the remaining members of the Executive Board may appoint an interim member to the Executive Board until the next Standards Board meeting.

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- (e)
- ii. Initial Term.
  - (a) Pursuant to Section 213(c)(3) of HAVA, of the members first selected to serve on the Executive Board of the Standards Board:
    - (i) Three (3) shall serve for one (1) term.
    - (ii) Three (3) shall serve for two (2) consecutive terms.
    - (iii) Three (3) shall serve for three (3) consecutive terms.

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- iii. Subsequent Terms.
  - (a) Pursuant to Section 213(c)(2) of HAVA, members of the Executive Board shall serve for a term of two (2) years and may not serve for more than three (3) consecutive terms.
  - (b) Members of the Standards Board who have previously served on the Executive Board shall be eligible to be nominated to the Executive Board no sooner than two (2) years from the last term in which they served on the Executive Board.

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e. Meetings.

- i. Any two members of the Executive Board may call an Executive Board meeting by filing the original call of the meeting with the DFO, including the stated reason for calling the meeting.
- ii. A majority of Executive Board Members shall be present for a quorum.
- iii. The Executive Board shall agree to actions by a majority vote of the Executive Board.
- iv. Proxy voting will not be allowed in Executive Board votes.
- v. Any member of the Standards Board may attend and at the discretion of the Chair, may participate in any and all discussions at an Executive Board meeting, but may not vote.
- vi. If the Executive Board decides to hold an open meeting, it shall do so in accordance with the requirements FACA.

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**Article VI. Executive Board Duties**

1. Chair. The Chair shall:

- a. Preside over all meetings of the Executive Board and Standards Board.
- b. Appoint the chair of standing committees and any ad hoc committees of the Standards Board.
- c. Establish the agenda for meetings of the Executive Board and Standards Board in consultation with the DFO.
- d. Call meetings of the Executive Board and Standards Board in consultation with the DFO.
- e. Act as the official liaison between the Standards Board and the EAC for all resolutions, recommendations, and information requests.
- f. Serve as an *ex officio* member of all committees.
- g. Appoint a Parliamentarian to preside over all Standards Board meetings.
  - i. The Parliamentarian shall provide advice and assistance to the Chair so that the Chair can run all meetings in accordance with Roberts Rules of Order.

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2. Vice-Chair. The Vice-Chair shall:

- a. Preside over meetings of the Executive Board and Standards Board in the Chair's absence.
  - b. Perform other duties as may be appropriate in the Chair's absence.
  - c. Assist the Chair from time to time as the Chair may designate.
  - d. In the event of a vacancy before the completion of the Chair's term, serve as the Chair.
3. Secretary. The Secretary shall:
- a. Oversee preparation and transmission of the minutes at Executive Board and Standards Board meetings, with assistance from the DFO.
  - b. Assist the Chair at meetings and from time to time as the Chair may designate.
4. Executive Board, Generally. The Executive Board shall:
- a. Perform all duties required under HAVA and other applicable Federal law.
  - b. Appoint the membership of appropriate standing committees and ad hoc committees by soliciting interest from the Standards Board membership.
  - c. Meet as necessary to address issues of concern in between Standards Board meetings.
  - d. Approve the minutes of the Executive Board meetings.
  - e. Convene Standards Board meetings, including, but not limited to, meetings by conference call and virtual meetings. Such meetings must allow each Standards Board member to include their comments and view or hear others' comments.
  - f. Consult with the DFO to ensure compliance with federal statutes and other applicable regulations.
  - g. Attend Executive Board meetings, including, but not limited to, meetings by conference call and virtual meetings, in accordance with these bylaws. In the event that an Executive Board member fails to attend or participate in at least one (1) Executive Board meeting within the the preceding twelve (12) month period, such Executive Board member shall forfeit his or her position on the Executive Board, thereby creating a vacancy. Such vacancy shall be filled in accordance with these bylaws.
  - h. As soon as possible, provide Standards Board Members all guidelines proposed to be adopted pursuant to Section 222(b)(3) of HAVA. Executive Board recommendations to the Standards Board pursuant to Section 222(b)(3) of HAVA shall include an appendix of all dissenting comments from Executive Board members.
  - i. Perform all other duties as from time to time the Standards Board may delegate to the Executive Board.
  - j. Upon notice of an Executive Board meeting, the Executive Board shall notify the Standards Board.
5. Designated Federal Officer (DFO). The DFO shall:
- a. Serve as the government's agent for all Standards Board activities.
  - b. Approve or call Standards Board meetings.
  - c. Approve agendas proposed by the Executive Committee.
  - d. Attend all Standards Board and Executive Board meetings.
  - e. Adjourn Standards Board and Executive Board meetings when such adjournment is in the public interest.
  - f. Provide adequate staff support to the Standards Board, to assist with:
    - i. Notice. The DFO shall:
      - (a) Notify members of the time and place for each meeting.
      - (b) Upon notice of an open Executive Board meeting, notify the Standards Board and public of time and place for the meeting.

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- (c) Notify appointing authorities of any and all vacancies on the Standards Board.
- ii. Recordkeeping and Administration. The DFO shall:
  - (a) Maintain records for all meetings, including subgroup or working group activities, as required by law.
  - (b) Maintain the roll.
  - (c) Assure that minutes of all Standards Board and Executive Board meetings, including subgroup and working group activities are prepared and distributed.
  - (d) House at the EAC and maintain official Standards Board records, including subgroup and working group activities.
  - (e) Filing all papers and submissions prepared for or by the Standards Board, including those items generated by subgroups and working groups.
  - (f) Respond to official correspondence.
  - (g) Prepare and handle all reports, including the annual report as required by FACA.
  - (h) Acting as the Standard Board's agent to collect, validate, and pay vouchers for pre-approved expenditures.

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**Article VII. Meetings**

1. Pursuant to Sections 215(a)-(c) of HAVA, the Standards Board shall hold a meeting of its members:
  - a. At such times as it considers appropriate for the purposes of conducting such business as it considers appropriate under HAVA.
  - b. In any event, not less frequently than once every two (2) years for purposes of selecting the Executive Board.
  - c. For the purposes of voting on voluntary voting system guidelines referred to it under Section 222 of HAVA, not less frequently than once every year.
2. Meetings shall be called by the DFO in consultation with the Executive Board.
3. The DFO shall approve the agenda for all meetings. The EAC shall distribute the agenda to Standards Board members prior to each meeting and shall publish notice of the meeting in the Federal Register as required by FACA.
4. Standards Board members and members of the public may submit agenda items to the DFO or Executive Board Chair.
5. Meetings.
  - a. Open Meetings.
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
  - b. Closed Meetings.
  - c. Unless otherwise determined in advance, all Standards Board meetings will be open to the public.
  - d. Once an open meeting has begun, it will not be closed unless prior approval of the closure has been obtained and proper notice of the closed session has been given to the public.

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- e. Notices of closed meetings will be published in the Federal Register at least 15 calendar days in advance.
- f. If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Chair will order such discussion to cease and will schedule it for closed session.
- g. All materials brought before, or presented to, the Board during the conduct of an open meeting, including, but not limited to, the minutes of the proceedings of the previous open meeting, will be available to the public for review or copying at the time of the scheduled meeting.
- h. Members of the public may attend any meeting or portion of a meeting that is not closed to the public and may, at the determination of the Chair, offer oral comment at such meeting. The Chair may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register will note that oral comment from the public is excluded. In such a case, the Standards Board will accept written comments as an alternative. In addition, members of the public may submit written statements to the EAC at any time.
- i. Standards Board meetings will be closed only in limited circumstances and in accordance with applicable law. The Standards Board must obtain prior approval to conduct a closed session. Requests for closed meetings must be submitted to EAC's Office of General Counsel a minimum of 45 days in advance of the proposed closed session.
- j. Where the DFO, in conjunction with the Office of General Counsel, has determined in advance that discussions during a Standards Board meeting will involve matters about which public disclosure would be harmful to the interests of the government, industry, or others, an advance notice of a closed meeting, citing the applicable exemptions of the Government in the Sunshine Act (GISA), shall be published in the Federal Register. The notice may announce the closing of all or just part of a meeting.

6. Minutes.

- a. The DFO, or his or her designee, shall assure that detailed minutes of each minute are prepared and distributed to Standards Board members.
- b. Minutes of open meetings shall be available to the public upon request. Minutes of closed meetings shall be available to the public upon request, subject to the Freedom of Information Act (FOIA).
- c. Meeting minutes shall include the following: (1) Time, (2) date, (3) location, (4) record of persons present, including the names of Standards Board members, staff, and the names of members of the public making written or oral presentations, (5) a complete and accurate description of the matters discussed and conclusions reached, and (6) copies of all reports received, issued, or approved by the Standards Board.
- d. All documents, reports, or other materials prepared by or for the Standards Board constitute official government records and will housed at the EAC and maintained according to the Federal Records Act.

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Article VIII. Quorum and Proxy Voting

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1. A quorum shall be established when fifty percent (50%) plus one of Standards Board members is present for a meeting or are present by proxy.
  - a. Only other Standards Board members may declare another Standards Board member present by proxy.
  - b. Proxy designations may be submitted in writing to the Chair up to the day of the Standards Board meeting.
2. The Standards Board shall agree to actions by majority vote of those present and voting unless otherwise specified by these bylaws.
3. Proxy votes may only be cast by Standards Board members, provided proxy designations have been timely filed in advance with the Chair clearly identifying the Standards Board member to cast an absent member's proxy vote.
4. The Chair shall appoint a proxy committee to verify the eligibility of proxy votes.
5. Voting procedures for the Standards Board, the Executive Board, and the subcommittees will follow the accepted procedure, in the latest edition of Robert's Rules of Order. Votes by the Standard Board on recommendations to EAC shall have the ayes, nays, and abstentions recorded.

#### Article IX. Committees

In appointing members to committees, the Standards Board shall pay particular attention to ensuring diverse membership. Accordingly, the Executive Board shall do due diligence to ensure that committee members (1) affiliate with diverse parties, (2) are representative of both state and local election officials, (3) represent different states and territories, and (4) representative of both elected and appointed officials.

1. Meetings.
  - a. All committees may meet informally at any time for the purpose of conducting their business, including telephonically or through electronic media.
2. Standing Committees.
  - a. Nominating Committee. The Nominating Committee shall:
    - i. Be comprised of five (5) members.
    - ii. Solicit nominations for the Executive Board from Standards Board members.
    - iii. Prepare and distribute to Standards Board members ballots that include all the information listed in Article V, section 1, subsection c, paragraph ii of these Bylaws.
  - b. Bylaws Committee. The Bylaws Committee shall:
    - i. Be comprised of seven (7) members.
    - ii. Be Chaired by the Parliamentarian.
    - iii. Submit all recommended amendments to the Executive Board for a two (2) day comment period before submitting recommendations to the Standards Board for resolution and adoption.
3. Ad-Hoc Committees.
  - a. The Standards Board may, at any time, by majority vote, establish an ad-hoc committee.

- b. The Standards Board member wishing to establish an ad-hoc committee must present to the Standards Board the reason(s) he/she is requesting the committee.
- c. Once an ad-hoc committee has been established, the Executive Board shall appoint members to the ad-hoc committee.
- d. No ad-hoc committee shall be comprised of more than ten (10) Standards Board Members.

#### **Article X. Amendments**

1. The bylaws may be amended based on a two-thirds (2/3) vote of the members present and voting at any Standards Board meeting.
2. The Standards Board's Bylaws Committee shall promulgate a form for proposing an amendment to the Standards Board's Bylaws. The form shall require the specific language of the proposed amendment to be included, identify the author of the amendment, and be designed to elicit the rationale and impact statement.
3. All proposed bylaw changes must be submitted in writing to the DFO, who shall thereafter forward the proposed changes to the Standards Board Bylaws Committee and the EAC's General Counsel.
  - a. The General Counsel shall report in an expeditious manner to the Bylaws Committee and the Executive Board whether or not a proposed change to the Bylaws is consistent with federal law and/or rules.
  - b. The Standards Board's Executive Committee shall place the report on the proposed change to the Standards Board's Bylaws on the agenda for the next meeting of the Standards Board.
4. The Executive Board shall forward all proposed changes to Standards Board members at least thirty-five (35) days prior to the next meeting of the Standards Board via email and U.S. Mail to the applicable address of record on file with the EAC. The Executive Board shall request that EAC post the proposed change to the bylaws and all supporting material on EAC's website at least thirty-five (35) days prior to the next meeting of the Standards Board.

#### **Article XI. Expenses and Reimbursement.**

1. Expenses related to Standards Board operations will be borne by the EAC.
2. Expenditures of any kind must be approved in advance by the DFO.
3. Standards Board members shall not receive any compensation for their services, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of federal agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in performance of their services for the Standards Board.

#### **Section XII. Effective Date**

1. These By-Laws are effective upon adoption by the Standards Board.

#### **Section XII: Transition Procedures and Ratification**

1. The adoption of the bylaws has no effect on the selection, terms or appointment of the officers or members of the Standards Board, the Executive Board, or a committee of the Board serving on the effective date of these bylaws.
2. All acts of the Standards Board, the Executive Board, or a committee of the Board are hereby ratified, except to the extent that an act does not conform with a resolution adopted by the Standards Board before the effective date of these bylaws.

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**Bylaws  
of  
The Standards Board  
of  
The U.S. Election Assistance  
Commission**



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## BYLAWS

### UNITED STATES ELECTION ASSISTANCE COMMISSION STANDARDS BOARD

The U.S. Election Assistance Commission Standards Board, hereinafter referred to as Standards Board, embodies the vision of Congress to forge a partnership among federal, state and local election officials whose goal is to promote public confidence in the conduct of federal elections in the United States.

#### Article I. Authority

1. Pursuant to the Federal Advisory Committee Act and the Help America Vote Act of 2002 (HAVA) [Public Law 107-252], as such statutes may be amended from time to time, the Standards Board has been granted its authority through its charter with the United States Election Assistance Commission (EAC) (as first filed with Congress on June 14, 2004, and renewed every two (2) years). The Standards Board, Executive Board and the committees of the Standards Board will comply fully with the provisions of the Federal Advisory Committee Act (FACA) and all other applicable Federal laws

#### Article II. Objectives

The Standards Board will:

1. Advise EAC through review of the voluntary voting system guidelines described in Title II Part 3 of HAVA; through review of the voluntary guidance described under Title III of HAVA; and through the review of the best practices recommendations described in Section 241 of Title II of HAVA, as required by HAVA or as may be developed by EAC.
2. Provide guidance and advice to EAC on a variety of topics related to the administration of elections for Federal office
3. Make recommendations to EAC. Neither the Executive Board nor any subcommittees of the Standards Board may make recommendations to EAC without the consideration and approval of the Standards Board.
4. Function solely as an advisory body.

#### Article III. Standards Board Membership

1. Pursuant to Section 213(a) of HAVA, the Standards Board shall consist of 110 members, as follows:
  - a. Fifty-five (55) shall be state election officials selected by the chief State election official of each State.
  - b. Fifty-five (55) shall be local election officials selected as follows:
    - i. Each state's local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select a representative local election official from the state in a process supervised by the chief election official of the state.
    - ii. In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an

individual to serve as a local election official. The individual selected under such a procedure may not be a member of the same political party as the chief election official.

- c. The two (2) Standards Board members who represent the same state may not be members of the same political party.

#### **Article IV. Standards Board Member Vacancies**

1. The chief election official of each state shall notify EAC and the Executive Board of the Standards Board within five (5) business days of any vacancy or membership changes to the Standards Board.
2. Vacancy appointments to the Standards Board shall be made in accordance with Section 213(a) of HAVA, as follows:
  - a. Fifty-five (55) shall be state election officials selected by the chief State election official of each State.
  - b. Fifty-five (55) shall be local election officials selected as follows:
    - i. Each state's local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select a representative local election official from the state in a process supervised by the chief election official of the state.
    - ii. In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official. The individual selected under such a procedure may not be a member of the same political party as the chief election official.
  - c. The two (2) Standards Board members who represent the same state may not be members of the same political party.
3. In December of each year, EAC shall notify the appointing authority of each state or territory as to who represents their state or territory on the Standards Board.

#### **Article V. Executive Board of the Standards Board**

1. Pursuant to Section 213(c) of HAVA, the Standards Board shall select nine (9) of its members to serve as the Executive Board of the Standards Board as follows:
  - a. Membership.
    - i. Not more than five (5) members of the Executive Board may be state election officials.
    - ii. Not more than five (5) members of the Executive Board may be local election officials.
    - iii. Not more than five (5) members of the Executive Board may be of the same political party.
  - b. Nominations.
    - i. Expired Terms.
      - (a) The Nominating Committee shall solicit nominations for the Executive Board from Standards Board members. The Nominating Committee shall send to Standards Board members a solicitation no

later than December 1<sup>st</sup> immediately prior to the expiration of any Executive Board member's term. The solicitations shall designate the address and form for submitting nominations.

- (b) Standards Board members may nominate themselves or other Standards Board members by responding to the solicitation.
- (c) Nominations shall be submitted to the Standards Board's Designated Federal Officer (DFO) in writing and may be submitted electronically no later than January 15<sup>th</sup> immediately prior to the expiration of any Executive Board member's term. In the event that January 15<sup>th</sup> is a federal holiday, nominations are due no later than January 16<sup>th</sup>.
- (d) Upon receipt of nominations, the Nominating Committee shall prepare ballot information to be distributed to the Standards Board at least fifteen (15) days prior to the date of the Standards Board meeting immediately following the submission deadline.
- (e) Nominations for membership on the Executive Board shall not be accepted from the floor of a Standards Board meeting.

ii. Vacancies Before the End of a Term.

- (a) In the event of a vacancy on the Executive Board prior to the expiration of a member's term on the Executive Board, the Nominating Committee shall send to Standards Board members a solicitation no later than sixty (60) days before the next meeting of the Standards Board. The solicitations shall designate the address and form for submitting nominations.
- (b) Standards Board members may nominate themselves or other Standards Board members by responding to the solicitation.
- (c) Nominations shall be submitted to the Standards Board's Designated Federal Officer (DFO) in writing and may be submitted electronically no later than the date indicated on the solicitation.
- (d) Upon receipt of nominations, the Nominating Committee shall prepare ballot information to be distributed to the Standards Board at least fifteen (15) days prior to the date of the Standards Board meeting immediately following the submission deadline.
- (e) Nominations for membership on the Executive Board shall not be accepted from the floor of a Standards Board meeting.

c. Elections.

- i. Elections to the Executive Board shall be by secret ballot and shall take place at a meeting of the Standards Board.
- ii. The ballot shall be designed to enable Standards Board members to select candidates based on the following: (1) The Candidate's political party affiliation, (2) whether the candidate is a state or local election official, (3) which state or territory the candidate represents, (4) whether the candidate was elected or appointed, and (5) in the case of state election officials, what position the candidate holds. Concise biographical information for each candidate shall be provided to each Standards Board member in advance of the election.

- iii. For elections following the first election (2005), not including any special elections to fill unexpired terms, two (2) of the three (3) positions shall be for local election officials. For elections following the second election (2007), two (2) of the (3) three positions shall be for state election officials. The number of positions for state and local election officials on the Executive Board shall continue to alternate in subsequent elections.
- iv. Within thirty (30) days of an Executive Board election, the Executive Board members shall convene to elect a Chair, Vice-Chair, and Secretary.
- v. In the event that the Standards Board is unable to meet for elections before the end of an Executive Board member's term, the sitting members of the Executive Board shall remain in their elected capacity until such time as the Standards Board is able to meet again and a new member is elected.
- vi. Votes for Executive Board elections may be made by absentee ballot --- **Formatted: Bullets and Numbering**

provided the following:

- (a) The Nominating committee shall create a form for absentee voting. --- **Formatted: Indent: First line: 0", Numbered + Level: 2 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Tab after: 1.25" + Indent at: 1.25"**
- (b) Absentee ballots shall be sent to the DFO at the address indicated on the absentee ballot no later than eight (8) days prior to the date of the Standards Board meeting immediately following the nominations submission deadline.
- (c) The DFO shall review all absentee ballots received by the deadline to ensure that they include all information requested on the form. Where information is missing, the DFO shall contact Standards Board members to complete the form.
- (d) The DFO shall give all absentee ballots received by the deadline indicated in these bylaws to the appointed election committee head at the Standards Board meeting immediately following the nominations submission deadline.
- (e) The appointed election committee head shall record each absentee ballot and include absentee ballots in election results.

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d. Executive Board Members Terms of Service and Vacancies.

i. Generally.

- (a) The Chair of the Executive Board shall notify EAC and the Nominating Committee Chair within five (5) business days of any vacancy on the Executive Board.
- (b) The Chair, Vice-Chair, and Secretary, shall serve for a term of not more than one (1) year. An Executive Board member shall not serve for two (2) consecutive terms for the same office, except in the case of a member serving the unexpired term of an office, in which case the member may be elected to the same office for the succeeding term.
- (c) An Executive Board member may be removed from the Executive Board, for cause, by a vote of two-thirds (2/3) of Standards Board members at a Standards Board meeting.
- (d) In the event of a vacancy on the Executive Board, the remaining members of the Executive Board may appoint an interim member of the Executive Board until the next Standards Board meeting.

- ii. Initial Term.
  - (a) Pursuant to Section 213(c)(3) of HAVA, of the members first selected to serve on the Executive Board of the Standards Board:
    - (i) Three (3) shall serve for one (1) term.
    - (ii) Three (3) shall serve for two (2) consecutive terms.
    - (iii) Three (3) shall serve for three (3) consecutive terms.
- iii. Subsequent Terms.
  - (a) Pursuant to Section 213(c)(2) of HAVA, members of the Executive Board shall serve for a term of two (2) years and may not serve for more than three (3) consecutive terms.
  - (b) Members of the Standards Board who have previously served on the Executive Board shall be eligible to be nominated to the Executive Board no sooner than two (2) years from the last term in which they served on the Executive Board.
- e. Meetings.
  - i. Any two (2) members of the Executive Board may call an Executive Board meeting by filing the original call of the meeting with and obtaining approval from the DFO, including the stated reason for calling the meeting, and the date and time of the meeting. Such meetings include, but are not limited to meetings by conference call and virtual (electronic media) meetings. These meetings must allow each Executive Board member to include their comments and hear or view others' comments.
  - ii. A majority of Executive Board Members shall be present for a quorum.
  - iii. The Executive Board shall agree to actions by a majority roll call vote of seated members of the Executive Board.
  - iv. Proxy voting shall not be allowed in Executive Board votes.
  - v. Any member of the Standards Board may attend and at the discretion of the Chair, may participate in any and all discussions at an Executive Board meeting, but may not vote.

#### **Article VI. Executive Board Duties**

- 1. Chair. The Chair shall:
  - a. Preside over all meetings of the Executive Board and Standards Board.
  - b. Appoint the chair of standing committees and any ad hoc committees of the Standards Board.
  - c. Establish the agenda for meetings of the Executive Board and Standards Board in consultation with the DFO.
  - d. Call meetings of the Executive Board and Standards Board in consultation with the DFO.
  - e. Act as the official liaison between the Standards Board and EAC for all resolutions, recommendations, and information requests.
  - f. Serve as an *ex officio* member of all committees.
  - g. Appoint a Parliamentarian to preside over all Standards Board meetings in order to advise and assist the Chair in running all meetings in accordance with Roberts Rules of

Order.

2. Vice-Chair. The Vice-Chair shall:
  - a. Preside over meetings of the Executive Board and Standards Board in the Chair's absence.
  - b. Perform other duties as may be appropriate in the Chair's absence.
  - c. Assist the Chair, from time to time, as the Chair may designate.
  - d. In the event of a vacancy before the completion of the Chair's term, serve as the Chair.
3. Secretary. The Secretary shall:
  - a. Review Board minutes before distribution to Standards Board members.
  - b. Ensure, with assistance from the DFO, that meeting minutes are properly on file at EAC.
  - c. Assist the Chair at meetings and, from time to time, as the Chair may designate.
4. Executive Board, Generally. The Executive Board shall:
  - a. Perform all duties required under HAVA and other applicable Federal laws.
  - b. Appoint the membership of appropriate standing committees and ad hoc committees by soliciting interest from the Standards Board membership.
  - c. Meet as necessary to address issues of concern in between Standards Board meetings.
  - d. Convene Standards Board meetings, including, but not limited to, meetings by conference call and virtual (electronic media) meetings. Such meetings must allow each Standards Board member to include their comments and view or hear others' comments. Such meetings shall be held in accordance with all applicable federal laws.
  - e. Consult with the DFO to ensure compliance with federal statutes and other applicable regulations.
  - f. Attend Executive Board meetings, including, but not limited to, meetings by conference call and virtual meetings, in accordance with these bylaws.
  - g. As soon as possible and in consultation with the DFO, provide Standards Board Members all proposed guidelines to be adopted pursuant to Section 222(b)(3) of HAVA. Executive Board recommendations to the Standards Board pursuant to Section 222(b)(3) of HAVA shall include an appendix of all dissenting comments from Executive Board members.
  - h. Perform all other duties as from time to time the Standards Board may delegate to the Executive Board.
  - i. Immediately upon notice of an Executive Board meeting, the Executive Board shall notify the Standards Board of the Executive Board meeting.
5. Designated Federal Officer (DFO). The DFO shall:
  - a. Serve as the government's agent for all Standards Board activities.
  - b. Approve or call Standards Board meetings.
  - c. Approve agendas proposed by the Executive Committee.
  - d. Attend all Standards Board and Executive Board meetings.
  - e. Adjourn Standards Board and Executive Board meetings when such adjournment is in the public interest.
  - f. Provide adequate staff support to the Standards Board, to assist with:
    - i. Notice. The DFO shall:
      - (a) Notify members of the time and place for each meeting of the Standards Board and the Executive Board.
      - (b) Notify the public of time and place for the meeting of the Standards

- Board.
- (c) Notify appointing authorities of any and all vacancies on the Standards Board.
- (d) Perform other duties as required in these Bylaws.
- ii. Recordkeeping and Administration. The DFO shall:
  - (a) Maintain records for all meetings, including subgroup or working group activities, as required by law.
  - (b) Maintain the roll.
  - (c) Assure that minutes of all Standards Board meetings are prepared and distributed.
  - (d) Maintain and house at EAC all official Standards Board records, including subgroup and working group activities.
  - (e) File all papers and submissions prepared for or by the Standards Board, including those items generated by subgroups and working groups.
  - (f) Respond to official correspondence.
  - (g) Prepare and handle all reports, including the annual report as required by FACA.
  - (h) Act as the Standard Board's agent to collect, validate, and pay all vouchers for pre-approved expenditures.

#### Article VII. Meetings

1. Consistent with the requirements of HAVA 215(a)(2), the Standards Board shall meet on an annual basis or otherwise as requested by EAC to address its responsibilities under HAVA and attend to other issues presented by EAC. Such meetings include, but are not limited to, meetings by conference call and virtual (electronic media) meetings. These meetings must allow each Standards Board member to include their comments and view or hear others' comments. Such meetings shall be held in accordance with all applicable Federal laws.
2. Meetings shall be called by the DFO in consultation with the Executive Board.
3. The DFO shall approve the agenda for all meetings. EAC shall distribute the agenda to Standards Board members prior to each meeting and shall publish notice of the meeting in the Federal Register as required by FACA.
4. Standards Board members and members of the public may submit agenda items to the DFO or Executive Board Chair.
5. Meetings.
  - a. Open Meetings.
    - i. Unless otherwise determined in advance, all Standards Board meetings shall be open to the public.
    - ii. Members of the public may attend any meeting or portion of a meeting that is not closed to the public and may, at the determination of the Chair, offer oral comment at such meeting. The Chair may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register will note that oral comment from the public is excluded. In such a case, the

Standards Board will accept written comments as an alternative. In addition, members of the public may submit written statements to EAC at any time.

- iii. All materials brought before, or presented to, the Board during the conduct of an open meeting, including, but not limited to, the minutes of the proceedings of the previous open meeting, will be available to the public for review or copying at the time of the scheduled meeting.
  - iv. Minutes of open meetings shall be available to the public upon request.
  - v. Once an open meeting has begun, it will not be closed to the public unless prior approval of the closure has been obtained and proper notice of the closed meeting has been given to the public.
  - vi. If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Chair will order such discussion to cease and will schedule it for a closed meeting.
- b. Closed Sessions.
- i. Notices regarding portions of meetings to be closed (to be referred to as sessions hereinafter) will be published in the Federal Register at least fifteen (15) calendar days in advance.
  - ii. Standards Board sessions will be closed to the public only in limited circumstances and in accordance with applicable law. The Standards Board must obtain prior approval to conduct a closed session. Requests for closed sessions must be submitted by the DFO to EAC's Office of General Counsel a minimum of forty-five (45) days in advance of the proposed closed session.
  - iii. Where the DFO, in conjunction with the Office of General Counsel, has determined in advance that discussions during a Standards Board meeting will involve matters about which public disclosure would be harmful to the interests of the government, industry, or others, an advance notice of a closed session, citing the applicable exemptions of the Government in the Sunshine Act (GISA), shall be published in the Federal Register. The notice may announce the closing of all or just part of a meeting.
  - iv. Minutes of closed sessions are not available to the public, and as a result, not subject to the Freedom of Information Act (FOIA).
6. Minutes.
- a. The DFO, or his or her designee, shall assure that detailed minutes of each meeting are prepared and distributed to Standards Board members.
  - b. Meeting minutes shall include the following: (1) Time, (2) date, (3) location, (4) record of persons present, including the names of Standards Board members, EAC Commissioners and staff, and the names of members of the public making written or oral presentations, (5) a complete and accurate description of the matters discussed and conclusions reached, and (6) copies of all reports received, issued, or approved by the Standards Board.
  - c. Meeting minutes are considered part of the official government record.
  - d. All documents, reports, or other materials prepared by or for the Standards Board constitute official government records and shall be housed at EAC and

maintained according to the Federal Records Act.

### Article VIII. Quorum and Proxy Voting

1. Quorum.
  - a. A quorum shall be established when 56 Standards Board members are present for a meeting as determined by a roll call or quorum call of the Standards Board members.
2. Proxy Votes.
  - a. Proxy designations may be submitted in writing to the Chair up to the day of the Standards Board meeting by the designated meeting start time established via the meeting agenda.
  - b. Proxy votes may only be cast by Standards Board members, provided proxy designations have been timely filed in advance with the Chair clearly identifying the Standards Board member selected to cast an absent member's proxy vote.
  - c. The Chair shall appoint a proxy committee to verify the eligibility of a member(s) designating a proxy vote, and of the member(s) designated to cast a proxy vote(s) on behalf of absent Standards Board members.
  - d. Proxy voting shall only be allowed for general business matters.
  - e. Proxy voting shall not be allowed for Executive Board elections.
3. Voting Generally.
  - a. The Standards Board shall agree to actions by majority vote of those present and voting unless otherwise specified by these bylaws.
  - b. Votes by the Standard Board on recommendations to EAC shall have the ayes, nays, and abstentions recorded.
  - c. Votes taken during meetings conducted by conference call and through virtual (electronic media) means shall have a quorum established prior to voting.

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### Article IX. Committees

In appointing members to committees, the Standards Board shall pay particular attention to ensuring diverse membership. Accordingly, the Executive Board shall do due diligence to ensure that committee members (1) affiliate with diverse parties, (2) are representative of both state and local election officials, (3) represent different states and territories, and (4) are representative of both elected and appointed officials.

1. Meetings.
  - a. All committees may meet informally at any time for the purpose of conducting their business, including telephonically or through electronic media.
2. Standing Committees.
  - a. Nominating Committee. The Nominating Committee shall:
    - i. Be comprised of five (5) members.
    - ii. Solicit nominations for the Executive Board from Standards Board members.
    - iii. Prepare and distribute to Standards Board members ballots that include all the information listed in Article V, section 1, subsection c, paragraph

- ii of these Bylaws.
- b. Bylaws Committee. The Bylaws Committee shall:
  - i. Be comprised of seven (7) members.
  - ii. Submit a report with all recommended bylaws amendments to the Executive Board for a seven (7) day comment period before submitting recommendations to the Standards Board for resolution and adoption.
- 3. Ad-Hoc Committees.
  - a. A Standards Board member wishing to establish an ad-hoc committee must present to the Standards Board the reason(s) he/she is requesting the committee.
  - b. The Standards Board may, at any time, by majority vote, establish an ad-hoc committee.
  - c. Once an ad-hoc committee has been established, the Executive Board shall appoint members to the ad-hoc committee.
- 4. Special Committees.
  - a. The Chair of the Standards Board Executive Board shall appoint Standards Board members to a special election certification committee following each Executive Board election. The special election certification committee shall count and certify all Executive Board election results.
  - b. As necessary, the Chair of the Standards Board Executive Board shall appoint Standards Board members to special committees for limited purposes.

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#### **Article X. Amendments**

- 1. The Standards Board's Bylaws Committee shall promulgate a form for proposing an amendment to the Standards Board's Bylaws.
  - a. The form shall require the specific language of the proposed amendment to be included, identify the author of the amendment, and be designed to elicit the rationale and impact of the proposed amendment.
- 2. All proposed bylaw changes must be submitted in writing to the DFO:
  - a. No later than December 1st; or
  - b. Within the seventy (70) day timeframe established by the Executive Board at the time of the call of the Standards Board Meeting; with immediate notification to all Standards Board members to be issued by the DFO.
- 3. After receiving proposed bylaw changes, the DFO shall forward the proposed changes to the Standards Board Bylaws Committee and EAC's General Counsel.
  - a. The General Counsel shall report in an expeditious manner to the Bylaws Committee and the Executive Board whether or not a proposed change to the Bylaws is consistent with federal law and/or rules.
  - b. The Bylaws Committee shall transmit a report containing the proposed bylaw changes to the Executive Board.
  - c. The Standards Board's Executive Board shall place the report on the proposed change to the Standards Board's Bylaws on the agenda for the next meeting of the Standards Board.
- 4. The Executive Board shall forward all proposed changes to Standards Board members at least thirty (30) days prior to the next meeting of the Standards

Board via email and U.S. Mail to the applicable address of record on file with EAC. The Executive Board shall request that EAC post the proposed change to the bylaws and all supporting material on EAC's website at least thirty (30) days prior to the next meeting of the Standards Board.

5. The bylaws may be amended by a two-thirds (2/3) vote of the members present and voting at any Standards Board meeting.

#### **Article XI. Expenses and Reimbursement**

1. Expenses related to Standards Board operations will be borne by EAC.
2. Expenditures of any kind must be approved in advance by the DFO.
3. Standards Board members shall not receive any compensation for their services, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of federal agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in performance of their services for the Standards Board.

#### **Article XII. Parliamentary Authority**

1. The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Standards Board in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order the Standards Board may adopt.
2. Voting procedures for the Standards Board, the Executive Board, and the subcommittees shall follow the accepted procedure according to Robert's Rules of Order.

**Article XIII. Effective Date**

1. These By-Laws are effective upon adoption by the Standards Board.

**Article XIV. Transition Procedures and Ratification**

1. The adoption of the bylaws has no effect on the selection, terms or appointment of the officers or members of the Standards Board, the Executive Board, or a committee of the Board serving on the effective date of these bylaws.
2. All acts of the Standards Board, the Executive Board, or a committee of the Board are hereby ratified, except to the extent that an act does not conform with a resolution adopted by the Standards Board before the effective date of these bylaws.

*Sonni G. Bartholomew*

Chair

March 2, 2007  
Date

*Jason M. Bellman*

DFO

March 2, 2007  
Date

These bylaws were adopted February 23, 2007, and supersede all previous versions.

**Deliberative Process  
Privilege**

WHEREAS, the United States Election Assistance Commission's (EAC) Standards Board provides valuable guidance to the EAC; and

WHEREAS, the Standards Board is required by statute to meet a minimum of once every two years; and

WHEREAS, the Standards Board finds it useful and important to meet at least once in each calendar year.

RESOLVED that the Standards Board recommends:

- Meeting face-to-face a minimum of one time in each calendar year to discuss Standards Board business and provide guidance to the EAC.
- Scheduling an annual meeting in or around the same month in each calendar year.

A True Record Attest:

---

Secretary of the Standards  
Board Executive Board

DRAFT

**Deliberative Process  
Privilege**

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

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

bcc

Subject Draft Voting Fraud and Voter Intimidation Report

Commissioners and Tom,

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

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

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

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

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

Happy reading and Happy Thanksgiving!



Voter Fraud & Intimidation Report.doc

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

006493



Gracia Hillman/EAC/GOV

11/30/2006 08:09 AM

To Juliet E. Thompson/EAC/GOV@EAC

cc

bcc

Subject Fraud Report

Julie:

When you draft proposed language for the DOJ interview section, I am asking that you put yourself in the position of the consultants. Ask yourself how you would want EAC to present this difference of opinion between what DOJ says it meant and what the consultants heard and wrote, as if you were the consultant.

Also, I just want to be clear that while I agree that we should include DOJ's retort, I do not believe we should "re-write" what the consultants presented. Rather, we should leave it intact and present the consultants writings in a context that addresses DOJ's objections.

Thanks,  
Gracia

-----  
Sent from my BlackBerry Wireless Handheld

000494

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

To Paul DeGregorio/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, "Davidson, Donetta" <ddavidson@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC  
cc jlayson@eac.gov

bcc

Subject Revised summaries of interviews with Donsanto and Tanner

History:  This message has been replied to.

Commissioners,

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

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



Summaries of Interviews with Donsanto-Tanner redacted-revised.doc

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

006495

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

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

Questions

*How are Prosecution Decisions Made?*

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an Assistant U.S. Attorney (AUSA). Donsanto uses a concept called predication. In other words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario - a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings because such defendants are likely to provide information about others involved.

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The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between the Voting Section and the Election Crimes Branch.

*Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?*

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

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*Does it Matter if the Complaint Comes from a Member of a Racial Minority?*

No. But if the question involves racial animus, that has also always been an aggravating

| factor, making it more likely the department will take it over

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*What Kinds of Complaints Would Routinely Override Principles of Federalism?*

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office on the ballot.

*Are There Too Few Prosecutions?*

DOJ can't prosecute everything.

*What Should Be Done to Improve the System?*

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to “fix” *McNally*, did not include voter fraud.

As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

*Other Information*

| The Department has held four symposia for District Election Officers (DEOs) and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public. ,

There are two types of attorneys in the division: prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

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| Cases

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Donsanto provided us with three case lists: cases still being investigated as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006; and cases closed for lack of evidence as of January 13, 2006.

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If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.*

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought against conspiracies to corrupt the process rather than individual offenders acting alone. For deterrence purposes, the Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once. The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

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Deleted: Charges were not brought against individuals – those cases went unprosecuted. This change in direction, focus, and level of aggression was by the decision of the Attorney General. The reason for the change was for deterrence purposes.  
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1. Felon voters in Milwaukee.
2. Alien voters in the Southern District of Florida. FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.
3. Double voters in a variety of jurisdictions.

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The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

*According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot*

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

Deleted: Director

February 24, 2006

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

Authority and Process

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

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

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

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

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

Often, lawsuits bring voluntary compliance.

Voter Intimidation

Deleted: Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. Mr. Tanner would not give us any information about or data from the section's election complaint in-take phone logs; data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws; and would give us only a selected few samples of attorney-observer reports, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. He would not discuss in any manner any current investigations or cases the section is involved in. He also did not believe it was his position to offer us recommendations as to how his office, elections, or the voting process might be improved.¶

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Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

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

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been a formal investigation into the abusive use of challengers.

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Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

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

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Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the Voting Section to become involved.

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Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

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

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

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

The section is not filing as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore. Mr. Tanner said that race based problems are rare now.

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

#### Recommendations

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

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

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Juliet E. Hodgkins/EAC/GOV  
12/01/2006 04:39 PM

To Paul DeGregorio/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, "Davidson, Donetta" <ddavidson@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC  
cc  
bcc

Subject Draft Fraud/Intimidation Report with Executive Summary

Commissioners,

The draft attached below contains the Executive Summary as well as the suggestions made by Commissioner Hillman. Please let me know if you have any additional changes by COB Monday, Dec. 4, so that I can incorporate these and have this document ready for consideration at Thursday's meeting.



Voter Fraud & Intimidation Report - 120106.doc

In addition, I have had another request from Tova Wang for an embargoed copy of this report. I have not heard from any of you on this matter. I assume that this means that you agree with my opinion that we cannot release this document to her since she is no longer under contract with us, as it would be tantamount to releasing this document to the public. Please let me know ASAP if this is not your understanding and belief.

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

006502



Gracia Hillman/EAC/GOV

12/04/2006 12:52 PM

To Juliet E. Thompson/EAC/GOV@EAC

cc pdegregorio@eac.gov, Ddavidson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Fraud Report Executive Summary

Attached are my suggested edits to the Executive Summary. (I am still reviewing the report and may comment on other sections.)



EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY.doc

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EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY

**EXECUTIVE SUMMARY**

The Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including “voting fraud” and “voter intimidation.” In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of “voting fraud” and “voter intimidation” and to identify research methodology to conduct a comprehensive, nationwide study of these topics.

EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

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

From EAC’s review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at “election crimes.” Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical provisions. EAC will study these concepts by surveying the states’ chief election officials about complaints they received, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received, charges filed, and final disposition of each complaint.

- Comment [GH1]:** Ethical provisions of what?
- Comment [GH2]:** We should learn about all complaints received by election officials, not just those received through the admin complaint process.
- Deleted:** through their administrative complaint processes
- Comment [GH3]:** Our study should also include final disposition of each case where charges were filed.
- Deleted:** and



Gracia Hillman/EAC/GOV

12/04/2006 01:49 PM

To Juliet E. Thompson/EAC/GOV@EAC

cc pdegregorio@eac.gov, Ddavidson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Edits to the Fraud Report

I offer edits to two sections of the report, on pages 14 and 19. Please see the attached one pager. I did a copy and paste of the two sections rather than resending back to you the entire report.



What is not an Election Crime for Purposes of this Study.doc

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## What is not an Election Crime for Purposes of this Study

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

.....

**Comment [GH1]:** Ethical provisions of what?

## *Survey Chief Election Officers Regarding Administrative Complaints*

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

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

**Comment [GH2]:** We can be pretty certain that legitimate complaints will be filed outside of the Admin Complaint Procedure.

006506

**Deliberative Process  
Privilege**

To: Peggy Sims  
From: Tova Wang  
Re: Working Group Recommendations  
Date: November 12, 2005

\*Wendy R. Weiser, Associate Counsel in the Democracy Program at the Brennan Center for Justice at NYU School of Law and an expert in federal and constitutional law, has done a great deal of research, writing, speaking, and litigating on voting rights and election law issues. As part of the Brennan Center's wide ranging activities in the area of democracy, Ms. Weiser is currently overseeing an analysis and investigation of recent allegations of voter fraud throughout the country.

\*Barbara Arnwine is Executive Director of the Lawyers Committee for Civil Rights Under Law, an organization that for four decades has been at the forefront of the legal struggle to secure racial justice and equal access to the electoral process for all voters. Notably, Ms. Arnwine and the organization have led the Election Protection program for the last several years, a nationwide grassroots education and legal effort deploying thousands of volunteers and using a nationally recognized voter hotline to protect voters' rights on election day.

\*Daniel Tokaji, professor and associate director of the Election Law Center at the Moritz College of Law at the Ohio State University, is one of the nation's foremost experts in election law and reform and ensuring equality in the voting system. Professor Tokaji frequently writes and speaks on democracy related issues at academic and practitioner conferences, on such issues as voting technology, fraud, registration, and identification requirements, as well as the interplay between the election administration practices and voting rights laws.

Donna Brazile is Chair of the Democratic National Committee's Voting Rights Institute, the Democratic Party's major initiative to promote and protect the right to vote created in response to the irregularities of the 2000 election, and former Campaign Manager for Gore-Lieberman 2000 (the first African American to lead a major presidential campaign.) Brazile is a weekly contributor and political commentator on CNN's Inside Politics and American Morning, a columnist for Roll Call Newspaper and a contributing writer for Ms. Magazine.

Wade Henderson is the Executive Director of the Leadership Conference on Civil Rights (LCCR) and Counsel to the Leadership Conference on Civil Rights Education Fund (LCCREF), an organization at the forefront of defending voting rights for the last fifty years. Prior to his role with the Leadership Conference, Mr. Henderson was the Washington Bureau Director of the National Association for the Advancement of Colored People (NAACP)

Robert Bauer is the Chair of the Political Law Practice at the law firm of Perkins Coie, National Counsel for Voter Protection, Democratic National Committee, Counsel to the Democratic Senatorial and Congressional Campaign Committees and Co-Author, Report

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of Counsel to the Senate Rules and Administration Committee in the Matter of the United States Senate Seat from Louisiana in the 105<sup>th</sup> Congress of the United States, (March 27, 1997). He is the author of *United States Federal Election Law*, and one of the foremost attorneys in the country in the area of federal/state campaign finance and election laws.

Laughlin McDonald has been the executive director of the Southern Regional Office of the ACLU since 1972 and as the Director of the ACLU Voting Rights Project, McDonald has played a leading role eradicating discriminatory election practices and protecting the gains in political participation won by racial minorities since passage of the 1965 federal Voting Rights Act. During the past two decades, McDonald has broken new ground by expanding ACLU voting rights cases to include representation of Native Americans in various western states, and written innumerable publications on voting rights issues.

Joseph E. Sandler is a member of the firm of Sandler, Reiff & Young, P.C., in Washington, D.C., concentrating in campaign finance and election law matters, and general counsel to the Democratic National Committee. As an attorney he has handled campaign finance and election law matters for Democratic national and state party organizations, Members of Congress, candidates and campaigns. He served as general co-counsel of the Association of State Democratic Chairs, as general counsel for the Democratic Governors' Association and as counsel to several state Democratic parties.

Cathy Cox is serving her second term as Georgia's Secretary of State, having first been elected in 1998. In 2002 she earned re-election with over 61 percent of the vote, winning 146 out of 159 counties. Because of Secretary Cox's efforts Georgia has become a national leader in election reform. Her initiative made Georgia the first state in America to deploy a modern, uniform electronic voting system in every county

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**Possible Working Group Members - Serebrov**

I recommend the first four with an \*

\***Mark (Thor) Hearne II**-Counsel to Republican National Committee; National Counsel to American Center for Voting Rights; National election counsel to Bush-Cheney, '04; Testified before U.S. House Administration Committee hearings into conduct of Ohio presidential election; Academic Advisor to Commission on Federal Election Reform (Baker-Carter Commission).

\***Todd Rokita**-Secretary of State, Indiana; Secretary Rokita strives to reform Indiana's election practices to ensure Indiana's elections are as fair, accurate and accessible as possible; Secretary Rokita serves on the nine-member Executive Board of the Election Assistance Commission Standards Board, charged by federal law to address election reform issues.

\***Patrick J. Rogers**-Partner/Shareholder, Modrall, Sperling, Roehl, Harris and Sisk, P.A., Albuquerque, New Mexico; 1991-2003 General Counsel to the New Mexico Republican Party; Election cases: *The Coalition to Expose Ballot Deception, et al v. Judy N. Chavez, et al*; Second Judicial District Court of Bernalillo County, New Mexico (2005); represented plaintiffs challenging petition procedures; *Miguel Gomez v. Ken Sanchez and Judy Chaves*; Second Judicial District Court of Bernalillo County, New Mexico (2005); residency challenge; *Moises Griego, et al v. Rebecca Vigil-Giron v. Ralph Nader and Peter Miguel Camejo*, Supreme Court for the State of New Mexico (2004); represented Ralph Nader and Peter Camejo, ballot access issues; *Larry Larrañaga, et al v. Mary E. Herrera and Rebecca Vigil-Giron*, Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues; *Decker, et al v. Kunko, et al*; District Court of Chaves County, New Mexico (2004); voter identification and fraudulent registration issues; *Kunko, et al v. Decker, et al*; Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues; *In the Matter of the Security of Ballots Cast in Bernalillo County in the 2000 General Election*; Second Judicial District Court of Bernalillo County, New Mexico (2000); voting and counting irregularities and fraud.

\***David A. Norcross**- Partner, Blank Rome LLP, Trenton NJ, Washington D.C; Chairman, New Jersey Republican State Committee, 1977 – 1981; General Counsel, Republican National Committee, 1993 – 1997; General Counsel, International Republican Institute; Counsel, The Center for Democracy; Vice Chairman, Commission on Presidential Debates; Executive Director, New Jersey Election Law Enforcement Commission

**Benjamin L. Ginsberg**-Served as national counsel to the Bush-Cheney presidential campaign; He played a central role in the 2000 Florida recount; He also represents the campaigns and leadership PACs of numerous members of the Senate and House, as well as the Republican National Committee, National Republican Senatorial Committee and

National Republican Congressional Committee; His expertise is more in campaign finance.

**Cleta Mitchell**-Partner in the Washington, D.C. office of Foley & Lardner LLP; She advises corporations, nonprofit organizations, candidates, campaigns, and individuals on state and federal election and campaign finance law, and compliance issues related to lobbying, ethics and financial disclosure; Ms. Mitchell practices before the Federal Election Commission and similar federal and state enforcement agencies; Her expertise is more in campaign finance law.

**Mark Braden**-Of counsel at Baker & Hostetler; He concentrates his work principally on election law and governmental affairs, including work with Congress, the Federal Election Commission, state campaign finance agencies, public integrity issues, political broadcast regulation, contests, recounts, the Voting Rights Act, initiatives, referendums and redistricting; His expertise is mainly outside of the voter fraud area.

Donetta L.  
Davidson/EAC/GOV  
01/11/2007 09:32 AM

To Paul DeGregorio/EAC/GOV@EAC, Matthew  
Masterson/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Draft EAC report on Voter Identification

Please print for Paul to take on the trip

----- Forwarded by Donetta L. Davidson/EAC/GOV on 01/11/2007 09:30 AM -----

Karen Lynn-Dyson/EAC/GOV

01/04/2007 04:27 PM

To Donetta L. Davidson/EAC/GOV@EAC, twilkey@eac.gov  
cc  
Subject Draft EAC report on Voter Identification

Chair Davidson and Tom-

You may recall that during your last Commissioner's meeting you requested that a draft of the EAC Voter ID report be ready by January 5. Attached please find the first draft of such a report that I have prepared, based on the Eagleton Voter ID report and study.

There are several points in the document where I raise questions about the data or Eagleton's findings from their analysis. Certainly, before we would publish this report, we would need Eagleton to review it and to verify that we have accurately represented their findings and conclusions.

Hopefully, this is a first good step towards publishing something on voter identification. I look forward to your suggestions for next steps.



EAC Voter ID Report.doc  
K

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

006511

# EAC Report on Voter Identification

## Executive Summary

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. HAVA Section 303 (b) mandates that first time voters who register by mail are required to show proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the States for its implementation. The EAC sought to examine how these voter identification requirements were implemented in the 2004 general elections and to prepare guidance for the states on this topic.

In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the contractor was to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data, aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau, the contractor found the overall relationship between the stringency of ID requirements and turnout to be fairly small, but statistically significant.

Based on The Eagleton Institute year-long inquiry into voter identification requirements EAC will implement one or more of the following recommendations:

- Further research into the connection between voter ID requirements and the number of ballots cast and counted;
- A state-by-state review of the impact that voter ID requirements are having on voter's participation;
- A state-by-state review of the relationship between ballot access and ballot security and the number of voters whose ballot is counted;
- A state-by-state review of time periods between voters casting of provisional ballots and the time allowed to return with an ID as well as a review of acceptable forms of identification other than photo ID.

## **Introduction**

This study was conducted at a time in which considerable attention is being paid to the issue of voter identification. Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for multiple voting or voting by those who are not eligible. The goal is to ensure that only those legally entitled to vote do so, and do so only once at each election. Opponents of stricter ID requirements seek to ensure board access to a regular ballot. There is a fear that some voters -- racial and ethnic minorities, young and elderly voters-- lack convenient access to required ID documents, or that these voters may be fearful of submitting their ID documents for official scrutiny.

This report considers policy issues associated with the voter ID debate. It examines the relationships between voter ID requirements and voter turnout along with the various policy implications of the issue.

## **Methodology of the Study**

In May 2005, under contract with the EAC, the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University undertook a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. The contract also included research and study related to provisional voting requirements. These research findings were submitted and reviewed by the EAC as a separate study.

The Eagleton Institute of Politics gathered information on the voter identification requirements in 50 states and the District of Columbia for 2004. Based on interpretations of state statutes and supplemental information provided through conversations with state election officials, state ID requirements were divided into five categories, with each category of identification more rigorous than the one preceding: stating name, signing name, signature match, presenting an ID, and the most rigorous, presenting a government photo ID. The Eagleton Institute also categorized and identified each state according to maximum and minimum identification requirements. Maximum requirements refer to the most that voters may be asked to do or show at the polling place. Minimum requirements refer to the most that voters can be required to do or show in order to cast a regular ballot. These definitions and the subsequent state-by-state analysis of voter identification requirements omitted those cases in which a particular voter's eligibility might be questioned using a state's voter ballot challenge process.

Two data sets were used to apply the criteria (variables) that were developed above: aggregate voter turnout data at the county level which was gathered from the EAC's 2004 Election Day Survey and; reports of individual voters collected through the November 2004 Current Population Survey administered by the U.S. Census Bureau. Use of EAC

survey data and Census Bureau CPS data provided a way to cross-check the validity of the analysis and conclusions that would be drawn regarding the effect of voter ID requirements on voter turnout.

## **Study Oversight and Methodological Review**

A draft of the Eagleton Institute report and findings on voter identification requirements was critiqued by a peer review group convened by the Eagleton Institute. A second review of the study's research and statistical methodologies was conducted using a group of research and statistical experts independently convened by the EAC. Comments and insights of the peer review group members were taken into account in the drafting of a study report although there was not unanimous agreement among the individual reviewers regarding the study findings and recommendations.

### **The Eagleton Institute of Politics Peer Review Group**

R Michael Alvarez, California Institute of Technology  
John C. Harrison, University of Virginia School of Law  
Martha E. Kropf, University of Missouri-Kansas City  
Daniel H. Lowenstein, University of California at Los Angeles  
Timothy G. O'Rourke, Salisbury University  
Bradley Smith, Capital University Law School  
Tim Storey, National Conference of State Legislatures  
Peter G. Verniero, former Attorney General, State of New Jersey

### **The EAC Peer Review Group**

Jonathan Nagler, New York University  
Jan Leighley, University of Arizona  
Adam Berninsky, Massachusetts Institute of Technology

## **Summary of the Research**

### **Maximum and Minimum Voter Identification Requirements**

In order to analyze what, if any, correlation may exist between a State's voter identification requirements and voter turnout, the Eagleton Institute first coded a state according to how demanding its voter ID requirement was. The voter ID requirement, ranked from lowest to highest was as follows: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification and, providing a form of photo identification. Several possible caveats to this ranking system were noted. For all states which had photo identification requirements in 2004, voters

without a photo ID were permitted to cast a regular ballot after signing an affidavit regarding his or her identity and eligibility. These voters were also allowed to provide other forms of ID. The researchers also noted that while each state may be assigned to a category, that categorization may not reflect the actual practice related to voter identification that may or may not have taken place at many polling places.

Research performed for this study by the Moritz College of Law found that states had five different types of **maximum** identification requirements in place on Election Day 2004. For the purposes of this study a requirement that called for a signed affidavit or the provision of other forms of ID was considered the most rigorous or the “maximum” requirement. At the polling place voters were asked to:

- State his or her name (10 states)
- Sign his or her name (13 states and the District of Columbia)
- Sign his or her name, which would be matched to a signature on file (seven states)
- Provide a form of identification that did not necessarily include a photo (15 states)
- Provide a photo identification (five states)

Using the same criteria, but applying them as **minimum** rather than maximum criteria for voting the research showed: **(check this section- it doesn't really make sense)**

- State his or her name (12 states)
- Sign his or her name (14 states and the District of Columbia)
- Matching the voter's signature to the signature on file (6 states)
- Provide a non-photo identification (14 states)
- Swear by an affidavit (4 states)

The results of the research are summarized in Table 1.

Election laws in several states offer exceptions to these ID requirements if potential voters lack the necessary form of identification. Laws in these states set a minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. In 2004 none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID were allowed to vote in all states, if he or she was able to meet another ID requirement.

### **The Relationship of Voter Identification Requirements to Voter Turnout**

A statistical analysis examining the variation in turnout rates based on the type of voter ID required by each state in the 2004 election was conducted using two sets of data: 1) aggregate turnout data at the county level for each state (compiled by the Eagleton Institute of Politics-footnote about how they collected the data) and 2) individual level survey data included in the November 2004 Current Population Survey (CPS), conducted by the U.S. Census Bureau.

The analysis looked at the voter identification requirements as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements were ranked according to how demanding they were judged to be, with photo identification considered to be the most demanding requirement (**what about affidavit????**). Used as discrete variable, the statistical analysis considered stating the name as the least demanding ID requirement; the other ID requirements were then compared to that requirement.

### **Aggregate-level statistical analysis**

The statistical analysis performed by the Eagleton Institute of Politics found that when averaging across counties in each state, statewide turnout is negatively correlated to maximum voter identification requirements ( $r = -.30$ ,  $p$  less than .05). When a statistical analysis is performed on the other minimum voter ID requirements (with affidavit being the most demanding requirement), the correlation between voter identification and turnout is negative, but not statistically significant ( $r = -.20$ ,  $p = .16$ ). These findings would suggest that the relationship between turnout rates and minimum requirements may not be linear.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend was found when analyzing minimum ID requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their name, compared to 60.1 percent in states that required an affidavit from voters. This analysis showed there was not a clear, consistent linear relationship between turnout and minimum identification requirements.

**(insert table 2- Variation in 2004 State Turnout Based on Voter Identification Requirements)**

### **Multivariate models of analysis using aggregate-level data**

The Eagleton Institute of Politics performed an additional analysis that would estimate the effects of voter identification requirements, that took into account the electoral context in 2004 and, the demographic characteristics of the population in each county. The model also considers such variables as whether or not the county was 1) in a presidential battleground state, 2) if the county was in a state with a competitive race for government and/or the U.S. Senate, 3) the percentage of voting-age population in each county that was Hispanic or African-American 4) the percentage of county residents age 65 and older, 5) the percent of county residents below the poverty line, and 6) the number of days between each state's registration deadline and the election.

The results of this statistical modeling and subsequent analysis indicated that the stricter voter ID requirements of matching a voter's signature to a signature on file or with presenting a non-photo identification are associated with lower voter turnout when compared to voter turnout in states that required voters to simply state his or her name. These conclusions were reached when variables 1-5 listed above were held constant.

Other results from the Eagleton Institute analysis of stricter voter identification requirements showed that:

- Increased voter turnout was associated with whether the county was in a battleground state or whether that state have a competitive race for governor and/or U.S.Senate.
- A slight negative effect on turnout was correlated with those state's with a longer time between the closing date for registration and the election.
- Voter turnout declined as the percentage of Hispanics in a county's population increased.
- Higher turnout (and a positive correlation) was associated with a higher percentage of senior citizens and household median income.
- The percentage of African-Americans in the county did not have a significant effect on turnout.

The Eagleton Institute analysis of minimum voter identification requirements showed that:

- A relationship between minimum voter ID requirements and turnout was not demonstrated.
- Battleground states and those with competitive state races had a significant and positive correlation to turnout.
- A higher percentage of senior citizens in the county and higher household median income were associated with higher turnout and showed a positive correlation to turnout.
- The percentage of Hispanics in the county was associated with reduced turnout.
- The increased number of days between the closing date for registration was associated with reduced turnout.

The analysis of these aggregate, county-level data showed a significant correlation, between maximum voter identification requirements (a signature match and non-photo

identification, but not a photo identification) and lower turnout in the 2004 election. This correlation was also significant when compared to the minimum voter ID requirement of the voter simply having to state his or her name.

### **Multivariate analysis using individual level turnout data**

This analysis which used November 2004 Current Population Survey data conducted by the U.S. Census Bureau is based on reports from self-described registered voters. Not included in the analysis are persons who said they are not registered to vote, those who said they cast absentee ballots and those who said they were not U.S. citizens. The CPS' Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents. ( **why is the N is Table 3-54,973?**)

In addition to the five maximum voter identification requirements (enumerated on page XX) the analysis performed included other socioeconomic, demographic and political factors that could have influenced turnout in the 2004 election. These independent variables were analyzed against the dependent variable of whether or not the respondent said he or she voted in the November 2004 election.

In this analysis three of the voter identification requirements were shown to have a statistically significant correlation with whether or not the survey respondents said they have voted in 2004. Lower voter turnout was associated with:

- those states with maximum voter requirements to sign one's name,
- those states with maximum voter requirements to provide a non-photo ID or photo ID, or
- those states with the minimum voter requirement to swear by an affidavit in order to cast a ballot without the state-required identification

Increased voter turnout showed:

- A significant correlation with the competitiveness of the Presidential race (**explain**).
- African-American voters were more likely than white or other voters to say they have voted.
- Income and marital status were positive predictors of voting (**high income or low income, single, married?**),
- Women were more likely to say they voted than men.
- Those ages 45 to 64 and 65 and older were more likely to say they voted than those ages 18 to 24.
- Those who earned a high school diploma, attended some college, graduated from college or attended graduate school were more likely to say they have voted than those who had not finished high school.

## **Analysis of the predicted probability of voter turnout using the individual data**

Using this Census Bureau Current Population Survey data the Eagleton Institute of Politics performed an additional statistical analysis in which they calculated the effect of various independent variables on the probability that a respondent said he or she voted. This analysis, involving 54,973 voters cross-tabulated the maximum and minimum voter identification requirements in each state with the five levels of voting requirements: stating name, signing name, matching the signature, a non-photo ID, photo-ID signing an affidavit. The results of these **Predicted Probability of Voter Turnout for all Voter** tabulations are summarized in Table 3 below:

From this analysis, the Eagleton Institute of Politics found that three of the voter identification requirements (**which ones?**) exerted a statistically significant, negative effect on whether or not the CPS survey respondents said they had voted in 2004. That is, compared to states that require voters to only state their name, those states which require the voter to sign his or her name, to provide a non-photo ID, or to provide a photo ID as a maximum requirement, were shown to have a negative influence on turnout. Also, a negative influence on turnout was found when comparing those states that require voters to only state their name, as compared to those states which have as a minimum requirement for verifying voter ID, signing an affidavit.

This probability analysis also found that the competitiveness of the presidential race had a significant effect on turnout as well as some significant demographic and educational effects. For the entire voting population signature, non-photo identification and photo identification requirements were all associated with lower turnout rates compared to the requirements that voter simply state their names. The analysis further found that:

- The predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names and that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to only having to state one's name.
- Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name. African American and Asian-American voters were about 6 percent less likely, while white voters were about 2 percent less likely.
- Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, while they were 6.1

percent less likely to vote where non-photo identification was the minimum requirement.

- For those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in those states that required an affidavit as the minimum requirement. These percentages were arrived at when comparing these states to ones that use as a minimum or maximum requirement, the voter to merely state his or her name.

### **Conclusions from the statistical analysis**

The statistical analysis found that as voter identification requirements vary, so do voter turnout rates. These findings were borne out through analyses conducted on aggregate data and individual-level data. There were, however, some distinctions found depending upon whether or not the state's particular voter identification requirements were set as minimums or maximums.

- The overall relationship between voter identification requirements and turnout for all registered voters was found to be small but statistically significant.
- Using the aggregate data the signature match and the non-photo identification requirement correlated with lower turnout. The photo identification requirement did not have a statistically significant effect.
- In the individual-level data the signature, no-photo identification and photo identification requirement were all correlated with lower turnout when compared to the requirements that voter simply state their names.
- Across various demographic groups (African-Americans, Asian-Americans and Hispanics) a statistically significant relationship was found between the non-photo identification requirement and voter turnout

### **Caveats to the Analysis**

The Eagleton Institute for Politics and the EAC make note that while this analysis is a good beginning, significant questions remain regarding the relationship between voter identification requirements and turnout. These analyses are unable, for example, to capture how or why identification requirements might lower turnout. That is, is it because voters are aware of the identification requirements and stay away from the polls because of them? Alternatively, do the requirements result in some voters being turned away when they cannot provide the identification, or must cast a provisional ballot?

Knowing more about the “on the ground” experience of voters regarding various identification requirements will guide state and local level policy makers in their efforts to educate voters about the requirements. These experiences could also help instruct election judges on how to handle questions and possible disputes over voter identification requirements.

## **Public Policy and Administrative Considerations**

Voter Identification, often described as the critical step in protecting the integrity of the ballot, is a process which can ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot. A voting system that requires voters to produce an identification document or documents may prevent the ineligible from voting, but also may prevent the eligible from casting a ballot.

Evaluating the effect of different voter identification regimes can be most effective when based on clear legal, equitable and practical standards. The questions outlined below might point policymakers to standards that can be created around voter identification requirements.

1. Is the voter ID system designed on the basis of valid and reliable empirical studies the will address concerns regarding certain types of voting fraud?
2. Does the voter ID requirement comply with the letter and spirit of the Voting Rights Act?
3. How effective is the voter ID requirement on increasing the security of the ballot and can it be coordinated with the statewide voter registration database?
4. How feasible is the voter identification requirement? That is, are there administrative or budgetary considerations or concerns? How easy or difficult will it be for pollworkers who must administer the requirement?
5. How cost effective is the voter ID system? That is, what are the monetary and non-monetary costs to the voter and to the state for implementing the ID system?
6. If voter ID requirements are shown to reduce voter turnout (generally, or with some particular groups), what possible steps should be taken to ameliorate this problem?

## **Recommendations and Next Steps**

As the Federal agency charged with informing election officials and the public about various issues related to the administration of elections EAC believes it should, in its capacity as a supporter of elections research, undertake additional study into the topic of voter identification requirements and the implementation of them in the following ways:

- Longitudinal studies of jurisdictions that have changed voter identification requirements.

- State-by-state and precinct-level analyses that will examine the correlations between various voter identification requirements and voter registration and turnout
- Alternative forms and methods for verifying a voter's identity.
- Continuing research into the connection between various voter identification requirements and the number of ballots cast and counted
- A continuing state-by-state update on changes to voter identification requirements.
- Continued collection of state-by-state data which will help examine the impact that voter identification requirements are having on the number of voters who are casting provisional ballots because of voter identification verification issues.

Appendix A: Summary of Voter Identification Requirements by State

Appendix B: Court Decisions and Literature on Voter Identification and Related Issue  
Court Decisions

Appendix C: Annotated Bibliography on Voter Identification Issues

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**Deliberative Process  
Privilege**

**Voting Fraud and Voter Intimidation**  
**Report to the**  
**U.S. Election Assistance Commission**  
**on**  
**Preliminary Research & Recommendations**

**By**  
**Job Serebrov and Tova Wang**

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## Introduction

### **Charge Under HAVA**

Under the Help America Vote Act, Pub. L. No. 107-252, 116 Stat. 1666 (2002) (“HAVA”), the United States Election Assistance Commission is charged with developing national statistics on voter fraud and developing methods of deterring and investigating voter fraud. Also, the Commission is charged with developing methods of identifying, deterring, and investigating methods of voter intimidation.

### **Scope of Project**

The Commission employed a bipartisan team of legal consultants, Tova Wang and Job Serebrov to develop a preliminary overview work product to determine the quantity and quality of vote fraud and voter intimidation that is present on a national scale. The consultants’ work is neither comprehensive nor conclusive. This first phase of an envisioned two-phase project was constrained by both time and funding. The consultants’ conclusions and recommendations for phase II will be contained in this report.

The consultants, working without the aid of a support staff, divided most of the work. However, the final work product was mutually checked and approved. They agreed upon the steps that were taken needed and the method employed. For all of the documentary sources, the consultants limited the time period under review from January 1, 2001 to January 1, 2006. The research performed by the consultants included interviews, an extensive Nexis search, a review of existing literature, and case research.

**Interviews:** The consultants chose the interviewees by first coming up with a list of the categories of types of people they wanted to interview. Then the consultants separately, equally filled those categories with a certain number of people. Due to time and resource constraints, the consultants had to pare down this list substantially – for instance, they had to rule out interviewing prosecutors altogether – but still got a good range of people to talk to. The ultimate categories were academics, advocates, elections officials, lawyers and judges. Although the consultants were able to talk to most of the people they wanted to, some were unavailable and a few were not comfortable speaking to them, particularly judges. The consultants together conducted all of the interviews, either by phone or in person. Then the consultants split up drafting the summaries. All summaries were reviewed and mutually approved. Most of the interviews were extremely informative and the consultants found the interviewees to be extremely knowledgeable and insightful for the most part.

**Nexis:** Initially, the consultants developed an enormous list of possible Nexis search terms. It soon became obvious that it would be impossible to conduct the research that way. As a result, consultant Wang performed the Nexis search by finding search term combinations that would yield virtually every article on a particular subject from the last

five years. Consultant Serebrov approved the search terms. Then Wang created an excel spreadsheet in order to break down the articles in way in which they could be effectively analyzed for patterns. Each type of fraud is broken down in a separate chart according to where it took place, the date, the type of election it occurred in, what the allegation was, the publication it came from. Where there was a follow up article, any information that that suggested there had been some further action taken or some resolution to the allegation was also included. For four very complicated and long drawn out situations – Washington State, Wisconsin, South Dakota in 2004, and the vote buying cases in a couple of particular jurisdictions over the last several years –written summaries with news citations are provided.

***Existing Literature:*** Part of the selections made by the consultants resulted from consultant Wang's long-term familiarity with the material while part was the result of a joint web search for articles and books on vote fraud and voter intimidation and suggestions from those interviewed by the consultants. The consultants reviewed a wide range of materials from government reports and investigations, to academic literature, to reports published by advocacy groups. The consultants believe that they covered the landscape of available sources.

***Cases:*** In order to properly identify all applicable cases, the consultants first developed an extensive word search term list. A WestLaw search was performed and the first one hundred cases under each word search term were then gathered in individual files. This resulted in a total of approximately 44,000 cases. Most of these cases were federal as opposed to state and appellate as opposed to trial. Consultant Serebrov analyzed the cases in each file to determine if they were on point. If he found that the first twenty cases were inapplicable, Serebrov would sample forty to fifty other file cases at random to determine applicability. If the entire file did not yield any cases, the file would be discarded. All discarded word search terms were recorded in a separate file. Likewise, if the file only yielded a few applicable cases, it would also be discarded. However, if a small but significant number of cases were on point, the file was later charted. The results of the case search were stark because relatively few applicable cases were found.

## **Working Definition of Fraud and Intimidation**

*Note: The definition provided below is for the purposes of this EAC project. Most of the acts described come within the federal criminal definition of fraud, but some may not.*

Election fraud is any intentional action, or intentional failure to act when there is a duty to do so, that corrupts the election process in a manner that can impact on election outcomes. This includes interfering in the process by which persons register to vote; the way in which ballots are obtained, marked, or tabulated; and the process by which election results are canvassed and certified.

Examples include the following:

- falsifying voter registration information pertinent to eligibility to cast a vote, (e.g. residence, criminal status, etc).;
- altering completed voter registration applications by entering false information;
- knowingly destroying completed voter registration applications (other than spoiled applications) before they can be submitted to the proper election authority;
- knowingly removing eligible voters from voter registration lists, in violation of HAVA, NVRA, or state election laws;
- intentional destruction by election officials of voter registration records or balloting records, in violation of records retention laws, to remove evidence of election fraud;
- vote buying;
- voting in the name of another;
- voting more than once;
- coercing a voter's choice on an absentee ballot;
- using a false name and/or signature on an absentee ballot;
- destroying or misappropriating an absentee ballot;
- felons, or in some states ex-felons, who vote when they know they are ineligible to do so;
- misleading an ex-felon about his or her right to vote;
- voting by non-citizens who know they are ineligible to do so;
- intimidating practices aimed at vote suppression or deterrence, including the abuse of challenge laws;
- deceiving voters with false information (e.g.; deliberately directing voters to the wrong polling place or providing false information on polling hours and dates);
- knowingly failing to accept voter registration applications, to provide ballots, or to accept and count voted ballots in accordance with the Uniformed and Overseas Citizens Absentee Voting Act;
- intentional miscounting of ballots by election officials;
- intentional misrepresentation of vote tallies by election officials;
- acting in any other manner with the intention of suppressing voter registration or voting, or interfering with vote counting and the certification of the vote.

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Voting fraud does not include mistakes made in the course of voter registration, balloting, or tabulating ballots and certifying results. For purposes of the EAC study, it also does not include violations of campaign finance laws.

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## Summaries of Research Conducted

### Interviews

#### *Common Themes*

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, “dead” voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud, although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.
- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate – including representatives from DOJ -- that for various reasons, the Department of Justice is bringing fewer voter intimidation and suppression cases now and is focusing on matters such as noncitizen voting, double voting and felon voting. While the civil rights section continues to focus on systemic patterns of malfeasance, the public integrity section is focusing now on individuals, on isolated instances of fraud.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full

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implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

***Common Recommendations:***

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.
  - With respect to the civil rights section, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and the section has not pursued any such cases.
  - Craig Donsanto of the public integrity section says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases the department is investigating and the number of indictments the section is pursuing are both up dramatically. Since 2002, the department has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so it can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud. Of particular note, Sarah Ball Johnson, Executive Director of Elections for Kentucky, emphasized that having had an effective statewide voter registration database for more than thirty years has helped that state avoid most of the fraud problems that have been alleged elsewhere, such as double voting and felon voting.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment

- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected nonpartisanly they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas is a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.
- A few recommend returning to allowing use of absentee ballots "for cause" only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the scheme contemplated in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

## **Nexis Research**

### ***Absentee Ballot Fraud***

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

### ***Voter Registration Fraud***

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people
- Fake names and other information on voter registration forms
- Illegitimate addresses used on voter registration forms
- Voters being tricked into registering for a particular party under false pretenses
- Destruction of voter registration forms depending on the party the voter registered with

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported on included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota and Wisconsin.

### ***Voter Intimidation and Suppression***

This is the area which had the most articles in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places.
- Improper demands for identification
- Poll watchers harassing voters
- Poll workers being hostile to or aggressively challenging voters
- Disproportionate police presence
- Poll watchers wearing clothes with messages that seemed intended to intimidate
- Insufficient voting machines and unmanageably long lines

Although the incidents reported on occurred everywhere, not surprisingly, many came from “battleground” states. There were several such reports out of Florida, Ohio and Pennsylvania.

### *“Dead Voters and Multiple Voting”*

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking of voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person taking criminal advantage of that. In total, the San Francisco Chronicle found 5 such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### *Vote Buying*

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations in three particular jurisdictions as detailed in the vote buying summary. There were more official investigations, indictments and convictions/pleas in this area. All of these cases are concentrated in the Midwest and South.

### *Deceptive Practices*

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In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of voter registration forms. There were no reports of prosecutions or any other legal proceeding.

### ***Non-citizen Voting***

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case charges were filed against ten individuals. In one case a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this nexis search, remained just allegations of noncitizen voting.

### ***Felon Voting***

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem has been the large number of ineligible felons that remained on the voting list.

### ***Election Official Fraud***

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### **Existing Research**

There are many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. There is little research that is truly systematic or scientific. The most systematic look at fraud is the report written by Lori Minnite. The most systematic look at voter intimidation is the report by Laughlin McDonald. Books

written about this subject seem to all have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists. It is hoped that this gap will be filled in the “second phase” of this EAC project.

Moreover, reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund’s frequently cited book. Again, this is something that it is hoped will be addressed in the “second phase” of this EAC project by doing follow up research on allegations made in reports, books and newspaper articles.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate, but some reports say it is a major problem, albeit hard to identify.
- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

## Cases

After reviewing over 40,000 cases, the majority of which came from appeals courts, I have found comparatively very few which are applicable to this study. Of those that are applicable, no apparent thematic pattern emerges. However, it seems that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility. But because so few cases provided a picture of these current problems, I suggest that case research for the second phase of this project concentrate on state trial-level decisions.

## Methodology

The following is a summary of interviews conducted with a number of political scientists and experts in the field as to how one might undertake a comprehensive examination of voter fraud and intimidation. A list of the individuals interviewed and their ideas are available, and all of the individuals welcome any further questions or explanations of their recommended procedures.

- In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources: the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that ask whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. (Stephen Ansolobehere, MIT)
- Several political scientists with expertise in these types of studies recommended a methodology that includes interviews, focus groups, and a limited survey. In determining who to interview and where the focus groups should be drawn from, they recommend the following procedure:
  - Pick a number of places that have historically had many reports of fraud and/or intimidation; from that pool pick 10 that are geographically and demographically diverse, and have had a diversity of problems
  - Pick a number of places that have not had many reports of fraud and/or intimidation; from that pool pick 10 places that match the geographic and demographic make-up of the previous ten above (and, if possible, have comparable elections practices)

- Assess the resulting overall reports and impressions resulting from these interviews and focus groups, and examine comparisons and differences among the states and what may give rise to them.

In conducting a survey of elections officials, district attorneys, district election officers, they recommend that:

- The survey sample be large in order to be able to get the necessary subsets
- The survey must include a random set of counties where there have and have not been a large number of allegations

(Allan Lichtman, American University; Thad Hall, University of Utah; Bernard Grofman, UC – Irvine)

- Another political scientist recommended employing a methodology that relies on qualitative data drawn from in-depth interviews with key critics and experts on all sides of the debate on fraud; quantitative data collected through a survey of state and local elections and law enforcement officials; and case studies. Case studies should focus on the five or ten states, regions or cities where there has been a history of election fraud to examine past and present problems. The survey should be mailed to each state's attorney general and secretary of state, each county district attorney's office and each county board of elections in the 50 states. (Lorraine Minnite, Barnard College)
- The research should be a two-step process. Using LexisNexis and other research tools, a search should be conducted of news media accounts over the past decade. Second, interviews with a systematic sample of election officials nationwide and in selected states should be conducted. (Chandler Davidson, Rice University)
- One expert in the field posits that we can never come up with a number that accurately represents either the incidence of fraud or the incidence of voter intimidation. Therefore, the better approach is to do an assessment of what is most likely to happen, what election violations are most likely to be committed – in other words, a risk analysis. This would include an analysis of what it would actually take to commit various acts, e.g. the cost/benefit of each kind of violation. From there we could rank the likely prevalence of each type of activity and examine what measures are or could be effective in combating them. (Wendy Weiser, Brennan Center of New York University)
- Replicate a study in the United States done abroad by Susan Hyde of the University of California- San Diego examining the impact of impartial poll site observers on the incidence of election fraud. Doing this retrospectively would require the following steps:
  - Find out where there were federal observers
  - Get precinct level voting information for those places

- Analyze whether there was any difference in election outcomes in those places with and without observers, and whether any of these results seem anomalous.

Despite the tremendous differences in the political landscapes of the countries examined by Hyde in previous studies and the U.S., Hyde believes this study could be effectively replicated in this country by sending observers to a random sample of precincts. Rather than compare the incumbent's vote share, such factors such as voter complaints, voter turnout, number of provisional ballots used, composition of the electorate, as well as any anomalous voting results could be compared between sites with and without monitors.

For example, if intimidation is occurring, and if reputable monitors make intimidation less likely or voters more confident, then turnout should be higher on average in monitored precincts than in unmonitored precincts. If polling station officials are intentionally refusing to issue provisional ballots, and the polling station officials are more likely to adhere to regulations while being monitored, the average number of provisional ballots should be higher in monitored precincts than in unmonitored precincts. If monitors cause polling station officials to adhere more closely to regulations, then there should be fewer complaints (in general) about monitored than unmonitored precincts (this could also be reversed if monitors made voters more likely to complain).

Again, random assignment controls for all of the other factors that otherwise influence these variables.

One of the downsides of this approach is it does not get at some forms of fraud, e.g. absentee ballot fraud; those would have to be analyzed separately.

- Another political scientist recommends conducting an analysis of vote fraud claims and purging of registration rolls by list matching. Allegations of illegal voting often are based on matching of names and birth dates. Alleged instances of double voting are based on matching the names and birth dates of persons found on voting records. Allegations of ineligible felon (depending on state law), deceased, and of non-citizen voting are based on matching lists of names, birth dates, and sometimes addresses of such people against a voting records. Anyone with basic relational database skills can perform such matching in a matter of minutes.

However, there are a number of pitfalls for the unwary that can lead to grossly over-estimating the number of fraudulent votes, such as missing or ignored middle names and suffixes or matching on missing birth dates. Furthermore, there is a surprising statistical fact that a group of about three hundred people with the same first and last name are almost assured to share the exact same birth date, including year. In a large state, it is not uncommon for hundreds of Robert Smiths (and other common names) to have voted. Thus, allegations of vote fraud

or purging of voter registration rolls by list matching almost assuredly will find a large proportion of false positives: people who voted legally or are registered to vote legally.

Statistics can be rigorously applied to determine how many names would be expected to be matched by chance. A simulation approach is best applied here: randomly assign a birth date to an arbitrary number of people and observe how many match within the list or across lists. The simulation is repeated many times to average out the variation due to chance. The results can then be matched back to actual voting records and purge lists, for example, in the hotly contested states of Ohio or Florida, or in states with Election Day registration where there are concerns that easy access to voting permits double voting. This analysis will rigorously identify the magnitude alleged voter fraud, and may very well find instances of alleged fraud that exceed what might have otherwise happened by chance.

This same political scientist also recommends another way to examine the problem: look at statistics on provisional voting: the number cast might provide indications of intimidation (people being challenged at the polls) and the number of those not counted would be indications of "vote fraud." One could look at those jurisdictions in the Election Day Survey with a disproportionate number of provisional ballots cast and cross reference it with demographics and number of provisional ballots discarded. (Michael McDonald, George Mason University)

- Spencer Overton, in a forthcoming law review article entitled *Voter Identification*, suggests a methodology that employs three approaches—investigations of voter fraud, random surveys of voters who purported to vote, and an examination of death rolls provide a better understanding of the frequency of fraud. He says all three approaches have strengths and weaknesses, and thus the best studies would employ all three to assess the extent of voter fraud. An excerpt follows:

*1. Investigations and Prosecutions of Voter Fraud*

Policymakers should develop databases that record all investigations, allegations, charges, trials, convictions, acquittals, and plea bargains regarding voter fraud. Existing studies are incomplete but provide some insight. For example, a statewide survey of each of Ohio's 88 county boards of elections found only four instances of ineligible persons attempting to vote out of a total of 9,078,728 votes cast in the state's 2002 and 2004 general elections. This is a fraud rate of 0.00000045 percent. The Carter-Baker Commission's Report noted that since October 2002, federal officials had charged 89 individuals with casting multiple votes, providing false information about their felon status, buying votes, submitting false voter registration information, and voting improperly as a non-citizen. Examined in the context of the 196,139,871 ballots cast between October 2002 and

August 2005, this represents a fraud rate of 0.0000005 percent (note also that not all of the activities charged would have been prevented by a photo identification requirement).

A more comprehensive study should distinguish voter fraud that could be prevented by a photo identification requirement from other types of fraud — such as absentee voting and stuffing ballot boxes — and obtain statistics on the factors that led law enforcement to prosecute fraud. The study would demand significant resources because it would require that researchers interview and pour over the records of local district attorneys and election boards.

Hard data on investigations, allegations, charges, pleas, and prosecutions is important because it quantifies the amount of fraud officials detect. Even if prosecutors vigorously pursue voter fraud, however, the number of fraud cases charged probably does not capture the total amount of voter fraud. Information on official investigations, charges, and prosecutions should be supplemented by surveys of voters and a comparison of voting rolls to death rolls.

## 2. *Random Surveys of Voters*

Random surveys could give insight about the percentage of votes cast fraudulently. For example, political scientists could contact a statistically representative sampling of 1,000 people who purportedly voted at the polls in the last election, ask them if they actually voted, and confirm the percentage who are valid voters. Researchers should conduct the survey soon after an election to locate as many legitimate voters as possible with fresh memories.

Because many respondents would perceive voting as a social good, some who did not vote might claim that they did, which may underestimate the extent of fraud. A surveyor might mitigate this skew through the framing of the question (“I’ve got a record that you voted. Is that true?”).

Further, some voters will not be located by researchers and others will refuse to talk to researchers. Photo identification proponents might construe these non-respondents as improper registrations that were used to commit voter fraud.

Instead of surveying all voters to determine the amount of fraud, researchers might reduce the margin of error by focusing on a random sampling of voters who signed affidavits in the three states that request photo identification but also allow voters to establish their identity through affidavit—Florida, Louisiana, and South Dakota. In

South Dakota, for example, only two percent of voters signed affidavits to establish their identity. If the survey indicates that 95 percent of those who signed affidavits are legitimate voters (and the other 5 percent were shown to be either fraudulent or were non-responsive), this suggests that voter fraud accounts for, at the maximum, 0.1 percent of ballots cast.

The affidavit study, however, is limited to three states, and it is unclear whether this sample is representative of other states (the difficulty may be magnified in Louisiana in the aftermath of Hurricane Katrina's displacement of hundreds of thousands of voters). Further, the affidavit study reveals information about the amount of fraud in a photo identification state with an affidavit exception—more voter fraud may exist in a state that does not request photo identification.

### 3. *Examining Death Rolls*

A comparison of death rolls to voting rolls might also provide an estimate of fraud.

Imagine that one million people live in state A, which has no documentary identification requirement. Death records show that 20,000 people passed away in state A in 2003. A cross-referencing of this list to the voter rolls shows that 10,000 of those who died were registered voters, and these names remained on the voter rolls during the November 2004 election. Researchers would look at what percentage of the 10,000 dead-but-registered people who "voted" in the November 2004 election. A researcher should distinguish the votes cast in the name of the dead at the polls from those cast absentee (which a photo identification requirement would not prevent). This number would be extrapolated to the electorate as a whole.

This methodology also has its strengths and weaknesses. If fraudulent voters target the dead, the study might overestimate the fraud that exists among living voters (although a low incidence of fraud among deceased voters might suggest that fraud among all voters is low). The appearance of fraud also might be inflated by false positives produced by a computer match of different people with the same name. Photo identification advocates would likely assert that the rate of voter fraud could be higher among fictitious names registered, and that the death record survey would not capture that type of fraud because fictitious names registered would not show up in the death records. Nevertheless, this study, combined with the other two, would provide important insight into the magnitude of fraud likely to exist in the absence of a photo identification requirement.

**Recommendations for Further EAC Activity  
on Voting Fraud and Voter Intimidation**

**Consultants' Recommendations**

***Recommendation 1: Conduct More Interviews***

Time and resource constraints prevented the consultants from interviewing the full range of participants in the process. As a result, we recommend that any future activity in this area include conducting further interviews.

In particular, we recommend that more election officials from all levels of government, parts of the country, and parties be interviewed. These individuals have the most direct inside information on how the system works -- and at times does not work. They are often the first people voters go to when something goes wrong and are often responsible for fixing it. They are the ones who must carry out the measures that are designed to both prevent fraud and voter intimidation and suppression. They will most likely know what, therefore, is and is not working.

It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers ("DEOs") and local district attorneys, as well as civil and criminal defense attorneys.

The Public Integrity Section of the Criminal Division of the Department of Justice has all of the 93 U.S. Attorneys appoint Assistant U.S. Attorneys to serve as DEOs for two years. DEOs are required to

- screen and conduct preliminary investigations of complaints, in conjunction with the FBI and PIN, to determine whether they constitute potential election crimes and should become matters for investigation;
- oversee the investigation and prosecution of election fraud and other election crimes in their districts;
- coordinate their district's (investigative and prosecutorial) efforts with DOJ headquarters prosecutors;
- coordinate election matters with state and local election and law enforcement officials and make them aware of their availability to assist with election-related matters;
- issue press releases to the public announcing the names and telephone numbers of DOJ and FBI officials to contact on election day with complaints about voting or election irregularities and answer telephones on election day to receive these complaints; and
- supervise a team of Assistant U.S. Attorneys and FBI special agents who are appointed to handle election-related allegations while the polls are open on election day.<sup>i</sup>

Given the great responsibilities of the DEOs, and the breadth of issues they must deal with, they undoubtedly are great resources for information and insight as to what types of fraud and intimidation/suppression are occurring in their districts.

In many situations, however, it is the local district attorneys who will investigate election fraud and suppression tactics, especially in local elections. They will be able to provide information on what has gone on in their jurisdictions, as well as which matters get pursued and why.

Finally, those who defend people accused of election related crimes would also be useful to speak to. They may have a different perspective on how well the system is working to detect, prevent, and prosecute election fraud.

***Recommendation 2: Follow Up on Nexis Research***

The Nexis search conducted for this phase of the research was based on a list of search terms agreed upon by both consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. However, without being able to go beyond the agreed search terms, it could not be determined whether there was any later determination regarding the allegations, investigation or charges brought. This leaves a gaping hole: it is impossible to know if the article is just reporting on “talk” or what turns out to be a serious affront to the system.

As a result, we recommend that follow up Nexis research be conducted to determine what, if any, resolutions or further activity there was in each case. This would provide a much more accurate picture of what types of activities are actually taking place.

***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Similarly, many allegations are made in the reports and books that we analyzed and summarized. Those allegations are often not substantiated in any way and are inherently time limited by the date of the writing. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation.

Therefore, we recommend follow up to the literature review: for those reports and books that make or cite specific instances of fraud or intimidation, a research effort should be made to follow up on those references to see if and how they were resolved.

***Recommendation 4: Review Complaints File With MyVote1 Project Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a 1-800 voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint.

In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.<sup>ii</sup> The researchers in charge of this project have done a great deal of work to parse and analyze the data collected through this process, including going through the audio messages and categorizing them by the nature of the complaint. These categories include registration, absentee ballot, poll access, ballot/screen, coercion/intimidation, identification, mechanical, provisional (ballot).

We recommend that further research include making full use of this data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints should provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

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

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation,<sup>iii</sup> the Section was extremely reluctant to provide the consultants with useful information. Further attempts should be made to obtain relevant data. This includes the telephone logs of complaints the Section keeps and information from the database – the Interactive Case Management (ICM) system – the Section maintains on complaints received and the corresponding action taken. We also recommend that further research include a review and analysis of the observer and monitor field reports from Election Day that must be filed with the Section.

***Recommendation 6: Review Reports Filed By District Election Officers***

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

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

The consultants also believe it would be useful for any further activity in this area to include attendance at the next Ballot Access and Voting Integrity Symposium. According to the Department,<sup>iv</sup>

Prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices are required to attend annual training conferences on fighting election fraud and voting rights abuses... These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity

Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. As a result of these conferences, there is a nationwide increase in Department expertise relating to the prosecution of election crimes and the enforcement of voting rights.

By attending the symposium researchers could learn more about the following:

- How District Election Officers are trained, e.g. what they are taught to focus their resources on, how they are instructed to respond to various types of complaints
- How information about previous election and voting issues is presented
- How the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants

***Recommendation 8: Employ Academic or Individual to Conduct Statistical Research***

Included in this report is a summary of various methodologies political scientists and others suggested to measure voter fraud and intimidation. While we note the skepticism of the Working Group in this regard, we nonetheless recommend that in order to further the mission of providing unbiased data, further activity in this area include an academic institution and/or individual that focuses on sound, statistical methods for political science research.

***Recommendation 9: Explore Improvements to Federal Law***

Finally, consultant Tova Wang recommends that future researchers review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

According to Craig Donsanto, long-time Director of the Election Crimes Branch, Public Integrity Section, Criminal Division of the U.S. Department of Justice:

As with other statutes addressing voter intimidation, in the absence of any jurisprudence to the contrary, it is the Criminal Division's position that section 1973gg-10(1) applies only to intimidation which is accomplished through the use of threats of physical or economic duress. Voter "intimidation" accomplished through less drastic means may present violations of the Voting Rights Act, 42 U.S.C. § 1973i(b), which are enforced by the Civil Rights Division through noncriminal remedies.<sup>v</sup>

Mr. Donsanto reiterated these points to us on several occasions, including at the working group meeting.

As a result, researchers should examine if there is some way in which current law might be revised or new laws passed that would reach voter intimidation that does not threaten the voter physically or financially, but rather threatens the voter's right to vote as a tangible value in itself. Such an amendment or law would reach all forms of voter intimidation, no matter if it is motivated by race, party, ethnicity or any other criteria. The law would then *potentially* cover, for example, letters and postcards with language meant to deter voters from voting and both pre-election and Election Day challengers that are clearly mounting challenges solely on illegitimate bases.

In the alternative to finding a way to criminalize such behavior, researchers might examine ways to invigorate measures to deter and punish voter intimidation under the civil law. For example, there might be a private right of action created for voters or groups who have been subjected to intimidation tactics in the voting process. Such an action could be brought against individual offenders; any state or local actor where there is a pattern of repeated abuse in the jurisdiction that such officials did not take sufficient action against; and organizations that intentionally engage in intimidating practices. As a penalty upon finding liability, civil damages could be available plus perhaps attorney's fees.

Another, more modest measure would be, as has been suggested by Ana Henderson and Christopher Edley,<sup>vi</sup> to bring parity to fines for violations under the Voting Rights Act. Currently the penalty for fraud is \$10,000 while the penalty for acts to deprive the right to vote is \$5,000.

### **Working Group Recommendations**

#### ***Recommendation 1: Employ Observers To Collect Data in the 2006 and/or 2008 Elections***

At the working group meeting, there was much discussion about using observers to collect data regarding fraud and intimidation at the polls in the upcoming elections. Mr. Ginsberg recommended using representatives of both parties for the task. Mr. Bauer and others objected to this, believing that using partisans as observers would be unworkable and would not be credible to the public.

There was even greater concern about the difficulties in getting access to poll sites for the purposes of observation. Most states strictly limit who can be in the polling place. In addition, there are already so many groups doing observation and monitoring at the polls, administrators might object. There was further concern that observers would introduce a variable into the process that would impact the outcome. The very fact that observers were present would influence behavior and skew the results.

Moreover, it was pointed out, many of the problems we see now with respect to fraud and intimidation does not take place at the polling place, e.g. absentee ballot fraud and deceptive practices. Poll site monitoring would not capture this activity. Moreover, with

increased use of early voting, poll site monitoring might have to go on for weeks to be effective, which would require tremendous resources.

Mr. Weinberg suggested using observers in the way they are utilized in international elections. Such observers come into a jurisdiction prior to the election, and use standardized forms at the polling sites to collect data.

***Recommendation 2: Do a Study on Absentee Ballot Fraud***

The working group agreed that since absentee ballot fraud is the main form of fraud occurring, and is a practice that is great expanding throughout the country, it would make sense to do a stand-alone study of absentee ballot fraud. Such a study would be facilitated by the fact that there already is a great deal of information on how, when, where and why such practices are carried out based on cases successfully prosecuted. Researchers could look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

***Recommendation 3: Use Risk Analysis Methodology to Study Fraud<sup>1</sup>***

Working group members were supportive of one of the methodologies recommended for studying this issue, risk analysis. As Mr. Bauer put it, based on the assumption that people act rationally, do an examination of what types of fraud people are most likely to commit, given the relative costs and benefits. In that way, researchers can rank the types of fraud that are the easiest to commit at the least cost with the greatest effect, from most to least likely to occur. This might prove a more practical way of measuring the problems than trying to actually get a number of acts of fraud and/or intimidation occurring. Mr. Greenbaum added that one would want to examine what conditions surrounding an election would be most likely to lead to an increase in fraud. Mr. Rokita objected based on his belief that the passions of partisanship lead people to not act rationally in an election.

***Recommendation 4: Conduct Research Using Database Comparisons***

Picking up on a suggestion made by Spencer Overton and explained in the suggested methodology section, Mr. Hearne recommended studying the issue using statistical database matching. Researchers should compare the voter roll and the list of people who actually voted to see if there are “dead” and felon voters. Because of the inconsistent quality of the databases, however, a political scientist would need to work in an appropriate margin of error when using such a methodology.

***Recommendation 5: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of

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<sup>1</sup> See Appendix C, and section on methodology

groups, including the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices, which may be available for review and analysis. This is also an area in which there is often tangible evidence, such as copies of the flyers and postcards themselves. All of this information should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

***Recommendation 6: Study Use of HAVA Administrative Complaint Procedure As Vehicle for Measuring Fraud and Intimidation***

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

***Recommendation 7: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts that are running before, during and after election day would be an effective means of disposing with complaints and violations in an expeditious manner. Pennsylvania employs such a system, and the EAC should consider investigating how well it is working to deal with fraud and intimidation problems.

## Key Working Group Observations and Concerns

### Working Group Observations

1. ***The main problems today are structural barriers to voting and administrative error.*** Mr. Perez observed that, in accordance with the research, the biggest issues today are structural barriers to voting, not stealing votes. Election administrators share this view. Election fraud is negligible, and to the extent it occurs, it needs to be prosecuted with stronger criminal laws. The biggest problem is properly preparing people, which is the responsibility of election administrators.
2. ***Most fraud and intimidation is happening outside of the polling place.*** Mr. Greenbaum observed that with respect to both voter fraud and voter suppression, such as deceptive practices and tearing up voter registration forms, most of that is taking place outside of the polling place.
3. ***This issue cannot be addressed through one study or one methodology alone.*** Mr. Weinberg observed that since there is such a variety in types of fraud and intimidation, one solution will not fit all. It will be impossible to obtain data or resolve any of these problems through a single method.
4. ***The preliminary research conducted for this project is extremely valuable.*** Several of the working group members complimented the quality of the research done and although it is only preliminary, thought it would be useful and informative in the immediate future.
5. ***The Department of Justice is exploring expanding its reach over voter suppression activities.*** In the context of the conversation about defining voter intimidation, Mr. Donsanto pointed out that while voter intimidation was strictly defined by the criminal law, his section is beginning to explore the slightly different concept of vote suppression, and how to pursue it. He mentioned the phone-jamming case in New Hampshire as an initial success in this effort. He noted that he believes that vote suppression in the form of deceptive practices ought to be a crime and the section is exploring ways to go after it within the existing statutory construct. Mr. Bauer raised the example of a party sending people dressed in paramilitary outfits to yell at people as they go to the polls, telling them they have to show identification. Mr. Donsanto said that under the laws he has to work with today, such activity is not considered corrupt. He said that his lawyers are trying to “bend” the current laws to address aggravated cases of vote suppression, and the phone-jamming case is an example of that. Mr. Donsanto said that within the Department, the term vote “suppression” and translating it into a crime is a “work in progress.”

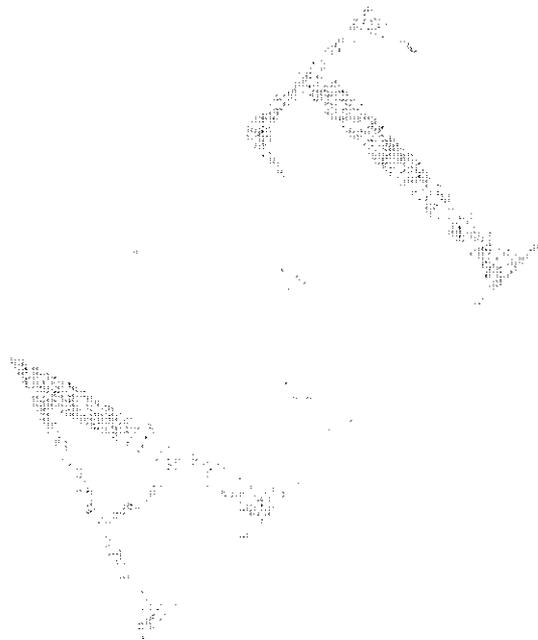
6. **Registration fraud does not translate into vote fraud.** Ms. Rogers, Mr. Donsanto and others stated that although phony voter registration applications turned in by people being paid by the form was a problem, it has not been found in their experience to lead to fraudulent voters at the polls. Ms. Rogers said such people were motivated by money, not defrauding the election.
7. **Handling of voter fraud and intimidation complaints varies widely across states and localities.** Ms. Rogers and others observed that every state has its own process for intake and review of complaints of fraud and intimidation, and that procedures often vary within states. The amount of authority secretaries of state have to address such problems also is different in every state. Mr. Weinberg stated he believed that most secretaries of state did not have authority to do anything about these matters. Participants discussed whether secretaries ought to be given greater authority so as to centralize the process, as HAVA has mandated in other areas.

### Working Group Concerns

1. Mr. Rokita questioned whether the purpose of the present project ought to be on assessing the level of fraud and where it is, rather than on developing methods for making such measurements. He believed that methodology should be the focus, “rather than opinions of interviewees.” He was concerned that the EAC would be in a position of “adding to the universe of opinions.”
2. Mr. Rokita questioned whether the “opinions” accumulated in the research “is a fair sampling of what’s out there.” Ms. Wang responded that one of the purposes of the research was to explore whether there is a method available to actually quantify in some way how much fraud there is and where it is occurring in the electoral process. Mr. Rokita replied that “Maybe at the end of the day we stop spending taxpayer money or it’s going to be too much to spend to find that kind of data. Otherwise, we will stop it here and recognize there is a huge difference of opinion on that issue of fraud, when it occurs is obtainable, and that would possibly be a conclusion of the EAC.” Ms. Sims responded that she thought it would be possible to get better statistics on fraud and there might be a way of “identifying at this point certain parts in the election process that are more vulnerable, that we should be addressing.”
3. Mr. Rokita stated that, “We’re not sure that fraud at the polling place doesn’t exist. We can’t conclude that.”
4. Mr. Rokita expressed concern about working with a political scientist. He believes that the “EAC needs to be very careful in who they select, because all the time and effort and money that’s been spent up to date and would be spent in the future could be invalidated by a wrong selection in the eyes of some group.”

**NEXIS Charts**

**Case Charts**



**Appendix 1**  
**List of Individuals Interviewed**

Wade Henderson, Executive Director, Leadership Conference for Civil Rights

Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center

William Groth, attorney for the plaintiffs in the Indiana voter identification litigation

Lori Minnite, Barnard College, Columbia University

Neil Bradley, ACLU Voting Rights Project

Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

Pat Rogers, attorney, New Mexico

Rebecca Vigil-Giron, Secretary of State, New Mexico

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

Stephen Ansolobhere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Tracey Campbell, author, *Deliver the Vote*

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights

Robin DeJarnette, Executive Director, American Center for Voting Rights

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

Joseph Sandler, Counsel to the Democratic National Committee

John Ravitz, Executive Director, New York City Board of Elections

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

Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin  
Evelyn Stratton, Justice, Supreme Court of Ohio

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

Harry Van Sickle, Commissioner of Elections, Pennsylvania

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

Sharon Priest, former Secretary of State, Arkansas

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**Appendix 2**  
**List of Literature Reviewed**

**Reports**

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Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.

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

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

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

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

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

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

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

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

#### **Books**

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

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

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

David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.

Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

**Legal**

*Indiana Democratic Party vs. Rokita*, U.S. District Court Southern District of Indiana (Indianapolis) 1:05-cv-00634, U.S. Court of Appeals, 7<sup>th</sup> Circuit 06-2218

*Common Cause of Georgia vs. Billups*, U.S. District Court, Northern District of Georgia (Rome) 4:05-cv-00201-HLM U.S. Court of Appeals, 11<sup>th</sup> Circuit 05-15784

U.S. Department of Justice Section 5 Recommendation Memorandum (regarding HB 244), August 25, 2005 at

<http://www.votingrights.org/news/downloads/Section%205%20Recommendation%20Memorandum.pdf>

### Appendix 3

## Excerpt from “Machinery of Democracy,” a Brennan Center Report

### APPENDIX C

#### BRENNAN CENTER TASK FORCE ON VOTING SYSTEM SECURITY, LAWRENCE NORDEN, CHAIR

Excerpted from pp. 8-19

### METHODOLOGY

The Task Force concluded, and the peer review team at NIST agreed, that the best approach for comprehensively evaluating voting system threats was to: (1) identify and categorize the potential threats against voting systems, (2) prioritize these threats based upon an agreed upon metric (which would tell us how difficult each threat is to accomplish from the attacker's point of view), and (3) determine, utilizing the same metric employed to prioritize threats, how much more difficult each of the catalogued attacks would become after various sets of countermeasures are implemented.

This model allows us to identify the attacks we should be most concerned about (*i.e.*, the most practical and least difficult attacks). Furthermore, it allows us to quantify the potential effectiveness of various sets of countermeasures (*i.e.*, how difficult the least difficult attack is after the countermeasure has been implemented). Other potential models considered, but ultimately rejected by the Task Force, are detailed in Appendix B.

### IDENTIFICATION OF THREATS

The first step in creating a threat model for voting systems was to identify as many potential attacks as possible. To that end, the Task Force, together with the participating election officials, spent several months identifying voting system vulnerabilities. Following this work, NIST held a Voting Systems Threat Analysis Workshop on October 7, 2005. Members of the public were invited to write up and post additional potential attacks. Taken together, this work produced over 120 potential attacks on the three voting systems. They are detailed in the catalogs annexed.<sup>20</sup> Many of the attacks are described in more detail at <http://vote.nist.gov/threats/papers.htm>.

The types of threats detailed in the catalogs can be broken down into nine categories: (1) the insertion of corrupt software into machines prior to Election Day; (2) wireless and other remote control attacks on voting machines on Election Day; (3) attacks on tally servers; (4) miscalibration of voting machines; (5) shut off of voting machine features intended to assist voters; (6) denial of service attacks; (7) actions by corrupt poll workers or others at the polling place to affect votes cast; (8) vote buying schemes; (9) attacks on ballots or VVPT. Often, the actual attacks

involve some combination of these categories. We provide a discussion of each type of attack in “Categories of Attacks,” *infra* at pp. 24–27.

### **PRIORITIZING THREATS: NUMBER OF INFORMED PARTICIPANTS AS METRIC**

Without some form of prioritization, a compilation of the threats is of limited value. Only by prioritizing these various threats could we help election officials identify which attacks they should be most concerned about, and what steps could be taken to make such attacks as difficult as possible. As discussed below, we have determined the level of difficulty for each attack where the attacker is attempting to affect the outcome of a close statewide election.<sup>21</sup>

There is no perfect way to determine which attacks are the least difficult, because each attack requires a different mix of resources – well-placed insiders, money, programming skills, security expertise, *etc.* Different attackers would find certain resources easier to acquire than others. For example, election fraud committed by local election officials would always involve well-placed insiders and a thorough understanding of election procedures; at the same time, there is no reason to expect such officials to have highly skilled hackers or first-rate programmers working with them. By contrast, election fraud carried out by a foreign government would likely start with plenty of money and technically skilled attackers, but probably without many conveniently placed insiders or detailed knowledge of election procedures.

Ultimately, we decided to use the “number of informed participants” as the metric for determining attack difficulty. An attack which uses fewer participants is deemed the easier attack.

We have defined “informed participant” as someone whose participation is needed to make the attack work, and who knows enough about the attack to foil or expose it. This is to be distinguished from a participant who unknowingly assists the attack by performing a task that is integral to the attack’s successful execution without understanding that the task is part of an attack on voting systems.

The reason for using the security metric “number of informed participants” is relatively straightforward: the larger a conspiracy is, the more difficult it would be to keep it secret. Where an attacker can carry out an attack by herself, she need only trust herself. On the other hand, a conspiracy that requires thousands of people to take part (like a vote-buying scheme) also requires thousands of people to keep quiet. The larger the number of people involved, the greater the likelihood that one of them (or one who was approached, but declined to take part) would either inform the public or authorities about the attack, or commit some kind of error that causes the attack to fail or become known.

Moreover, recruiting a large number of people who are willing to undermine the integrity of a statewide election is also presumably difficult. It is not hard to imagine two or three people agreeing to work to change the outcome of an election. It seems far less likely that an attacker could identify and employ hundreds or thousands of similarly corrupt people without being discovered.

We can get an idea of how this metric works by looking at one of the threats listed in our catalogs: the vote-buying threat, where an attacker or attackers pay individuals to vote for a particular candidate. This is Attack Number 26 in the PCOS Attack Catalog<sup>22</sup> (though this attack would not be substantially different against DREs or DREs w/ VVPT).<sup>23</sup> In order to work under our current types of voting systems, this attack requires (1) at least one person to purchase votes, (2) many people to agree to sell their votes, and (3) some way for the purchaser to confirm that the voters she pays actually voted for the candidate she supported. Ultimately, we determined that, while practical in smaller contests, a vote-buying attack would be an exceptionally difficult way to affect the outcome of a statewide election. This is because, even in a typically close statewide election, an attacker would need to involve thousands of voters to ensure that she could affect the outcome of a statewide race.<sup>24</sup>

For a discussion of other metrics we considered, but ultimately rejected, see Appendix C.

## **DETERMINING NUMBER OF INFORMED PARTICIPANTS**

### **DETERMINING THE STEPS AND VALUES FOR EACH ATTACK**

The Task Force members broke down each of the catalogued attacks into its necessary steps. For instance, Attack 12 in the PCOS Attack Catalog is “Stuffing Ballot Box with Additional Marked Ballots.”<sup>25</sup> We determined that, at a minimum, there were three component parts to this attack: (1) stealing or creating the ballots and then marking them, (2) scanning marked ballots through the PCOS scanners, probably before the polls opened, and (3) modifying the poll books in each location to ensure that the total number of votes in the ballot boxes was not greater than the number of voters who signed in at the polling place.

Task Force members then assigned a value representing the minimum number of persons they believed would be necessary to accomplish each goal. For PCOS Attack 12, the following values were assigned:<sup>26</sup>

**Minimum number required to steal or create ballots: 5 persons total.<sup>27</sup>**

**Minimum number required to scan marked ballots: 1 per polling place attacked.**

**Minimum number required to modify poll books: 1 per polling place attacked.<sup>28</sup>**

After these values were assigned, the Brennan Center interviewed several election officials to see whether they agreed with the steps and values assigned to each attack.<sup>29</sup> When necessary, the values and steps were modified. The new catalogs, including attack steps and values, were then reviewed by Task Force members. The purpose of this review was to ensure, among other things, that the steps and values were sound.

These steps and values tell us how difficult it would be to accomplish a *single attack in a single polling place*. They do not tell us how many people it would take to change the outcome of an election successfully – that depends, of course, on specific facts about the jurisdiction: how many votes are generally recorded in each polling

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place, how many polling places are there in the jurisdiction, and how close is the race? For this reason, we determined that it was necessary to construct a hypothetical jurisdiction, to which we now turn.

**NUMBER OF INFORMED PARTICIPANTS NEEDED TO CHANGE STATEWIDE ELECTION**

We have decided to examine the difficulty of each attack in the context of changing the outcome of a reasonably close statewide election. While we are concerned by potential attacks on voting systems in any type of election, we are most troubled by attacks that have the potential to affect large numbers of votes. These are the attacks that could actually change the outcome of a statewide election with just a handful of attack participants.

We are less troubled by attacks on voting systems that can only affect a small number of votes (and might therefore be more useful in local elections). This is because there are many non-system attacks that can also affect a small number of votes (*i.e.*, sending out misleading information about polling places, physically intimidating voters, submitting multiple absentee ballots, *etc.*). Given the fact that these non-system attacks are likely to be less difficult in terms of number of participants, financial cost, risk of detection, and time commitment, we are uncertain that an attacker would target *voting machines* to alter a small number of votes.

In order to evaluate how difficult it would be for an attacker to change the outcome of a statewide election, we created a composite jurisdiction. The composite jurisdiction was created to be representative of a relatively close statewide election. We did not want to examine a statewide election where results were so skewed toward one candidate (for instance, the re-election of Senator Edward M. Kennedy in 2000, where he won 73% of the vote<sup>30</sup>), that reversing the election results would be impossible without causing extreme public suspicion. Nor did we want to look at races where changing only a relative handful of votes (for instance, the Governor's race in Washington State in 2004, which was decided by a mere 129 votes<sup>31</sup>) could affect the outcome of an election; under this scenario, many of the potential attacks would involve few people, and therefore look equally difficult.

We have named our composite jurisdiction "the State of Pennasota." The State of Pennasota is a composite of ten states: Colorado, Florida, Iowa, Ohio, New Mexico, Pennsylvania, Michigan, Nevada, Wisconsin and Minnesota. These states were chosen because they were the ten "battleground" states that Zogby International consistently polled in the spring, summer, and fall 2004.<sup>32</sup> These are statewide elections that an attacker would have expected, ahead of time, to be fairly close.

We have also created a composite election, which we label the "Governor's Race" in Pennasota. The results of this election are a composite of the actual results in the same ten states in the 2004 Presidential Election.

We have used these composites as the framework by which to evaluate the difficulty of the various catalogued attacks.<sup>33</sup> For instance, we know a ballot-box stuffing attack would require roughly five people to create and mark fake ballots, as

well as one person per polling place to stuff the boxes, and one person per polling place to modify the poll books. But, in order to determine how many informed participants would be needed to affect a statewide race, we need to know how many polling places would need to be attacked.

The composite jurisdiction and composite election provide us with information needed to answer these questions: *i.e.*, how many extra votes our attackers would need to add to their favored candidate's total for him to win, how many ballots our attackers can stuff into a particular polling place's ballot box without arousing suspicion (and related to this, how many votes are generally cast in the average polling place), how many polling places are there in the state, *etc.* We provide details about both the composite jurisdiction and election in the section entitled "Governor's Race, State of Pennasota, 2007," *infra* at pp 20–27.

#### LIMITS OF INFORMED PARTICIPANTS AS METRIC

Of the possible metrics we considered, we believe that measuring the number of people who know they are involved in an attack (and thus could provide evidence of the attack to the authorities and/or the media), is the best single measure of attack difficulty; as already discussed, we have concluded that the more people an attacker is forced to involve in his attack, the more likely it is that one of the participants would reveal the attack's existence and foil the attack, perhaps sending attackers to jail. However, we are aware of a number of places where the methodology could provide us with questionable results.

By deciding to concentrate on size of attack team, we mostly ignore the need for other resources when planning an attack. Thus, a software attack on DREs which makes use of steganography<sup>34</sup> to hide attack instruction files (*see* "DRE w/ VVPT Attack No.1a" discussed in greater detail, *infra* at pp. 62–65) is considered easier than an attack program delivered over a wireless network at the polling place (*see* discussion of wireless networks, *infra* at pp. 85–91). However, the former attack probably requires a much more technologically sophisticated attacker.

Another imperfection with this metric is that we do not have an easy way to represent how much choice the attacker has in finding members of his attack team. Thus, with PCOS voting, we conclude that the cost of subverting a routine audit of ballots is roughly equal to the cost of intercepting ballot boxes in transit and substituting altered ballots (*see* discussion of PCOS attacks, *infra* at pp. 77–83). However, subverting the audit team requires getting a specific set of trusted people to cooperate with the attacker. By contrast, the attacker may be able to decide which precincts to tamper with based on which people he has already recruited for his attack.

In an attempt to address this concern, we considered looking at the number of "insiders" necessary to take part in each attack. Under this theory, getting five people to take part in a conspiracy to attack a voting system might not be particularly difficult. But getting five well-placed county election officials to take part in the attack would be (and should be labeled) the more difficult of the two attacks. Because, for the most part, the low-cost attacks we have identified do not necessarily involve well placed insiders (but could, for instance, involve one of many people with access to commercial off the shelf software ("COTS") during development

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or at the vendor), we do not believe that using this metric would have substantially changed our analysis.<sup>35</sup>

Finally, these attack team sizes do not always capture the logistical complexity of an attack. For example, an attack on VVPT machines involving tampering with the voting machine software and also replacing the paper records in transit requires the attacker to determine what votes were falsely produced by the voting machine and print replacement records in time to substitute them. While this is clearly possible, it raises a lot of operational difficulties – a single failed substitution leaves the possibility that the attack would be detected during the audit of ballots.

We have tried to keep these imperfections in mind when analyzing and discussing our least difficult attacks.

We suspect that much of the disagreement between voting officials and computer security experts in the last several years stems from a difference of opinion in prioritizing the difficulty of attacks. Election officials, with extensive experience in the logistics of handling tons of paper ballots, have little faith in paper and understand the kind of breakdowns in procedures that lead to traditional attacks like ballot box stuffing; in contrast, sophisticated attacks on computer voting systems appear very difficult to many of them. Computer security experts understand sophisticated attacks on computer systems, and recognize the availability of tools and expertise that makes these attacks practical to launch, but have no clear idea how they would manage the logistics of attacking a paper-based system. Looking at attack team size is one way to bridge this difference in perspective.

## EFFECTS OF IMPLEMENTING COUNTERMEASURE SETS

The final step of our threat analysis is to measure the effect of certain countermeasures against the catalogued attacks. How much more difficult would the attacks become once the countermeasures are put into effect? How many more informed participants (if any) would be needed to counter or defeat these countermeasures?

Our process for examining the effectiveness of a countermeasure mirrors the process for determining the difficulty of an attack: we first asked whether the countermeasure would allow us to detect an attack with near certainty. If we agreed that the countermeasure would expose the attack, we identified the steps that would be necessary to circumvent or defeat the countermeasure. For each step to defeat the countermeasure, we determined the number of additional informed participants (if any) that an attacker would need to add to his team. As with the process for determining attack difficulty, the Brennan Center interviewed numerous election officials to see whether they agreed with the steps and values assigned. When necessary, the values and steps for defeating the countermeasures were altered to reflect the input of election officials.

## COUNTERMEASURES EXAMINED

### BASIC SET OF COUNTERMEASURES

The first set of countermeasures we looked at is the “Basic Set” of countermeasures. This Basic Set was derived from security survey responses<sup>36</sup> we received

from county election officials around the country, as well as additional interviews with more than a dozen current and former election officials. Within the Basic Set of countermeasures are the following procedures:

### **Inspection**

The jurisdiction is not knowingly using any uncertified software that is subject to inspection by the Independent Testing Authority (often referred to as the “ITA”).<sup>37</sup>

### **Physical Security for Machines**

- Ballot boxes (to the extent they exist) are examined (to ensure they are empty) and locked by poll workers immediately before the polls are opened.
- Before and after being brought to the polls for Election Day, voting systems for each county are locked in a single room in a county warehouse.
- The warehouse has perimeter alarms, secure locks, video surveillance and regular visits by security guards.
- Access to the warehouse is controlled by sign-in, possibly with card keys or similar automatic logging of entry and exit for regular staff.
- Some form of “tamper evident” seals are placed on machines before and after each election.
- The machines are transported to polling locations five to fifteen days before Election Day.

### **Chain of Custody/Physical Security of Election Day Records**

- At close of the polls, vote tallies for each machine are totaled and compared with number of persons that have signed the poll books.
- A copy of totals for each machine is posted at each polling place on Election Night and taken home by poll workers to check against what is posted publicly at election headquarters, on the web, in the papers, or elsewhere.<sup>38</sup>
- All audit information (*i.e.*, Event Logs, VVPT records, paper ballots, machine printouts of totals) that is not electronically transmitted as part of the unofficial upload to the central election office, is delivered in official, sealed and hand-delivered information packets or boxes. All seals are numbered and tamper-evident.
- Transportation of information packets is completed by two election officials representing opposing parties who have been instructed to remain in joint custody of the information packets or boxes from the moment it leaves the precinct to the moment it arrives at the county election center.

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- Each polling place sends its information packets or boxes to the county election center separately, rather than having one truck or person pick up this data from multiple polling locations.
- Once the sealed information packets or boxes have reached the county election center, they are logged. Numbers on the seals are checked to ensure that they have not been replaced. Any broken or replaced seals are logged. Intact seals are left intact.
- After the packets and/or boxes have been logged, they are provided with physical security precautions at least as great as those listed for voting machines, above. Specifically, for Pennasota, we have assumed the room in which the packets are stored have perimeter alarms, secure locks, video surveillance and regular visits by security guards and county police officers; and access to the room is controlled by sign-in, possibly with card keys or similar automatic logging of entry and exit for regular staff.

### Testing<sup>39</sup>

- An Independent Testing Authority has certified the model of voting machine used in the polling place.
- Acceptance Testing<sup>40</sup> is performed on machines at time, or soon after they are received by County.
- Pre-election Logic and Accuracy<sup>41</sup> testing is performed by the relevant election official.
- Prior to opening the polls, every voting machine and vote tabulation system is checked to see that it is still configured for the correct election, including the correct precinct, ballot style, and other applicable details.

### REGIMEN FOR AUTOMATIC ROUTINE AUDIT PLUS BASIC SET OF COUNTERMEASURES.

The second set of countermeasures is the Regimen for an Automatic Routine Audit Plus Basic Set of Countermeasures.

Some form of routine auditing of voter-verified paper records occurs in 12 states, to test the accuracy of electronic voting machines. They generally require between 1 and 10% of all precinct voting machines to be audited after each election. <sup>42</sup>

Jurisdictions can implement this set of countermeasures only if their voting systems produce some sort of voter-verified paper record of each vote. This could be in the form of a paper ballot, in the case of PCOS, or a voter-verified paper trail (“VVPT”), in the case of DREs.

We have assumed that jurisdictions take the following steps when conducting an Automatic Routine Audit (when referring to this set of assumptions “Regimen for an Automatic Routine Audit”):

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### The Audit

- Leaders of the major parties in each county are responsible for selecting a sufficient number of audit-team members to be used in that county.<sup>43</sup>
- Using a highly transparent random selection mechanism (*see* point ii, below), the voter-verified paper records for between a small percentage of all voting machines in the State are selected for auditing.
- Using a transparent random selection method, auditors are assigned to the selected machines (two or three people, with representatives of each major political party, would comprise each audit team).
- The selection of voting machines, and the assignment of auditors to machines, occurs immediately before the audits take place. The audits take place as soon after polls close as possible – for example, at 9 a.m. the morning after polls close.
- Using a transparent random selection method, county police officers, security personnel and the video monitor assigned to guard the voter-verified records are chosen from a large pool of on-duty officers and employees on election night.
- The auditors are provided the machine tallies and are able to see that the county tally reflects the sums of the machine tallies before the start of the inspection of the paper.
- The audit would include a tally of spoiled ballots (in the case of VVPT, the number of cancellations recorded), overvotes, and undervotes.

### Transparent Random Selection Process

In this report, we have assumed that random auditing procedures are in place for both the Regimen for an Automatic Routine Audit and Regimen for Parallel Testing. We have further assumed procedures to prevent a single, corrupt person from being able to fix the results. This implies a kind of transparent and public random procedure.

For the Regimen for an Automatic Routine Audit there are at least two places where transparent, random selection processes are important: in the selection of precincts to audit, and in the assignment of auditors to the precincts they will be auditing.

Good election security can employ Transparent Random Selection in other places with good effect:

- the selection of parallel testers from a pool of qualified individuals.
- the assignment of police and other security professionals from on-duty lists, to monitor key materials, for example, the VVPT records between the time that they arrive at election central and the time of the completion of the ARA.

If a selection process for auditing is to be trustworthy and trusted, ideally:

- The whole process will be publicly observable or videotaped;<sup>44</sup>
- The random selection will be publicly verifiable, *i.e.*, anyone observing will be able to verify that the sample was chosen randomly (or at least that the number selected is not under the control of any small number of people); and
- The process will be simple and practical within the context of current election practice so as to avoid imposing unnecessary burdens on election officials.

There are a number of ways that election officials can ensure some kind of transparent randomness. One way would be to use a state lottery machine to select precincts or polling places for auditing. We have included two potential examples of transparent random selection processes in Appendix F. These apply to the Regimen for Parallel Testing as well.

#### REGIMEN FOR PARALLEL TESTING PLUS BASIC SET OF COUNTERMEASURES

The final set of countermeasures we have examined is “Parallel Testing” plus the Basic Set of countermeasures. Parallel Testing, also known as election-day testing, involves selecting voting machines at random and testing them as realistically as possible during the period that votes are being cast.

#### Parallel Testing

In developing our set of assumptions for Parallel Testing, we relied heavily upon interviews with Jocelyn Whitney, Project Manager for Parallel Testing in the State of California, and conclusions drawn from this Report.<sup>45</sup> In our analysis, we assume that the following procedures would be included in the Parallel Testing regimen (when referring to this regimen “Regimen for Parallel Testing”) that we evaluate:

- At least two of each DRE model (meaning both vendor and model) would be selected for Parallel Testing;
- At least two DREs from each of the three largest counties would be parallel tested;
- Counties to be parallel tested would be chosen by the Secretary of State in a transparent and random manner.
- Counties would be notified as late as possible that machines from one of their precincts would be selected for Parallel Testing;<sup>46</sup>
- Precincts would be selected through a transparent random mechanism;
- A video camera would record testing;
- For each test, there would be one tester and one observer;

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- Parallel Testing would occur at the polling place;
- The script for Parallel Testing would be generated in a way that mimics voter behavior and voting patterns for the polling place;
- At the end of the Parallel Testing, the tester and observer would reconcile vote totals in the script with vote totals reported on the machine.

### **Transparent Random Selection Process**

We further assume that the same type of transparent random selection process that would be used for the Regimen for Automatic Routine Audit would also be employed for the Regimen for Parallel Testing to determine which machines would be subjected to testing on Election Day.

## **APPENDIX C**

### **ALTERNATIVE SECURITY METRICS CONSIDERED**

#### **Dollars Spent**

The decision to use the number of informed participants as the metric for attack level difficulty came after considering several other potential metrics. One of the first metrics we considered was the dollar cost of attacks. This metric makes sense when looking at attacks that seek financial gain – for instance, misappropriating corporate funds. It is not rational to spend \$100,000 on the misappropriation of corporate funds if the total value of those funds is \$90,000. Ultimately, we rejected this metric as the basis for our analysis because the dollar cost of the attacks we considered were dwarfed by both (1) current federal and state budgets, and (2) the amounts currently spent legally in state and federal political campaigns.

#### **Time of Attack**

The relative security of safes and other safety measures are often rated in terms of “time to defeat.” This was rejected as metric of difficulty because it did not seem relevant to voting systems. Attackers breaking into a house are concerned with the amount of time it might take to complete their robbery because the homeowners or police might show up. With regard to election fraud, many attackers may be willing to start months or years before an election if they believe they can control the outcome. As discussed *supra* at pp. 35–48, attackers may be confident that they can circumvent the independent testing authorities and other measures meant to identify attacks, so that the amount of time an attack takes becomes less relevant.

**Appendix 4**  
**Voting Fraud-Voter Intimidation Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, Texas

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia

National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, Missouri

National Counsel to the American Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S.

Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice

## Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

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<sup>i</sup> Department of Justice's Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R

<sup>ii</sup> The MyVote1 Project Final Report, Fels Institute of Government, University of Pennsylvania, November 1, 2005, Pg. 12

<sup>iii</sup> Department of Justice's Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R, p. 4. This same report criticizes some of the procedures the Section used for these systems and urged the Department to improve upon them in time for the 2004 presidential election. No follow-up report has been done since that time to the best of our knowledge.

<sup>iv</sup> "Department Of Justice To Hold Ballot Access and Voting Integrity Symposium," U.S. Department of Justice press release, August 2, 2005

<sup>v</sup> Craig C. Donsanto, Prosecution of Electoral Fraud Under United States Federal Law," IFES Political Finance White Paper Series, 2006, p. 29

<sup>vi</sup> Ana Henderson and Christopher Edley, Jr., Voting Rights Act Reauthorization: Research-Based Recommendations to Improve Voting Access, Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, University of California at Berkeley, School of Law, 2006, p. 29



**United States  
Election Assistance  
Commission**

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**Testing and Certification  
Program Manual**

*Version 1.0 - Effective January 1, 2007*

[www.eac.gov](http://www.eac.gov)

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*The reporting requirements in this manual have been approved under the Paperwork Reduction Act of 1995, Office of Management and Budget Control (OMB) Number 3265-0004, expiring March 31, 2007. Persons are not required to respond to this collection of information unless it displays a currently valid OMB number. Information gathered pursuant to this document and its forms will be used solely to administer the EAC Testing and Certification Program. This program is voluntary. Individuals who wish to participate in the program, however, must meet its requirements. The estimated total annual hourly burden on the voting system manufacturing industry and election officials is 114 hours. This estimate includes the time required for reviewing the instructions, gathering information, and completing the prescribed forms. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the U.S. Election Assistance Commission, Voting System Testing and Certification Program, Office of the Program Director, 1225 New York Avenue, NW, Suite 1100, Washington, D.C. 20005.*

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## 1. Introduction

- 1.1. **Background.** The Federal Election Commission (FEC) adopted the first formal set of voluntary Federal standards for computer-based voting systems in January 1990. At that time, no national program or organization existed to test and certify such systems to the standards. The National Association of State Election Directors (NASED) stepped up to fill this void in 1994. NASED is an independent, nongovernmental organization of State election officials. The organization formed the Nation's first national program to test and qualify voting systems to the new Federal standards. The organization worked for more than a decade, on a strictly voluntary basis, to help ensure the reliability, consistency, and accuracy of voting systems fielded in the United States. In late 2002, Congress passed the Help America Vote Act of 2002 (HAVA). HAVA created the U.S. Election Assistance Commission (EAC) and assigned to the EAC the responsibility for both setting voting system standards and providing for the testing and certification of voting systems. This mandate represented the first time the Federal government provided for the voluntary testing, certification, and decertification of voting systems nationwide. In response to this HAVA requirement, the EAC has developed the Voting System Testing and Certification Program (Certification Program).
- 1.2. **Authority.** HAVA requires that the EAC certify and decertify voting systems. Section 231(a)(1) of HAVA specifically requires the EAC to "... provide for the testing, certification, decertification and recertification of voting system hardware and software by accredited laboratories." The EAC has the sole authority to grant certification or withdraw certification at the Federal level, including the authority to grant, maintain, extend, suspend, and withdraw the right to retain or use any certificates, marks, or other indicators of certification.
- 1.3. **Scope.** This Manual provides the procedural requirements of the EAC Voting System Testing and Certification Program. Although participation in the program is voluntary, adherence to the program's procedural requirements is mandatory for participants. The procedural requirements of this Manual supersede any prior voting system certification requirements issued by the EAC.
- 1.4. **Purpose.** The primary purpose of the EAC Certification Program Manual is to provide clear procedures to Manufacturers for the testing and certification of voting systems to specified Federal standards consistent with the requirements of HAVA Section 231(a)(1). The program, however, also serves to do the following:
  - 1.4.1. Support State certification programs.
  - 1.4.2. Support local election officials in the areas of acceptance testing and pre-election system verification.
  - 1.4.3. Increase quality control in voting system manufacturing.
  - 1.4.4. Increase voter confidence in the use of voting systems.

**1.5. Manual.** This Manual is a comprehensive presentation of the EAC Voting System Testing and Certification Program. It is intended to establish all of the program's administrative requirements.

1.5.1. Contents. The contents of the Manual serve as an overview of the program itself. The Manual contains the following chapters:

1.5.1.1. *Manufacturer Registration.* Under the program, a Manufacturer is required to register with the EAC prior to participation. This registration provides the EAC with needed information and requires the Manufacturer to agree to the requirements of the Certification Program. This chapter sets out the requirements and procedures for registration.

1.5.1.2. *When Voting Systems Must Be Submitted for Testing and Certification.* All voting systems must be submitted consistent with this Manual before they may receive a certification from the EAC. This chapter discusses the various circumstances that require submission to obtain or maintain a certification.

1.5.1.3. *Certification Testing and Review.* Under this program, the testing and review process requires the completion of an application, employment of an EAC-accredited laboratory for system testing, and technical analysis of the laboratory test report by the EAC. The result of this process is an Initial Decision on Certification. This chapter discusses the required steps for voting system testing and review.

1.5.1.4. *Grant of Certification.* If an Initial Decision to grant certification is made, the Manufacturer must take additional steps before the Manufacturer may be issued a certification. These steps require the Manufacturer to document the performance of a trusted build (*see* definition at Section 1.16), the deposit of software into a repository, and the creation of system identification tools. This chapter outlines the action that a Manufacturer must take to receive a certification and the Manufacturer's post-certification responsibilities.

1.5.1.5. *Denial of Certification.* If an Initial Decision to deny certification is made, the Manufacturer has certain rights and responsibilities under the program. This chapter contains procedures for requesting reconsideration, opportunity to cure defects, and appeal.

1.5.1.6. *Decertification.* Decertification is the process by which the EAC revokes a certification it previously granted to a voting system. It is an important part of the Certification Program because it serves to ensure that the requirements of the program are followed and that certified voting systems fielded for use in Federal elections maintain the same level of quality as those presented for testing. This chapter sets procedures for Decertification and explains the Manufacturer's rights and responsibilities during that process.

- 1.5.1.7. *Quality Monitoring Program.* Under the Certification Program, EAC will implement a quality monitoring process that will help ensure that voting systems certified by the EAC are the same systems sold by Manufacturers. The quality monitoring process is a mandatory part of the program and includes elements such as fielded voting system review, anomaly reporting, and manufacturing site visits. This chapter sets forth the requirements of the Quality Monitoring Program.
- 1.5.1.8. *Requests for Interpretations.* An Interpretation is a means by which a registered Manufacturer or Voting System Test Laboratory (VSTL) may seek clarification on a specific Voluntary Voting System Guidelines (VVSG) standard. This chapter outlines the policy, requirements, and procedures for requesting an Interpretation.
- 1.5.1.9. *Release of Certification Program Information.* Federal law protects certain types of information individuals provided the government from release. This chapter outlines the program's policies, sets procedures, and discusses responsibilities associated with the public release of potential protected commercial information.
- 1.5.2. **Maintenance and Revision.** This Manual, which sets the procedural requirements for a new Federal program, is expected to be improved and expanded as experience and circumstances dictate. The Manual will be reviewed periodically and updated to meet the needs of the EAC, Manufacturers, VSTLs, election officials, and public policy. The EAC is responsible for revising this document. All revisions will be made consistent with Federal law. Substantive input from stakeholders and the public will be sought whenever possible, at the discretion of the agency. Changes in policy requiring immediate implementation will be noticed via policy memoranda and will be issued to each registered Manufacturer. Changes, addendums, or updated versions will also be posted to the EAC Web site at [www.eac.gov](http://www.eac.gov).
- 1.6. Program Methodology.** EAC's Voting System Testing and Certification Program is but one part of the overall conformity assessment process that includes companion efforts at the State and local levels.
  - 1.6.1. **Federal and State Roles.** The process to ensure that voting equipment meets the technical requirements is a distributed, cooperative effort of Federal, State, and local officials in the United States. Working with voting equipment Manufacturers, these officials each have unique responsibility for ensuring that the equipment a voter uses on Election Day meets specific requirements.
    - 1.6.1.1. The EAC Program has primary responsibility for ensuring that voting systems submitted under this program meet Federal standards established for voting systems.

- 1.6.1.2. State officials have responsibility for testing voting systems to ensure that they will support the specific requirements of each individual State. States may use EAC VSTLs to perform testing of voting systems to unique State requirements while the systems are being tested to Federal standards. The EAC will not, however, certify voting systems to State requirements.
  - 1.6.1.3. State or local officials are responsible for making the final purchase choice. They are responsible for deciding which system offers the best fit and total value for their specific State or local jurisdiction.
  - 1.6.1.4. State or local officials are also responsible for acceptance testing to ensure that the equipment delivered is identical to the equipment certified on the Federal and State levels, is fully operational, and meets the contractual requirements of the purchase.
  - 1.6.1.5. State or local officials should perform pre-election logic and accuracy testing to confirm that equipment is operating properly and is unmodified from its certified state.
- 1.6.2. Conformity Assessment, Generally. Conformity assessment is a system established to ensure that a product or service meets the requirements that apply to it. Many conformity assessment systems exist to protect the quality and ensure compliance with requirements of products and services. All conformity assessment systems attempt to answer a variety of questions:
- 1.6.2.1. *What specifications are required of an acceptable system?* For voting systems, the EAC voting system standards (VVSG and Voting System Standards [VSS]) address this issue. States and local jurisdictions also have supplementing standards.
  - 1.6.2.2. *How are systems tested against required specifications?* The EAC Voting System Testing and Certification Program is a central element of the larger conformity assessment system. The program, as set forth in this Manual, provides for the testing and certification of voting systems to identified versions of the VVSG. The Testing and Certification Program's purpose is to ensure that State and local jurisdictions receive voting systems that meet the requirements of the VVSG.
  - 1.6.2.3. *Are the testing authorities qualified to make an accurate evaluation?* The EAC accredits VSTLs, after the National Institute of Standards and Technology (NIST) National Voluntary Lab Accreditation Program (NVLAP) has reviewed their technical competence and lab practices, to ensure these test authorities are fully qualified. Furthermore, EAC technical experts review all test reports from accredited laboratories to ensure an accurate and complete evaluation. Many States provide similar reviews of laboratory reports.

1.6.2.4. *Will Manufacturers deliver units within manufacturing tolerances to those tested?* The VVSG and this Manual require that vendors have appropriate change management and quality control processes to control the quality and configuration of their products. The Certification Program provides mechanisms for the EAC to verify Manufacturer quality processes through field system testing and manufacturing site visits. States have implemented policies for acceptance of delivered units.

**1.7. Program Personnel.** All EAC personnel and contractors associated with this program will be held to the highest ethical standards. All agents of the EAC involved in the Certification Program will be subject to conflict-of-interest reporting and review, consistent with Federal law and regulation.

**1.8. Program Records.** The EAC Program Director is responsible for maintaining accurate records to demonstrate that the testing and certification program procedures have been effectively fulfilled and to ensure the traceability, repeatability, and reproducibility of testing and test report review. All records will be maintained, managed, secured, stored, archived, and disposed of in accordance with Federal law, Federal regulations, and procedures of the EAC.

**1.9. Submission of Documents.** Any documents submitted pursuant to the requirements of this Manual shall be submitted:

1.9.1. If sent electronically, via secure e-mail or physical delivery of a compact disk, unless otherwise specified.

1.9.2. In a Microsoft Word or Adobe PDF file, formatted to protect the document from alteration.

1.9.3. With a proper signature when required by this Manual. Documents that require an authorized signature may be signed with an electronic representation or image of the signature of an authorized management representative and must meet any and all subsequent requirements established by the Program Director regarding security.

1.9.4. If sent via physical delivery, by Certified Mail™ (or similar means that allows tracking) to the following address:

Testing and Certification Program Director  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, D.C. 20005

**1.10. Receipt of Documents—Manufacturer.** For purposes of this Manual, a document, notice, or other communication is considered received by a Manufacturer upon one of the following:

1.10.1. The actual, documented date the correspondence was received (either electronically or physically) at the Manufacturer's place of business, or

- 1.10.2. If no documentation of the actual delivery date exists, the date of constructive receipt of the communication. For electronic correspondence, documents will be constructively received the day after the date sent. For mail correspondence, the document will be constructively received 3 days after the date sent.
- 1.10.3. The term “receipt” shall mean the date a document or correspondence arrives (either electronically or physically) at the Manufacturer’s place of business. Arrival does not require that an agent of the Manufacturer open, read, or review the correspondence.
- 1.11. Receipt of Documents—EAC.** For purposes of this Manual, a document, notice, or other communication is considered received by the EAC upon its physical or electronic arrival at the agency. All documents received by the agency will be physically or electronically date stamped. This stamp shall serve as the date of receipt. Documents received after the regular business day (5:00 PM Eastern Standard Time), will be treated as if received on the next business day.
- 1.12. EAC Response Timeframes.** In recognition of the responsibilities and challenges facing Manufacturers as they work to meet the requirements imposed by this program, State certification programs, customers, State law and production schedules, the EAC will provide timeframes for its response to significant program elements. This shall be done by providing current metrics on EAC’s Web site regarding the actual average EAC response time for (1) approving Test Plans, (2) issuing Initial Decisions, and (3) issuing Certificates of Conformance.
- 1.13. Records Retention—Manufacturers.** The Manufacturer is responsible for ensuring that all documents submitted to the EAC or that otherwise serve as the basis for the certification of a voting system are retained. A copy of all such records shall be retained as long as a voting system is offered for sale or supported by a Manufacturer and for 5 years thereafter.
- 1.14. Record Retention—EAC.** The EAC shall retain all records associated with the certification of a voting system as long as such system is fielded in a State or local election jurisdiction for use in Federal elections. The records shall otherwise be retained or disposed of consistent with Federal statutes and regulations.
- 1.15. Publication and Release of Documents.** The EAC will release documents consistent with the requirements of Federal law. It is EAC policy to make the certification process as open and public as possible. Any documents (or portions thereof) submitted under this program will be made available to the public unless specifically protected from release by law. The primary means for making this information available is through the EAC Web site.

**1.16. Definitions.** For purposes of this Manual, the terms listed below have the following definitions.

Appeal. A formal process by which the EAC is petitioned to reconsider an Agency Decision.

Appeal Authority. The individual or individuals appointed to serve as the determination authority on appeal.

Build Environment. The disk or other media that holds the source code, compiler, linker, integrated development environments (IDE), and/or other necessary files for the compilation and on which the compiler will store the resulting executable code.

Certificate of Conformance. The certificate issued by the EAC when a system has been found to meet the requirements of the VVSG. The document conveys certification of a system.

Commission. The U.S. Election Assistance Commission, as an agency.

Commissioners. The serving commissioners of the U.S. Election Assistance Commission.

Component. A discrete and identifiable element of hardware or software within a larger voting system.

Compiler. A computer program that translates programs expressed in a high-level language into machine language equivalents.

Days. Calendar days, unless otherwise noted. When counting days, for the purpose of submitting or receiving a document, the count shall begin on the first full calendar day after the date the document was received.

Disk Image. An exact copy of the entire contents of a computer disk.

Election Official. A State or local government employee who has as one of his or her primary duties the management or administration of a Federal election.

Federal Election. Any primary, general, runoff, or special Election in which a candidate for Federal office (President, Senator, or Representative) appears on the ballot.

Fielded Voting System. A voting system purchased or leased by a State or local government that is being use in a Federal election.

File Signature. A signature of a file or set of files produced using a HASH algorithm. A file signature, sometimes called a HASH value, creates a value that is computationally infeasible of being produced by two similar but different files. File signatures are used to verify that files are unmodified from their original versions.

**HASH Algorithm.** An algorithm that maps a bit string of arbitrary length to a shorter, fixed-length bit string. (A HASH uniquely identifies a file similar to the way a fingerprint identifies an individual. Likewise, as an individual cannot be recreated from his or her fingerprint, a file cannot be recreated from a HASH. The HASH algorithm used primarily in the NIST (National Software Reference Library), and this program is the Secure HASH Algorithm (SHA-1) specified in Federal Information Processing Standard (FIPS) 180-1.)

**Installation Device.** A device containing program files, software, and installation instructions for installing an application (program) onto a computer. Examples of such devices include installation disks, flash memory cards, and PCMCIA cards.

**Integration Testing.** The end-to-end testing of a full system configured for use in an election to assure that all legitimate configurations meet applicable standards.

**Linker.** A computer program that takes one or more objects generated by compilers and assembles them into a single executable program.

**Manufacturer.** The entity with ownership and control over a voting system submitted for certification.

**Mark of Conformance.** A uniform notice permanently posted on a voting system that signifies that it has been certified by the EAC.

**Memorandum for the Record.** A written statement drafted to document an event or finding, without a specific addressee other than the pertinent file.

**Proprietary Information.** Commercial information or trade secrets protected from release under the Freedom of Information Act (FOIA) and the Trade Secrets Act.

**System Identification Tools.** Tools created by a Manufacturer of voting systems that allow elections officials to verify that the hardware and software of systems purchased are identical to the systems certified by the EAC.

**Technical Reviewers.** Technical experts in the areas of voting system technology and conformity assessment appointed by the EAC to provide expert guidance.

**Testing and Certification Decision Authority.** The EAC Executive Director or Acting Executive Director.

**Testing and Certification Program Director.** The individual appointed by the EAC Executive Director to administer and manage the Testing and Certification Program.

**Trusted Build.** A witnessed software build where source code is converted to machine-readable binary instructions (executable code) in a manner providing security measures that help ensure that the executable code is a verifiable and faithful representation of the source code.

Voting System. The total combination of mechanical, electromechanical, and electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used to define ballots, cast and count votes, report or display election results, connect the voting system to the voter registration system, and maintain and produce any audit trail information.

Voting System Standards. Voluntary voting system standards developed by the FEC. Voting System Standards have been published twice: once in 1990 and again in 2002. The Help America Vote Act made the 2002 Voting System Standards EAC guidance. All new voting system standards are issued by the EAC as Voluntary Voting System Guidelines.

Voting System Test Laboratories. Laboratories accredited by the EAC to test voting systems to EAC approved voting system standards. Each Voting System Test Laboratory (VSTL) must be accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) and recommended by the National Institute of Standards Technology (NIST) before it may receive an EAC accreditation. NVLAP provides third party accreditation to testing and calibration laboratories. NVLAP is in full conformance with the standards of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC), including ISO/IEC Guide 17025 and 17011.

Voluntary Voting System Guidelines. Voluntary voting system standards developed, adopted, and published by the EAC. The guidelines are identified by version number and date.

**1.17. Acronyms and Abbreviations.** For purposes of this Manual, the acronyms and abbreviations listed below represent the following terms.

Certification Program. The EAC Voting System Testing and Certification Program

Decision Authority. Testing and Certification Decision Authority

EAC. United States Election Assistance Commission

FEC. Federal Election Commission

HAVA. Help America Vote Act of 2002 (42 U.S.C. §15301 et seq.)

Labs or Laboratories. Voting System Test Laboratories

NASED. National Association of State Election Directors

NIST. National Institute of Standards and Technology

NVLAP. National Voluntary Laboratory Accreditation Program

Program Director. Director of the EAC Testing and Certification Program

VSS. Voting System Standards

VSTL. Voting System Test Laboratory

VVSG. Voluntary Voting System Guidelines

## 2. Manufacturer Registration

**2.1. Overview.** Manufacturer Registration is the process by which voting system Manufacturers make initial contact with the EAC and provide information essential to participate in the EAC Voting System Testing and Certification Program. Before a Manufacturer of a voting system can submit an application to have a voting system certified by the EAC, the Manufacturer must be registered. This process requires the Manufacturer to provide certain contact information and agree to certain requirements of the Certification Program. After successfully registering, the Manufacturer will receive an identification code.

**2.2. Registration Required.** To submit a voting system for certification or otherwise participate in the EAC voluntary Voting System Testing and Certification Program, a Manufacturer must register with the EAC. Registration does not constitute an EAC endorsement of the Manufacturer or its products. Registration of a Manufacturer is not a certification of that Manufacturer's products.

**2.3. Registration Requirements.** The registration process will require the voting system Manufacturer to provide certain information to the EAC. This information is necessary to enable the EAC to administer the Certification Program and communicate effectively with the Manufacturer. The registration process also requires the Manufacturer to agree to certain Certification Program requirements. These requirements relate to the Manufacturer's duties and responsibilities under the program. For this program to succeed, it is vital that a Manufacturer know and assent to these duties at the outset of the program.

2.3.1. Information. Manufacturers are required to provide the following information.

2.3.1.1. The Manufacturer's organizational information:

2.3.1.1.1. The official name of the Manufacturer.

2.3.1.1.2. The address of the Manufacturer's official place of business.

2.3.1.1.3. A description of how the Manufacturer is organized (i.e., type of corporation or partnership).

2.3.1.1.4. Names of officers and/or members of the board of directors.

2.3.1.1.5. Names of all partners and members (if organized as a partnership or limited liability corporation).

2.3.1.1.6. Identification of any individual, organization, or entity with a controlling ownership interest in the Manufacturer.

2.3.1.2. The identity of an individual authorized to represent and make binding commitments and management determinations for the Manufacturer (management representative). The following information is required for the management representative:

2.3.1.2.1. Name and title.

2.3.1.2.2. Mailing and physical addresses.

2.3.1.2.3. Telephone number, fax number, and e-mail address.

2.3.1.3. The identity of an individual authorized to provide technical information on behalf of the Manufacturer (technical representative). The following information is required for the technical representative:

2.3.1.3.1. Name and title.

2.3.1.3.2. Mailing and physical addresses.

2.3.1.3.3. Telephone number, fax number, and e-mail address.

2.3.1.4. The Manufacturer's written policies regarding its quality assurance system. This policy must be consistent with guidance provided in the VVSG and this Manual.

2.3.1.5. The Manufacturer's written polices regarding internal procedures for controlling and managing changes to and versions of its voting systems. Such polices shall be consistent with this Manual and guidance provided in the VVSG.

2.3.1.6. The Manufacturer's written polices on document retention. Such policies must be consistent with the requirements of this Manual.

2.3.1.7. A list of all manufacturing and/or assembly facilities used by the Manufacturer and the name and contact information of a person at each facility. The following information is required for a person at each facility:

2.3.1.7.1. Name and title.

2.3.1.7.2. Mailing and physical addresses.

2.3.1.7.3. Telephone number, fax number, and e-mail address.

2.3.2. Agreements. Manufacturers are required to take or abstain from certain actions to protect the integrity of the Certification Program and promote quality assurance. Manufacturers are required to agree to the following program requirements:

- 2.3.2.1. Represent a voting system as certified only when it is authorized by the EAC and is consistent with the procedures and requirements of this Manual.
- 2.3.2.2. Produce and affix an EAC certification label to all production units of the certified system. Such labels must meet the requirements set forth in Chapter 5 of this Manual.
- 2.3.2.3. Notify the EAC of changes to any system previously certified by the EAC pursuant to the requirements of this Manual (see Chapter 3). Such systems shall be submitted for testing and additional certification when required.
- 2.3.2.4. Permit an EAC representative to verify the Manufacturer's quality control procedures by cooperating with EAC efforts to test and review fielded voting systems consistent with Section 8.6 of this Manual.
- 2.3.2.5. Permit an EAC representative to verify the Manufacturer's quality control procedures by conducting periodic inspections of manufacturing facilities consistent with Chapter 8 of this Manual.
- 2.3.2.6. Cooperate with any EAC inquiries and investigations into a certified system's compliance with VVSG standards or the procedural requirements of this Manual consistent with Chapter 7.
- 2.3.2.7. Report to the Program Director any known malfunction of a voting system holding an EAC Certification. A malfunction is a failure of a voting system, not caused solely by operator or administrative error, which causes the system to cease operation during a Federal election or otherwise results in data loss. Malfunction notifications should be consolidated into one report. This report should identify the location, nature, date, impact, and resolution (if any) of the malfunction and be filed within 60 days of any Federal election.
- 2.3.2.8. Certify that the entity is not barred or otherwise prohibited by statute, regulation, or ruling from doing business in the United States.
- 2.3.2.9. Adhere to all procedural requirements of this Manual.

2.4. **Registration Process**. Generally, registration is accomplished through use of an EAC registration form. After the EAC has received a registration form and other required registration documents, the agency reviews the information for completeness before approval.

2.4.1. Application Process. To become a registered voting system Manufacturer, one must apply by submitting a Manufacturer Registration Application Form (Appendix A). This

form will be used as the means for the Manufacturer to provide the information and agree to the responsibilities required in Section 2.3, above.

2.4.1.1. *Application Form.* In order for the EAC to accept and process the registration form, the applicant must adhere to the following requirements:

2.4.1.1.1. All fields must be completed by the Manufacturer.

2.4.1.1.2. All required attachments prescribed by the form and this Manual must be identified, completed, and forwarded in a timely manner to the EAC (e.g., Manufacturer's quality control and system change policies).

2.4.1.1.3. The application form must be affixed with the handwritten signature (including a digital representation of the handwritten signature) of the authorized representative of the vendor.

2.4.1.2. *Availability and Use of the Form.* The Manufacturer Registration Application Form may be accessed through the EAC Web site at [www.eac.gov](http://www.eac.gov). Instructions for completing and submitting the form are included on the Web site. The Web site will also provide contact information regarding questions about the form or the application process.

2.4.2. EAC Review Process. The EAC will review all registration applications.

2.4.2.1. After the application form and required attachments have been submitted, the applicant will receive an acknowledgment that the EAC has received the submission and that the application will be processed.

2.4.2.2. If an incomplete form is submitted or an attachment is not provided, the EAC will notify the Manufacturer and request the information. Registration applications will not be processed until they are complete.

2.4.2.3. Upon receipt of the completed registration form and accompanying documentation, the EAC will review the information for sufficiency. If the EAC requires clarification or additional information, the EAC will contact the Manufacturer and request the needed information.

2.4.2.4. Upon satisfactory completion of a registration application's sufficiency review, the EAC will notify the Manufacturer that it has been registered.

2.5. **Registered Manufacturers.** After a Manufacturer has received notice that it is registered, it will receive an identification code and will be eligible to participate in the voluntary voting system Certification Program.

- 2.5.1. Manufacturer Code. Registered Manufacturers will be issued a unique, three-letter identification code. This code will be used to identify the Manufacturer and its products.
  - 2.5.2. Continuing Responsibility To Report. Registered Manufacturers are required to keep all registration information up to date. Manufacturers must submit a revised application form to the EAC within 30 days of any changes to the information required on the application form. Manufacturers will remain registered participants in the program during this update process.
  - 2.5.3. Program Information Updates. Registered Manufacturers will be automatically provided timely information relevant to the Certification Program.
  - 2.5.4. Web site Postings. The EAC will add the Manufacturer to the EAC listing of registered voting system Manufacturers publicly available at [www.eac.gov](http://www.eac.gov).
- 2.6. **Suspension of Registration**. Manufacturers are required to establish policies and operate within the EAC Certification Program consistent with the procedural requirements presented in this Manual. When Manufacturers engage in management activities that are inconsistent with this Manual or fail to cooperate with the EAC in violation the Certification Program's requirements, their registration may be suspended until such time as the problem is remedied.
- 2.6.1. Procedures. When a Manufacturer's activities violate the procedural requirements of this Manual, the Manufacturer will be notified of the violations, given an opportunity to respond, and provided the steps required to bring itself into compliance.
    - 2.6.1.1. *Notice*. Manufacturers shall be provided written notice that they have taken action inconsistent with or acted in violation of the requirements of this Manual. The notice will state the violations and the specific steps required to cure them. The notice will also provide Manufacturers with 30 days (or a greater period of time as stated by the Program Director) to (1) respond to the notice and/or (2) cure the defect.
    - 2.6.1.2. *Manufacturer Action*. The Manufacturer is required to either respond in a timely manner to the notice (demonstrating that it was not in violation of program requirements) or cure the violations identified in a timely manner. In any case, the Manufacturer's action must be approved by the Program Director to prevent suspension.

- 2.6.1.3. *Non-Compliance.* If the Manufacturer fails to respond in a timely manner, is unable to provide a cure or response that is acceptable to the Program Director, or otherwise refuses to cooperate, the Program Director may suspend the Manufacturer's registration. The Program Director shall issue a notice of his or her intent to suspend the registration and provide the Manufacturer five (5) business days to object to the action and submit information in support of the objection.
- 2.6.1.4. *Suspension.* After notice and opportunity to be heard (consistent with the above), the Program Director may suspend a Manufacturer's registration. The suspension shall be noticed in writing. The notice must inform the Manufacturer of the steps that can be taken to remedy the violations and lift the suspension.
- 2.6.2. Effect of Suspension. A suspended Manufacturer may not submit a voting system for certification under this program. This prohibition includes a ban on the submission of modifications and changes to certified system. A suspension shall remain in effect until lifted. Suspended Manufacturers will have their registration status reflected on the EAC Web site. Manufacturers have the right to remedy a non-compliance issue at any time and lift a suspension consistent with EAC guidance. Failure of a Manufacturer to follow the requirements of this section may also result in Decertification of voting systems consistent with Chapter 7 of this Manual.

### 3. When Voting Systems Must Be Submitted for Testing and Certification

3.1. **Overview.** An EAC certification signifies that a voting system has been successfully tested to identified voting system standards adopted by the EAC. Only the EAC can issue a Federal certification. Ultimately, systems must be submitted for testing and certification under this program to receive this certification. Systems will usually be submitted when (1) they are new to the marketplace, (2) they have never before received an EAC certification, (3) they are modified, or (4) the Manufacturer wishes to test a previously certified system to a different (newer) standard. This chapter also discusses the submission of de minimis changes, which may not require additional testing and certification, as well as provisional, pre-election emergency modifications, which provide for pre-election, emergency waivers.

3.2. **What Is an EAC Certification?** Certification is the process by which the EAC, through testing and evaluation conducted by an accredited Voting System Test Laboratory, validates that a voting system meets the requirements set forth in existing voting system testing standards (Voting System Standards [VSS] or VVSG), and performs according to the Manufacturer's specifications for the system. An EAC certification may be issued only by the EAC in accordance with the procedures presented in this Manual. Certifications issued by other bodies (e.g., the National Association of State Election Directors and State certification programs) are not EAC certifications.

3.2.1. **Types of Voting Systems Certified.** The EAC Certification Program is designed to test and certify electromechanical and electronic voting systems. The EAC will not accept for certification review voting systems that do not contain any electronic components. Ultimately, the determination of whether a voting system may be submitted for testing and certification under this program is solely at the discretion of the EAC.

3.2.2. **Voting System Standards.** Voting systems certified under this program are tested to a set of voluntary standards providing requirements that voting systems must meet to receive a Federal certification. Currently, these standards are referred to as Voluntary Voting System Guidelines (in the past they were called Voting System Standards).

3.2.2.1. *Versions—Availability and Identification.* Voluntary Voting System Guidelines (or applicable Voting System Standards) are published by the EAC and are available on the EAC Web site ([www.eac.gov](http://www.eac.gov)). The standards will be routinely updated. Versions will be identified by version number and/or release date.

3.2.2.2. *Versions—Basis for Certification.* The EAC will promulgate which version or versions of the standards it will accept as the basis for testing and certification. This effort may be accomplished through the setting of an implementation date for a particular version's applicability, the setting of a date by which testing to a particular version is mandatory, or the setting of a date by which the EAC will no longer test to a particular standard. **The EAC will certify only those voting systems tested to standards that the EAC has identified as valid for certification.**

- 3.2.2.2.1. End date. When a version's status as the basis of an EAC certification is set to expire on a certain date, the submission of the system's test report will be the controlling event (see Chapter 4). This requirement means the system's test report must be received by the EAC on or before the end date to be certified to the terminating standard.
- 3.2.2.2.2. Start date. When a version's status as the basis of an EAC certification is set to begin on a certain date, the submission of the system's application for certification will be the controlling event (see Chapter 4). This requirement means the system's application, requesting certification to the new standard, will not be accepted by the EAC until the start date.
- 3.2.2.3. *Version—Manufacturer's Option.* When the EAC has authorized certification to more than one version of the standards, the Manufacturer must choose which version it wishes to have its voting system tested against. The voting system will then be certified to that version of the standards. Manufacturers must ensure that all applications for certification identify a particular version of the standards.
- 3.2.2.4. *Emerging Technologies.* If a voting system or component thereof is eligible for a certification under this program (see Section 3.2.1.) and employs technology that is not addressed by a currently accepted version of the VVSG or VSS, the relevant technology shall be subjected to full integration testing and shall be tested to ensure that it operates to the Manufacturer's specifications. The remainder of the system will be tested to the applicable Federal standards. Information on emerging technologies will be forwarded to the EAC's Technical Guidelines Development Committee (TGDC).
- 3.2.3. Significance of an EAC Certification. An EAC certification is an official recognition that a voting system (in a specific configuration or configurations) has been tested to and has met an identified set of Federal voting standards. An EAC certification is **not** any of the following:
  - 3.2.3.1. An endorsement of a Manufacturer, voting system, or any of the system's components.
  - 3.2.3.2. A Federal warranty of the voting system or any of its components.
  - 3.2.3.3. A determination that a voting system, when fielded, will be operated in a manner that meets all HAVA requirements.
  - 3.2.3.4. A substitute for State or local certification and testing.

3.2.3.5. A determination that the system is ready for use in an election.

3.2.3.6. A determination that any particular component of a certified system is itself certified for use outside the certified configuration.

**3.3. Effect of the EAC Certification Program on Other National Certifications.** Before the creation of the EAC Certification Program, national voting system qualification was conducted by a private membership organization, the National Association of State Election Directors (NASED). NASED offered a qualification for voting systems for more than a decade, using standards issued by the Federal government. The EAC Certification Program does not repeal NASED-issued qualifications. All voting systems previously qualified under the NASED program retain their NASED qualification consistent with State law; however, a NASED-qualified voting system is not an EAC-certified system and is treated like an uncertified system for purposes of the EAC Certification Program.

**3.4. When Certification Is Required Under the Program.** To obtain or maintain an EAC certification, Manufacturers must submit a voting system for testing and certification under this program. Such action is usually required for (1) new systems not previously tested to any standard; (2) existing systems not previously certified by the EAC; (3) previously certified systems that have been modified; (4) systems or technology specifically identified for retesting by the EAC; or (5) previously certified systems that the Manufacturer seeks to upgrade to a higher standard (e.g., a more recent version of the VVSG).

3.4.1. New System Certification. For purposes of this Manual, new systems are defined as voting systems that have not been previously tested to applicable Federal standards. New voting systems must be fully tested and submitted to the EAC according to the requirements of Chapter 4 of this Manual.

3.4.2. System Not Previously EAC Certified. This term describes any voting system not previously certified by the EAC, including systems previously tested and qualified by NASED or systems previously tested and denied certification by the EAC. Such systems must be fully tested and submitted to the EAC according to the requirements of Chapter 4 of this Manual.

3.4.3. Modification. A modification is any change to a *previously EAC-certified voting system's* hardware, software, or firmware that is not a *de minimis* change. Any modification to a voting system will require testing and review by the EAC according to the requirements of Chapter 4 of this Manual.

3.4.4. EAC Identified Systems. Manufacturers may be required to submit systems previously certified by the EAC for retesting. This may occur when the EAC determines that the original tests conducted on the voting system are now insufficient to demonstrate compliance with Federal standards in light of newly discovered threats or information.

3.4.5. Certification Upgrade. This term defines any system previously certified by the EAC but submitted for additional testing and certification to a higher standard (e.g., to a newer version of the VVSG). Any such system must be tested to the new standards and submitted to the EAC per Chapter 4 of this Manual.

3.5. **De Minimis Changes**. A de minimis change is a change to voting system hardware that is so minor in nature and effect that it requires no additional testing and certification. Such changes, however, require VSTL review and endorsement as well as EAC approval. Any proposed change not accepted as a de minimis change is a modification and shall be submitted for testing and review consistent with the requirements of this Manual. An approved de minimis change is not a modification.

3.5.1. De Minimis Change—Defined. A de minimis change is a change to a certified voting system's hardware, the nature of which will not materially alter the system's reliability, functionality, capability, or operation. Software and firmware modifications are not de minimis changes. In order for a hardware change to qualify as a de minimis change, it must not only maintain, unaltered, the reliability, functionality, capability and operability of a system, it shall also ensure that when hardware is replaced, the original hardware and the replacement hardware are electronically and mechanically interchangeable and have identical functionality and tolerances. Under no circumstance shall a change be considered a de minimis change if it has reasonable and identifiable potential to impact the system's operation and compliance with applicable voting system standards.

3.5.2. De Minimis Change—Procedure. Manufacturers who wish to implement a proposed de minimis change must submit it for VSTL review and endorsement and EAC approval. A proposed change is not a de minimis change and may not be implemented as such until it has been approved in writing by the EAC.

3.5.2.1. *VSTL Review*. Manufacturers must submit any proposed de minimis change to an EAC VSTL for review and endorsement. The Manufacturer will provide the VSTL (1) a detailed description of the change; (2) a description of the facts giving rise to or necessitating the change; (3) the basis for its determination that the change will not alter the system's reliability, functionality, or operation; and (4) upon request of the VSTL, a sample voting system at issue or any relevant technical information needed to make the determination. The VSTL will review the proposed de minimis change and make an independent determination as to whether the change meets the definition of de minimis change or requires the voting system to go through additional testing as a system modification. If the VSTL determines that a de minimis change is appropriate, it shall endorse the proposed change as a de minimis change. If the VSTL determines that modification testing and certification should be performed, it shall reject the proposed change. Endorsed changes shall be forwarded to the EAC Program Director for final

approval. Rejected changes shall be returned to the Manufacturer for resubmission as system modifications.

3.5.2.2. *VSTL Endorsed Changes.* The VSTL shall forward to the EAC any change it has endorsed as de minimis. The VSTL shall forward its endorsement in a package that includes:

3.5.2.2.1. The Manufacturer's initial description of the de minimis change, a narrative of facts giving rise to or necessitating the change, and the determination that the change will not alter the system's reliability, functionality, or operation.

3.5.2.2.2. The written determination of the VSTL endorsement of the de minimis change. The endorsement document must explain why the VSTL, in its engineering judgment, determined that the proposed de minimis change met the definition in this section and otherwise does not require additional testing and certification.

3.5.2.3. *EAC Action.* The EAC will review all proposed de minimis changes endorsed by the VSTL. The EAC has sole authority to determine whether any VSTL endorsed change constitutes a de minimis change under this section. The EAC will inform the Manufacturer and VSTL of its determination in writing.

3.5.2.3.1. EAC approval. If the EAC approves the change as a de minimis change, it shall provide written notice to the Manufacturer and VSTL. The EAC will maintain copies of all approved de minimis changes and otherwise track such changes.

3.5.2.3.2. EAC denial. If the EAC determines that a proposed de minimis change cannot be approved, it will inform the VSTL and Manufacturer of its decision. The proposed change will be considered a modification and require testing and certification consistent with this Manual.

3.5.3. De Minimis Change—Effect of EAC Approval. EAC approval of a de minimis change permits the Manufacturer to implement the proposed change (as identified, endorsed, and approved) without additional modification testing and certification. Fielding an engineering change not approved by the EAC is a basis for system Decertification.

**3.6. Provisional, Pre-Election Emergency Modification.** To deal with extraordinary pre-election emergency situations, the EAC has developed a special provisional modification process. This process is to be used **only** for the emergency situations indicated and **only** when there is a clear and compelling need for temporary relief until the regular certification process can be followed.

- 3.6.1. Purpose. The purpose of this section is to allow a mechanism within the EAC Certification Program for Manufacturers to modify EAC-certified voting systems in emergency situations immediately before an election. This situation arises when a modification to a voting system is required and an election deadline is imminent, preventing the completion of the full certification process (and State and/or local testing process) in time for Election Day. In such situations the EAC may issue a waiver to the Manufacturer, granting it leave to make the modification without submission for modification testing and certification.
- 3.6.2. General Requirements. A request for an emergency modification waiver may be made by a Manufacturer only *in conjunction with* the State election official whose jurisdiction(s) would be adversely affected if the requested modification were not implemented before Election Day. Requests must be submitted at least 5 calendar days before an election. Only systems previously certified are eligible for such a waiver. To receive a waiver, a Manufacturer must demonstrate the following:
- 3.6.2.1. The modification is functionally or legally required; that is, the system cannot be fielded in an election without the change.
  - 3.6.2.2. The voting system requiring modification is needed by State or local election officials to conduct a pending Federal election.
  - 3.6.2.3. The voting system to be modified has previously been certified by the EAC.
  - 3.6.2.4. The modification cannot be tested by a VSTL and submitted to the EAC for certification, consistent with the procedural requirements of this Manual, at least 30 days before the pending Federal election.
  - 3.6.2.5. Relevant State law requires Federal certification of the requested modification.
  - 3.6.2.6. The Manufacturer has taken steps to ensure that the modification will properly function as designed, is suitably integrated with the system, and otherwise will not negatively affect system reliability, functionality, or accuracy.
  - 3.6.2.7. The Manufacturer (through a VSTL) has completed as much of the evaluation testing as possible for the modification and has provided the results of such testing to the EAC.
  - 3.6.2.8. The emergency modification is required and otherwise supported by the Chief State Election Official seeking to field the voting system in an impending Federal election.
- 3.6.3. Request for Waiver. A Manufacturer's request for waiver shall be made in writing to the Decision Authority and shall include the following elements:

- 3.6.3.1. A signed statement providing sufficient description, background, information, documentation, and other evidence necessary to demonstrate that the request for a waiver meets each of the eight requirements stated in Section 3.5.2 above.
- 3.6.3.2. A signed statement from the Chief State Election Official requiring the emergency modification. This signed statement shall identify the pending election creating the emergency situation and attest that (1) the modification is required to field the system, (2) State law (citation) requires EAC action to field the system in an election, and (3) normal timelines required under the EAC Certification Program cannot be met.
- 3.6.3.3. A signed statement from a VSTL that there is insufficient time to perform necessary testing and complete the certification process. The statement shall also state what testing the VSTL has performed on the modification to date, provide the results of such tests, and state the schedule for completion of testing.
- 3.6.3.4. A detailed description of the modification, the need for the modification, how it was developed, how it addresses the need for which it was designed, its impact on the voting system, and how the modification will be fielded or implemented in a timely manner consistent with the Manufacturer's quality control program.
- 3.6.3.5. All documentation of tests performed on the modification by the Manufacturer, a laboratory, or other third party.
- 3.6.3.6. A stated agreement signed by the Manufacturer's representative agreeing to take the following action:
  - 3.6.3.6.1. Submit for testing and certification, consistent with Chapter 4 of this Manual, any voting system receiving a waiver under this section that has not already been submitted. This action shall be taken immediately.
  - 3.6.3.6.2. Abstain from representing the modified system as EAC certified. The modified system has not been certified; rather, the originally certified system has received a waiver providing the Manufacturer leave to modify it.
  - 3.6.3.6.3. Submit a report to the EAC regarding the performance of the modified voting system within 60 days of the Federal election that served as the basis for the waiver. This report shall (at a minimum) identify and describe any (1) performance failures, (2) technical failures, (3) security failures, and/or (4) accuracy problems.

- 3.6.4. EAC Review. The EAC will review all waiver requests submitted in a timely manner and make determinations regarding the requests. Incomplete requests will be returned for resubmission with a written notification regarding its deficiencies.
- 3.6.5. Letter of Approval. If the EAC approves the modification waiver, the Decision Authority shall issue a letter granting the temporary waiver within five (5) business days of receiving a complete request.
- 3.6.6. Effect of Grant of Waiver. An EAC grant of waiver for an emergency modification is not an EAC certification of the modification. Waivers under this program grant Manufacturers leave to only temporarily amend previously certified systems without testing and certification for the specific election noted in the request. Without such a waiver, such action would ordinarily result in Decertification of the modified system (See Chapter 7). Systems receiving a waiver shall satisfy any State requirement that a system be nationally or federally certified. In addition—
- 3.6.6.1. All waivers are temporary and expire 60 days after the Federal election for which the system was modified and the waiver granted.
- 3.6.6.2. Any system granted a waiver must be submitted for testing and certification. This shall be accomplished as soon as possible.
- 3.6.6.3. The grant of a waiver is no indication that the modified system will ultimately be granted a certification.
- 3.6.7. Denial of Request for Waiver. A request for waiver may be denied by the EAC if the request does not meet the requirements noted above, fails to follow the procedure established by this section or otherwise fails to sufficiently support a conclusion that the modification at issue is needed, will function properly, and is in the public interest. A denial of a request for emergency modification by the EAC shall be final and not subject to appeal. Manufacturers may submit for certification, consistent with Chapter 4 of this Manual, modifications for which emergency waivers were denied.
- 3.6.8. Publication Notice of Waiver. The EAC will post relevant information relating to the temporary grant of an emergency waiver on its Web site. This information will be posted upon grant of the waiver and removed upon the waiver's expiration. This posting will include information concerning the limited nature and effect of the waiver.

## 4. Certification Testing and Technical Review

- 4.1. Overview.** This chapter discusses the procedural requirements for submitting a voting system to the EAC for testing and review. The testing and review process requires an application, employment of an EAC-accredited testing laboratory, and technical analysis of the laboratory test report by the EAC. The result of this process is an Initial Decision on Certification by the Decision Authority.
- 4.2. Policy.** Generally, to receive an initial determination on an EAC certification for a voting system, a registered Manufacturer must have (1) submitted an EAC-approved application for certification, (2) had a VSTL submit an EAC-approved test plan, (3) had a VSTL test a voting system to applicable voting system standards, (4) had a VSTL submit a test report to the EAC for technical review and approval, and (5) received EAC approval of the report in an Initial Decision on Certification.
- 4.3. Certification Application.** The first step in submitting a voting system for certification is submission of an application package. The package contains an application form and a copy of the voting system's Implementation Statement (see VVSG 2005—Version 1.0, Vol. I, Section 1.6.4), functional diagram, and System Overview documentation submitted to the VSTL as a part of the Technical Data Package (see VVSG 2005—Version 1.0, Vol. II, Section 2.2). This application process initiates the certification process and provides the EAC with needed information.
- 4.3.1. Information on Application Form.** The application (application form) provides the EAC certain pieces of information that are essential at the outset of the certification process. This information includes the following:
- 4.3.1.1. *Manufacturer Information.*** Identification of the Manufacturer (name and three-letter identification code).
  - 4.3.1.2. *Selection of Accredited Laboratory.*** Selection and identification of the VSTL that will perform voting system testing and other prescribed laboratory action consistent with the requirements of this Manual. Once selected, a Manufacturer may NOT replace the selected VSTL without the express written consent of the Program Director. Such permission will be granted solely at the discretion of the Program Director and only upon demonstration of good cause.
  - 4.3.1.3. *Voting System Standards Information.*** Identification of the VVSG or VSS, including the document's date and version number, to which the Manufacturer wishes to have the identified voting system tested and certified.
  - 4.3.1.4. *Nature of the Submission.*** Manufacturers must identify the nature of their submission by selecting one of the following four submission types:

- 4.3.1.4.1. New system. For purposes of this Manual, a new system is defined as a voting system that has not been previously tested to any applicable Federal standards.
- 4.3.1.4.2. System not previously EAC certified. This term describes any voting system not previously certified by the EAC, including systems previously tested and qualified by NASED or systems previously tested and denied certification by the EAC.
- 4.3.1.4.3. Modification. A modification is any change to *a previously EAC-certified voting system's* hardware, software, or firmware.
- 4.3.1.4.4. Certification upgrade. This term defines any system previously certified by the EAC but submitted (without modification) for additional testing and certification to a higher standard (e.g., to a newer version of the VVSG).
- 4.3.1.5. *Identification of the Voting System.* Manufacturers must identify the system submitted for testing by providing its name and applicable version number. If the system submitted has been previously fielded, but the Manufacturer wishes to change its name or version number after receipt of EAC certification, it must provide identification information on both the past name or names and the new, proposed name. This requirement might occur in systems submitted for modification, for their first EAC certification, or for a certification upgrade.
- 4.3.1.6. *Description of the Voting System.* Manufacturers must provide a brief description of the system or modification being submitted for testing and certification. This description shall include the following information:
  - 4.3.1.6.1. A listing of all components of the system submitted.
  - 4.3.1.6.2. Each component's version number.
  - 4.3.1.6.3. A complete list of each configuration of the system's components that could be fielded as the certified voting system.<sup>1</sup>
  - 4.3.1.6.4. Any other information necessary to identify the specific configuration being submitted for certification.

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<sup>1</sup> An EAC certification applies to the configuration of components (the voting system) presented for testing. A voting system may be fielded without using each of the components that formed the system presented, since voting systems, as certified, may contain optional or redundant components to meet the varying needs of election officials. Systems may not be fielded with additional components or without sufficient components to properly prosecute an election, as neither individual components nor separately tested systems may be combined to create new certified voting systems.

- 4.3.1.7. *Date Submitted.* Manufacturers must note the date the application was submitted for EAC approval.
- 4.3.1.8. *Signature.* The Manufacturer must affix the signature of the authorized management representative.
- 4.3.2. Submission of the Application Package. Manufacturers must submit a copy of the application form described above and copies of the voting system's (1) Implementation Statement, (2) functional diagram, and (3) System Overview documentation submitted to the VSTL as a part of the Technical Data Package
- 4.3.2.1. *Application Form.* Application forms will be available on the EAC Web site: [www.eac.gov](http://www.eac.gov). The application form submitted to the EAC must be signed; dated; and fully, accurately, and completely filled out. The EAC will not accept incomplete or inaccurate applications.
- 4.3.2.2. *Implementation Statement.* The Manufacturer must submit with the application form a copy of the voting system's Implementation Statement, which must meet the requirements of the VVSG (VVSG 2005—Version 1.0, Vol. I, Section 1.6.4). If an existing system is being submitted with a modification, the Manufacturer must submit a copy of a revised Implementation Statement.
- 4.3.2.3. *Functional Diagram.* The Manufacturer must submit with the application form a high-level Functional Diagram of the voting system that includes all of its components. The diagram must portray how the various components relate and interact.
- 4.3.2.4. *System Overview.* The Manufacturer must submit with the application form a copy of the voting system's System Overview documentation submitted to the VSTL as a part of the Technical Data Package. This document must meet the requirements of the VVSG (VVSG 2005—Version 1.0, Vol. II, Section 2.2).
- 4.3.2.5. *Submission.* Applications, with the accompanying documentation, shall be submitted in Adobe PDF, Microsoft Word, or other electronic formats as prescribed by the Program Director. Information on how to submit packages will be posted on the EAC Web site: [www.eac.gov](http://www.eac.gov).
- 4.3.3. EAC Review. Upon receipt of a Manufacturer's application package, the EAC will review the submission for completeness and accuracy. If the application package is incomplete, the EAC will return it to the Manufacturer with instructions for resubmission. If the form submitted is acceptable, the Manufacturer will be notified and provided a unique application number within five (5) business days of the EAC's receipt of the application.

**4.4. Test Plan.** The Manufacturer shall authorize the VSTL identified in its application to submit a test plan directly to the EAC. This plan shall provide for testing of the system sufficient to ensure it is functional and meets all applicable voting system standards.

4.4.1. Development. An accredited laboratory will develop test plans that use appropriate test protocols, standards, or test suites developed by the laboratory. Laboratories must use all applicable protocols, standards, or test suites issued by the EAC.

4.4.2. Required Testing. Test plans shall be developed to ensure that a voting system is functional and meets all requirements of the applicable, approved voting system standards. The highest level of care and vigilance is required to ensure that comprehensive test plans are created. A test plan should ensure that the voting system meets all applicable standards and that test results and other factual evidence of the testing are clearly documented. System testing must meet the requirements of the VVSG. Generally, full testing will be required of any voting system applying for certification, regardless of previous certification history.

4.4.2.1. *New System.* A new system shall be subject to full testing of all hardware and software according to applicable voting system standards.

4.4.2.2. *System Not Previously EAC Certified.* A system not previously certified by the EAC shall be fully tested as a new system.

4.4.2.3. *Modification.* A modification to a previously EAC-certified voting system shall be tested in a manner necessary to ensure that all changes meet applicable voting system standards and that the modified system (as a whole) will properly and reliably function. Any system submitted for modification shall be subject to full testing of the modifications (delta testing) and those systems or subsystems altered or impacted by the modification (regression testing). The system will also be subject to system integration testing to ensure overall functionality. The modification will be tested to the version or versions of the VVSG/VSS currently accepted for testing and certification by the EAC. This requirement, however, does not mean that the full system must be tested to such standards. If the system has been previously certified to a VVSG/VSS version deemed acceptable by the EAC (see Section 3.2.2.2), it may retain that level of certification with only the modification being tested to the present version(s).

4.4.2.4. *EAC Identified Systems.* Previously certified systems identified for retesting by the EAC (see Section 3.4.4) shall be tested as directed by the Program Director (after consultation with NIST, VSTLs, or other technical experts as necessary).

4.4.2.5. *Certification Upgrade.* A previously certified system submitted for testing to a new voting system standard (without modification) shall be tested in a manner necessary to ensure that the system meets all requirements of the new

standards. The VSTL shall create a test plan that identifies the differences between the new and old standards and, based upon the differences, fully retest all hardware and software components affected.

4.4.3. Format. Test labs shall issue test plans consistent with the requirements in VVSG, Vol. II and any applicable EAC guidance.

4.4.4. EAC Approval. All test plans are subject to EAC approval. No test report will be accepted for technical review unless the test plan on which it is based has been approved by EAC's Program Director.

4.4.4.1. *Review*. All test plans must be reviewed for adequacy by the Program Director. For each submission, the Program Director will determine whether the test plan is acceptable or unacceptable. Unacceptable plans will be returned to the laboratory for further action. Acceptable plans will be approved. Although Manufacturers may direct test labs to begin testing before approval of a test plan, the Manufacturer bears the full risk that the test plan (and thus any tests performed) will be deemed unacceptable.

4.4.4.2. *Unaccepted Plans*. If a plan is not accepted, the Program Director will return the submission to the Manufacturer's identified VSTL for additional action. Notice of unacceptability will be provided in writing to the laboratory and include a description of the problems identified and steps required to remedy the test plan. A copy of this notice will also be sent to the Manufacturer. Questions concerning the notice shall be forwarded to the Program Director in writing. Plans that have not been accepted may be resubmitted for review after remedial action is taken.

4.4.4.3. *Effect of Approval*. Approval of a test plan is required before a test report may be filed. In most cases, approval of a test plan signifies that the tests proposed, if performed properly, are sufficient to fully test the system. A test plan, however, is approved based on the information submitted. New or additional information may require a change in testing requirements at any point in the certification process.

4.5. **Testing**. During testing, Manufacturers are responsible for enabling VSTLs to report any changes to a voting system or an approved test plan directly to the EAC. Manufacturers shall also enable VSTLs to report all test failures or anomalies directly to the EAC.

4.5.1. Changes. Any changes to a voting system, initiated as a result of the testing process, will require submission of an updated Implementation Statement, functional diagram, and System Overview document and, potentially, an updated test plan. Test plans must be updated whenever a change to a voting system requires deviation from the test plan originally approved by the EAC. Changes requiring alteration or deviation from the originally approved test plan must be submitted to the EAC (by the VSTL) for approval before the completion of testing. The submission shall include an updated

Implementation Statement, functional diagram, and System Overview, as needed. Changes not affecting the test plan shall be reported in the test report. The submission shall include an updated Implementation Statement, functional diagram, and System Overview document, as needed.

- 4.5.2. **Test Anomalies or Failures.** Manufacturers shall enable VSTLs to notify the EAC directly and independently of any test anomalies, or failures during testing. The VSTLs shall ensure that all anomalies or failures are addressed and resolved before testing is completed. All test failures, anomalies and actions taken to resolve such failures and anomalies shall be documented by the VSTL in an appendix to the test report submitted to the EAC. These matters shall be reported in a matrix, or similar format, that identifies the failure or anomaly, the applicable voting system standards, and a description of how the failure or anomaly was resolved. Associated or similar anomalies/failures may be summarized and reported in a single entry on the report (matrix) as long as the nature and scope of the anomaly/failure is clearly identified.
- 4.6. **Test Report.** Manufacturers shall enable their identified VSTL to submit test reports directly to the EAC. The VSTL shall submit test reports only if the voting system has been tested and all tests identified in the test plan have been successfully performed.
  - 4.6.1. **Submission.** The test reports shall be submitted to the Program Director. The Program Director shall review the submission for completeness. Any reports showing incomplete or unsuccessful testing will be returned to the test laboratory for action and resubmission. Notice of this action will be provided to the Manufacturer. Test reports shall be submitted in Adobe PDF, Microsoft Word, or other electronic formats as prescribed by the Program Director. Information on how to submit reports will be posted on the EAC Web site: [www.eac.gov](http://www.eac.gov).
  - 4.6.2. **Format.** Manufacturers shall ensure that test labs submit reports consistent with the requirements in the VVSG and this Manual.
  - 4.6.3. **Technical Review.** A technical review of the test report, technical documents, and test plan will be conducted by EAC technical experts. The EAC may require the submission of additional information from the VSTL or Manufacturer if deemed necessary to complete the review. These experts will submit a report outlining their findings to the Program Director. The report will provide an assessment of the completeness, appropriateness, and adequacy of the VSTL's testing as documented in the test report.
  - 4.6.4. **Program Director's Recommendation.** The Program Director shall review the report and take one of the following actions:
    - 4.6.4.1. Recommend certification of the candidate system consistent with the reviewed test report and forward it to the Decision Authority for action (Initial Decision); or

4.6.4.2. Refer the matter back to the technical reviewers for additional specified action and resubmission.

**4.7. Initial Decision on Certification.** Upon receipt of the report and recommendation forwarded by the Program Director, the Decision Authority shall issue an Initial Decision on Certification. The decision shall be forwarded to the Manufacturer consistent with the requirements of this Manual.

4.7.1. An Initial Decision granting certification shall be processed consistent with Chapter 5 of this Manual.

4.7.2. An Initial Decision denying certification shall be processed consistent with Chapter 6 of this Manual.

## 5. Grant of Certification

- 5.1. Overview.** The grant of certification is the formal process through which EAC acknowledges that a voting system has successfully completed conformance testing to an appropriate set of standards or guidelines. The grant of certification begins with the Initial Decision of the Decision Authority. This decision becomes final after the Manufacturer confirms that the final version of the software that was certified and which the Manufacturer will deliver with the certified system has been subject to a trusted build, placed in an EAC-approved repository, and can be verified using the Manufacturer's system identification tools. After a certification is issued, the Manufacturer is provided a Certificate of Conformance and relevant information about the system is added to the EAC Web site. Manufacturers with certified voting systems are responsible for ensuring that each system they produce is properly labeled as certified.
- 5.2. Applicability of This Chapter.** This chapter applies when the Decision Authority makes an Initial Decision to grant a certification to a voting system based on the materials and recommendation provided by the Program Director.
- 5.3. Initial Decision.** The Decision Authority shall make a written decision on all voting systems submitted for certification and issue the decision to a Manufacturer. When such decisions result in a grant of certification, the decision shall be considered preliminary and referred to as an *Initial Decision* pending required action by the Manufacturer. The Initial Decision shall:
- 5.3.1. State the preliminary determination reached (granting certification).
  - 5.3.2. Inform the Manufacturer of the steps that must be taken to make the determination final and receive a certification. This action shall include providing the Manufacturer with specific instructions, guidance, and procedures for confirming and documenting that the final certified version of the software meets the requirements for:
    - 5.3.2.1. Performing and documenting a trusted build pursuant to Section 5.6 of this chapter.
    - 5.3.2.2. Depositing software in an approved repository pursuant to Section 5.7 of this chapter.
    - 5.3.2.3. Creating and making available system verification tools pursuant to Section 5.8 of this chapter.
  - 5.3.3. Certification is not final until the Manufacturer accepts the certification and all conditions placed on the certification.
- 5.4. Pre-Certification Requirements.** Before an Initial Decision becomes final and a certification is issued, Manufacturers must ensure certain steps are taken. They must confirm that the final version of the software that was certified and which the Manufacturer will deliver with the certified system has been subject to a trusted build (see Section 5.6), has been delivered for deposit in an EAC-approved repository (see Section 5.7), and can be verified using

Manufacturer-developed identification tools (see Section 5.8). The Manufacturer must provide the EAC documentation demonstrating compliance with these requirements.

**5.5. Trusted Build.** A software build (also referred to as a compilation) is the process whereby source code is converted to machine-readable binary instructions (executable code) for the computer. A “trusted build” (or trusted compilation) is a build performed with adequate security measures implemented to give confidence that the executable code is a verifiable and faithful representation of the source code. A trusted build creates a chain of evidence from the Technical Data Package and source code submitted to the VSTLs to the actual executable programs that are run on the system. Specifically, the build will do the following:

5.5.1. Demonstrate that the software was built as described in the Technical Data Package.

5.5.2. Show that the tested and approved source code was actually used to build the executable code used on the system.

5.5.3. Demonstrate that no elements other than those included in the Technical Data Package were introduced in the software build.

5.5.4. Document for future reference the configuration of the system certified.

**5.6. Trusted Build Procedure.** A trusted build is a three-step process: (1) the build environment is constructed, (2) the source code is loaded onto the build environment, and (3) the executable code is compiled and the installation device is created. The process may be simplified for modification to previously certified systems. In each step, a minimum of two witnesses from different organizations is required to participate. These participants must include a VSTL representative and vendor representative. Before creating the trusted build, the VSTL must complete the source code review of the software delivered from the vendor for compliance with the VVSG and must produce and record file signatures of all source code modules.

5.6.1. Constructing the Build Environment. The VSTL shall construct the build environment in an isolated environment controlled by the VSTL, as follows:

5.6.1.1. The device that will hold the build environment shall be completely erased by the VSTL to ensure a total and complete cleaning of it. The VSTL shall use commercial off-the-shelf software, purchased by the laboratory, for cleaning the device.

5.6.1.2. The VSTL, with vendor consultation and observation, shall construct the build environment.

5.6.1.3. After construction of the build environment, the VSTL shall produce and record a file signature of the build environment.

- 5.6.2. Loading Source Code Onto the Build Environment. After successful source code review, the VSTL shall load source code onto the build environment as follows:
- 5.6.2.1. The VSTL shall check the file signatures of the source code modules and build environment to ensure that they are unchanged from their original form.
  - 5.6.2.2. The VSTL shall load the source code onto the build environment and produce and record the file signature of the resulting combination.
  - 5.6.2.3. The VSTL shall capture a disk image of the combination build environment and source code modules immediately before performing the build.
  - 5.6.2.4. The VSTL shall deposit the disk image into an authorized archive to ensure that the build can be reproduced, if necessary, at a later date.
- 5.6.3. Creating the Executable Code. Upon completion of all the tasks outlined above, the VSTL shall produce the executable code.
- 5.6.3.1. The VSTL shall produce and record a file signature of the executable code.
  - 5.6.3.2. The VSTL shall deposit the executable code into an EAC-approved software repository and create installation disk(s) from the executable code.
  - 5.6.3.3. The VSTL shall produce and record file signatures of the installation disk(s) in order to provide a mechanism to validate the software before installation on the voting system in a purchasing jurisdiction.
  - 5.6.3.4. The VSTL shall install the executable code onto the system submitted for testing and certification before completion of system testing.
- 5.6.4. Trusted Build for Modifications. The process of building new executable code when a previously certified system has been modified is somewhat simplified.
- 5.6.4.1. The build environment used in the original certification is removed from storage and its file signature verified.
  - 5.6.4.2. After source code review, the modified files are placed onto the verified build environment and new executable files are produced.
  - 5.6.4.3. If the original build environment is unavailable or its file signatures cannot be verified against those recorded from the original certification, then the more labor-intensive process of creating the build environment must be performed. Further source code review may be required of unmodified files to validate that they are unmodified from their originally certified versions.

**5.7. Depositing Software in an Approved Repository.** After EAC certification has been granted, the VSTL project manager, or an appropriate delegate of the project manager, shall deliver for deposit the following elements in one or more trusted archive(s) (repositories) designated by the EAC:

- 5.7.1. Source code used for the trusted build and its file signatures.
- 5.7.2. Disk image of the pre-build, build environment, and any file signatures to validate that it is unmodified.
- 5.7.3. Disk image of the post-build, build environment, and any file signatures to validate that it is unmodified.
- 5.7.4. Executable code produced by the trusted build and its file signatures of all files produced.
- 5.7.5. Installation device(s) and file signatures.

**5.8. System Identification Tools.** The Manufacturer shall provide tools through which a fielded voting system may be identified and demonstrated to be unmodified from the system that was certified. The purpose of this requirement is to make such tools available to Federal, State, and local officials to identify and verify that the equipment used in elections is unmodified from its certified version. Manufacturers may develop and provide these tools as they see fit. The tools, however, must provide the means to identify and verify hardware and software. The EAC may review the system identification tools developed by the Manufacturer to ensure compliance. System identification tools include the following examples:

- 5.8.1. Hardware is commonly identified by model number and revision number on the unit, its printed wiring boards (PWBs), and major subunits. Typically, hardware is verified as unmodified by providing detailed photographs of the PWBs and internal construction of the unit. These images may be used to compare with the unit being verified.
- 5.8.2. Software operating on a host computer will typically be verified by providing a self-booting compact disk (CD) or similar device that verifies the file signatures of the voting system application files AND the signatures of all nonvolatile files that the application files access during their operation. Note that the creation of such a CD requires having a file map of all nonvolatile files that are used by the voting system. Such a tool must be provided for verification using the file signatures of the original executable files provided for testing. If during the certification process modifications are made and new executable files created, then the tool must be updated to reflect the file signatures of the final files to be distributed for use. For software operating on devices in which a self-booting CD or similar device cannot be used, a procedure must be provided to allow identification and verification of the software that is being used on the device.

**5.9. Documentation.** Manufacturers shall provide documentation to the Program Director verifying that the trusted build has been performed, software has been deposited in an approved repository, and system identification tools are available to election officials. The Manufacturer

shall submit a letter, signed by both its management representative and a VSTL official, stating (under penalty of law) that it has (1) performed a trusted build consistent with the requirements of Section 5.6 of this Manual, (2) deposited software consistent with Section 5.7 of this Manual, and (3) created and made available system identification tools consistent with Section 5.8 of this Manual. This letter shall also include (as attachments) a copy and description of the system identification tool developed under Section 5.8 above.

**5.10. Agency Decision.** Upon receipt of documentation demonstrating the successful completion of the requirements above and recommendation of the Program Director, the Decision Authority will issue an Agency Decision granting certification and providing the Manufacturer with a certification number and Certificate of Conformance.

**5.11. Certification Document.** A Certificate of Conformance will be provided to Manufacturers for voting systems that have successfully met the requirements of the EAC Certification Program. The document will serve as the Manufacturer's evidence that a particular system is certified to a particular set of voting system standards. The EAC certification and certificate apply only to the specific voting system configuration(s) identified, submitted and evaluated under the Certification Program. Any modification to the system not authorized by the EAC will void the certificate. The certificate will include the product (voting system) name, the specific model or version of the product tested, the name of the VSTL conducting the testing, identification of the standards to which the system was tested, the EAC certification number for the product, and the signature of the EAC Executive Director. The certificate will also identify each of the various configurations of the voting system's components that may be represented as certified.

**5.12. Certification Number and Version Control.** Each system certified by the EAC will receive a certification number that is unique to the system and will remain with the system until such time as the system is decertified, sufficiently modified, or tested and certified to newer standards. Generally, when a previously certified system is issued a new certification number, the Manufacturer will be required to change the system's name or version number.

**5.12.1. New Voting Systems and Those Not Previously Certified by the EAC.** All systems receiving their first certification from the EAC will receive a new certification number. Manufacturers must provide the EAC with the voting system's name and version number during the application process (see Chapter 4). Systems previously certified by another body may retain the previous system name and version number unless the system was modified before its submission to the EAC. Such modified systems must be submitted with a new naming convention (i.e., a new version number).

**5.12.2. Modifications.** Voting systems previously certified by the EAC and submitted for certification of a modification will generally receive a new voting system certification number. Such modified systems must be submitted with a new naming convention (i.e., a new version number). In rare instances, the EAC may authorize retention of the same certification and naming convention when the modification is so minor that it does not represent a substantive change in the voting system. A request for such authorization must be made and approved by the EAC during the application phase of the program.

5.12.3. Certification Upgrade. Voting systems previously certified and submitted (without modification) for testing to a new version of the VVSG will receive a new certification number. In such cases, however, the Manufacturer will not be required to change the system name or version.

5.12.4. De Minimis Change. Voting systems previously certified and implementing an approved de minimis change (per Chapter 3) will not be issued a new certification number and are not required to implement a new naming convention.

**5.13. Publication of EAC Certification.** The EAC will publish and maintain on its Web site a list of all certified voting systems, including copies of all Certificates of Conformance, the supporting test report, and information about the voting system and Manufacturer. Such information will be posted immediately following the Manufacturer's receipt of the EAC Final Decision and Certificate of Conformance.

**5.14. Representation of EAC Certification.** Manufacturers may not represent or imply that a voting system is certified unless it has received a Certificate of Conformance for that system. Statements regarding EAC certification in brochures, on Web sites, on displays, and in advertising/sales literature must be made solely in reference to specific systems. Any action by a Manufacturer to suggest EAC endorsement of its product or organization is strictly prohibited and may result in a Manufacturer's suspension or other action pursuant to Federal civil and criminal law.

**5.15. Mark of Certification Requirement.** Manufacturers shall post a mark of certification on all EAC-certified voting systems produced. This mark or label must be securely attached to the system before sale, lease, or release to third parties. A mark of certification shall be made using an EAC-mandated template available for download on the EAC Web site: [www.eac.gov](http://www.eac.gov). These templates identify the version of the VVSG or VSS to which the system is certified. Use of this template shall be mandatory. The EAC mark must be displayed as follows:

5.15.1. The Manufacturer may use only the mark of certification that accurately reflects the certification held by the voting system as a whole. The certification of individual components or modifications shall not be independently represented by a mark of certification. In the event a system has components or modifications tested to various (later) versions of the VVSG, the system shall bear only the mark of certification of the standard to which the system (as a whole) was tested and certified (i.e. the lesser standard). Ultimately, a voting system shall only display the mark of certification of the oldest or least rigorous standard to which any of its components are certified.

5.15.2. The mark shall be placed on the outside of a unit of voting equipment in a place readily visible to election officials. The mark need not be affixed to each of the voting system's components. The mark shall be affixed to either (1) each unit that is used to cast ballots or (2) each unit that is used to tabulate ballots.

5.15.3. The notice shall be securely affixed to the voting system. The label shall not be a paper label. "Securely affixed" means that the label is etched, engraved, stamped, silk-

screened, indelibly printed, or otherwise securely marked on a permanently attached part of the equipment or on a nameplate of metal, plastic, or other sturdy material fastened to the equipment by use of welding, riveting, or adhesive.

5.15.4. The label must be designed to last the expected lifetime of the voting system in the environment in which the system may be operated and must not be readily detachable.

**5.16. Information to Election Officials Purchasing Voting Systems.** The user's manual or instruction manual for a certified voting system shall warn purchasers that changes or modifications not tested and certified by the EAC will void the EAC certification of the voting system. In cases in which the manual is provided only in a form other than paper, such as on a CD or over the Internet, the information required in this section may be included in this alternative format provided the election official can reasonably be expected to have the capability to access information in that format.

## 6. Denial of Certification

- 6.1. Overview.** When the Decision Authority issues an Initial Decision denying certification, the Manufacturer has certain rights and responsibilities. The Manufacturer may request an opportunity to cure the defects identified by the Decision Authority. In addition, the Manufacturer may request that the Decision Authority reconsider the Initial Decision after the Manufacturer has had the opportunity to review the record and submit supporting written materials, data, and the rationale for its position. Finally, in the event reconsideration is denied, the Manufacturer may appeal the decision to the Appeal Authority.
- 6.2. Applicability of This Chapter.** This chapter applies when the Decision Authority makes an Initial Decision to deny an application for voting system certification based on the materials and recommendation provided by the Program Director.
- 6.3. Form of Decisions.** All agency determinations shall be made in writing. Moreover, all materials and recommendations reviewed or used by agency decision makers in arriving at an official determination shall be in written form.
- 6.4. Effect of Denial of Certification.** Upon receipt of the agency's decision denying certification—or in the event of an appeal, subject to the Decision on Appeal—the Manufacturer's application for certification is denied. Such systems will not be reviewed again by the EAC for certification unless the Manufacturer alters the system, retests it, and submits a new application for system certification.
- 6.5. The Record.** The Program Director shall maintain all documents related to a denial of certification. Such documents shall constitute the procedural and substantive record of the decision making process. Records may include the following:
- 6.5.1. The Program Director's report and recommendation to the Decision Authority.
  - 6.5.2. The Decision Authority's Initial Decision and Final Decision.
  - 6.5.3. Any materials gathered by the Decision Authority that served as a basis for a certification determination.
  - 6.5.4. All relevant and allowable materials submitted by the Manufacturer upon request for reconsideration or appeal.
  - 6.5.5. All correspondence between the EAC and a Manufacturer after the issuance of an Initial Decision denying certification.
- 6.6. Initial Decision.** The Decision Authority shall make and issue a written decision on voting systems submitted for certification. When such decisions result in a denial of certification, the decision shall be considered preliminary and referred to as an *Initial Decision*. Initial Decisions shall be in writing and contain (1) the Decision Authority's basis and explanation for the decision and (2) notice of the Manufacturer's rights in the denial of certification process.

- 6.6.1. **Basis and Explanation.** The Initial Decision of the Decision Authority shall accomplish the following:
- 6.6.1.1. Clearly state the agency's decision on certification.
  - 6.6.1.2. Explain the basis for the decision, including identifying the following:
    - 6.6.1.2.1. The relevant facts.
    - 6.6.1.2.2. The applicable EAC voting system standards (VVSG or VSS).
    - 6.6.1.2.3. The relevant analysis in the Program Director's recommendation.
    - 6.6.1.2.4. The reasoning behind the decision.
  - 6.6.1.3. State the actions the Manufacturer must take, if any, to cure all defects in the voting system and obtain a certification.
- 6.6.2. **Manufacturer's Rights.** The written Initial Decision must also inform the Manufacturer of its procedural rights under the program, including the following:
- 6.6.2.1. Right to request reconsideration. The Manufacturer shall be informed of its right to request a timely reconsideration (see Section 6.9). Such request must be made within 10 calendar days of the Manufacturer's receipt of the Initial Decision.
  - 6.6.2.2. Right to request a copy or otherwise have access to the information that served as the basis of the Initial Decision ("the record").
  - 6.6.2.3. Right to cure system defects prior to final Agency Decision (see Section 6.8). A Manufacturer may request an opportunity to cure within 10 calendar days of its receipt of the Initial Decision.
- 6.7. No Manufacturer Action on Initial Decision.** If a Manufacturer takes no action (by either failing to request an opportunity to cure or request reconsideration) within 10 calendar days of its receipt of the Initial Decision, the Initial Decision shall become the agency's Final Decision on Certification. In such cases, the Manufacturer is determined to have foregone its right to reconsideration, cure, and appeal. The certification application shall be considered finally denied.
- 6.8. Opportunity To Cure.** Within 10 calendar days of receiving the EAC's Initial Decision on Certification, a Manufacturer may request an opportunity to cure the defects identified in the EAC's Initial Decision. If the request is approved, a compliance plan must be created, approved, and followed. If this cure process is successfully completed, a voting system denied certification in an Initial Decision may receive a certification without resubmission.

- 6.8.1. Manufacturer's Request To Cure. The Manufacturer must send a request to cure within 10 calendar days of receipt of an Initial Decision. The request must be sent to the Program Director.
- 6.8.2. EAC Action on Request. The Decision Authority will review the request and approve it. The Decision Authority will deny a request to cure only if the proposed plan to cure is inadequate or does not present a viable way to remedy the identified defects. Approval or denial of a request to cure shall be provided the Manufacturer in writing. If the Manufacturer's request to cure is denied, it shall have 10 calendar days from the date it received such notice to request reconsideration of the Initial Decision pursuant to Section 6.6.2.
- 6.8.3. Manufacturer's Compliance Plan. Upon approval of the Manufacturer's request for an opportunity to cure, it shall submit a compliance plan to the Decision Authority for approval. This compliance plan must set forth steps to be taken to cure all identified defects. It shall include the proposed changes to the system, updated technical information (as required by Section 4.3.2), and a new test plan created and submitted directly to the EAC by the VSTL (testing the system consistent with Section 4.4.2.3). The plan shall also provide for the testing of the amended system and submission of a test report by the VSTL to the EAC for approval. It should provide an estimated date for receipt of this test report and include a schedule of periodic VSTL progress reports to the Program Director.
- 6.8.4. EAC Action on the Compliance Plan. The Decision Authority must review and approve the compliance plan. The Decision Authority may require the Manufacturer to provide additional information and modify the plan as required. If the Manufacturer is unable or unwilling to provide a compliance plan acceptable to the Decision Authority, the Decision Authority shall provide written notice terminating the "opportunity to cure" process. The Manufacturer shall have 10 calendar days from the date it receives such notice to request reconsideration of the Initial Decision pursuant to Section 6.6.2.
- 6.8.5. Compliance Plan Test Report. The VSTL shall submit the test report created pursuant to its EAC-approved compliance plan. The EAC shall review the test report, along with the original test report and other materials originally provided. The report will be technically reviewed by the EAC consistent with the procedures laid out in Chapter 4 of this Manual.
- 6.8.6. EAC Decision on the System. After receipt of the test plan, the Decision Authority shall issue a decision on a voting system amended pursuant to an approved compliance plan. This decision shall be issued in the same manner and with the same process and rights as an Initial Decision on Certification.

**6.9. Requests for Reconsideration.** Manufacturers may request reconsideration of an Initial Decision.

6.9.1. Submission of Request. A request for reconsideration must be made within 10 calendar days of the Manufacturer's receipt of an Initial Decision. The request shall be made and sent to the Decision Authority.

6.9.2. Acknowledgment of Request. The Decision Authority shall acknowledge receipt of the Manufacturer's request for reconsideration. This acknowledgment shall either enclose all information that served as the basis for the Initial Decision (the record) or provide a date by which the record will be forwarded to the Manufacturer.

6.9.3. Manufacturer's Submission. Within 30 calendar days of receipt of the record, a Manufacturer may submit written materials in support of its position, including the following:

6.9.3.1. A written argument responding to the conclusions in the Initial Decision.

6.9.3.2. Documentary evidence relevant to the issues raised in the Initial Decision.

6.9.4. Decision Authority's Review of Request. The Decision Authority shall review and consider all relevant submissions of the Manufacturer. In making a decision on reconsideration, the Decision Authority shall also consider all documents that make up the record and any other documentary information he or she determines relevant.

**6.10. Agency Final Decision.** The Decision Authority shall issue a written Agency Decision after review of the Manufacturer's request for reconsideration. This Decision shall be the decision of the agency. The following actions are necessary for writing the decision:

6.10.1.1. Clearly state the agency's determination on the application for certification.

6.10.1.2. Address the issues raised by the Manufacturer in its request for reconsideration.

6.10.1.3. Identify all facts, evidence, and EAC voting system standards (VVSG or VSS) that served as the basis for the decision.

6.10.1.4. Provide the reasoning behind the determination.

6.10.1.5. Identify and provide, as an attachment, any additional documentary information that served as a basis for the decision and that was not part of the Manufacturer's submission or the prior record.

6.10.1.6. Provide the Manufacturer notice of its right to appeal.

**6.11. Appeal of Agency Final Decision.** A Manufacturer may, upon receipt of an Agency Final Decision denying certification, issue a request for appeal.

6.11.1. Requesting Appeal. A Manufacturer may appeal a final decision of the agency by issuing a written request for appeal.

6.11.1.1. *Submission.* Requests must be submitted in writing to the Program Director, addressed to the Chair of the U.S. Election Assistance Commission.

6.11.1.2. *Timing of Appeal.* The Manufacturer may request an appeal within 20 calendar days of receipt of the Agency Final Decision. Late requests will not be considered.

6.11.1.3. *Contents of Request.*

6.11.1.3.1. The request must clearly state the specific conclusions of the Final Decision the Manufacturer wishes to appeal.

6.11.1.3.2. The request may include additional written argument.

6.11.1.3.3. The request may not reference or include any factual material not in the record.

6.11.2. Consideration of Appeal. All timely appeals will be considered by the Appeal Authority.

6.11.2.1. The Appeal Authority shall be two or more EAC Commissioners or other individuals appointed by the Commissioners who have not previously served as the initial or reconsideration authority on the matter.

6.11.2.2. All decisions on appeal shall be based on the record.

6.11.2.3. The determination of the Decision Authority shall be given deference by the Appeal Authority. Although it is unlikely that the scientific certification process will produce factual disputes, in such cases, the burden of proof shall belong to the Manufacturer to demonstrate by clear and convincing evidence that its voting system met all substantive and procedural requirements for certification. In other words, the determination of the Decision Authority will be overturned only when the Appeal Authority finds the ultimate facts in controversy highly probable.

**6.12. Decision on Appeal.** The Appeal Authority shall make a written, final Decision on Appeal and shall provide it to the Manufacturer.

6.12.1. Contents. The following actions are necessary to write the Decision on Appeal:

6.12.1.1. State the final determination of the agency.

6.12.1.2. Address the matters raised by the Manufacturer on appeal.

6.12.1.3. Provide the reasoning behind the decisions.

6.12.1.4. State that the Decision on Appeal is final.

6.12.2. Determinations. The Appeal Authority may make one of two determinations:

6.12.2.1. *Grant of Appeal.* If the Appeal Authority determines that the conclusions of the Decision Authority shall be overturned *in full*, the appeal shall be granted. In such cases, certification will be approved subject to the requirements of Chapter 5.

6.12.2.2. *Denial of Appeal.* If the Appeal Authority determines that *any part* of the Decision Authority's determination shall be upheld, the appeal shall be denied. In such cases, the application for appeal is finally denied.

6.12.3. Effect. All Decisions on Appeal shall be final and binding on the Manufacturer. No additional appeal shall be granted.

## 7. Decertification

**7.1. Overview.** Decertification is the process by which the EAC revokes a certification previously granted to a voting system. It is an important part of the Certification Program because it serves to ensure that the requirements of the program are followed and that certified voting systems fielded for use in Federal elections maintain the same level of quality as those presented for testing. Decertification is a serious matter. Its use will significantly affect Manufacturers, State and local governments, the public, and the administration of elections. As such, the process for Decertification is complex. It is initiated when the EAC receives information that a voting system may not be in compliance with the applicable voting system standard or the procedural requirements of this Manual. Upon receipt of such information, the Program Director may initiate an Informal Inquiry to determine the credibility of the information. If the information is credible and suggests the system is non-compliant, a Formal Investigation will be initiated. If the results of the Formal Investigation demonstrate non-compliance, the Manufacturer will be provided a Notice of Non-Compliance. Before a Final Decision on Decertification is made, the Manufacturer will have the opportunity to remedy any defects identified in the voting system and present information for consideration by the Decertification Authority. A Decertification of a voting system may be appealed in a timely manner.

**7.2. Decertification Policy.** Voting systems certified by the EAC are subject to Decertification. Systems shall be decertified if (1) they are shown not to meet applicable voting system standard, (2) they have been modified or changed without following the requirements of this Manual, or (3) the Manufacturer has otherwise failed to follow the procedures outlined in this Manual so that the quality, configuration, or compliance of the system is in question. Decertification of a voting system is a serious matter. Systems will be decertified only after completion of the process outlined in this chapter.

**7.3. Informal inquiry.** An Informal Inquiry is the first step taken when information is presented to the EAC that suggests a voting system may not be in compliance with the applicable voting system standard or the procedural requirements of this Manual.

**7.3.1. Informal Inquiry Authority.** The authority to conduct an Informal Inquiry shall rest with the Program Director.

**7.3.2. Purpose.** The sole purpose of the Informal Inquiry is to determine whether a Formal Investigation is warranted. The outcome of an Informal Inquiry is limited to a decision on referral for investigation.

**7.3.3. Procedure.** Informal Inquiries do not follow a formal process.

**7.3.3.1. *Initiation.*** Informal Inquiries are initiated at the discretion of the Program Director. They may be initiated any time the Program Director receives attributable, relevant information that suggests a certified voting system may require Decertification. The information shall come from a source that has directly observed or witnessed the reported occurrence. Such information may be a product of the Certification Quality Monitoring Program (see Chapter 8).

Information may also come from State and local election officials, voters, or others who have used or tested a given voting system. The Program Director may notify a Manufacturer that an Informal Inquiry has been initiated, but such notification is not required. Initiation of an inquiry shall be documented through the creation of a Memorandum for the Record.

7.3.3.2. *Inquiry.* The Informal Inquiry process is limited to that inquiry necessary to determine whether a Formal Investigation is required. In other words, the Program Director shall conduct such inquiry necessary to determine (1) that the information obtained is credible and (2) that the information, if true, would serve as a basis for Decertification. The nature and extent of the inquiry process will vary depending on the source of the information. For example, an Informal Inquiry initiated as a result of action taken under the Certification Quality Monitoring Program will often require the Program Director merely to read the report issued as a result of the Quality Monitoring action. On the other hand, information provided by election officials or by voters who have used a voting system may require the Program Director (or assigned technical experts) to perform an in-person inspection or make inquiries of the Manufacturer.

7.3.3.3. *Conclusion.* An Informal Inquiry shall be concluded after the Program Director is in a position to determine the credibility of the information that initiated the inquiry and whether that information, if true, would require Decertification. The Program Director may make only two conclusions: (1) refer the matter for a Formal Investigation or (2) close the matter without additional action or referral.

7.3.4. Closing the Matter Without Referral. If the Program Director determines, after Informal Inquiry, that a matter does not require a Formal Investigation, the Program Director shall close the inquiry by filing a Memorandum for the Record. This document shall state the focus of the inquiry, the findings of the inquiry and the reasons a Formal Investigation was not warranted.

7.3.5. Referral. If the Program Director determines, after Informal Inquiry, that a matter requires a Formal Investigation, the Program Director shall refer the matter in writing to the Decision Authority. In preparing this referral, the Program Director shall do the following:

7.3.5.1. State the facts that served as the basis for the referral.

7.3.5.2. State the findings of the Program Director.

7.3.5.3. Attach all documentary evidence that served as the basis for the conclusion.

7.3.5.4. Recommend a Formal Investigation, specifically stating the system to be investigated and the scope and focus of the proposed investigation.

**7.4. Formal Investigation.** A Formal Investigation is an official investigation to determine whether a voting system requires Decertification. The end result of a Formal Investigation is a Report of Investigation.

7.4.1. Formal Investigation Authority. The Decision Authority shall have the authority to initiate and conclude a Formal Investigation by the EAC.

7.4.2. Purpose. The purpose of a Formal Investigation is to gather and document relevant information sufficient to make a determination on whether an EAC-certified voting system requires Decertification consistent with the policy put forth in Section 7.2 above.

7.4.3. Initiation of Investigation. The Decision Authority shall authorize the initiation of an EAC Formal Investigation.

7.4.3.1. *Scope.* The Decision Authority shall clearly set the scope of the investigation by identifying (in writing) the voting system (or systems) and specific procedural or operational non-conformance to be investigated. The non-conformance or non-conformances to be investigated shall be set forth in the form of numbered allegations.

7.4.3.2. *Investigator.* The Program Director shall be responsible for conducting the investigation unless the Decision Authority appoints another individual to conduct the investigation. The Program Director (or Decision Authority appointee) may assign staff or technical experts, as required, to investigate the matter.

7.4.4. Notice of Formal Investigation. Upon initiation of a Formal Investigation, notice shall be given the Manufacturer of the scope of the investigation. The following actions are necessary to prepare this notice:

7.4.4.1. Identify the voting system and specific procedural or operation non-conformance being investigated (scope of investigation).

7.4.4.2. Provide the Manufacturer an opportunity to provide relevant information in writing.

7.4.4.3. Provide an estimated timeline for the investigation.

7.4.5. Investigation. Because voting systems play a vital role in our democratic process, investigations shall be conducted impartially, diligently, promptly, and confidentially. Investigators shall use techniques to gather necessary information that meet these requirements.

- 7.4.5.1. *Fair and Impartial Investigation.* All Formal Investigations shall be conducted in a fair and impartial manner. All individuals assigned to an investigation must be free from any financial conflicts of interest.
- 7.4.5.2. *Diligent Collection of Information.* All investigations shall be conducted in a meticulous and thorough manner. Investigations shall gather all relevant information and documentation that is reasonably available. The diligent collection of information is vital for informed decision making.
- 7.4.5.3. *Prompt Collection of Information.* Determinations that may affect the administration of Federal elections must be made with all reasonable speed. EAC determinations on Decertification will affect the actions of State and local election officials conducting elections. As such, all investigations regarding Decertification must proceed with an appropriate sense of urgency.
- 7.4.5.4. *Confidential Collection of Information.* Consistent with Federal law, information pertaining to a Formal Investigation should not be made public until the Report of Investigation is complete. The release of incomplete and unsubstantiated information or predecisional opinions that may be contrary or inconsistent with the final determination of the EAC could cause public confusion or could unnecessarily negatively affect public confidence in active voting systems. Such actions could serve to impermissibly affect election administration and voter turnout. All predecisional investigative materials must be appropriately safeguarded.
- 7.4.5.5. *Methodologies.* Investigators shall gather information by means consistent with the four principles noted above. Investigative tools include (but are not limited to) the following:
  - 7.4.5.5.1. Interviews. Investigators may interview individuals (such as State and local election officials, voters, or representatives of the Manufacturer) with relevant information. All interviews shall be reduced to written form; each interview should be summarized in a statement that is reviewed, approved, and signed by the subject.
  - 7.4.5.5.2. Field audits.
  - 7.4.5.5.3. Manufacturer site audits.
  - 7.4.5.5.4. Written interrogatories. Investigators may pose specific, written questions to the Manufacturer for the purpose of gathering information relevant to the investigation. The Manufacturer shall respond to the queries within a reasonable timeframe (as specified in the request).

- 7.4.5.5.5. System testing. Testing may be performed in an attempt to reproduce a condition or failure that has been reported. This testing will be conducted at a VSTL under contract with the EAC.
- 7.4.5.6. *Report of Investigation.* The end result of a Formal Investigation is a Report of Investigation.
- 7.4.6. Report of Investigation. The Report of Investigation serves, primarily, to document (1) all relevant and reliable information gathered in the course of the investigation, and (2) the conclusion reached by the Decision Authority.
  - 7.4.6.1. *When Complete.* The report is complete and final when certified and signed by the Decision Authority.
  - 7.4.6.2. *Contents of the Report of Investigation.* The following actions are necessary to prepare the written report:
    - 7.4.6.2.1. Restate the scope of the investigation, identifying the voting system and specific matter investigated.
    - 7.4.6.2.2. Briefly describe the investigative process employed.
    - 7.4.6.2.3. Summarize the relevant and reliable facts and information gathered in the course of the investigation.
    - 7.4.6.2.4. Attach all relevant and reliable evidence collected in the course of the investigation that documents the facts. All facts shall be documented in written form.
    - 7.4.6.2.5. Analyze the information gathered.
    - 7.4.6.2.6. Clearly state the findings of the investigation.
- 7.4.7. Findings, Report of Investigation. The Report of Investigation shall state one of two conclusions. After gathering and reviewing all applicable facts, the report shall find each allegation investigated to be either (1) substantiated, or (2) unsubstantiated.
  - 7.4.7.1. *Substantiated Allegation.* An allegation is substantiated if a preponderance of the relevant and reliable information gathered requires that the voting system at issue be decertified (consistent with the policy set out in Section 7.2). If any allegation is substantiated, a Notice of Non-Compliance must be issued.
  - 7.4.7.2. *Unsubstantiated Allegation.* An allegation is unsubstantiated if the preponderance of the relevant and reliable information gathered does not require Decertification (see Section 7.2). If all allegations are unsubstantiated,

the matter shall be closed and a copy of the report forwarded to the Manufacturer.

- 7.4.8. Publication of Report. The report shall not be made public nor released to the public until final.
- 7.5. **Effect of Informal Inquiry or Formal Investigation on Certification**. A voting system's EAC certification is not affected by the initiation or conclusion of an Informal Inquiry or Formal Investigation. Systems under investigation remain certified until a final Decision on Decertification is issued by the EAC.
- 7.6. **Notice of Non-Compliance**. If an allegation in a Formal Investigation is substantiated, the Decision Authority shall send the Manufacturer a Notice of Non-Compliance. *The Notice of Non-Compliance is not, itself, a Decertification of the voting system*. The purpose of the notice is to (1) notify the Manufacturer of the non-compliance and the EAC's intent to Decertify the system and (2) inform the Manufacturer of its procedural rights so that it may be heard prior to Decertification.
- 7.6.1. Non-Compliance Information. The following actions are necessary for preparing a Notice of Non-Compliance:
- 7.6.1.1. Provide a copy of the Report of Investigation to the Manufacturer.
  - 7.6.1.2. Identify the non-compliance, consistent with the Report of Investigation.
  - 7.6.1.3. Inform the Manufacturer that if the voting system is not made compliant, the voting system will be decertified.
  - 7.6.1.4. State the actions the Manufacturer must take, if any, to bring the voting system into compliance and avoid Decertification.
- 7.6.2. Manufacturer's Rights. The written Notice of Non-Compliance must also inform the Manufacturer of its procedural rights under the program, which include the following:
- 7.6.2.1. *Right to Present Information Prior to Decertification Decision*. The Manufacturer shall be informed of its right to present information to the Decision Authority prior to a determination of Decertification.
  - 7.6.2.2. *Right to Have Access to the Information That Will Serve as the Basis of the Decertification Decision*. The Manufacturer shall be provided the Report of Investigation and any other materials that will serve as the basis of an Agency Decision on Decertification.
  - 7.6.2.3. *Right to Cure System Defects Prior to the Decertification Decision*. A Manufacturer may request an opportunity to cure within 20 calendar days of its receipt of the Notice of Non-Compliance.

**7.7. Procedure for Decision on Decertification.** The Decision Authority shall make and issue a written Decision on Decertification whenever a Notice of Non-Compliance is issued. The Decision Authority will not take such action until the Manufacturer has had a reasonable opportunity to cure the non-compliance and submit information for consideration.

**7.7.1. Opportunity to Cure.** The Manufacturer shall have an opportunity to cure a non-conforming voting system in a *timely* manner prior to Decertification. A cure is timely when the cure process can be completed before the next Federal election, meaning that any proposed cure must be in place before *any* individual jurisdiction fielding the system holds a Federal election. The Manufacturer must request the opportunity to cure. If the request is approved, a compliance plan must be created, approved, and followed. If this cure process is successfully completed, a Manufacturer may modify a non-compliant voting system, remedy procedural discrepancies, or otherwise bring its system into compliance without resubmission or Decertification.

**7.7.1.1. Manufacturer's Request to Cure.** Within 10 calendar days of receiving the EAC's Notice of Non-Compliance, a Manufacturer may request an opportunity to cure all defects identified in the Notice of Non-Compliance in a *timely* manner. The request must be sent to the Decision Authority and outline how the Manufacturer would modify the system, update the technical information (as required by Section 4.3.2), have the VSTL create a test plan and test the system, and obtain EAC approval before the next election for Federal office.

**7.7.1.2. EAC Action on Request.** The Decision Authority will review the request and approve it if the defects identified in the Notice of Non-Compliance may reasonably be cured before the next election for Federal office.

**7.7.1.3. Manufacturer's Compliance Plan.** Upon approval of the Manufacturer's request for an opportunity to cure, the Manufacturer shall submit a compliance plan to the Decision Authority for approval. This compliance plan must set forth the steps to be taken (including time frames) to cure *all* identified defects in a timely manner. The plan shall describe the proposed changes to the system, provide for modification of the system, update the technical information required by Section 4.3.2, include a test plan delivered to the EAC by the VSTL (testing the system consistent with Section 4.4.2.3), and provide for the VSTL's testing of the system and submission of the test report to the EAC for approval (assume *at least* 20 working days). The plan shall also include a schedule of periodic progress reports to the Program Director<sup>2</sup>.

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<sup>2</sup> Manufacturers should also be cognizant of State certification procedures and local pre-election logic and accuracy testing. Systems that meet EAC guidelines will also be impacted by independent State and local requirements. These requirements may also prevent a system from being fielded, irrespective of EAC Certification.

- 7.7.1.4. *EAC Action on the Compliance Plan.* The Decision Authority must review and approve the compliance plan. The Decision Authority may require the Manufacturer to provide additional information and modify the plan as required. If the Manufacturer is unable or unwilling to provide a Compliance Plan acceptable to the Decision Authority, the Decision Authority shall provide written notice terminating the “opportunity to cure” process.
- 7.7.1.5. *VSTL’s Submission of the Compliance Plan Test Report.* The VSTL shall submit the test report created pursuant to the Manufacturer’s EAC-approved Compliance Plan. The EAC shall review the test report and any other necessary or relevant materials. The report will be technically reviewed by the EAC in a manner similar to the procedures described in Chapter 4 of this Manual.
- 7.7.1.6. *EAC Decision on the System.* After receipt of the VSTL’s test report, the Decision Authority shall issue a decision on a voting system amended pursuant to an approved Compliance Plan. For the purpose of planning, the Manufacturer should allow *at least 20* working days for this process.
- 7.7.2. Opportunity to Be Heard. The Manufacturer may submit written materials in response to the Notice of Non-Compliance and Report of Investigation. These documents shall be considered by the Decision Authority when making a determination on Decertification. The Manufacturer shall ordinarily have 20 calendar days from the date it received the Notice of Non-Compliance (or in the case of a failed effort to cure, the termination of that process) to deliver its submissions to the Decision Authority. When warranted by public interest (because a delay in making a determination on Decertification would affect the timely, fair, and effective administration of a Federal election), however, the Decision Authority may provide a Manufacturer less time to submit information. This alternative period (and the basis for it) must be stated in the Notice of Non-Compliance. The alternative time period must allow the Manufacturer a reasonable amount of time to gather its submissions. Submissions may include the following materials:
  - 7.7.2.1. A written argument responding to the conclusions in the Notice of Non-Compliance or Report of Investigation.
  - 7.7.2.2. Documentary evidence relevant to the allegations or conclusions in the Notice of Non-Compliance.
- 7.7.3. Decision on Decertification. The Decision Authority shall make an agency determination on Decertification.
  - 7.7.3.1. *Timing.* The Decision Authority shall promptly make a decision on Decertification. The Decision Authority may not issue such a decision, however, until the Manufacturer has provided all of its written materials for

consideration or the time allotted for submission (usually 20 calendar days) has run out.

7.7.3.2. *Considered Materials.* The Decision Authority shall review and consider all relevant submissions of the Manufacturer. In making a Decision on Decertification, the Decision Authority shall also consider all documents that make up the record and any other documentary information he or she determines relevant.

7.7.3.3. *Agency Decision.* The Decision Authority shall issue a written Agency Decision after review of applicable materials. This decision shall be the final decision of the agency. The following actions are necessary to write the decision:

7.7.3.3.1. Clearly state the agency's determination on the Decertification, specifically addressing the areas of non-compliance investigated.

7.7.3.3.2. Address the issues raised by the Manufacturer in the materials it submitted for consideration.

7.7.3.3.3. Identify all facts, evidence, procedural requirements, and/or voting system standards (VMSG or VSS) that served as the basis for the decision.

7.7.3.3.4. Provide the reasoning behind the decision.

7.7.3.3.5. Identify, and provide as an attachment, any additional documentary information that served as a basis for the decision and that was not part of the Manufacturer's submission or the Report of Investigation.

7.7.3.3.6. Provide the Manufacturer notice of its right to appeal.

**7.8. Effect of Decision Authority's Decision on Decertification.** The Decision Authority's Decision on Decertification is the determination of the agency. A Decertification is effective upon the EAC's publication or Manufacturer's receipt of the decision (whichever is earlier). A Manufacturer that has had a voting system decertified may appeal that decision.

**7.9. Appeal of Decertification.** A Manufacturer may, upon receipt of an Agency Final Decision on Decertification, request an appeal in a timely manner.

7.9.1. Requesting Appeal.

7.9.1.1. *Submission.* Requests must be submitted by the Manufacturer in writing to the Chair of the U.S. Election Assistance Commission.

- 7.9.1.2. *Timing of Appeal.* The Manufacturer may request an appeal within 20 calendar days of receipt of the Agency Final Decision on Decertification. Late requests will not be considered.
- 7.9.1.3. *Contents of Request.* The following actions are necessary for the Manufacturer to write and submit a request for appeal:
  - 7.9.1.3.1. Clearly state the specific conclusions of the Final Decision the Manufacturer wishes to appeal.
  - 7.9.1.3.2. Include additional written argument, if any.
  - 7.9.1.3.3. Do not reference or include any factual material not previously considered or submitted to the EAC.
- 7.9.1.4. *Effect of Appeal on Decertification.* The initiation of an appeal does not affect the decertified status of a voting system. Systems are decertified upon notice of Decertification in the agency's Decision on Decertification (see Section 7.8).
- 7.9.2. Consideration of Appeal. All timely appeals will be considered by the Appeal Authority.
  - 7.9.2.1. The Appeal Authority shall be two or more EAC Commissioners or other individual or individuals appointed by the Commissioners who have not previously served as investigators, advisors, or decision makers in the Decertification process.
  - 7.9.2.2. All decisions on appeal shall be based on the record.
  - 7.9.2.3. The decision of the Decision Authority shall be given deference by the Appeal Authority. Although it is unlikely that the scientific certification process will produce factual disputes, in such cases the burden of proof shall belong to the Manufacturer to demonstrate by clear and convincing evidence that its voting system met all substantive and procedural requirements for certification. In other words, the determination of the Decision Authority will be overturned only when the Appeal Authority finds the ultimate facts in controversy to be highly probable.
- 7.9.3. Decision on Appeal. The Appeal Authority shall make a written, final Decision on Appeal that it shall provide to the Manufacturer. Each Decision on Appeal shall be final and binding on the Manufacturer. No additional appeal shall be granted. The following actions are necessary to write a Decision on Appeal:
  - 7.9.3.1. State the final determination of the agency.

7.9.3.2. Address the matters raised by the Manufacturer on appeal.

7.9.3.3. Provide the reasoning behind the decision.

7.9.3.4. State that the Decision on Appeal is final.

7.9.4. Effect of Appeal.

7.9.4.1. *Grant of Appeal.* If a Manufacturer's appeal is granted in whole, the decision of the Decision Authority is reversed. The voting system shall have its certification reinstated. For purposes of this program, the system shall be treated as though it was never decertified.

7.9.4.2. *Denial of Appeal.* If a Manufacturer's appeal is denied in whole or in part, the decision of the Decision Authority is upheld. The voting system remains decertified and no additional appeal is available.

**7.10. Effect of Decertification.** A voting system that has been decertified no longer holds an EAC certification under the Certification Program. For purposes of this Manual and the program, a decertified system will be treated as any other uncertified voting system. As such, the effects of Decertification are as follows:

7.10.1. The Manufacturer may not represent the voting system as certified.

7.10.2. The voting system may not be labeled with a mark of certification.

7.10.3. The voting system will be removed from the EAC list of certified systems.

7.10.4. The EAC will notify State and local election officials of the Decertification.

**7.11. Recertification.** A decertified system may be resubmitted for certification. Such systems shall be treated as any other system seeking certification. The Manufacturer shall present an application for certification consistent with the instructions of this Manual.

## 8. Quality Monitoring Program

- 8.1. Overview.** The quality of any product, including a voting system, depends on two specific elements: (1) the design of the product or system and (2) the care and consistency of the manufacturing process. The EAC testing and certification process focuses on voting system design by ensuring that a representative sample of a system meets the technical specifications of the applicable EAC voting system standards. This process, commonly called “type acceptance,” determines whether the representative sample submitted for testing meets the requirements. What type acceptance does not do is explore whether variations in manufacturing may allow production of non-compliant systems. Generally, the quality of the manufacturing is the responsibility of the Manufacturer. After a system is certified, the vendor assumes primary responsibility for compliance of the products produced. This level of compliance is accomplished by the Manufacturer’s configuration management and quality control processes. The EAC’s Quality Monitoring Program, as outlined in this chapter, however, provides an additional layer of quality control by allowing the EAC to perform manufacturing site reviews, carry out fielded system reviews, and gather information on voting system anomalies from election officials. These additional tools help ensure that voting systems continue to meet the requirements of EAC’s voting system standards as the systems are manufactured, delivered, and used in Federal elections. These aspects of the program enable the EAC to independently monitor the continued compliance of fielded voting systems.
- 8.2. Purpose.** The purpose of the Quality Monitoring Program is to ensure that EAC-certified voting systems are identical to those fielded in election jurisdictions. This level of quality control is accomplished primarily by identifying (1) potential quality problems in manufacturing, (2) uncertified voting system configurations, and (3) field performance issues with certified systems.
- 8.3. Manufacturer’s Quality Control.** EAC’s Quality Monitoring Program is not a substitute for the Manufacturer’s quality control program. As stated in Chapter 2 of this Manual, all Manufacturers must have an acceptable quality control program in place before they may be registered. The EAC’s program serves as an independent and complementary process of quality control that works in tandem with the Manufacturer’s efforts.
- 8.4. Quality Monitoring Methodology.** This chapter provides the EAC with three primary tools for assessing the level of effectiveness of the certification process and the compliance of fielded voting systems. These tools include (1) manufacturing site reviews, (2) fielded system reviews, and (3) a means for receiving anomaly reports from the field.
- 8.5. Manufacturing Site Review.** Facilities that produce certified voting systems will be reviewed periodically, at the discretion of the EAC, to verify that the system being manufactured, shipped, and sold is the same as the sample submitted for certification testing. All registered Manufacturers must cooperate with such audits as a condition of program participation.
- 8.5.1. Notice.** The site review may be scheduled or unscheduled, at the discretion of the EAC. Unscheduled reviews will be performed with at least 24 hours notice. Scheduling and

notice of site reviews will be coordinated with and provided to both the manufacturing facility's representative and the Manufacturer's representative.

- 8.5.2. **Frequency.** At a minimum, at least one manufacturing facility of a registered Manufacturer shall be subject to a site review at least once every 4 years.
- 8.5.3. **The Review.** The production facility and production test records must be made available for review. When requested, production schedules must be provided to the EAC. Production or production testing may be witnessed by EAC representatives. If equipment is not being produced during the inspection, the review may be limited to production records. During the inspection, the Manufacturer must make available to the EAC representative the Manufacturer's quality manual and other documentation sufficient to enable the inspector to evaluate the following factors of the facility's production:
- 8.5.3.1. Manufacturing quality controls.
  - 8.5.3.2. Final inspection and testing.
  - 8.5.3.3. History of deficiencies or anomalies and corrective actions taken.
  - 8.5.3.4. Equipment calibration and maintenance.
  - 8.5.3.5. Corrective action program.
  - 8.5.3.6. Policies on product labeling and the application of the EAC mark of certification.
- 8.5.4. **Exit Briefing.** Site reviewers will provide the manufacturing facility representative a verbal exit briefing regarding the preliminary observations of the review.
- 8.5.5. **Written Report.** A written report documenting the review will be drafted by the EAC representative and provided to the Manufacturer. The report will detail the findings of the review and identify actions that are required to correct any deficiencies.

**8.6. Fielded System Review and Testing.** Upon invitation or with the permission of a State or local election authority, the EAC may, at its discretion, conduct a review of fielded voting systems. Such reviews will be done to ensure that a fielded system is in the same configuration as that certified by the EAC and that it has the proper mark of certification. This review may include the testing of a fielded system, if deemed necessary. Any anomalies found during this review and testing will be provided to the election jurisdiction and the Manufacturer.

**8.7. Field Anomaly Reporting.** As another means of gathering field data, the EAC will collect information from election officials who field EAC-certified voting systems. Information on actual voting system field performance is a basic means for assessing the effectiveness of the Certification Program and the manufacturing quality and version control. The EAC will

provide a mechanism for election officials to provide real-world input on voting system anomalies.

- 8.7.1. Anomaly Report. Election officials may use the Voting System Anomaly Reporting Form to report voting system anomalies to the EAC. The form and instructions for its completion are available as Appendix C in this Manual or on the EAC Web site, [www.eac.gov](http://www.eac.gov). The form may be filed with the EAC on line, by mail or by facsimile. Use of the form is required.
- 8.7.2. Who May Report? State or local election officials who have experienced voting system anomalies in their jurisdiction may file anomaly reports. The individuals reporting must identify themselves and have firsthand knowledge of or official responsibility over the anomaly being reported. Anonymous or hearsay reporting will not be accepted.
- 8.7.3. What Is Reported? Election officials shall report voting system anomalies. An *anomaly* is defined as an irregular or inconsistent action or response from the voting system or system component resulting in some disruption to the election process. Incidents resulting from administrator error or procedural deficiencies are not considered anomalies for purposes of this chapter. The report must include the following information:
  - 8.7.3.1. The official's name, title, contact information, and jurisdiction.
  - 8.7.3.2. A description of the voting system at issue.
  - 8.7.3.3. The date and location of the reported occurrence.
  - 8.7.3.4. The type of election.
  - 8.7.3.5. A description of the anomaly witnessed.
- 8.7.4. Distribution of Credible Reports. Credible reports will be distributed to State and local election jurisdictions who field similar systems, the Manufacturer of the voting system at issue, and the VSTLs. Reports are reviewed by EAC staff in coordination with relevant State officials. Credible reports:
  - 8.7.4.1. Meet the definition of anomaly under Section 8.7.3,
  - 8.7.4.2. Constitute a complete report per the requirements of Sections 8.7.3.1 through 8.7.3.5,
  - 8.7.4.3. Have had alleged facts confirmed by contacting filer and/or others present at the time of the incident, and
  - 8.7.4.4. Have been verified by the relevant State's chief election official.

**8.8. Use of Quality Monitoring Information.** Ultimately, the information the EAC gathers from manufacturing site reviews, fielded system reviews, and field anomaly reports will be used to improve the program and ensure the quality of voting systems. The Quality Monitoring Program is not designed to be punitive but to be focused on improving the process. Information gathered will be used to accomplish the following:

- 8.8.1. Identify areas for improvement in the EAC Testing and Certification Program.
- 8.8.2. Improve manufacturing quality and change control processes.
- 8.8.3. Increase voter confidence in voting technology.
- 8.8.4. Inform Manufacturers, election officials, and the EAC of issues associated with voting systems in a real-world environment.
- 8.8.5. Share information among jurisdictions that use similar voting systems.
- 8.8.6. Resolve problems associated with voting technology or manufacturing in a timely manner by involving Manufacturers, election officials, and the EAC.
- 8.8.7. Provide feedback to the EAC and the Technical Guidelines Development Committee (TGDC) regarding issues that may need to be addressed through a revision to the Voluntary Voting System Guidelines.
- 8.8.8. Initiate an investigation when information suggests that Decertification is warranted (see Chapter 7).

## 9. Requests for Interpretations

**9.1. Overview.** A Request for Interpretation is a means by which a registered Manufacturer or VSTL may seek clarification on a specific EAC voting system standard (VVSG or VSS). An Interpretation is a clarification of the voting system standards and guidance on how to properly evaluate conformance to it. Suggestions or requests for modifications to the standards are provided by other processes. This chapter outlines the policy, requirements, and procedures for submitting a Request for Interpretation.

**9.2. Policy.** Registered Manufacturers or VSTLs may request that the EAC provide a definitive Interpretation of EAC-accepted voting system standards (VVSG or VSS) when, in the course of developing or testing a voting system, facts arise that make the meaning of a particular standard ambiguous or unclear. The EAC may self-initiate such a request when its agents identify a need for interpretation within the program. An Interpretation issued by the EAC will serve to clarify what a given standard requires and how to properly evaluate compliance. Ultimately, an Interpretation does not amend voting system standards, but serves only to clarify existing standards.

**9.3. Requirements for Submitting a Request for Interpretation.** An EAC Interpretation is limited in scope. The purpose of the Interpretation process is to provide Manufacturers or VSTLs who are in the process of developing or testing a voting system a means for resolving the meaning of a voting system standard in light of a specific voting system technology without having to present a finished product to EAC for certification. To submit a Request for Interpretation, one must (1) be a proper requester, (2) request interpretation of an applicable voting system standard, (3) present an actual controversy, and (4) seek clarification on a matter of unsettled ambiguity.

**9.3.1. Proper Requestor.** A Request for Interpretation may be submitted only by a registered Manufacturer or a VSTL. Requests for Interpretation will not be accepted from any other parties.

**9.3.2. Applicable Standard.** A Request for Interpretation is limited to queries on EAC voting system standards (i.e., VVSG or VSS). Moreover, a Manufacturer or VSTL may submit a Request for Interpretation only on a version of EAC voting system standards to which the EAC currently offers certification.

**9.3.3. Existing Factual Controversy.** To submit a Request for Interpretation, a Manufacturer or VSTL must present a question relative to a specific voting system or technology proposed for use in a voting system. A Request for Interpretation on hypothetical issues will not be addressed by the EAC. To submit a Request for Interpretation, the need for clarification must have arisen from the development or testing of a voting system. A factual controversy exists when an attempt to apply a specific section of the VVSG or VSS to a specific system or piece of technology creates ambiguity.

9.3.4. Unsettled, Ambiguous Matter. Requests for Interpretation must involve actual controversies that have not been previously settled. This requirement mandates that interpretations contain actual ambiguities not previously clarified.

9.3.4.1. *Actual Ambiguity*. A proper Request for Interpretation must contain an actual ambiguity. The interpretation process is not a means for challenging a clear EAC voting system standard. Recommended changes to voting system standards are welcome and may be forwarded to the EAC, but they are not part of this program. An ambiguity arises (in applying a voting system standard to a specific technology) when one of the following occurs:

9.3.4.1.1. The language of the standard is unclear on its face.

9.3.4.1.2. One section of the standard seems to contradict another, relevant section.

9.3.4.1.3. The language of the standard, though clear on its face, lacks sufficient detail or breadth to determine its proper application to a particular technology.

9.3.4.1.4. The language of a particular standard, when applied to a specific technology, clearly conflicts with the established purpose or intent of the standard.

9.3.4.1.5. The language of the standard is clear, but the proper means to assess compliance is unclear.

9.3.4.2. *Not Previously Clarified*. The EAC will not accept a Request for Interpretation when the issue has previously been clarified.

**9.4. Procedure for Submitting a Request for Interpretation.** A Request for Interpretation shall be made in writing to the Program Director. All requests should be complete and as detailed as possible because Interpretations issued by the EAC are based on, and limited to, the facts presented. Failure to provide complete information may result in an Interpretation that is off point and ultimately immaterial to the issue at hand. The following steps must be taken when writing a Request for Interpretation:

9.4.1. Establish Standing To Make the Request. To make a request, one must meet the requirements identified in Section 9.3 above. Thus, the written request must provide sufficient information for the Program Director to conclude that the requestor is (1) a proper requester, (2) requesting an Interpretation of an applicable voting system standard, (3) presenting an actual factual controversy, and (4) seeking clarification on a matter of unsettled ambiguity.

9.4.2. Identify the EAC Voting System Standard To Be Clarified. The request must identify the specific standard or standards to which the requestor seeks clarification. The request

must state the version of the voting system standards at issue (if applicable) and quote and correctly cite the applicable standards.

9.4.3. State the Facts Giving Rise to the Ambiguity. The request must provide the facts associated with the voting system technology that gave rise to the ambiguity in the identified standard. The requestor must be careful to provide all necessary information in a clear, concise manner. Any Interpretation issued by the EAC will be based on the facts provided.

9.4.4. Identify the Ambiguity. The request must identify the ambiguity it seeks to resolve. The ambiguity shall be identified by stating a concise question that meets the following requirements:

9.4.4.1. Shall be clearly stated.

9.4.4.2. Shall be related to and reference the voting system standard and voting system technology information provided.

9.4.4.3. Shall be limited to a single issue. Each question or issue arising from an ambiguous standard must be stated separately. Compound questions are unacceptable. If multiple issues exist, they should be presented as individual, numbered questions.

9.4.4.4. Shall be stated in a way that can ultimately be answered *yes* or *no*.

9.4.5. Provide a Proposed Interpretation. A Request for Interpretation should propose an answer to the question posed. The answer should interpret the voting system standard in the context of the facts presented. It should also provide the basis and reasoning behind the proposal.

9.5. **EAC Action on a Request for Interpretation.** Upon receipt of a Request for Interpretation, the EAC shall take the following action:

9.5.1. Review the Request. The Program Director shall review the request to ensure it is complete, is clear, and meets the requirements of Section 9.3. Upon review, the Program Director may take the following action:

9.5.1.1. *Request Clarification.* If the Request for Interpretation is incomplete or additional information is otherwise required, the Program Director may request that the Manufacturer or VSTL clarify its Request for Interpretation and identify any additional information required.

9.5.1.2. *Reject the Request for Interpretation.* If the Request for Interpretation does not meet the requirements of Section 9.3, the Program Director may reject it. Such rejection must be provided in writing to the Manufacturer or VSTL and must state the basis for the rejection.

- 9.5.1.3. *Notify Acceptance of the Request.* If the Request for Interpretation is acceptable, the Program Director will notify the Manufacturer or VSTL in writing and provide it with an estimated date of completion. A Request for Interpretation may be accepted in whole or in part. A notice of acceptance shall state the issues accepted for interpretation.
- 9.5.2. Consideration of the Request. After a Request for Interpretation has been accepted, the matter shall be investigated and researched. Such action may require the EAC to employ technical experts. It may also require the EAC to request additional information from the Manufacturer or VSTL. The Manufacturer or VSTL shall respond promptly to such requests.
- 9.5.3. Interpretation. The Decision Authority shall be responsible for making determinations on a Request for Interpretation. After this determination has been made, a written Interpretation shall be sent to the Manufacturer or VSTL. The following actions are necessary to prepare this written Interpretation:
- 9.5.3.1. State the question or questions investigated.
  - 9.5.3.2. Outline the relevant facts that served as the basis of the Interpretation.
  - 9.5.3.3. Identify the voting system standards interpreted.
  - 9.5.3.4. State the conclusion reached.
  - 9.5.3.5. Inform the Manufacturer or VSTL of the effect of an Interpretation (see Section 9.6).
- 9.6. **Effect of Interpretation.** Interpretations are fact specific and case specific. They are not tools of policy, but specific, fact-based guidance useful for resolving a particular problem. Ultimately, an Interpretation is determinative and conclusive only with regard to the case presented. Nevertheless, Interpretations do have some value as precedent. Interpretations published by the EAC shall serve as reliable guidance and authority over identical or similar questions of interpretation. These Interpretations will help users understand and apply the provisions of EAC voting system standards.
- 9.7. **Library of Interpretations.** To better serve Manufacturers, VSTLs, and those interested in the EAC voting system standards, the Program Director shall publish EAC Interpretations. All proprietary information contained in an Interpretation will be redacted before publication consistent with Chapter 10 of this Manual. The library of published opinions is posted on the EAC Web site: [www.eac.gov](http://www.eac.gov).

## 10. Release of Certification Program Information

**10.1. Overview.** Manufacturers participating in the Certification Program will be required to provide the EAC a variety of documents. In general, these documents will be releasable to the public. Moreover, in many cases, the information provided will be affirmatively published by the EAC. In limited cases, however, documents may not be released if they include trade secrets, confidential commercial information, or personal information. While the EAC is ultimately responsible for determining which documents Federal law protects from release, Manufacturers must identify the information they believe is protected and ultimately provide substantiation and a legal basis for withholding. This chapter discusses EAC's general policy on the release of information and provides Manufacturers with standards, procedures, and requirements for identifying documents as trade secrets or confidential commercial information.

**10.2. EAC Policy on the Release of Certification Program Information.** The EAC seeks to make its Voting System Testing and Certification Program as transparent as possible. The agency believes that such action benefits the program by increasing public confidence in the process and creating a more informed and involved public. As such, it is the policy of the EAC to make all documents, or severable portions thereof, available to the public consistent with Federal law (e.g. Freedom of Information Act (FOIA) and the Trade Secrets Act).

10.2.1. Requests for information. As in any Federal program, members of the public may request access to Certification Program documents under FOIA (5 U.S.C. §552). The EAC will promptly process such requests per the requirements of that Act.

10.2.2. Publication of documents. Beyond the requirements of FOIA, the EAC intends to affirmatively publish program documents (or portions of documents) it believes will be of interest to the public. This publication will be accomplished through the use of the EAC Web site ([www.eac.gov](http://www.eac.gov)). The published documents will cover the full spectrum of the program, including information pertaining to:

10.2.2.1. Registered Manufacturers;

10.2.2.2. VSTL test plans;

10.2.2.3. VSTL test reports;

10.2.2.4. Agency decisions;

10.2.2.5. Denials of Certification;

10.2.2.6. Issuance of Certifications;

10.2.2.7. Information on a certified voting system's operation, components, features or capabilities;

10.2.2.8. Appeals;

- 10.2.2.9. Reports of investigation and Notice of Non-compliance;
- 10.2.2.10. Decertification actions;
- 10.2.2.11. Manufacturing facility review reports;
- 10.2.2.12. Official Interpretations (VVSG or VSS); and
- 10.2.2.13. Other topics as determined by the EAC.

10.2.3. Trade Secret and Confidential Commercial Information. Federal law places a number of restrictions on a Federal agency's authority to release information to the public. Two such restrictions are particularly relevant to the Certification program: (1) trade secrets information and (2) privileged or confidential commercial information. Both types of information are explicitly prohibited from release by the FOIA and the Trade Secrets Act (18 U.S.C. §1905).

**10.3. Trade Secrets.** A trade secret is a secret, commercially valuable plan, process, or device that is used for the making or processing of a product and that is the end result of either innovation or substantial effort. It relates to the productive process itself, describing how a product is made. It does not relate to information describing end product capabilities, features, or performance.

10.3.1. The following examples illustrate productive processes that may be trade secrets:

- 10.3.1.1. Plans, schematics, and other drawings useful in production.
- 10.3.1.2. Specifications of materials used in production.
- 10.3.1.3. Voting system source code used to develop or manufacture software where release would reveal actual programming.
- 10.3.1.4. Technical descriptions of manufacturing processes and other secret information relating directly to the production process.

10.3.2. The following examples are likely not trade secrets:

- 10.3.2.1. Information pertaining to a finished product's capabilities or features.
- 10.3.2.2. Information pertaining to a finished product's performance.
- 10.3.2.3. Information regarding product components that would not reveal any commercially valuable information regarding production.

**10.4. Privileged or Confidential Commercial Information.** Privileged or confidential commercial information is that information submitted by a Manufacturer that is commercial or financial in nature and privileged or confidential.

10.4.1. Commercial or Financial Information. The terms *commercial* and *financial* should be given their ordinary meanings. They include records in which a submitting Manufacturer has any *commercial interest*.

10.4.2. Privileged or Confidential Information. Commercial or financial information is privileged or confidential if its disclosure would likely cause substantial harm to the competitive position of the submitter. The concept of harm to one's competitive position focuses on harm flowing from a competitor's affirmative use of the proprietary information. It does not include incidental harm associated with upset customers or employees.

**10.5. EAC's Responsibilities.** The EAC is ultimately responsible for determining whether or not a document (in whole or in part) may be released pursuant to Federal law. In doing so, however, the EAC will require information and input from the Manufacturer submitting the documents. This requirement is essential for the EAC to identify, track, and make determinations on the large volume of documentation it receives. The EAC has the following responsibilities:

10.5.1. Managing Documentation and Information. The EAC will control the documentation it receives by ensuring that documents are secure and released to third parties only after the appropriate review and determination.

10.5.2. Contacting Manufacturer on Proposed Release of Potentially Protected Documents. In the event a member of the public submits a FOIA request for documents provided by a Manufacturer or the EAC otherwise proposes the release of such documents, the EAC will take the following actions:

10.5.2.1. Review the documents to determine if they are potentially protected from release as trade secrets or confidential commercial information. The documents at issue may have been previously identified as protected by the Manufacturer when submitted (see Section 10.7.1 below) or identified by the EAC on review.

10.5.2.2. Grant the submitting Manufacturer an opportunity to provide input. In the event the information has been identified as potentially protected from release as a trade secret or confidential commercial information, the EAC will notify the submitter and allow it an opportunity to submit its position on the issue prior to release of the information. The submitter shall respond consistent with Section 10.7.1 below.

10.5.3. Final Determination on Release. After providing the submitter of the information an opportunity to be heard, the EAC will make a final decision on release. The EAC will inform the submitter of this decision.

**10.6. Manufacturer's Responsibilities.** Although the EAC is ultimately responsible for determining if a document, or any portion thereof, is protected from release as a trade secret or confidential commercial information, the Manufacturer shall be responsible for identifying documents, or portions of documents, it believes warrant such protection. Moreover, the Manufacturer will be responsible for providing the legal basis and substantiation for its determination regarding the withholding of a document. This responsibility arises in two situations: (1) upon the initial submission of information, and (2) upon notification by the EAC that it is considering the release of potentially protected information.

10.6.1. Initial Submission of Information. When a Manufacturer is submitting documents to the EAC as required by the Certification Program, it is responsible for identifying any document or portion of a document that it believes is protected from release by Federal law. Manufacturers shall identify protected information by taking the following action:

10.6.1.1. *Submitting a Notice of Protected Information.* This notice shall identify the document, document page, or portion of a page that the Manufacturer believes should be protected from release. This identification must be done with specificity. For each piece of information identified, the Manufacturer must state the legal basis for its protected status.

10.6.1.1.1. Cite the applicable law that exempts the information from release.

10.6.1.1.2. Clearly discuss why that legal authority applies and why the document must be protected from release.

10.6.1.1.3. If necessary, provide additional documentation or information. For example, if the Manufacturer claims a document contains confidential commercial information, it would also have to provide evidence and analysis of the competitive harm that would result upon release.

10.6.1.2. *Label Submissions.* Label all submissions identified in the notice as "Proprietary Commercial Information." Label only those submissions identified as protected. Attempts to indiscriminately label all materials as proprietary will render the markings moot.

10.6.2. Notification of Potential Release. In the event a Manufacturer is notified that the EAC is considering the release of information that may be protected, the Manufacturer shall take the following action:

10.6.2.1. Respond to the notice within 15 calendar days. If additional time is needed, the Manufacturer must promptly notify the Program Director. Requests for additional time will be granted only for good cause and must be made before the 15-day deadline. Manufacturers that do not respond in a timely manner will be viewed as not objecting to release.

10.6.2.2. Clearly state **one** of the following in the response:

10.6.2.2.1. There is no objection to release, or

10.6.2.2.2. The Manufacturer objects to release. In this case, the response must clearly state which portions of the document the Manufacturer believes should be protected from release. The Manufacturer shall follow the procedures discussed in Section 10.7.1 above.

**10.7. Personal Information.** Certain personal information is protected from release under FOIA and the Privacy Act (5 U.S.C. §552a). This information includes private information about a person that, if released, would cause the individual embarrassment or constitute an unwarranted invasion of personal privacy. Generally, the EAC will not require the submission of private information about individuals. The incidental submission of such information should be avoided. If a Manufacturer believes it is required to submit such information, it should contact the Program Director. If the information will be submitted, it must be properly identified. Examples of such information include the following:

10.7.1. Social Security Number.

10.7.2. Bank account numbers.

10.7.3. Home address.

10.7.4. Home phone number.

## Appendix A

# Manufacturer Registration Application Form

Available in electronic format at [www.eac.gov](http://www.eac.gov)

## Appendix B

# Application for Voting System Testing Form

Available in electronic format at [www.eac.gov](http://www.eac.gov)

## Appendix C

# Voting System Anomaly Reporting Form

Available in electronic format at [www.eac.gov](http://www.eac.gov)

**Deliberative Process  
Privilege**



"Tova Wang"

11/16/2005 04:20 PM

To psims@eac.gov, serebrov@sbcglobal.net

cc ggilmour@eac.gov

bcc

Subject RE: Moving Along

Hi Peg,

I am free tomorrow at noon and at 4. I'm free all day Friday.

Job, given the timeline on the approval of the working group, would it be possible for us to go over your list of potential interviewees in the interim?

As to your concern about the workplan, Job and I have discussed this frequently and at length. We are working together on everything, although this has been difficult given our inability to have an in-person meeting and our general lack of proximity. If disagreements about process and scope do arise, is there a procedure we should follow? We've been doing the best we can so far.

You mention a survey in your examples -- if that is still a live option, we should discuss that.

Can the law clerk be on the phone when we talk this week, or at least when we meet in person?

And when can we have an in-person meeting???

I have been working with and been friends with Doug Chapin, Thad Hall, Dan Tokaji, and Ingrid Reed for years. What is the procedure by which you want me to talk to them now?

Finally, I still need answers to my questions about expenses.

Thanks so much.

Tova

-----Original Message-----

**From:** psims@eac.gov [mailto:psims@eac.gov]

**Sent:** Wednesday, November 16, 2005 3:51 PM

**To:** [REDACTED]

**Cc:** ggilmour@eac.gov

**Subject:** Moving Along

Dear Tova and Job:

Rest assured that I have not ignored your emails. We have a lot going on around here, and have had to use a triage system to tackle all of the things that currently need our attention. I understand that Julie has responded to Tova's question about the September monthly report, indicating that the nomenclature refers to work done in September, not a monthly report due in September. Here are responses to other questions you have raised, and some concerns of mine:

**Teleconference** - We do need a teleconference this week to discuss some procedural issues and any remaining concerns that you may have. At the moment, my schedule for the remainder of the

939900

week is flexible. When would a teleconference be convenient for you two?

**Working Group** - I am circulating your lists of possible working group members to our Commissioners for review and comment. I will get back to you as soon as I have heard from everyone. This may take awhile, probably through the end of November, as one of our Commissioners is out of the office for an extended period due to a death in the family.

**Revised Workplan** - Due to political sensitivities regarding this project, it is more important than usual that you act as a team. I noticed several instances on the revised workplan where only one of you is scheduled to be involved. While it seems to me that it would be OK for one or the other to take the lead on a particular aspect of the work (e.g.; developing Westlaw search terms, drafting a research instrument, or setting up interviews), it is very important that both of you be involved in making final decisions on the information gathering process and in the resulting information gathering effort (e.g.; finalizing the Westlaw search terms and reviewing the search results; finalizing the proposed research instrument, administering the survey, and reviewing the survey responses; and conducting interviews).

**DOJ Contact** - I am working through the DOJ bureaucracy to obtain the input we need from the Election Crimes Branch. I have spoken to the career attorney I mentioned in previous teleconferences, Craig Donsanto. He is very interested in providing information and perspectives that will be useful to the project; but may have to obtain his superior's permission to participate. I will keep you posted on my efforts. Once we have access to him, it will be important to schedule an initial interview at the earliest time convenient for him and the two of you.

**Contacting Other EAC Contractors** - Questions for other EAC contractors need to be fielded through me. I realize this may seem cumbersome, but there are a number of reasons for this, some involving contractual issues, some procedural and policy issues. I will have to coordinate our activities on this project with the EAC project manager for the other EAC research project(s). Together, we will ascertain what the other contractors already have provided to EAC that may answer your questions, perhaps without an interview being necessary, or if the research is not far enough along to provide the information you seek.

Peggy Sims  
Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave, NW - Ste 1100  
Washington, DC 20005  
Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)  
Fax: 202-566-3127  
email: psims@eac.gov

006646

**Deliberative Process  
Privilege**



Tamar Nedzar /EAC/GOV  
12/04/2006 10:57 AM

To Sheila A. Banks/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fw: Bylaws Committee Conference Call

Sheila,

Sorry I won't be available for the call this afternoon, but I'm happy to weigh in on anything you might need when I'm back in the office on Thursday or by email before then.

Commissioner Hillman asked me to draft language that would enable the current elected officers to remain in their capacity in the event that the Standards Board could not meet before the end of a term (i.e. before February of any given year).

I propose the following language (to be inserted at Article 5, 1(c)(v)):

"In the event that the Standards Board is unable to meet for elections before the end of an Executive Board member's term, the sitting members of the Executive Board shall remain in their elected capacity until such time as the Standards Board is able to meet again."

I believe this will cover the possibility that they aren't able to meet in a February of a particular year.

Thanks,

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-1707  
<http://www.eac.gov>  
TNedzar@eac.gov  
Sheila A. Banks/EAC/GOV



Sheila A. Banks/EAC/GOV  
11/28/2006 01:37 PM

To Tamar Nedzar/EAC/GOV@EAC  
cc  
Subject Fw: Bylaws Committee Conference Call

Here's everything for the December 4 meeting.

Sheila

----- Forwarded by Sheila A. Banks/EAC/GOV on 11/28/2006 01:36 PM -----

**GMHILLMAN**

Sent by: Sheila A. Banks

11/27/2006 12:57 PM

To howard.sholl@state.de.us, mary.kiffmeyer@state.mn.us,  
kevin.kennedy@seb.state.wi.us, thurst@idsos.state.id.us,  
armbruster\_joanne@aclink.org, mavery@co.hinds.ms.us  
cc t.bartholomew@ci.troy.mi.us, pnighs@state.wy.us  
Subject Bylaws Committee Conference Call

006490

Dear Bylaws Committee Members,

The Bylaws Committee conference call is on **Monday, December 4, 2006 at 2:00 p.m. Eastern Time.**  
To participate, please dial 866-222-9044 and enter-passcode [REDACTED] at the prompt.

The following meeting materials have been attached for your convenience.

- October 4 Summary Notes
- Redrafted Bylaws
- Bylaws Changes At a Glance
- Resolution 2007-01
- Proposed Bylaws Change Instructions and Form



Bylaws Committee Summary Notes.09.26.doc



Bylaws Changes At A Glance.doc



Redrafted Bylaws 10.27.06.doc



STANDARDS BOARD Bylaws Change Form 10\_29\_06.doc



Bylaws Resolution 10162006.doc

Looking forward to talking to you on the 4th.

Regards,

Gracia M. Hillman  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, DC 20005  
Tel: 202-566-3100  
Fax: 202-566-1392  
www.eac.gov

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006491



"Tova Wang"

10/05/2005 05:26 PM

To psims@eac.gov, [REDACTED]

cc ggilmour@eac.gov

bcc

Subject fraud/intimidation project

Attached please find the revised work plan and schedule. Let me know if you have any questions,



comments or suggested changes. Tova tw plan 1005.doc

006647

To: Peggy Sims, Gavin Gilmour, Karen Lynn-Dyson and Tom Wilkey  
From: Tova Wang, Job Serebrov  
Re: Work Plan  
Date: October 5, 2005

The following is a work plan and division of labor for the project on voter fraud and voter intimidation:

MONTH ONE (beginning the date contracts are finalized):

- I. Draft project work plan
- II. Develop list of potential members of the working group; have EAC vet and approve names (Tova, Job, EAC)
- III. Define Fraud/Intimidation (Tova and Job)
  - a. Discussion among consultants to:
    - i. Determine what we believe the parameters of the terms fraud and intimidation should be for our research purposes.
    - ii. Create a list of state and local officials, third party representatives, attorneys, scholars, etc. to interview and/or survey to assist in this process of definition
  - b. Analysis of existing research (Tova and Job)
- IV. Obtain research assistance (e.g. interns, law clerks) (EAC)

MONTH TWO:

- V. Interview individuals identified in month one about the scope of fraud and intimidation (Job and Tova);
- VI. Create working written description of what fraud and intimidation means, includes/does not include (Job and Tova)
- VII. Examine the Feasibility of Quantifying the Level of Incidence of Different Types of Fraud
  - a. Look at how we can develop a statistically sound research instrument
    - i. Discussion with political and social scientists, legal scholars in the field (Tova)
  - b. Preliminary survey of case law of recent prosecutions for fraud/intimidation (Job/law clerk)
  - c. Interviews with state and local officials, third party groups, election lawyers to assess what they believe are the most prevalent problems (Job and Tova)

MONTH THREE:

006648

- VIII. Preliminary assessment of the federal, state and local legal capacity to handle fraud and intimidation cases
  - a. Case law research (Job)
  - b. Survey of current state election codes (Tova and Job)
  - c. Analysis of Department of Justice Civil Rights and Criminal Divisions work in this area (Tova)

MONTH FOUR:

- IX. Written summary of background research on voting fraud and intimidation (Tova and Job)
- X. Development of a work plan and set of issues for examination for the working group (Tova and Job)
- XI. Finalize working group membership and set meeting dates

MONTH FIVE:

- XII. Initial working group meetings

MONTH SIX:

- XIII. Develop project scope of work and project work plan
- XIV. Draft summary report describing key findings of this preliminary study of voting fraud and voter intimidation

Karen Lynn-Dyson/EAC/GOV  
05/09/2005 12:24 PM

To Juliet E. Thompson/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC, Gaylin Vogel/EAC/GOV@EAC  
cc Paul DeGregorio/EAC/GOV@EAC, Carol A.  
Paquette/EAC/GOV@EAC

bcc

Subject Meeting with Craig DonSanto

Hi-

I've scheduled a meeting with Craig DonSanto for Tuesday, May 17th at 10:00 am in his offices.

We'll be discussing voter fraud and what the EAC might do regarding research on the issue. As you may know, Craig's office is issuing a major report/manual on the topic. He will share the draft of this effort with us at the meeting next week.

As you know, I'm hoping one of our interns will be working on this project for us this summer. In the meantime, I'm hoping at least one of the folks from the EAC legal team can come to this meeting. BTW, Craig's office is just down the street.

Let me know your availability, and which intern you can assign to this effort.

Thanks

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

006650

Juliet E. Thompson/EAC/GOV  
09/27/2005 10:32 AM

To Margaret Sims/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC

cc

bcc

Subject Voter Fraud

Peg and Gavin,

Peg, I know you are out sick today. Hope you are feeling better by the time you get this message.

While we had a kick off conference scheduled for the Legal Resources Website, we did not have one for the Voter Fraud project. We should probably try to schedule a telephone kick off this week. I don't foresee any reason that the conference would have to be in person, do you?

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006651

Karen Lynn-Dyson/EAC/GOV  
10/06/2005 12:28 PM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc Carol A. Paquette/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
bcc  
Subject Re: Voter Fraud Contract 

Gavin-

A few answers to your questions:

They have not received contracts but did receive a Statement of Work about a month ago.

That Statement of Work does not reference use of Westlaw or a law clerk. I have no recollection of offering such services. I have, however, had many conversations with Tova and Job. At some point I may have said that because the EAC has Westlaw and legal interns, there may or may not be a way from Job and Tova to avail them of these services.

The Statements of Work developed (see draft attached) were used in place of an RFP. Tova and Job are to serve as consultants on a project that may or may not result in their developing an RFP on voting fraud and intimidation for the EAC.



Job Serebrov sow.doc Tova Wang sow.doc  
K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

Gavin S. Gilmour/EAC/GOV

Gavin S. Gilmour/EAC/GOV  
10/06/2005 11:50 AM

To Karen Lynn-Dyson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
cc Carol A. Paquette/EAC/GOV@EAC  
Subject Voter Fraud Contract

Karen/Tom,

Peggy held a meeting with voting fraud/intimidation contractors. In this meeting they noted that despite the fact that the contract requires them to perform legal research, they do not have the means to do so (no access to Westlaw, etc.). They noted that in discussions with the two of you, they were told that the EAC would provide them access to West Law and, possibly, a law clerk with office space. None of

006652

this is noted in the contract. They claim to have never seen the contract? Do we have their response to our RFP? We will all need to meet to clarify this.

GG

Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006653

Gavin S. Gilmour/EAC/GOV  
10/20/2006 09:19 AM

To Margaret Sims/EAC/GOV@EAC  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Tamar  
Nedzar/EAC/GOV@EAC, twilkey@eac.gov  
bcc

Subject Re: Voter Fraud-Voter Intimidation Draft Report

I would put forth one point at the outset... if we are creating an EAC report, let create an EAC report. Tova and Job contract employees... I do not see why we can't use all, some or none of their work without footnote or comment.

Just my initial thought.

GG

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

THIS MESSAGE IS FOR ITS INTENDED RECIPIENT ONLY. IT IS A PRIVILEGED DOCUMENT AND SHALL NOT BE RELEASED TO A THIRD PARTY WITHOUT THE CONSENT OF THE SENDER.

Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV  
10/19/2006 07:04 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Tamar  
Nedzar/EAC/GOV@EAC  
cc twilkey@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC  
Subject Voter Fraud-Voter Intimidation Draft Report

Attached is a copy of the draft voter fraud-voter intimidation report that combines all of the pieces provided to me by the consultants, except for the voluminous Nexis research and case law charts. Tom wants to get this before the Commissioners ASAP, but I need some other eyes to look it over before we do. Although I've made some formatting changes to provide some consistency in presentation, and corrected a couple of glaring errors, I remain concerned about a number of issues:

- As you know, references to DOJ actions/responses have caused some concern at DOJ. But both consultants are adamantly opposed to EAC making substantive changes to their report. Perhaps using footnotes clearly labeled as EAC footnotes would be a method of addressing this issue?
- There are some recommendations regarding DOJ that we (the consultants and I) were told would not be supported by DOJ, and other references to DOJ, none of which have been reviewed by the department. I think we ought to give Craig Donsanto and John Tanner a chance to provide feedback on each of these sections.
- I am a little concerned about the naming of names, particularly in the section that addresses working group concerns. If we publish it as is, it might end up as fodder for some very negative newspaper articles.

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- The report currently uses three different voices: third person, first person singular, first person plural. I think this looks really clumsy. If we are not actually making substantive changes, perhaps we could get away with making the presentation consistent in this regard.
- Because the consultants submitted the report in pieces, they did not include proper sequeways. I don't know if we should leave it as is, or insert them where needed.

Please let me know what you think. If it would help, we can schedule a teleconference. — Peggy



VF-VI Final Rept-draft 10-19-06.doc

006655

Karen Lynn-Dyson/EAC/GOV  
03/20/2007 04:29 PM

To: Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject: Re: Review of Voter ID Statement

I believe so- although I'll have to read the response at least 12 more times before it makes sense!!

Karen Lynn-Dyson  
Research Director  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
03/20/2007 03:40 PM

To: Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
Subject: Re: Review of Voter ID Statement

Can you handle this based on what they gave you?

-----  
Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Karen Lynn-Dyson  
Sent: 03/20/2007 03:43 PM EDT  
To: "John Weingart" <[REDACTED]@GSAEXTERNAL>  
Cc: Juliet Hodgkins; "Tim Vercellotti" <[REDACTED]>; [REDACTED]; Thomas Wilkey  
Subject: Re: Review of Voter ID Statement

Thanks for the clarification, John.

I'll be back in touch if there are additional questions.

Regards-

Karen Lynn-Dyson  
Research Director  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005

006656

tel:202-566-3123

006857

Gavin S. Gilmour/EAC/GOV  
04/11/2007 11:52 AM

To Jeannie Layson/EAC/GOV, Juliet E.  
Hodgkins/EAC/GOV@EAC

cc

bcc

Subject An unsolicited thought/statement

*The stated purpose of the EAC's recently released "fraud report" was not to draw conclusions about fraud, but determine how the subject should be studied by the EAC. As such, it would inappropriate for the EAC to make unsupported conclusions regarding fraud in its preliminary report. Such speculative statements would only serve to compromise its future effort to study this matter in an nonpartisan fashion.*

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
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THIS MESSAGE IS FOR ITS INTENDED RECIPIENT ONLY. IT IS A PRIVILEGED DOCUMENT AND SHALL NOT BE RELEASED TO A THIRD PARTY WITHOUT THE CONSENT OF THE SENDER.

006858

Juliet E. Hodgkins/EAC/GOV  
03/21/2007 05:02 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. jlayson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC  
bcc

Subject One more time

I think that Karen and I have captured all of the changes that needed to be made including answering the question posed by Commissioner Hillman regarding footnote #2.

Please take one final look.



Voter ID edited 32107- with changed footnote.doc.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006659

## **EAC Study of Voter Identification Requirements**

### **Background**

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document<sup>1</sup> was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates<sup>2</sup> and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.<sup>3</sup>

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, [www.eac.gov](http://www.eac.gov).

### **EAC Declines to Adopt Draft Report**

---

<sup>1</sup> In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

<sup>2</sup> The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. These data did not differentiate between citizens and non-citizens; because these numbers include non-citizens, the Contractor applied the percentage of citizens included in voting age population statistics in 2000 to the U.S. Census Bureau estimated voting age population in 2004. Thus, 2004 estimates of voting age population include persons who are not registered to vote.

<sup>3</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

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EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.<sup>4</sup> Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached.

#### **Further EAC Study on Voter Identification Requirements**

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

---

<sup>4</sup> See Transcript of EAC Public Meeting, February 8, 2007, page 109.

- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

DRAFT

Juliet E. Hodgkins/EAC/GOV  
03/16/2007 04:27 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, [REDACTED]  
cc Thomas R. Wilkey/EAC/GOV@EAC, jlayson@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC  
bcc

Subject Revised Voter ID statement with Eagleton comments to paragraph 2

Since this morning, we have received Eagleton's comments to the draft language provided to them. I have highlighted their changes in yellow.

Again, two documents are provided below: one showing track changes and one showing those changes accepted.



Voter ID edited 31507- track changes with Eagleton comments.doc



Voter ID edited 31507- changes accepted with Eagleton comments.doc

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
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Washington, DC 20005  
(202) 566-3100

00666

# EAC Statement on Future Study of Voter Identification Requirements

## Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document<sup>1</sup> was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates<sup>2</sup> and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.<sup>3</sup> The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data – aggregate turnout data at the county level for each state and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau – the Contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.

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The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues

<sup>1</sup> In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

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<sup>2</sup> The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

<sup>3</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

### **EAC Recommendations for further study and next steps**

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's ~~consideration of efforts to study the possible impact of~~-voter identification requirements.

However, EAC has concerns regarding the ~~research data, analysis, and statistical methodology the Contractor chose to employ in order to~~used to analyze voter identification requirements ~~and the potential variation into~~ determine if these laws have an impact on turnout rates based on the type of voter identification requirements. ~~The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data on that point) was conducted that produced only some evidence of correlation between voter identification requirements and turn-out. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.<sup>4</sup> Thus, EAC will not adopt the Contractor's study and EAC is not adopting the report submitted by the Contractor and, therefore, is not releasing the will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.~~

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or

<sup>4</sup> See EAC Public Testimony, February 8, 2007, page 109.

her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

## **EAC Statement on Future Study of Voter Identification Requirements**

### **Background**

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document<sup>1</sup> was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates<sup>2</sup> and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.<sup>3</sup>

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, [www.eac.gov](http://www.eac.gov).

### **EAC Recommendations for further study and next steps**

<sup>1</sup> In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

<sup>2</sup> The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

<sup>3</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.<sup>4</sup> Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

---

<sup>4</sup> See EAC Public Testimony, February 8, 2007, page 109.

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- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

DRAFT

Juliet E. Hodgkins/EAC/GOV

03/22/2007 03:10 PM

To DeAnna M. Smith/EAC/GOV@EAC

cc jlayson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Tally vote memo

DeAnna,

Here is the proposed memo to go with the Tally Vote on the voter ID issue. I have also sent this to Tom, so that he can look at it.



memo to commissioners on voter id issue.doc

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006670



**U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005**

**MEMORANDUM**

**TO:** Commissioners Davidson, Hillman, Hunter, and Rodriguez  
**FROM:** Thomas R. Wilkey  
**DATE:** March 22, 2007  
**RE:** Draft Voter Identification Report, Research and Future Study of Voter Identification Requirements

**BACKGROUND**

In 2005, EAC contracted with the Eagleton Institute of Politics to conduct a study of the voter identification requirements that were in existence in the 50 states and 5 territories during the 2004 election. As a part of that study, Eagleton conducted research concerning the status of laws in the states and also conducted statistical analysis regarding the impact of the existence of voter identification requirements on the turnout of voters.

The Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements are a first step in the Commission's efforts to study the possible impact of voter identification requirements. However, the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements raise concerns. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians.

**ANALYSIS**

As you may know, the Deliberative Process Privilege to the Freedom of Information Act (FOIA) protects intra-agency documents that are (1) pre-decisional in nature and (2) part of the

deliberative process. In other words, the documents must be part of a process that recommends or presents opinions on a policy matter or governmental decision before that matter is finally decided. It is a well settled matter of law that the work of contract employees and contractors (“consultants”) constitute intra-agency documents.<sup>1</sup> This is true even where the consultants are deemed to be independent contractors and are not subject to the degree of control that agency employment entails.<sup>2</sup> The courts have made this determination after recognizing that agencies have a special need for the opinions and recommendations of temporary consultants.<sup>3</sup> Ultimately, deliberative documents are exempt from release (1) to encourage open and frank discussions on policy matters between agency subordinates and superiors, (2) to protect against premature disclosure of proposed policies and (3) to protect against public confusion that might result from disclosure of rationales that were not in fact the ultimate basis for agency action.<sup>4</sup>

The draft report presented by Eagleton represents one phase of the deliberative process—before the document was vetted by staff, approved by the Executive Director and reviewed and approved by the Commissioners (the relevant policy makers). Ultimately, the draft document was created by Eagleton in order to aid the EAC’s Commissioners in their decisions regarding voter identification requirements. The contractor had no personal interest in their submissions and had no agency decision-making authority. Eagleton was tasked with simply providing pre-decisional research and information to the EAC. Their efforts were limited to creating a truthful, comprehensive, and unbiased draft report. Only when a report is finalized and is adopted by EAC does it constitute an EAC decision or a policy determination.

The Voter Identification draft report was created by Eagleton in conjunction with the Moritz College of Law (Ohio State University) to “...provide research assistance to the EAC for the development of voluntary guidance on provisional voting and voter identification procedures.” The stated objective of the contract was to:

...obtain assistance with the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements for the purpose of drafting guidance on these topics... The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

Eagleton was provided guidance, information, and were directed by EAC personnel. The final product that they were to deliver (draft report) was identified in the contract as “a guidance document for EAC adoption.” Clearly, as noted by the contract, the issuance of Federal guidance to states is a matter of government policy and limited to official EAC action.

EAC’s interpretation of HAVA and its determination of what it will study and how it will use its resources to study it are matters of agency policy and decision. It would be irresponsible for

---

<sup>1</sup> Department of the Interior v. Klamath Water Users Protective Association, 532 U.S. 1, 9-11 (2001) (Citing Harry E. Hoover v. Dept. of the Interior, 611 F.2d 1132, at 1138 (1980); Lead Industries Assn. v. OSHA, 610 F.2d 70, 83 (C.A.5 1980) (applying exemption 5 to draft reports prepared by contractors); and Government Land Bank v. GSA, 671 F.2d 663, 665 (CA1 1982)); See also Hertzberg v. Veneman, 273 F. Supp. 2d 67, 76 n.2 (D.D.C. 2003).

<sup>2</sup> Klamath, at 10.

<sup>3</sup> Hoover, 611 F.2d at 1138.

<sup>4</sup> NLRB v. Sears, Roebuck & Co., 41 U.S. at 151.

EAC to accept the product of contracted employees and publish that information without exercising due diligence in vetting the product of the employees' work and the veracity of the information used to produce that product. EAC, along with working and peer review groups have conducted this review of the draft voter identification report provided by Eagleton. EAC found that the draft report raised more questions than it answered, because of the limited data that was analyzed and the analysis that was conducted on those data.

As a part of its review of the draft report, EAC staff have determined that the contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements are a first step in the Commission's efforts to study the possible impact of voter identification requirements. In addition, staff recommends a series of next steps for future study and analysis of voter identification requirements, including:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identity.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

A draft statement capturing proposed action on the draft report as well as recommended next steps for research and analysis of voter identification requirements has been attached to this memorandum.

**RECOMMENDATIONS:**

- (1) EAC should exercise its authority in making policy concerning the study of voter identification requirements and decline to adopt the draft report provided by Eagleton;
- (2) EAC should adopt the recommendations of staff regarding future study and analysis of voter identification requirements;
- (3) EAC should adopt and publish the attached statement concerning the research and draft report presented by Eagleton as well as the future plans of EAC to conduct research in this area; and
- (4) EAC should publish the data, information and draft report provided by Eagleton.

Juliet E. Hodgkins/EAC/GOV  
03/22/2007 11:36 AM

To DeAnna M. Smith/EAC/GOV@EAC  
cc  
bcc  
Subject Tally Vote

DeAnna,

Can you get this tally vote ready for Tom's signature? It needs a memo, which we should discuss. Perhaps, I will try to draft something in a few minutes. Anyway, just wanted to get this one in the hopper.

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

—— Forwarded by Juliet E. Hodgkins/EAC/GOV on 03/22/2007 11:29 AM ——

Caroline C. Hunter/EAC/GOV  
03/21/2007 05:26 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, jlayson@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
Subject Re: One more time 

Looks good to me.

Caroline C. Hunter  
Commissioner  
Election Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, DC 20005  
(202) 566-3107  
chunter@eac.gov  
www.eac.gov

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
03/21/2007 05:02 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC  
cc jlayson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC  
Subject One more time

006675

I think that Karen and I have captured all of the changes that needed to be made including answering the question posed by Commissioner Hillman regarding footnote #2.

Please take one final look.



Voter ID edited 32107- with changed footnote.doc

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
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006676

Juliet E. Hodgkins/EAC/GOV  
03/19/2007 02:09 PM

To DeAnna M. Smith/EAC/GOV@EAC  
cc  
bcc  
Subject Final Voter Fraud report and appendixes

are on the EAC website.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
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006677

Juliet E. Hodgkins/EAC/GOV  
03/19/2007 02:08 PM

To DeAnna M. Smith/EAC/GOV@EAC  
cc  
bcc  
Subject Draft Fraud and Intimidation Report



VF-VI Final Rept-draft.doc

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006678

Juliet E. Hodgkins/EAC/GOV  
03/28/2007 12:07 PM

To Caroline C. Hunter/EAC/GOV@EAC, jlayson@eac.gov  
cc  
bcc  
Subject Latest Statement

both of you have asked for this document...



Voter ID edited 32107- with changed footnote.doc

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
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006679

# EAC Study of Voter Identification Requirements

## Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics (“Contractor”) to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document<sup>1</sup> was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates<sup>2</sup> and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.<sup>3</sup>

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor’s testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC’s website, [www.eac.gov](http://www.eac.gov).

## EAC Declines to Adopt Draft Report

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<sup>1</sup> In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

<sup>2</sup> The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. These data did not differentiate between citizens and non-citizens; because these numbers include non-citizens, the Contractor applied the percentage of citizens included in voting age population statistics in 2000 to the U.S. Census Bureau estimated voting age population in 2004. Thus, 2004 estimates of voting age population include persons who are not registered to vote.

<sup>3</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.<sup>4</sup> Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached.

#### **Further EAC Study on Voter Identification Requirements**

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

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<sup>4</sup> See Transcript of EAC Public Meeting, February 8, 2007, page 109.

- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

DRAFT

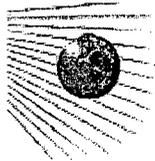
**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
12/04/2006 01:49 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fraud report 

I assume that you saw Gracia's comments. I accepted them and added one or two words to clarify one point.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Paul DeGregorio/EAC/GOV



Paul DeGregorio/EAC/GOV  
12/04/2006 01:42 PM

To Juliet E. Thompson/EAC/GOV  
cc  
Subject Fraud report

Julie,  
I looked over your changes and they look fine with me. I'll trust your judgement on the final product we receive on Thursday. If any policy or major changes are made by other commissioners, let me know.  
Thanks.  
Paul

-----  
Sent from my BlackBerry Wireless Handheld

006686

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
12/01/2006 04:39 PM

To Paul DeGregorio/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, "Davidson, Donetta"  
<ddavidson@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC  
cc  
bcc

Subject Draft Fraud/Intimidation Report with Executive Summary

Commissioners,

The draft attached below contains the Executive Summary as well as the suggestions made by Commissioner Hillman. Please let me know if you have any additional changes by COB Monday, Dec. 4, so that I can incorporate these and have this document ready for consideration at Thursday's meeting.



Voter Fraud & Intimidation Report - 120106.doc

In addition, I have had another request from Tova Wang for an embargoed copy of this report. I have not heard from any of you on this matter. I assume that this means that you agree with my opinion that we cannot release this document to her since she is no longer under contract with us, as it would be tantamount to releasing this document to the public. Please let me know ASAP if this is not your understanding and belief.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
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(202) 566-3100

006684

**EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY****EXECUTIVE SUMMARY**

The Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including “voting fraud” and “voter intimidation.” In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of “voting fraud” and “voter intimidation” and to identify research methodology to conduct a comprehensive, nationwide study of these topics.

EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

In order to facilitate future study of these topics, EAC developed a working definition of “election crimes.” “Election crimes” are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

From EAC’s review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at “election crimes.” Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical provisions. EAC will study these concepts by surveying the states’ chief election officials about complaints they received through their administrative complaint processes, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received and charges filed.

## INTRODUCTION

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the lawful application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a working definition of election crimes and adopted research methodology on how to assess the existence and enforcement of election crimes in the United States.

## PURPOSE AND METHODOLOGY OF THE EAC STUDY

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. The initial study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,<sup>1</sup> who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic of voting fraud and voter intimidation; (2) developing a uniform definition of voting fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

---

<sup>1</sup> Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to National Republican  
Campaign Committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

### **Reports and Studies of Voting fraud and Intimidation**

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.

DRAFT – DO NOT DISTRIBUTE

- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?” A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, “A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law,” The Sentencing Project, November 2005.
- American Center for Voting Rights “Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election,” August 2, 2005.
- The Advancement Project, “America’s Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy” November 7, 2001
- The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, “Democracy at Risk: The November 2004 Election in Ohio,” DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

#### **Books**

- John Fund, *Stealing Elections: How Voting fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as

“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### **Interviews with Experts**

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**

Author, *Deliver the Vote*

**Douglas Webber**

Assistant Attorney General, Indiana

**Heather Dawn Thompson**

Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**

Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**

Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**

Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**

Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**

Counsel  
Democratic National Committee

**John Ravitz**

Executive Director  
New York City Board of Elections

**Sharon Priest**

Former Secretary of State, Arkansas

**Kevin Kennedy**

Executive Director  
State Board of Elections, Wisconsin

**Evelyn Stratton**

Justice  
Supreme Court of Ohio

**Joseph Rich**

Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Craig Donsanto**

Director, Public Integrity Section  
U.S. Department of Justice

**John Tanner**

Chief  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,

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voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix "3".

### **Case Law and Statutes**

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix "4".

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters on voter registration list and/or voting,
- multiple voting,
- felons voting,

- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future. As a result, EAC has adopted the use of the term “election crimes” for its future study.

### Current Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud**, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu[ally] a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting.

Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing “voting fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voting fraud” does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, “voting fraud” does not capture actions or willful inaction in the voter registration process. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases “voting fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

### **New Terminology**

The goal of this study was to develop a common definition of what is generically referred to as “voting fraud” and “voter intimidation” that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, “voting fraud” and “voter intimidation” can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

Thus, EAC has adopted the use of the phrase “election crimes” to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election-related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, we recognize that the resources, both financial and human capital, needed to study all “voting fraud” and “voter intimidation” including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to

case. A more complete discussion of the concept of "election crimes" follows along with a list of excluded actions.

### **The Definition of an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

#### ***Acts of Deception***

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;

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- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a materially false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

***Acts of Coercion***

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

***Acts of Damage or Destruction***

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;

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- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

### *Failure or Refusal to Act*

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

### **What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Last, violations of ethical provisions and the Hatch Act are not “election crimes.” Similarly, civil or other wrongs that do not rise to the level of criminal activity (i.e., a misdemeanor, relative felony or felony) are not “election crimes.”

## **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

### ***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

### ***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys’ Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such

practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

**Accepted Recommendations**

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator

being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

*Analyze Survey Data in Light of State Laws and Procedures*

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

**CONCLUSION**

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.

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**APPENDIX 1 – BIOGRAPHIES OF JOB SEREBROV AND TOVA WANG**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 2 – SUMMARIES OF BOOKS, REPORTS AND ARTICLES**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 3 – SUMMARIES OF INTERVIEWS**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 4 – SUMMARIES OF CASES REVIEWED**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

Juliet E.  
Thompson-Hodgkins/EAC/G  
OV

03/16/2006 03:28 PM

To Paul DeGregorio/EAC/GOV@EAC

cc

bcc

Subject Thor Hearn

Couple of questions:

Do you want us to draft a response as if it were coming from you? Or do you want us to respond directly?

How in depth do you want us to go? I see Thor as a bit of a tar baby, in that he will come back with other arguments or continue to monopolize our time with questions, positions, etc. I also see the need to shut him down and have something in writing responding to his concerns and arguments. What is your thought on how far to go with this?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006726

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
11/29/2006 05:35 PM

To Paul DeGregorio/EAC/GOV@EAC, "Davidson, Donetta"  
<ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC  
bcc

Subject Revised - Draft -- Voting Fraud/Voter Intimidation Report

Attached is a revised version of the Voting Fraud/Voter Intimidation Draft Report. The changes that Commissioner Hillman suggested have been made and highlighted in yellow. See pages 10-11.

Peggy and I are working on the revision of the Donsanto and Tanner interview summaries and will forward that to you under a separate email.



Voter Fraud & Intimidation Report - 112906.doc

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
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006708

**EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY**

**INTRODUCTION**

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the lawful application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a working definition of election crimes and adopted research methodology on how to assess the existence and enforcement of election crimes in the United States.

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. The initial study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,<sup>1</sup> who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic of voting fraud and voter intimidation; (2) developing a uniform definition of voting

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<sup>1</sup> Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".

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fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to National Republican  
Campaign Committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

### **Reports and Studies of Voting fraud and Intimidation**

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.

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- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

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- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

**Books**

- John Fund, *Stealing Elections: How Voting fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as

“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### **Interviews with Experts**

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

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**Tracey Campbell**

Author, *Deliver the Vote*

**Douglas Webber**

Assistant Attorney General, Indiana

**Heather Dawn Thompson**

Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**

Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**

Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**

Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**

Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**

Counsel  
Democratic National Committee

**John Ravitz**

Executive Director  
New York City Board of Elections

**Sharon Priest**

Former Secretary of State, Arkansas

**Kevin Kennedy**

Executive Director  
State Board of Elections, Wisconsin

**Evelyn Stratton**

Justice  
Supreme Court of Ohio

**Joseph Rich**

Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Craig Donsanto**

Director, Public Integrity Section  
U.S. Department of Justice

**John Tanner**

Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,

voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state’s attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “3”.

### **Case Law and Statutes**

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “4”.

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters on voter registration list and/or voting,
- multiple voting,
- felons voting,

- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future. As a result, EAC has adopted the use of the term “election crimes” for its future study.

### Current Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud**, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu[ally] a tort, but in some cases (esp. when the conduct is willful), it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting.

Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing “voting fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voting fraud” does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, “voting fraud” does not capture actions or willful inaction in the voter registration process. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases “voting fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

### **New Terminology**

The goal of this study was to develop a common definition of what is generically referred to as “voting fraud” and “voter intimidation” that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, “voting fraud” and “voter intimidation” can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

Thus, EAC has adopted the use of the phrase “election crimes” to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, we recognize that the resources, both financial and human capital, needed to study all “voting fraud” and “voter intimidation,” including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to

case. A more complete discussion of the concept of "election crimes" follows along with a list of excluded actions.

### **The Definition of an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

#### ***Acts of Deception***

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;

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- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a materially false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

*Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

*Acts of Damage or Destruction*

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;

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- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

### *Failure or Refusal to Act*

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

### **What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Last, violations of ethical provisions and the Hatch Act are not “election crimes.” Similarly, civil or other wrongs that do not rise to the level of criminal activity (i.e., a misdemeanor, relative felony or felony) are not “election crimes.”

## **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

### ***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

### ***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

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***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys’ Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such

practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

**Accepted Recommendations**

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator

being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

*Analyze Survey Data in Light of State Laws and Procedures*

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

**CONCLUSION**

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.

006725

Juliet E. Hodgkins/EAC/GOV  
03/16/2007 01:38 PM

To Gracia Hillman/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Voter ID statement

Because I forgot to put her on.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Gracia Hillman/EAC/GOV



Gracia Hillman/EAC/GOV  
03/16/2007 01:22 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
cc Jeannie Layson/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, rosemaryrod2003  
Subject Re: Voter ID statement

Why is it that Karen is not in the email loop on this circulation?

Sent from my BlackBerry Wireless Handheld  
Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 03/16/2007 09:41 AM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter;  
**Cc:** Thomas Wilkey; Jeannie Layson  
**Subject:** Voter ID statement

Commissioners,

Attached below are two versions of the Voter ID statement. One shows the track changes and the other shows the document having accepted all of those changes (so that it would be easier to read). Jeannie and Tom have both taken a look at this document and we think that it captures what we discussed on Wednesday.

Please take a look and let me know if this meets with your understanding of what we discussed.

[attachment "Voter ID edited 31507- track changes.doc" deleted by Gracia Hillman/EAC/GOV]  
[attachment "Voter ID edited 31507- changes accepted.doc" deleted by Gracia Hillman/EAC/GOV]

Juliet Thompson Hodgkins  
General Counsel

006727

United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006728

Juliet E. Hodgkins/EAC/GOV  
12/11/2006 11:37 AM

To Gracia Hillman/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Draft response to Tova Wang 

since it was addressed to the Commissioners, I would suggest that the Commissioners should respond (either collectively or through the Chairman). I will send your edits to your colleagues to see if we have consensus on this response.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Gracia Hillman/EAC/GOV



Gracia Hillman/EAC/GOV  
12/11/2006 11:26 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov  
cc  
Subject Re: Draft response to Tova Wang 

Julie and Jeannie:

Thank you for the quick turn around on drafting a response to Tova Wang.

I have made substantial edits because I think the first draft offered too much information, which is not germane to Tova's complaint. Additionally, too much verbiage masks the strength of our good report and seemed to obscure the main points in our response.

I hope you will find the attached helpful.

BTW, who will sign the letter ?



Tova Wang, Dec06.doc

Gracia M. Hillman  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, DC 20005  
Tel: 202-566-3100  
Fax: 202-566-1392  
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006730

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
03/16/2007 04:27 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, [REDACTED]  
cc Thomas R. Wilkey/EAC/GOV@EAC, jlayson@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC  
bcc

Subject Revised Voter ID statement with Eagleton comments to paragraph 2

Since this morning, we have received Eagleton's comments to the draft language provided to them. I have highlighted their changes in yellow.

Again, two documents are provided below: one showing track changes and one showing those changes accepted.



Voter ID edited 31507- track changes with Eagleton comments.doc



Voter ID edited 31507- changes accepted with Eagleton comments.doc

Juliet Thompson Hodgkins  
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006731

## EAC Statement on Future Study of Voter Identification Requirements

### Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates<sup>2</sup> and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.<sup>3</sup> The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data – aggregate turnout data at the county level for each state and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau – the Contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.

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The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues

<sup>1</sup> In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

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<sup>2</sup> The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

<sup>3</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, [www.eac.gov](http://www.eac.gov).

### **EAC Recommendations for further study and next steps**

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's consideration of efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the research data, analysis, and statistical methodology the Contractor chose to employ in order to analyze voter identification requirements and the potential variation into determining if these laws have an impact on turnout rates based on the type of voter identification requirements. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data on that point) was conducted that produced only some evidence of correlation between voter identification requirements and turn-out. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers. Thus, EAC will not adopt the Contractor's study and EAC is not adopting the report submitted by the Contractor and, therefore, is not releasing the will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or

<sup>4</sup> See EAC Public Testimony, February 8, 2007, page 109.

her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

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### EAC Recommendations for further study and next steps

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EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

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EAC will undertake the following activities:

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- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

---

<sup>4</sup> See EAC Public Testimony, February 8, 2007, page 109.

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- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

DRAFT

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
03/16/2007 09:41 AM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, rosemaryrod2003@yahoo.com  
cc Thomas R. Wilkey/EAC/GOV@EAC, jlayson@eac.gov  
bcc

Subject Voter ID statement

Commissioners,

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Voter ID edited 31507- track changes.doc Voter ID edited 31507- changes accepted.doc

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006738

## EAC Statement on Future Study of Voter Identification Requirements

### Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. The contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election—November 2004. For example, the turnout rate in 2004 in states with a photo identification requirement was compared to the turnout rate in 2004 in states with a requirement that voters sign their name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates<sup>1</sup> and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.<sup>2</sup> The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data—aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau—the Contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, [www.eac.gov](http://www.eac.gov).

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<sup>1</sup> The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

<sup>2</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

## EAC Recommendations for further study and next steps

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's ~~consideration of~~ efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the ~~research data, analysis, and statistical methodology the Contractor chose to employ in order to~~ analyze voter identification requirements and the potential variation into determine if these laws have an impact on turnout rates based on the type of voter identification requirements. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data on that point) was conducted that produced only some evidence of correlation between voter identification requirements and turn-out. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. ~~The Contractor and the EAC agree that the report raises more questions than provides answers.~~ Thus, EAC will not adopt the Contractor's study and EAC is not adopting the report submitted by the Contractor and, therefore, is not releasing the ~~will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.~~

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

<sup>3</sup> See EAC Public Testimony, February 8, 2007, page 109.

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- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

DRAFT

## EAC Statement on Future Study of Voter Identification Requirements

### Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. The contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states with a photo identification requirement was compared to the turnout rate in 2004 in states with a requirement that voters sign their name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates<sup>1</sup> and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.<sup>2</sup>

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, [www.eac.gov](http://www.eac.gov).

### EAC Recommendations for further study and next steps

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

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<sup>1</sup> The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

<sup>2</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.<sup>3</sup> Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be

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<sup>3</sup> See EAC Public Testimony, February 8, 2007, page 109.

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covered in the study and timelines for completing an EAC study on voter identification.

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

DRAFT

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
02/06/2007 03:53 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Thomas R.

cc

bcc

Subject Questions for Eagleton

Commissioners,

Commissioner Davidson asked that I forward to each of you the following questions that I drafted at her request last week. She also asked that I let you know that she is interested in asking questions 3, 5, and 7.

1. What is meant by "statistically significant"? Please explain in plain language when a result is considered statistically significant. Also, please provide an academic definition of that term. How did you calculate the mean and standard deviations from the mean?
2. What data was used to derive these research findings?
3. Did you attempt to find information or data related to elections prior to 2004 in states that have voter identification requirements?
4. What other variables other than voter identification were tested? Contested race? Historical voter turnout? Weather? Media attention to the area? Candidate activities/campaign?
5. What was the impact (positive or negative) of these other factors on voter turnout?
6. How did you control these variables/factors when measuring the impact of voter ID on voter turnout or on prospective voter turnout? For example, did you only apply the factor to like circumstances – similar historical turnout, same level of contention in the races of the ballot, etc.
7. Would the study and your conclusions have been more reliable if additional data had been analyzed? Data such as voter turn out in states that have had voter ID in past Federal elections?
8. What data did you use to identify voter turnout?
9. What data did you use to identify whether people or groups of people were more or less likely to vote when identification is required?
10. Why did you use census data as opposed to data on registered voters? Doesn't census data also include information from people who are not registered voters and people who are not even eligible to be registered voters?

In addition to the questions above, I provided the following feedback to Commissioner Davidson concerning the draft report provided by Eagleton:

- I am troubled by the concept that Eagleton compared states as if they were equal. They assume that, all factors being equal, that the voter turn out in each state would be equal. I am not at all certain that this is the case. Further, there is no evidence that the statistician actually compared previous years' turnout in the same state to determine whether 2004 was some sort of anomaly for that state (high or low). Long story short, I am very skeptical of the data that they used to draw conclusions. We should ask questions about what data they used, how they parsed it, why they used the data, what other data could have been used to provide better, more reliable results.
- My second concern is how they (statistically speaking) differentiate between a minimum requirement

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(i.e. state name, photo i.d., etc) and a maximum requirement (i.e., state name, photo i.d., etc.). It makes no sense to me how they could possibly arrive at a different percentage for these requirement levels.

- My third issue is the persistent use of the phrases "ballot access" and "ballot integrity" without some definition or some explanation of what those concepts are.

Commissioner Davidson also asked that I ask some questions related to the first bullet, above, specifically relating to the comparison of states without validation that the state's turn out for 2004 was "normal" for that state as opposed to an anomaly.

Last, Commissioner Davidson asked that you all coordinate your selected questions to avoid having two commissioners wanting to ask the same question.

Please let me know if you have any questions or concerns about these questions or if I can explain my reasoning behind the questions.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006748

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
02/01/2007 03:29 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Karen  
Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject: More thoughts on Eagleton draft report

After having read the Eagleton draft report, I have some thoughts and questions:

I am troubled by the concept that Eagleton compared states as if they were equal. They assume that, all factors being equal, that the voter turn out in each state would be equal. I am not at all certain that this is the case. Further, there is no evidence that the staticians actually compared previous years' turnout in the same state to determine whether 2004 was some sort of anomaly for that state (high or low). Long story short, I am very skeptical of the data that they used to draw conclusions. We should ask questions about what data they used, how they parsed it, why they used the data, what other data could have been used to provide better, more reliable results.

My second concern is how they (statistically speaking) differentiate between a minimum requirement (i.e. state name, photo i.d., etc) and a maximum requirement (i.e., state name, photo i.d., etc.). It makes no sense to me how they could possibly arrive at a different percentage for these requirement levels.

My third issue is the persistent use of the phrases "ballot access" and "ballot integrity" without some definition or some explanation of what those concepts are.

Juliet Thompson Hodgkins  
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United States Election Assistance Commission  
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(202) 566-3100

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**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
01/30/2007 09:48 PM

To "Davidson, Donetta" <ddavidson@eac.gov>  
cc Karen Lynn-Dyson/EAC/GOV@EAC  
bcc

Subject Questions for the public meeting

Donetta,

Below are some questions that I have compiled in reading through the summary that Karen developed. I have not re-evaluated the draft report provided by Eagleton. As soon as I have the opportunity to revisit that document, I will send any additional questions that I would suggest asking.

**QUESTIONS FOR EAGLETON:**

1. What is meant by "statistically significant"? Please explain in plain language when a result is considered statistically significant. Also, please provide an academic definition of that term. How did you calculate the mean and standard deviations from the mean?
2. What data was used to derive these research findings?
3. Did you attempt to find information or data related to elections prior to 2004 in states that have voter identification requirements?
4. What other variables other than voter identification were tested? Contested race? Historical voter turnout? Weather? Media attention to the area? Candidate activities/campaign?
5. What was the impact (positive or negative) of these other factors on voter turnout?
6. How did you control these variables/factors when measuring the impact of voter ID on voter turnout or on prospective voter turnout? For example, did you only apply the factor to like circumstances – similar historical turnout, same level of contention in the races of the ballot, etc.
7. Would the study and your conclusions have been more reliable if additional data had been analyzed? Data such as voter turn out in states that have had voter ID in past Federal elections?
8. What data did you use to identify voter turnout?
9. What data did you use to identify whether people or groups of people were more or less likely to vote when identification is required?  
Why did you use census data as opposed to data on registered voters? Doesn't census data also include information from people who are not registered voters and people who are not even eligible to be registered voters?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
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(202) 566-3100

006748

Juliet E. Hodgkins/EAC/GOV  
12/11/2006 11:40 AM

To "Davidson, Donetta" <ddavidson@eac.gov>, Paul  
DeGregorio/EAC/GOV@EAC  
cc Gracia Hillman/EAC/GOV@EAC  
bcc

Subject Fw: Draft response to Tova Wang

commisisoners,

See below edits that Gracia has offered to the letter. Let me know if you agree. I would like to send this out today. Also, in response to Gracia's question below, I believe that since her letter was addressed to the Commissioners that the Commissioners should respond (either collectively or through the Chairman). Please let me know if you agree with the edits. It would be nice to get this out today.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

— Forwarded by Juliet E. Hodgkins/EAC/GOV on 12/11/2006 11:37 AM —



Gracia Hillman/EAC/GOV  
12/11/2006 11:26 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov  
cc

Subject Re: Draft response to Tova Wang

Julie and Jeannie:

Thank you for the quick turn around on drafting a response to Tova Wang.

I have made substantial edits because I think the first draft offered too much information, which is not germane to Tova's complaint. Additionally, too much verbiage masks the strength of our good report and seemed to obscure the main points in our response.

I hope you will find the attached helpful.

BTW, who will sign the letter ?



Tova Wang, Dec06.doc

Gracia M. Hillman  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, DC 20005  
Tel: 202-566-3100  
Fax: 202-566-1392  
www.eac.gov

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006750

December 8, 2006

Ms. Tova Wang  
(Address)  
(Address)

Dear Ms. Wang:

~~The U.S. Election Assistance Commission believes that voting fraud and voter intimidation are very important, complex topics that should be studied and reported on fairly and accurately. As a clearinghouse of election administration information, EAC is committed to providing complete and comprehensive information to the election community and the public.~~

We are writing in response to your December 7, 2006 memorandum.

In its December 2006 report on voting fraud and voter intimidation, As you know, the U.S. Election Assistance Commission (EAC) issued its first report on election crimes last week, based in large part on the work that was done for EAC by Job and you. The report contains~~EAC honored this commitment by providing the readers of its report with the full and complete summaries of every interview conducted as well as every book, article, report or case that was reviewed. It is incumbent upon us to provide them with the best and most complete data and research that we can. Rather than provide only the synopsis of these interviews, EAC provided the readers with the individual -entire summaries created by the consultants so readers could reach their own conclusions about the substance of the interviews.~~

~~With regard to the interviews of two of the personnel from the Department of Justice, EAC made clarifying edits. Upon reviewing initial information about their Department of Justice interviews contained in the status report that was provided to the EAC Standards Board and EAC Board of Advisors and the information provided by the consultants at the -working group meeting in May 2006, those persons interviewed at the Department of Justice did not agree with certain characterizations of their statements contained in these materials. Therefore, EAC exercised its responsibility to make clarifying edits. The Department of Justice is an important prosecutorial agency engaged in enforcing Federal anti-fraud and anti-intimidation laws. Thus, it was important to EAC to assure that the summary of their comments did not lend confusion to an already complex and hotly-debated topic.~~

~~Because of the lack of organization and cohesion in the draft provided by the consultants, that document would have led to greater confusion and division regarding the issues of voting fraud and voter intimidation. As such, EAC revised the draft report and provided the entirety of the supporting documentation to the public.~~

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~~For these reasons, t~~The report on voting fraud and voter intimidation will stand as adopted on December 7, 2006. Again, we thank you for the contributions you made to the EAC's initial research of these important issues.

Sincerely,

006752

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
11/17/2006 01:40 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Thomas R. cc Bert A. Benavides/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Eileen L. Colver/EAC/GOV@EAC, Matthew Masterson/EAC/GOV@EAC, Gavin S. bcc

Subject Draft Voting Fraud and Voter Intimidation Report

Commissioners and Tom,

I have attached a draft version of the EAC Voting Fraud and Voter Intimidation report. Please have your comments ready no later than Tuesday, Nov. 28, COB, so that I will be prepared to discuss them at our briefing on Wednesday, Nov. 29 at 10:30.

You will note that there are appendixes referenced in the report. These documents are quite lengthy. Thus, I did not attach them to this email. If, however, you want to read the documents, DeAnna has access to them in my absence and can either email them to you or print them for you.

I think that the report is fairly self-explanatory. However, there are two questions that we need to address and that the Commissioners need to comment on:

1. The consultants provided summaries of articles, books, and reports that they read, as well as summaries of the interviews that they conducted. Peggy created two tables summarizing the consultants' summaries of books, article and reports as well as interviews. We need to make a determination of which summaries we want to attach as appendixes. The only issue that I am aware of (and I have a question pending to Peggy about the quality of these summaries) is a significant disagreement over the summaries of interviews with Craig Donsanto and John Tanner of the Dept. of Justice. They disagree with the characterization given by the consultants to what they said in the interview. Obviously, this matter would have to be resolved if we decide to use the consultants' summaries.

2. Tom and I had a conversation with Tova and Job about the fact that we are going to issue a report. Tova was quite insistent about being able to see the report before it is released. I am NOT inclined to give her a copy of the report before it is released. Neither Tova nor Job are still on contract with the EAC. Thus, they are just like any other member of the public. I believe that if we release it to them, then we may have a significant problem withholding the document from others that may ask for it via FOIA request. I believe that the course of action should be to release it to all persons simultaneously.

Happy reading and Happy Thanksgiving!



Voter Fraud & Intimidation Report.doc

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006753

**EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY****INTRODUCTION**

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the correct application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the existence and enforcement of election crimes in the United States.

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,<sup>1</sup> who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic of voting fraud and voter intimidation; (2) developing a uniform definition of voting

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<sup>1</sup> Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".

fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to National Republican  
Campaign Committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

### **Reports and Studies of Voting fraud and Intimidation**

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
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During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as

“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

#### **Interviews with Experts**

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**

Author, *Deliver the Vote*

**Douglas Webber**

Assistant Attorney General, Indiana

**Heather Dawn Thompson**

Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**

Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**

Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**

Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**

Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**

Counsel  
Democratic National Committee

**John Ravitz**

Executive Director  
New York City Board of Elections

**Sharon Priest**

Former Secretary of State, Arkansas

**Kevin Kennedy**

Executive Director  
State Board of Elections, Wisconsin

**Evelyn Stratton**

Justice  
Supreme Court of Ohio

**Joseph Rich**

Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Craig Donsanto**

Director, Public Integrity Section  
U.S. Department of Justice

**John Tanner**

Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,

voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state’s attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “3”.

### **Case Law and Statutes**

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “4”.

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,

- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

### New Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud, n. 1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting. Thus, a voter who intentionally impersonates another registered voter and attempts to

vote for that person would be committing “voting fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voting fraud” does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, “voting fraud” does not capture actions or willful inaction in the voter registration process. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases “voting fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as “voting fraud” and “voter intimidation” that would serve as the basis for a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined “election crimes,” a phrase that captures all crimes related to the voter registration and voting processes.

### **The Definition of an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

*Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a materially false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

*Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

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- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

***Acts of Damage or Destruction***

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;

- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

### **What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes,” and actions that do not rise to the level of criminal activity, such as a misdemeanor, relative felony or felony, are not “election crimes.”

## **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such

activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

### **Accepted Recommendations**

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

#### ***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition

of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

***Analyze Survey Data in Light of State Laws and Procedures***

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from

areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

## CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
03/15/2007 10:09 AM

To Thomas R. Wilkey/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: One more time

take a look at this before I send it to the Commissioners.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

— Forwarded by Juliet E. Hodgkins/EAC/GOV on 03/15/2007 10:07 AM —

Jeannie Layson /EAC/GOV

03/15/2007 09:13 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
Subject Re: One more time 

Just a few minor items...



Voter ID edited 31407 jl.doc  
Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

03/14/2007 08:14 PM

To jlayson@eac.gov  
cc  
Subject One more time

Here is the latest consolidated version of the "statement" on Voter ID. See if you think that this captures what they were attempting to say.

Juliet Thompson Hodgkins  
General Counsel

6773

United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005



(202) 566-3100 Voter ID edited 31407.doc

006774

## EAC Statement on Future Study of Voter Identification Requirements

### Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. The contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election—November 2004. For example, the turnout rate in 2004 in states with a photo identification requirement was compared to the turnout rate in 2004 in states with a requirement that voters sign their name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates<sup>1</sup> and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.<sup>2</sup> The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data—aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau—the Contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, [www.eac.gov](http://www.eac.gov).

<sup>1</sup> The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

<sup>2</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

## EAC Recommendations for further study and next steps

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's ~~consideration of~~ efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the ~~research data, analysis, and statistical methodology the Contractor chose to employ in order to~~ used to analyze voter identification requirements and the potential variation into determine if these laws have an impact on turnout rates based on the type of voter identification requirements. ~~The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data on that point) was conducted that produced only some evidence of correlation between voter identification requirements and turn-out. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians.~~ The Contractor and the EAC agree that the report raises more questions than provides answers. ~~Thus, EAC will not adopt the Contractor's study and EAC is not adopting the report submitted by the Contractor and, therefore, is not releasing the~~ will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

<sup>3</sup> See EAC Public Testimony, February 8, 2007, page 109.

- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

DRAFT

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Juliet E. Hodgkins/EAC/GOV  
12/01/2006 02:20 PM

To Thomas R. Wilkey/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: fraud and intimidation report

why didn't you tell her that we can't release this to her?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

----- Forwarded by Juliet E. Hodgkins/EAC/GOV on 12/01/2006 02:19 PM -----



wang@tcf.org  
12/01/2006 02:07 PM

To jthompson@eac.gov  
cc "Job Serebrov" [REDACTED]  
Subject fraud and intimidation report

Julie,

I understand from Tom Wilkey that you are planning on releasing our report at the public meeting next Thursday, December 7. As we discussed, I respectfully request that Job and I be permitted to review what you are releasing before it is released. I would like us both to be provided with an embargoed copy as soon as possible so we have time to properly review it before Thursday. I can be contacted by email, cell phone at 917-656-7905, or office phone 202-741-6263. I hope to hear from you soon. Thanks.

Tova

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**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
11/14/2006 10:14 PM

To Thomas R. Wilkey/EAC/GOV@EAC, jlayson@eac.gov  
cc  
bcc  
Subject Draft fraud and intimidation report

Attached is a draft of the fraud/intimidation report. I wanted to get some feedback on the report before I send it to the Commissioners. I would appreciate any comments that you have.



EAC REPORT ON VOTER FRAUD AND VOTER INTIMIDATION STUDY.doc

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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**EAC REPORT ON VOTER FRAUD AND VOTER INTIMIDATION STUDY****INTRODUCTION**

Voter fraud and intimidation is a phrase familiar to many voting-aged Americans. However, it means different things to different people. Voter fraud and intimidation is a phrase used to refer to crimes, civil rights violations, and at times even the correct application of state or federal laws to the voting process. Past study of this topic has been as varied as its perceived meaning. In an effort to help understand the realities of voter fraud and voter intimidation in our elections, EAC has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the true existence and enforcement of election crimes in this country.

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the U.S. Election Assistance Commission (EAC) to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voter fraud and voter intimidation was a topic that EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voter fraud and intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voter fraud and voter intimidation actions, laws, or prosecutions. That type of research is well beyond the basic understanding that had to be established regarding what is commonly referred to as voter fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voter fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, who along with EAC staff and interns conducted the research that forms the basis of this report. Consultants were chosen based upon their experience with the topic. In addition, consultants were chosen to assure a bipartisan representation in this study. The consultants and EAC staff were charged (1) to research the current state of information on the topics of voter fraud and voter intimidation, (2) to develop a uniform definition of voter fraud and voter intimidation, and (3) to propose recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voter fraud and intimidation. In addition, EAC consultants conducted interviews with selected

experts in the field. Last, EAC consultants and staff presented their study to a working group that provided feed back. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to national Republican  
campaign committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of existing laws, cases, studies and reports on voter fraud and intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voter fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited to produce this final report.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voter fraud and voter intimidation, EAC consultants reviewed the current body of information on voter fraud and intimidation. What the world knows about these issues comes largely from a very limited body of reports, articles and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation.

Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voter fraud and voter intimidation.

### **Reports and Studies of Voter Fraud and Intimidation**

Over the years, there have been a number of studies conducted about the concepts of voter fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voter fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “\_\_”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?” A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, “A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law,” The Sentencing Project, November 2005.

- American Center for Voting Rights “Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election,” August 2, 2005.
- The Advancement Project, “America’s Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy” November 7, 2001
- The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, “Democracy at Risk: The November 2004 Election in Ohio,” DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.
- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," *Demos: A Network of Ideas and Action*, 2003.

- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

### Books

- John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Foiled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voter fraud and voter intimidation. None of the studies or reports was based on a comprehensive study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voter fraud or voter intimidation. Most reports focused on a limited number of case studies or instances of alleged voter fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voter fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate. Generally, speaking there is little agreement on what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation even legal practices that they allege suppress the vote.

One point of agreement is that absentee voting and voter registration by third-party groups create opportunities for fraud. A number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of voters of a certain party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### **Interviews with Experts**

In addition to reviewing prior studies and reports on voter fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voter fraud and voter intimidation. Persons interviewed included

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Pat Rogers**  
Attorney, New Mexico

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**  
Author, *Deliver the Vote*

**Douglas Webber**  
Assistant Attorney General, Indiana

**Heather Dawn Thompson**  
Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**  
Counsel  
Democratic National Committee

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**John Ravitz**  
Executive Director  
New York City Board of Elections

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**Sharon Priest**  
Former Secretary of State, Arkansas

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin

**John Tanner**  
Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by third-party groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud, citing as reasons that it was the most likely type of fraud to be discovered and that there are stiff penalties associated with this type of fraud.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, the location of polling places, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voter fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voter fraud and voter intimidation are difficult to prove and require resources and time that local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies

have more time and resources but have limited jurisdiction. They can only prosecute crimes related to elections involving federal candidates. Those interviewed differed on the effectiveness of the current system of enforcement, including those that allege that prosecutions are not sufficiently aggressive and those that feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “ \_\_\_ ”.

### **Case Law and Statutes**

Consultants reviewed over 40,000 cases that were identified using a series of search terms related to voter fraud and voter intimidation. The majority of these cases came from appeal courts. This is not a surprising situation, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “ \_\_\_ ”.

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voter fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voter fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation

throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voter fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charge and prosecutions of voter fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voter fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding of what is and what is not “voter fraud” and “voter intimidation.” Some think of voter fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. In order to come up with a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

### New Terminology

The phrase “voter fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud, n. 1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voter fraud,” it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing “voter fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voter fraud” does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, “voter fraud” does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly

006788

refuses to register to vote an otherwise legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

To further complicate matters, the phrases “voter fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the civil division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as “voter fraud” and “voter intimidation” that would serve as the basis of a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use legal election processes are well beyond the resources available to EAC. As such, EAC has defined “election crimes,” a phrase that captures all crimes related to the voter registration and voting processes.

#### **What is an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process, eligible persons to be excluded from the election process, ineligible votes to be cast in an election, eligible votes not to be cast or counted, or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Generally speaking, election crimes can be committed by voters, candidates, election officials, or any other members of the public that desire to criminally impact the result of an election. However, crimes that are based upon knowing or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

006789

*Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, regarding the date and time of the election or regarding a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate at one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once at the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

*Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other valuable thing to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his vote in any election, or who requires or demands an examination or inspection by himself or another of an employee's ballot;

DRAFT – DO NOT DISTRIBUTE

- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for registering to vote.

***Acts of Damage or Destruction***

- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments for the purpose of enabling the voter to vote his or her ballot;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as he intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

### **What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All crimes or civil violations related to campaign finance reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes.” Last, actions that do no rise to the level of criminal activity, that is a misdemeanor, relative felony or felony, are not “election crimes.”

### **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can study the existence of election crimes. EAC consultants developed recommendations. In addition, the working group and some of the persons interviewed as a part of this study provided recommendations.

#### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and parties should be interviewed. It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

#### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

#### ***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a 1-800 voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints may provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and monitor field reports from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys’ Offices. By attending the symposium researchers could learn more about the following how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the

National Voter Registration Act, and the Help America Vote Act are described and explained to participants

***Recommendation 8: Conduct Statistical Research***

EAC should measure voter fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have historically been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets. The sample must include a random set of counties where there have and have not been a large number of allegations

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls in on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers can use that risk analysis to rank the types of fraud based on the ease of commission and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether deceased voters or felons actually voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are actually utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

**Accepted Recommendations**

There has never been a comprehensive study that gathered data regarding all claims, charges and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine what volume and type of election crimes are being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning voting crimes are the administrative complaint processes that states were required to establish as a part of complying with HAVA. Those complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints under those procedures with the state's chief election official and those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses can be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. This data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

#### *Analyze Survey Data in Light of State Laws and Procedures*

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

### **CONCLUSION**

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and political pundits. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC through its clearinghouse role will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention and prosecution of election crimes.

006327

Juliet E. Hodgkins/EAC/GOV

11/09/2006 01:24 PM

To Thomas R. Wilkey/EAC/GOV@EAC

cc

bcc

Subject Re: Tova and Job 

fine, can Bert set it up?  
Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV

11/09/2006 12:20 PM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc

Subject Tova and Job

Julie;

I had a call from Tova who had a call from Job on what are plans are for the report.  
I think it would be a good idea for us to have a brief meeting with them early next week so that both understand what we are doing here.  
I told her we had found some interesting things they has assemled...but I think it would be good to "clear the air " with both of them

Thanks

Tom

Thomas R. Wilkey  
Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100  
Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov

006798

Juliet E.  
Thompson-Hodgkins/EAC/G  
OV

08/31/2006 10:35 AM

To Thomas R. Wilkey/EAC/GOV@EAC

cc

bcc

Subject Letter for Weingart



letter regarding release of Eagleton data.doc

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006799

John Weingart  
Associate Director  
Eagleton Institute of Politics  
Rutgers University

New Brunswick, NJ

Dear Mr. Weingart:

Thank you for your recent inquiry of August 16, 2006 regarding the anticipated release of data contained in the Eagleton Institute of Politics and Moritz College of Law studies on provisional voting and voter identification, which were conducted for the U.S. Election Assistance Commission.

While your assertion that election officials could benefit from the data compiled in the course of your research may be true, I would urge Eagleton and Moritz to exercise caution in the release of this information without further work to ensure its accuracy and completeness. Eagleton and Moritz received information from several election officials at the Standards Board and Board of Advisors meetings that information contained in the data set and draft report are inaccurate or incomplete. Furthermore, as you will recall, EAC accepted the report based on your data in "draft" due to our concerns about the data and the analysis of that data. In light of those concerns, EAC has not yet completed its review of the "draft" report and has not made final determinations on the release of any future document based on that data and draft report.

As such, you may release the data gathered by Eagleton or Moritz; however this data may not be released in conjunction with or using EAC's name as endorsing the content, quality or veracity of such data. You may not release the draft report that you provided the EAC under contract as this report has not been finalized and has not been officially released EAC. Release of draft reports prior to final action by EAC will only serve to foster confusion and defeat the purpose of the contract for which Eagleton/Moritz was hired. I trust that this clarifies how Eagleton and Moritz may use the data gathered in the performance of its contract with the EAC. If you have any questions, please feel free to contact me.

Sincerely,

Thomas Wilkey  
Executive Director

006800

**Deliberative Process  
Privilege**

Juliet E.  
Thompson/EAC/GOV  
10/30/2005 11:06 PM

To Thomas R. Wilkey/EAC/GOV@EAC  
cc  
bcc  
Subject Eagleton/Moritz

I just sent my detailed comments to Eagleton. I stopped short of accusing them of making unfounded conclusions, but I am seriously concerned about all of our research projects on the point of presenting facts versus conclusions based upon assumptions. This was an issue with Kim Brace's report and the summary of it. I think that I caught most of them, but this is something that the research staff should be pointing out. I know I am preaching to the choir when I say that our reports (research and otherwise) have to be beyond reproach. I would rather stop short of reaching sensational conclusions to assure that they are supported in fact.

By way of example, in the Kim Brace draft there was a statement about states having VR databases having superior voter registration management. I am not sure that those two logically derive from one another without additional information and assumptions. The same sort of statements are rampant in the state by state summaries that Eagleton/Moritz provided. We should not accept these as summaries if they don't clean up the unsupported conclusions and unstated assumptions that pervade those documents.

Just so you'll know I am not just griping tonight -- how was your trip home? Hope all was well and that you have arrived/will arrive safely back in DC. You missed a georgeous weekend here. Hope it was equally nice in NY. I was more or less a slug up until today, but it helped. I can now sit in a chair for more than 30 minutes at a time without a shooting pain in my stomach.

See you tomorrow.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006801

Juliet E.  
Thompson/EAC/GOV  
11/01/2005 01:44 PM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Bad news

Get with peggy. I also need the same info

---

Sent from my BlackBerry Wireless Handheld  
Gavin S. Gilmour

**From:** Gavin S. Gilmour  
**Sent:** 11/01/2005 12:43 PM  
**To:** Juliet Thompson  
**Subject:** Re: Bad news

Julie

How do you want me to participate in your Job Tova conversation? i.e. is there a number I can call.

GG

Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
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(202) 566-3100

006802

Juliet E. Hodgkins/EAC/GOV  
11/29/2006 05:35 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Interview Summaries



Appendix 3 - Interview Summaries - consultants.doc

Juliet Thompson Hodgkins  
General Counsel  
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Washington, DC 20005  
(202) 566-3100

006803

EAC SUMMARY OF EXPERT INTERVIEWS FOR  
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

**Interview with Commissioner Harry Van Sickle and Deputy Chief Counsel to the Secretary of State Larry Boyle, State of Pennsylvania**

March 1, 2006

As Commissioner Van Sickle has only been in office for about a year, Mr. Boyle answered most of our questions.

Fraud and Intimidation

Neither Van Sickle nor Boyle was aware of any fraud of any kind in the state of Pennsylvania over the last five years. They are not aware of the commission of any deceptive practices, such as flyers that intentionally misinform as to voting procedures. They also have never heard of any incidents of voter intimidation. With respect to the mayoral election of 2003, the local commission would know about that.

Since the Berks County case of 2003, where the Department of Justice found poll workers who treated Latino voters with hostility among other voting rights violations, the Secretary's office has brought together Eastern Pennsylvania election administrators and voting advocates to discuss the problems. As a result, other counties have voluntarily chosen to follow the guidance of the Berks County federal court order.

Regarding the allegations of fraud that surrounded the voter identification debate, Mr. Boyle said was not aware of any instances of fraud involving identity. He believes this is because Pennsylvania has laws in place to prevent this. For example, in 2002 the state legislature passed an ID law that is stricter than HAVA's – it requires all first time voters to present identification. In addition, the SURE System – the state's statewide voter registration database – is a great anti-fraud mechanism. The system will be in place statewide in the May 2006 election.

In addition, the state took many steps before the 2004 election to make sure it would be smooth. They had attorneys in the counties to consult on problems as well as staff at the central office to take calls regarding problems. In addition, in 2004 the state used provisional ballots for the first time. This resolved many of the problems that used to occur on Election Day.

Mr. Boyle is not aware of any voter registration fraud. This is because when someone registers to vote, the administrator does a duplicate check. In addition, under new laws a person registering to vote must provide their drivers license or Social Security number which are verified through the Department of Motor Vehicles and the Social Security Administration. Therefore, it would be unlikely that someone would be able to register to vote falsely.

Process

Most problems are dealt with at the local level and do not come within the review of the Secretary of State's office. For instance, if there is a complaint of intimidation, this is generally dealt with by the county courts which are specially designated solely to election cases on

006804

EAC SUMMARY OF EXPERT INTERVIEWS FOR  
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

Election Day. The Secretary does not keep track of these cases. Since the passage of NVRA and HAVA counties will increasingly call the office when problems arise.

Recommendations

Mr. Boyle suggested we review the recommendations of the Pennsylvania Election Reform Task Force which is on the Secretary's website. Many of those recommendations have been introduced in the legislature.

**Interview with Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice**

January 13, 2006

Questions

*How are Prosecution Decisions Made?*

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an AUSA. Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario -- a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings easily because such defendants are likely to provide information about others involved.

The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between

*Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?*

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

EAC SUMMARY OF EXPERT INTERVIEWS FOR  
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

*Does it Matter if the Complaint Comes from a Member of a Racial Minority?*

No. But if the question involves racial animus, that has also always been an aggravating factor, making it more likely the Department will take it over

*What Kinds of Complaints Would Routinely Override Principles of Federalism?*

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office.

*Are There Too Few Prosecutions?*

DOJ can't prosecute everything.

*What Should Be Done to Improve the System?*

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to “fix” *McNally*, did not include voter fraud.

As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

*Other Information*

The Department has held four symposia for DEOs and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public. (Peg will be sending us the complete training materials used at those sessions. These are confidential and are the subject of FOIA litigation).

There are two types of attorneys in the division: prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the

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US Attorney is unable to handle the case (most frequent reason) and braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

Cases:

Donsanto provided us with three case lists: Open cases (still being investigated) as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006 and cases closed for lack of evidence as of January 13, 2006

If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.*

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought when there was a pattern or scheme to corrupt the process. Charges were not brought against individuals – those cases went unprosecuted. This change in direction, focus, and level of aggression was by the decision of the Attorney General. The reason for the change was for deterrence purposes.

The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

Felon voters in Milwaukee.

Alien voters in the Southern District of Florida. FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.

Double voters in a variety of jurisdictions.

The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

*According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot*

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**Interview with Douglas Webber, Assistant Attorney General, Indiana**

February 15, 2006

**Background**

Mr. Webber was an attorney for the Marion County Election Board and was also part of the Indianapolis Ballot Security Team (sometimes called the Goon Squad). This Team was a group of attorneys well trained in election law whose mission was to enforce ballot security.

**Litigation**

Status of litigation in Indiana: On January 12 the briefing was completed. The parties are waiting for a decision from the U.S. district judge. The judge understood that one of the parties would seek a stay from the 7<sup>th</sup> Circuit Court of Appeals. The parties anticipate a decision in late March or early April. Mr. Webber did the discovery and depositions for the litigation. Mr. Webber feared the plaintiffs were going to state in their reply brief that HAVA's statewide database requirement would resolve the problems alleged by the state. However, the plaintiffs failed to do so, relying on a Motor Voter Act argument instead. Mr. Webber believes that the voter ID at issue will make the system much more user-friendly for the poll workers. The Legislature passed the ID legislation, and the state is defending it, on the basis of the problem of the *perception* of fraud.

**Incidents of fraud and intimidation**

Mr. Webber thinks that no one can put his or her thumb on whether there has been voter fraud in Indiana. For instance, if someone votes in place of another, no one knows about it. There have been no prosecuted cases of polling place fraud in Indiana. There is no recorded history of documented cases, but it does happen. In the litigation, he used articles from around the country about instances of voter fraud, but even in those examples there were ultimately no prosecutions, for example the case of Milwaukee. He also stated in the litigation that there are all kinds of examples of dead people voting---totaling in the hundreds of thousands of votes across the country.

One interesting example of actual fraud in Indiana occurred when a poll worker, in a poll using punch cards, glued the chads back and then punched out other chads for his candidate. But this would not be something that would be addressed by an ID requirement.

He also believes that the perception that the polls are loose can be addressed by the legislature. The legislature does not need to wait to see if the statewide database solve the problems and therefore affect the determination of whether an ID requirement is necessary. When he took the deposition of the Republican Co-Director, he said he thought Indiana was getting ahead of the curve. That is, there have been problems around the country, and confidence in elections is low. Therefore Indiana is now in front of getting that confidence back.

Mr. Webber stated that the largest vote problem in Indiana is absentee ballots. Absentee ballot fraud and vote buying are the most documented cases. It used to be the law that applications for absentee ballots could be sent anywhere. In one case absentee votes were exchanged for "a job on election day"---meaning one vote for a certain price. The election was contested and the trial

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judge found that although there was vote fraud, the incidents of such were less than the margin of victory and so he refused to overturn the election. Mr. Webber appealed the case for the state and argued the judge used the wrong statute. The Indiana Supreme Court agreed and reversed. Several people were prosecuted as a result – those cases are still pending.

Process

In Indiana, voter complaints first come to the attorney for the county election board who can recommend that a hearing be held. If criminal activity was found, the case could be referred to the county prosecutor or in certain instances to the Indiana Attorney General's Office. In practice, the Attorney General almost never handles such cases.

Mr. Webber has had experience training county of election boards in preserving the integrity and security of the polling place from political or party officials. Mr. Webber stated that the Indiana voter rolls need to be culled. He also stated that in Southern Indiana a large problem was vote buying while in Northern Indiana a large problem was based on government workers feeling compelled to vote for the party that gave them their jobs.

Recommendations

- Mr. Webber believes that all election fraud and intimidation complaints should be referred to the Attorney General's Office to circumvent the problem of local political prosecutions. The Attorney General should take more responsibility for complaints of fraud because at the local level, politics interferes. At the local level, everyone knows each other, making it harder prosecute.
- Indiana currently votes 6 am to 6 pm on a weekday. Government workers and retirees are the only people who are available to work the polls. Mr. Webber suggested that the biggest change should be to move elections to weekends. This would involve more people acting as poll workers who would be much more careful about what was going on.
- Early voting at the clerk's office is good because the people there know what they are doing. People would be unlikely to commit fraud at the clerk's office. This should be expanded to other polling places in addition to that of the county clerk.
- Finally, Mr. Webber believes polling places should be open longer, run more professionally but that there needs to be fewer of them so that they are staffed by only the best, most professional people.

**Interview Sharon Priest, former Secretary of State, Arkansas  
January 24, 2006**

Process:

When there is an allegation of election fraud or intimidation, the county clerk refers it to the local district attorney. Most often, the DA does not pursue the claim. There is little that state administrators can do about this because in Arkansas, county clerks are partisanly elected and completely autonomous. Indeed, county clerks have total authority to determine who is an eligible voter.

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Data:

There is very little data collected in Arkansas on fraud and intimidation cases. Any information there might be stays at the county level. This again is largely because the clerks have so much control and authority, and will not release information. Any statewide data that does exist might be gotten from Susie Storms from the State Board of Elections.

Most Common Problems

The perception of fraud is much greater than the actual incidence of fraud.

- The DMV does not implement NVRA in that it does not take the necessary steps when providing the voter registration forms and does not process them properly. This leads to both ineligible voters potentially getting on the voting rolls (e.g. noncitizens, who have come to get a drivers license, fill out a voter registration form having no intention of actually voting) and voter thinking they are registered to vote to find they are not on the list on Election Day. Also, some people think they are automatically registered if they have applied for a drivers license.
- Absentee ballot fraud is the most frequent form of election fraud.
- In Arkansas, it is suspected that politicians pay ministers to tell their congregations to vote for them
- In 2003, the State Board documented 400 complaints against the Pulaski County Clerk for engaging in what was at least borderline fraud, e.g. certain people not receiving their absentee ballots. The case went to a grand jury but no indictment was brought.
- Transportation of ballot boxes is often insecure making it very easy for insiders to tamper with the ballots or stuff the ballot boxes. Priest has not actually witnessed this happen, but believes it may have.
- Intimidation at the poll sites in court houses. Many voters are afraid of the county judges or county employees and therefore will not vote. They justifiably believe their ballots will be opened by these employees to see who they voted for, and if they voted against the county people, retribution might ensue.
- Undue challenges to minority language voters at the poll sites
- Paid registration collectors fill out phony names, but these individuals are caught before anyone is able to cast an ineligible ballot.

Suggested Reforms for Improvement:

- Nonpartisan election administration
- Increased prosecution of election crimes through greater resources to district attorneys. In addition, during election time, there should be an attorney in the DA's office who is designated to handle election prosecution.
- There should be greater centralization of the process, especially with respect to the statewide database. Arkansas has a "bottom up" system. This means the counties still control the list and there is insufficient information sharing. For example, if someone

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lives in one county but dies in another, the county in which the voter lived – and was registered to vote – will not be notified of the death.

**Interview with Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians**

March 22, 2006

Background

Thompson is a member of the Cheyenne River Sioux tribe in South Dakota. For many years she worked locally on elections doing poll monitoring and legal work, from a nonpartisan perspective. In 2004, she headed the Native Vote Election Protection, a project run by the National Congress of American Indians, and was in charge of monitoring all Native American voting sites around the country, focusing on 10 or 15 states with the biggest Native populations. She is now permanently on staff of the National Congress of American Indians as the Director of Government relations. NCAI works jointly with NARF as well as the Election Protection Coalition.

Recent trends

Native election protection operations have intensified recently for several reasons. While election protection efforts in Native areas have been ongoing, leaders realized that they were failing to develop internal infrastructure or cultivate locally any of the knowledge and expertise which would arrive and leave with external protection groups.

Moreover, in recent years partisan groups have become more aware of the power of the native vote, and have become more active in native communities. This has partly resulted in an extreme increase in voter intimidation tactics. As native communities are easy to identify, easy to target, and generally dominated by a single party, they are especially vulnerable to such tactics.

Initially, reports of intimidation were only passed along by word of mouth. But it became such a problem in the past 5 to 6 years that tribal leaders decided to raise the issue to the national level. Thompson points to the Cantwell election in 2000 and the Johnson election in South Dakota in 2002 as tipping points where many began to realize the Indian vote could matter in Senate and national elections.

Thompson stressed that Native Vote places a great deal of importance on being nonpartisan. While a majority of native communities vote Democratic, there are notable exceptions, including communities in Oklahoma and Alaska, and they have both parties engaging in aggressive tactics. However, she believes the most recent increase in suppression and intimidation tactics have come from Republican Party organizations.

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Nature of Suppression/Intimidation of Native Voters

Thompson categorizes suppression into judge related and poll-watcher related incidents, both of which may be purposeful or inadvertent, as well as longstanding legal-structural constraints.

Structural problems

One example of inadvertent suppression built into the system stems from the fact that many Indian communities also include significant numbers of non-Indians due to allotment. Non-Indians tend to be most active in the state and local government while Indians tend to be more involved in the tribal government. Thus, the individuals running elections end up being non-Indian. Having Indians vote at polling places staffed by non-Indians often results in incidents of disrespect towards Native voters (Thompson emphasized the considerable racism which persists against Indians in these areas). Also, judges aren't familiar with Indian last names and are more dismissive of solving discrepancies with native voters.

Structural problems also arise from laws which mandate that the tribal government cannot run state or local elections. In places like South Dakota, political leaders used to make it intentionally difficult for Native Americans to participate in elections. For example, state, local and federal elections could not be held in the same location as tribal elections, leading to confusion when tribal and other elections are held in different locations. Also, it is common to have native communities with few suitable sites, meaning that a state election held in a secondary location can suddenly impose transportation obstacles.

Photo ID Issues

Thompson believes both state level and HAVA photo ID requirements have a considerable negative impact. For a number of reasons, many Indian voters don't have photo ID. Poor health care and poverty on reservations means that many children are born at home, leading to a lack of birth certificates necessary to obtain ID. Also, election workers and others may assume they are Hispanic, causing additional skepticism due to citizenship questions. There is a cultural issue as well—historically, whenever Indians register with the federal government it has been associated with a taking of land or removal of children. Thus many Indians avoid registering for anything with the government, even for tribal ID.

Thompson also offered examples of how the impact of ID requirements had been worsened by certain rules and the discriminatory way they have been carried out. In the South Dakota special election of 2003, poll workers told Native American voters that if they did not have ID with them and they lived within sixty miles of the precinct, the voter had to come back with ID. The poll workers did not tell the voters that they could vote by affidavit ballot and not need to return, as required by law. This was exacerbated by the fact that the poll workers didn't know the voters—as would be the case with non-Indian poll workers and Indian voters. Many left the poll site without voting and did not return.

In Minnesota, the state tried to prohibit the use of tribal ID's for voting outside of a reservation, even though Minnesota has a large urban Native population. Thompson believes this move was

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very purposeful, and despite any reasonable arguments from the Secretary of State, they had to file a lawsuit to stop the rule. They were very surprised to find national party representatives in the courtroom when they went to deal with lawsuit, representatives who could only have been alerted through a discussion with the Secretary of State.

Partisan Poll-Monitoring

Thompson believes the most purposeful suppression has been perpetrated by the party structures on an individual basis, of which South Dakota is a great example.

Some negative instances of poll monitoring are not purposeful. Both parties send in non-Indian, non-Western lawyers, largely from the East Coast, which can lead to uncomfortable cultural clashes. These efforts display a keen lack of understanding of these communities and the best way to negotiate within in them. But while it may be intimidating, it is not purposeful.

Yet there are also many instances of purposeful abuse of poll monitoring. While there were indeed problems during the 2002 Johnson election, it was small compared to the Janklow special election. Thompson says Republican workers shunned cultural understanding outreach, and had an extensive pamphlet of what to say at polls and were very aggressive about it. In one tactic, every time a voter would come up with no ID, poll monitors would repeat "You can't vote" over and over again, causing many voters to leave. This same tactic appeared across reservations, and eventually they looked to the Secretary of State to intervene.

In another example, the head of poll watchers drove from poll to poll and told voters without IDs to go home, to the point where the chief of police was going to evict him from the reservation. In Minnesota, on the Red Lake reservation, police actually did evict an aggressive poll watcher—the fact that the same strategies are employed several hundred miles apart points to standardized instructions.

None of these incidents ever went to court. Thompson argues this is due to few avenues for legal recourse. In addition, it is inherently difficult to settle these things, as they are he said-she said incidents and take place amidst the confusion of Election Day. Furthermore, poll watchers know what the outline of the law is, and they are careful to work within those parameters, leaving little room for legal action.

Other seeming instances of intimidation may be purely inadvertent, such as when, in 2002, the U.S. Attorney chose Election Day to give out subpoenas, and native voters stayed in their homes. In all fairness, she believes this was a misunderstanding.

The effect of intimidation on small communities is especially strong and is impossible to ultimately measure, as the ripple effect of rumors in insular communities can't be traced. In some communities, they try to combat this by using the Native radio to encourage people to vote and dispel myths.

She has suggestions for people who can describe incidents at a greater level of detail if interested.

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Vote Buying and Fraud

They haven't found a great deal of evidence on vote-buying and fraud. When cash is offered to register voters, individuals may abuse this, although Thompson believes this is not necessarily unique to the Native community, but a reflection of high rates of poverty. This doesn't amount to a concerted effort at conspiracy, but instead represents isolated incidents of people not observing the rules. While Thompson believes looking into such incidents is a completely fair inquiry, she also believes it has been exploited for political purposes and to intimidate. For example, large law enforcement contingents were sent to investigate these incidents. As Native voters tend not to draw distinctions between law enforcement and other officials, this made them unlikely to help with elections.

Remedies

As far as voter suppression is concerned, Native Vote has been asking the Department of Justice to look into what might be done, and to place more emphasis on law enforcement and combating intimidation. They have been urging the Department to focus on this at least much as it is focusing on enforcement of Section 203. Native groups have complained to DOJ repeatedly and DOJ has the entire log of handwritten incident reports they have collected. Therefore, Thompson recommends more DOJ enforcement of voting rights laws with respect to intimidation. People who would seek to abuse the process need to believe a penalty will be paid for doing so. Right now, there is no recourse and DOJ does not care, so both parties do it because they can.

Certain states should rescind bars on nonpartisan poll watchers on Election Day; Thompson believes this is contrary to the nonpartisan, pro-Indian presence which would best facilitate voting in Native communities.

As discussed above, Thompson believes ID requirements are a huge impediment to native voters. At a minimum, Thompson believes all states should be explicit about accepting tribal ID on Election Day.

Liberalized absentee ballot rules would also be helpful to Native communities. As many Indian voters are disabled and elderly, live far away from their precinct, and don't have transportation, tribes encourage members to vote by absentee ballot. Yet obstacles remain. Some voters are denied a chance to vote if they have requested a ballot and then show up at the polls. Thompson believes South Dakota's practice of tossing absentee ballots if a voter shows up at the ED would serve as an effective built-in protection. In addition, she believes there should be greater scrutiny of GOTV groups requesting absentee ballots without permission. Precinct location is a longstanding issue, but Thompson recognizes that states have limited resources. In the absence of those resources, better absentee ballot procedures are needed.

Basic voter registration issues and access are also important in native communities and need to be addressed.

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Thompson is mixed on what restrictions should be placed on poll watcher behavior, as she believes open elections and third party helpers are both important. However, she would be willing to explore some sort of stronger recourse and set of rules concerning poll watchers' behavior. Currently, the parties are aware that no recourse exists, and try to get away with what they will. This is not unique to a single party—both try to stay within law while shaking people up. The existing VRA provision is 'fluffy'—unless you have a consent decree, you have very little power. Thompson thinks a general voter intimidation law that is left a bit broad but that nonetheless makes people aware of some sort of kickback could be helpful.

**Interview with Jason Torchinsky, former attorney with the Civil Rights Section of the Department of Justice, assistant general counsel for the American Center for Voting Rights (ACVR) and Robin DeJarnette, political consultant for C4 and C5 organizations and executive director for the ACVR.**

February 16, 2006

ACVR Generally

Other officers of the ACVR-Thor Hearne II-general counsel and Brian Lunde, former executive director of the Democratic National Committee.

Board of Directors of ACVR-Brian Lunde, Thor Hearne II, and Cameron Quinn

ACVR works with a network of attorneys around the country and has been recently involved with lobbying in PA and MO.

Regarding the August 2005 Report

ACVR has not followed up on any of the cases it cited in the 2005 report to see if the allegations had been resolved in some manner. Mr. Torchinsky stated that there are problems with allegations of fraud in the report and prosecution---just because there was no prosecution, does not mean there was no vote fraud. He believes that it is very hard to come up with a measure of voter fraud short of prosecution. Mr. Torchinsky does not have a good answer to resolve this problem.

P. 35 of the Report indicates that there were coordinated efforts by groups to coordinate fraudulent voter registrations. P. 12 of the Ohio Report references a RICO suit filed against organizations regarding fraudulent voter registrations. Mr. Torchinsky does not know what happened in that case. He stated that there was a drive to increase voter registration numbers regardless of whether there was an actual person to register. He stated that when you have an organization like ACORN involved all over the place, there is reason to believe it is national in scope. When it is the same groups in multiple states, this leads to the belief that it is a concerted effort.

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Voting Problems

Mr. Torchinsky stated there were incidents of double voting---ex. a double voter in Kansas City, MO. If the statewide voter registration database requirement of HAVA is properly implemented, he believes it will stop multiple voting in the same state. He supports the HAVA requirement, if implemented correctly. Since Washington State implemented its statewide database, the Secretary of State has initiated investigations into felons who voted. In Philadelphia the major problem is permitting polling places in private homes and bars – even the homes of party chairs.

Mr. Torchinsky believes that voter ID would help, especially in cities in places like Ohio and Philadelphia, PA. The ACVR legislative fund supports the Real ID requirements suggested by the Carter-Baker Commission. Since federal real ID requirements will be in place in 2010, any objection to a voter ID requirement should be moot.

Mr. Torchinsky stated that there are two major poll and absentee voting problems---(1) fraudulent votes-ex. dead people voting in St. Louis and (2) people voting who are not legally eligible-ex. felons in most places. He also believes that problems could arise in places that still transport paper ballots from the voting location to a counting room. However, he does not believe this is as widespread a problem now as it once was.

Suggestions

Implement the Carter-Baker Commission recommendations because they represent a reasonable compromise between the political parties.

**Interview with Joe Rich, former Chief of the Voting Section,  
US Department of Justice  
February 7, 2006**

Background

Mr. Rich went to Yale undergraduate and received his law degree from the University of Michigan. He served as Chief of the Voting Section from 1999-2005. Prior to that he served in other leadership roles in the Civil Rights Division and litigated several civil rights cases.

Data Collection and Monitoring

The section developed a new database before the 2004 election to log complaint calls and what was done to follow up on them. They opened many investigations as a result of these complaints, including one on the long lines in Ohio (see DOJ letter on website, as well as critical commentary on the DOJ letter's analysis). DOJ found no Section 2 violation in Ohio. John Tanner should be able to give us this data. However, the database does not include complaints that were received by monitors and observers in the field.

All attorney observers in the field are required to submit reports after Election Day to the Department. These reports would give us a very good sense of the scope and type of problems that arose on that day and whether they were resolved on the spot or required further action.

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The monitoring in 2004 was the biggest operation ever. Prior to 2000, only certain jurisdictions could be observed – a VRA covered jurisdiction that was certified or a jurisdiction that had been certified by a court, e.g. through a consent decree. Since that time, and especially in 2004, the Department has engaged in more informal “monitoring.” In those cases, monitors assigned to certain jurisdictions, as opposed to observers, can only watch in the polling place with permission from the jurisdiction. The Department picked locations based on whether they had been monitored in the past, there had been problems before, or there had been allegations in the past. Many problems that arose were resolved by monitors on the spot.

Processes for Cases not Resolved at the Polling Site

If the monitor or observer believes that a criminal act has taken place, he refers it to the Public Integrity Section (PIN). If it is an instance of racial intimidation, it is referred to the Civil Rights Criminal Division. However, very few such cases are prosecuted because they are very hard to prove. The statutes covering such crimes require actual violence or the threat of violence in order to make a case. As a result, most matters are referred to PIN because they operate under statutes that make these cases easier to prove. In general, there are not a high number of prosecutions for intimidation and suppression.

If the act is not criminal, it may be brought as a civil matter, but only if it violated the Voting Rights Act – in other words, only if there is a racial aspect to the case. Otherwise the only recourse is to refer it to PIN.

However, PIN tends not to focus on intimidation and suppression cases, but rather cases such as alleged noncitizen voting, etc. Public Integrity used to only go after systematic efforts to corrupt the system. Now they focus on scattered individuals, which is a questionable resource choice. Criminal prosecutors over the past 5 years have been given more resources and more leeway because of a shift in focus and policy toward noncitizens and double voting, etc.

There have been very few cases brought involving African American voters. There have been 7 Section 2 cases brought since 2001 – only one was brought on behalf of African American voters. That case was initiated under the Clinton administration. The others have included Latinos and discrimination against whites.

Types of Fraud and Intimidation Occurring

There is no evidence that polling place fraud is a problem. There is also no evidence that the NVRA has increased the opportunity for fraud. Moreover, regardless of NVRA’s provisions, an election official can always look into a voter’s registration if he or she believes that person should no longer be on the list. The Department is now suing Missouri because of its poor registration list.

The biggest problem is with absentee ballots. The photo ID movement is a vote suppression strategy. This type of suppression is a bigger problem than intimidation. There has been an increase in vote suppression over the last five years, but it has been indirect, often in the way that

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laws are interpreted and implemented. Unequal implementation of ID requirements at the polls based on race would be a VRA violation.

The most common type of intimidation occurring is open hostility by poll workers toward minorities. It is a judgment call whether this is a crime or not – Craig Donsanto of PIN decides if it rises to a criminal matter.

Election Day challenges at the polls could be a VRA violation but such a case has never been formally pursued. Such cases are often resolved on the spot. Development of a pre-election challenge list targeted at minorities would be a VRA violation but this also has never been pursued. These are choices of current enforcement policy.

Long lines due to unequal distribution of voting machines based on race, list purges based on race and refusal to offer a provisional ballot on the basis of race would also be VRA violations.

#### Recommendations

Congress should pass a new law that allows the Department to bring civil actions for suppression that is NOT race based, for example, deceptive practices or wholesale challenges to voters in jurisdictions that tend to vote heavily for one party.

Given the additional resources and latitude given to the enforcement of acts such as double voting and noncitizen voting, there should be an equal commitment to enforcement of acts of intimidation and suppression cases.

There should also be increased resources dedicated to expanded monitoring efforts. This might be the best use of resources since monitors and observers act as a deterrent to fraud and intimidation.

#### **Interview with Joe Sandler, Counsel to the DNC**

February 24, 2006

#### Background

Sandler is an election attorney. He worked for the DNC in 1986, was in-house counsel from 1993-1998, and currently is outside counsel to the DNC and most state Democratic Parties. Sandler was part of the recount team in Florida in both 2002 and 2004. He recruited and trained attorneys in voting issues---starting in 2002 Sandler recruited in excess of 15, 000 attorneys in twenty-two states. He is now putting together a national lawyers council in each state.

#### 2004-Administrative Incompetence v. Fraud

Sandler believes the 2004 election was a combination of administrative incompetence and fraud. Sandler stated there was a deliberate effort by the Republicans to disenfranchise voters across the

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country. This was accomplished by mailing out cards to registered voters and then moving to purge from the voters list those whose cards were returned. Sandler indicated that in New Mexico there was a deliberate attempt by Republicans to purge people registered by third parties. He stated that there were intentional efforts to disenfranchise voters by election officials like Ken Blackwell in Ohio.

The problems with machine distribution in 2004 were not deliberate. However, Sandler believes that a large problem exists in the states because there are no laws that spell out a formula to allocate so many voting machines per voter.

Sandler was asked how often names were intentionally purged from the voter lists. He responded that there will be a lot of names purged as a result of the creation of the voter lists under HAVA. However, Sandler stated most wrongful purging results from incompetence. Sandler also said there was not much intimidation at the polls because most such efforts are deterred and that the last systematic effort was in Philadelphia in 2003 where Republicans had official looking cars and people with badges and uniforms, etc.

Sandler stated that deliberate dissemination of misinformation was more incidental, with individuals misinforming and not a political party. Disinformation did occur in small Spanish speaking communities.

Republicans point to instances of voter registration fraud but Sandler believes it did not occur, except for once in a blue moon. Sandler did not believe non-citizen voting was a problem. He also does not believe that there is voter impersonation at the polls and that Republicans allege this as a way of disenfranchising voters through restrictive voter identification rules.

#### Fraud and Intimidation Trends

Sandler stated that over the years there has been a shift from organized efforts to intimidate minority voters through voter identification requirements, improper purging, failure to properly register voters, not allocating enough voting machines, failure to properly use the provisional ballot, etc., by voter officials as well as systematic efforts by Republicans to deregister voters.

At the federal level, Sandler said, the voting division has become so politicized that it is basically useless now on intimidation claims. At the local level, Sandler does not believe politics prevents or hinders prosecution for vote fraud.

#### Sandler's Recommendations

Moving the voter lists to the state level is a good idea where carefully done

Provisional ballots rules should follow the law and not be over-used

No voter ID

Partisanship should be taken out of election administration, perhaps by giving that responsibility by someone other than the Secretary of State. There should at least be conflict of interest rules

Enact laws that allow private citizens to bring suit under state law

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All suggestions from the DNC Ohio Report:

1. The Democratic Party must continue its efforts to monitor election law reform in all fifty states, the District of Columbia and territories.
2. States should be encouraged to codify into law all required election practices, including requirements for the adequate training of official poll workers.
3. States should adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts, to ensure adequate and nondiscriminatory access. These standards should be based on set ratios of numbers of machines and pollworkers per number of voters expected to turn out, and should be made available for public comment before being adopting.
4. States should adopt legislation to make clear and uniform the rules on voter registration.
5. The Democratic Party should monitor the processing of voter registrations by local election authorities on an ongoing basis to ensure the timely processing of registrations and changes, including both newly registered voters and voters who move within a jurisdiction or the state, and the Party should ask state Attorneys General to take action where necessary to force the timely updating of voter lists.
6. States should be urged to implement statewide voter lists in accordance with the Help America Vote Act ("HAVA"), the election reform law enacted by Congress in 2002 following the Florida debacle.
7. State and local jurisdictions should adopt clear and uniform rules on the use of, and the counting of, provisional ballots, and distribute them for public comment well in advance of each election day.
8. The Democratic Party should monitor the purging and updating of registered voter lists by local officials, and the Party should challenge, and ask state Attorneys General to challenge, unlawful purges and other improper list maintenance practices.
9. States should not adopt requirements that voters show identification at the polls, beyond those already required by federal law (requiring that identification be shown only by first time voters who did not show identification when registering.)
10. State Attorneys General and local authorities should vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.
11. Jurisdictions should be encouraged to use precinct-tabulated optical scan systems with a computer assisted device at each precinct, in preference to touchscreen ("direct recording equipment" or "DRE") machines.
12. Touchscreen (DRE) machines should not be used until a reliable voter verifiable audit feature can be uniformly incorporated into these systems. In the event of a recount, the paper or other auditable record should be considered the official record.
13. Remaining punchcard systems should be discontinued.
14. States should ask state Attorneys General to challenge unfair or discriminatory distribution of equipment and resources where necessary, and the Democratic Party should bring litigation as necessary.
15. Voting equipment vendors should be required to disclose their source code so that it can be examined by third parties. No voting machine should have wireless connections or be able to connect to the Internet.
16. Any equipment used by voters to vote or by officials to tabulate the votes should be used

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exclusively for that purpose. That is particularly important for tabulating/aggregating computers.

17. States should adopt "no excuse required" standards for absentee voting.
18. States should make it easier for college students to vote in the jurisdiction in which their school is located.
19. States should develop procedures to ensure that voting is facilitated, without compromising security or privacy, for all eligible voters living overseas.
20. States should make voter suppression a criminal offense at the state level, in all states.
21. States should improve the training of pollworkers.
22. States should expend significantly more resources in educating voters on where, when and how to vote.
23. Partisan officials who volunteer to work for a candidate should not oversee or administer any elections.

**Interview with John Ravitz, Executive Director, New York City Board of Elections**  
February 16, 2006

Process

If there is an allegation of fraud or intimidation, the commissioners can rule to act on it. For example, in 2004 there were allegations in Queens that people had registered to vote using the addresses of warehouses and stores. The Board sent out teams of investigators to look into this. The Board then developed a challenge list that was to be used at the polls if any of the suspect voters showed up to vote.

If the allegation rises to a criminal level, the Board will refer it to the county district attorney. If a poll worker or election official is involved, the Board may conduct an internal investigation. That individual would be interviewed, and if there is validity to the claim, the Board would take action.

Incidences of Fraud and Intimidation

Mr. Ravitz says there have been no complaints about voter intimidation since he has been at the Board. There have been instances of over-aggressive poll workers, but nothing threatening. Voter fraud has also generally not been a problem.

In 2004, the problem was monitors from the Department of Justice intimidating voters. They were not properly trained, and were doing things like going into the booth with voters. The Board had to contact their Department supervisors to put a stop to it.

Charges regarding "ballot security teams" have generally just been political posturing.

The problem of people entering false information on voter registration forms is a problem. However, sometimes a name people allege is false actually turns out to be the voter's real name. Moreover, these types of acts do not involve anyone actually casting a fraudulent ballot.

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With respect to the issue of voters being registered in both New York and Florida, the Board now compares its list with that of Florida and other places to address the problem. This will be less of an issue with the use of statewide voter registration databases, as information becomes easier to share. Despite the number of people who were on the voter registration lists of both jurisdictions, there was no one from those lists who voted twice.

Most of the problems at the polls have to do with poll workers not doing what they are supposed to do, not any sort of malfeasance. This indicates that improved training is the most important measure we can take.

There have been instances in which poll workers ask voters for identification when they shouldn't. However, the poll workers seem to do it when they cannot understand the name when the voter tells it to them. The Board has tried to train them that no matter what, the poll worker cannot ask for identification in order to get the person's name.

Absentee ballot fraud has also not been a problem in New York City. This is likely because absentee ballots are counted last – eight days after election day. This is so that they can be checked thoroughly and verified. This is a practice other jurisdictions might consider.

New York City has not had a problem with ex-felons voting or with ex-felons not knowing their voting rights. The City has not had any problems in recent years with deceptive practices, such as flyers providing misinformation about voting procedures.

Recommendations

- Better poll worker training
- Thorough inspection of absentee ballots subsequent to the election

**Interview with John Tanner, Director, Civil Rights Division, U.S. Department of Justice**

February 24, 2006

Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. Mr. Tanner would not give us any information about or data from the section's election complaint in-take phone logs; data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws; and would give us only a selected few samples of attorney-observer reports, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. He would not discuss in any manner any current investigations or cases the section is involved in. He also did not believe it was his position to offer us recommendations as to how his office, elections, or the voting process might be improved.

Authority and Process

The Voting Section, in contrast to the Public Integrity section as Craig Donsanto described it, typically looks only at systemic problems, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In

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situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Federal voting laws only apply to state action, so the section only sues local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, systematic changes forced upon those jurisdictions have made it so now the section does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14<sup>th</sup> and 15<sup>th</sup> Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter of individuals or systemic. When deciding what to do with the complaint, the section errs on the side of referring it criminally because they do not want civil litigation to complicate a possible criminal case.

When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

Voter Intimidation

Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been an investigation into the abusive use of challengers.

Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

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However, Mr. Tanner said the Department was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the voting section to become involved.

Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands of the states will be helpful because at this higher level of government you find a higher level of professionalism.

It is hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. However, the enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared, as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

The section is not filing as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore. Mr. Tanner said that race based problems are rare now.

NVRA has been effective in opening up the registration process. In terms of enforcement, Mr. Tanner said they do what they can when they have credible allegations. There is a big gap between complaints and what can be substantiated. Mr. Tanner stated that given the high quality of the attorneys now in the section, if they do not investigate it or bring action, that act complained of did not happen.

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Recommendations

Mr. Tanner did not feel it was appropriate to make recommendations.

**Interview with Kevin Kennedy, State Elections Director, State of Wisconsin**

April 11, 2006

Background

Kennedy is a nonpartisan, appointed official. He has been in this position since 1983.

Complaints of fraud and intimidation do not usually come to Kennedy's office. Kennedy says that complainants usually take their allegations to the media first because they are trying to make a political point.

2004 Election Incidents of Fraud

The investigations into the 2004 election uncovered some cases of double voting and voting by felons who did not know they were not eligible to vote, but found no concerted effort to commit fraud. There have been a couple of guilty pleas as a result, although not a number in the double digits. The task force and news reports initially referred to 100 cases of double voting and 200 cases of felon voting, but there were not nearly that many prosecutions. Further investigation since the task force investigation uncovered that in some instances there were mis-marks by poll workers, fathers and sons mistaken for the same voter, and even a husband and wife marked as the same voter. The double votes that are believed to have occurred were a mixture of absentee and polling place votes. It is unclear how many of these cases were instances of voting in two different locations.

In discussing the case from 2000 in which a student claimed – falsely – that he had voted several times, Kennedy said that double voting can be done. The deterrent is that it's a felony, and that one person voting twice is not an effective way to influence an election. One would need to get a lot of people involved for it to work.

The task force set up to investigate the 2004 election found a small number of illegal votes but given the 7,000 alleged, it was a relatively small number. There was no pattern of fraud.

The one case Kennedy could recall of an organized effort to commit fraud was in the spring of 2003 or 2004. A community service agency had voters request that absentee ballots be sent to the agency instead of to the voters and some of those ballots were signed without the voters' knowledge. One person was convicted, the leader of the enterprise.

In Milwaukee, the main contention was that there were more ballots than voters. However, it was found that the 7,000 vote disparity was tied to poll worker error. The task force found that there was no concerted effort involved. Kennedy explained that there are many ways a ballot

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can get into a machine without a voter getting a number. These include a poll worker forgetting to give the voter one; someone does Election Day registration and fills out a registration form but does not get a number because the transaction all takes place at one table; and in Milwaukee, 20,000 voters who registered were not put on the list in time and as a short term solution the department sent the original registration forms to the polling places to be used instead of the list to provide proof of registration. This added another element of confusion that might have led to someone not getting a voter number.

The Republican Party used this original list and contracted with a private vendor to do a comparison with the U.S. postal list. They found initially that there were 5,000 bad addresses, and then later said there were 35,000 illegitimate addresses. When the party filed a complaint, the department told them they could force the voters on their list to cast a challenge ballot. On Election Day, the party used the list but found no actually voting from those addresses. Kennedy suspects that the private vendor made significant errors when doing the comparison.

In terms of noncitizen voting, Kennedy said that there is a Russian community in Milwaukee that the Republican Party singles out every year but it doesn't go very far. Kennedy has not seen much in the way of allegations of noncitizen voting.

However, when applying for a drivers license, a noncitizen could register to vote. There is no process for checking citizenship at this point, and the statewide registration database will not address this. Kennedy is not aware of any cases of noncitizen voting as a result, but it might have happened.

Kennedy said that the biggest concern seemed to be suspicions raised when groups of people are brought into the polling site from group homes, usually homes for the disabled. There are allegations that these voters are being told how to vote.

#### Incidents of Voter Intimidation

In 2004, there was a lot of hype about challenges, but in Wisconsin, a challenger must articulate a basis under oath. This acts as a deterrent, but at the same time it creates the potential that someone might challenge everyone and create long lines, keeping people from voting. In 2004, the Republican Party could use its list of suspect addresses as a legitimate basis for challenges, so there is the potential for abuse. It is also hard to train poll workers on that process. In 2004, there were isolated cases of problems with challengers.

In 2002, a flyer was circulated only in Milwaukee claiming that you had vote by noon. This was taken as an intimidation tactic by the Democrats.

#### Reforms

Wisconsin has had difficulty with its database because 1) they have had a hard time getting a good product out of the vendor and 2) until now there was no registration record for one-quarter of the voters. Any jurisdiction with fewer than 5000 voters was not required to have a registration list.

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In any case, once these performance issues are worked out, Kennedy does believe the statewide voter registration database will be very valuable. In particular, it will mean that people who move will not be on more than one list anymore. It should also address the double voting issue by identifying who is doing it, catching people who do it, and identifying where it could occur.

Recommendations

Better trained poll workers

Ensure good security procedures for the tabulation process and more transparency in the vote counting process

Conduct post-election audits

**Interview with Lori Minnite, Barnard College**

February 22, 2006

Background

Ms. Minnite is an assistant professor of political science at Barnard College. She has done substantial research on voter fraud and wrote the report "Securing the Vote." Ms. Minnite also did work related to an election lawsuit. The main question that she was asked to address in the lawsuit was---did election-day registration increase the possibility of fraud?

Securing the Vote

In Securing the Vote, Ms. Minnite found very little evidence of voter fraud because the historical conditions giving rise to fraud have weakened over the past twenty years. She stated that for fraud to take root a conspiracy was needed with a strong local political party and a complicit voter administration system. Since parties have weakened and there has been much improvement in the administration of elections and voting technology, the conditions no longer exist for large scale incidents of polling place fraud.

Ms. Minnite concentrates on fraud committed by voters not fraud committed by voting officials. She has looked at this issue on the national level and also concentrated on analyzing certain specific states. Ms. Minnite stressed that it is important to keep clear who the perpetrators of the fraud are and where the fraud occurs because that effects what the remedy should be. Often, voters are punished for fraud committed by voting officials.

Other Fraud Issues

Ms. Minnite found no evidence that NVRA was leading to more voter fraud. She supports non-partisan election administration. Ms. Minnite has found evidence that there is absentee ballot fraud. She can't establish that there is a certain amount of absentee ballot fraud or that it is the major kind of voter fraud.

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Recommendations

Assure there are accurate voter records and centralize voter databases

Reduce partisanship in electoral administration.

**Interview with Nina Perales, Counsel, Mexican American Legal Defense and Education Fund**

March 7, 2006

Background

Ms. Perales is an attorney with the Mexican American Legal Defense Fund (MALDEF). MALDEF's mission is to foster sound public policies, laws and programs to safeguard the civil rights of the 40 million Latinos living in the United States and to empower the Latino community to fully participate in our society. One of the areas MALDEF works in is electoral issues, predominately centered on the Voting Rights Act. Ms. Perales did not seem to have a sense of the overall electoral issues in her working region (the southwest) effecting Hispanic voters and did not seem to want to offer her individual experiences and work activities as necessarily a perfect reflection of the challenges Hispanic voters face.

Largest Election Problems Since 2000

Santa Anna County, New Mexico-2004-intimidated voters by video taping them.

San Antonio-One African American voter subjected to a racial slur.

San Antonio-Relocated polling places at the last minute without Section 5 pre-clearance.

San Antonio-Closed polls while voters were still in line.

San Antonio-2003-only left open early voting polls in predominantly white districts.

San Antonio-2005-racially contested mayoral run-off election switched from touch screen voting to paper ballots.

Voter Fraud and Intimidation

In Texas, the counties are refusing to open their records with respect to Section 203 compliance (bilingual voting assistance), and those that did respond to MALDEF's request submitted incomplete information. Ms. Perales believes this in itself is a form of voter intimidation.

Ms. Perales said it is hard to say if the obstacles minorities confront in voting are a result of intentional acts or not because the county commission is totally incompetent. There have

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continuously been problems with too few ballots, causing long lines, especially in places that had historically lower turnout. There is no formula in Texas for allocating ballots – each county makes these determinations.

When there is not enough language assistance at the polls, forcing a non-English speaker to rely on a family member to vote, that can suppress voter turnout.

Ms. Perales is not aware of deceptive practices or dirty tricks targeted at the Latino community.

There have been no allegations of illegal noncitizen voting in Texas. Indeed, the sponsor of a bill that would require proof of citizenship to vote could not provide any documentation of noncitizen voting in support of the bill. The bill was defeated in part because of the racist comments of the sponsor. In Arizona, such a measure was passed. Ms. Perales was only aware of one case of noncitizen voting in Arizona, involving a man of limited mental capacity who said he was told he was allowed to register and vote. Ms. Perales believes proof of citizenship requirements discriminate against Latinos.

#### Recommendations

Ms. Perales feels the laws are adequate, but that her organization does not have enough staff to do the monitoring necessary. This could be done by the federal government. However, even though the Department of Justice is focusing on Section 203 cases now, they have not even begun to scratch the surface. Moreover, the choices DOJ has made with respect to where they have brought claims do not seem to be based on any systematic analysis of where the biggest problems are. This may be because the administration is so ideological and partisan.

Ms. Perales does not believe making election administration nonpartisan would have a big impact. In Texas, administrators are appointed in a nonpartisan manner, but they still do not always have a nonpartisan approach. Each administrator tends to promote his or her personal view regardless of party.

#### **Interview with Pat Rogers, private attorney**

March 3, 2006

#### Background

In addition to his legal practice with *Modrall, Sperling, Roehl, Harris & Sisk*, Rogers also does some state-level lobbying for Verizon Wireless, GM, Dumont and other companies. His experience in election law goes back to 1988, where his first elections case was a defense against Bill Richardson, who had sued to get another candidate tossed off a ballot because of petition fraud. Since 1988, he has been involved in election cases at least once every two years.

#### 2004 Litigation

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In a case that ended before the New Mexico Supreme Court, Rogers represented the Green Party and other plaintiffs against the New Mexico Secretary of State for sending a directive telling local boards not to require ID for first time voters registering by mail. He argued that this watered-down ID check conflicted with what seemed fairly clear statutory requirements for first time voters. In 2004 these requirements were especially important due to the large presence of 3<sup>rd</sup> party organizations registering voters such as a 527 funded by Governor Richardson, ACORN, and others.

Plaintiffs were seeking a temporary restraining order requiring Secretary of State to follow the law. Yet the Supreme Court ultimately decided that, whether the directive was right or wrong, it was too late to require ID lest Bush v. Gore issues be raised.

Today, the issue is moot as the state legislature has changed the law, and the Secretary of State will no longer be in office. It seems unlikely they will send any policy directives to county clerks lest they violate due process/public notice.

Major issues in NM w/ regard to vote fraud

Registration fraud seems to be the major issue, and while the legislature has taken some steps, Rogers is skeptical of the effect they will have, considering the history of unequal application of election laws. He also believes there are holes in the 3<sup>rd</sup> party registration requirement deadlines.

Rogers views a national law requiring ID as the best solution to registration problems. Rather than imposing a burden he contends it will enhance public confidence in the simplest way possible.

Registration Fraud in 2004 election

It came to light that ACORN had registered a 13 year old. The father was an APD officer and received the confirmation, but it was sent to the next door address, a vacant house. They traced this to an ACORN employee and it was established that this employee had been registering others under 18.

Two weeks later, in a crack cocaine bust of Cuban nationals, one of those raided said his job was registering voters for ACORN, and the police found signatures in his possession for fictitious persons.

In a suspicious break-in at an entity that advertised itself as nonpartisan, only GOP registrations were stolen.

In another instance, a college student was allegedly fired for registering too many Republicans.

Rogers said he believed these workers were paid by the registration rather than hourly.

There have been no prosecution or convictions related to these incidents. In fact, there have been no prosecutions for election fraud in New Mexico in recent history. However, Rogers is

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skeptical that much action can be expected considering the positions of Attorney General, Governor, and Secretary of State are all held by Democrats. Nor has there been any interest from the U.S. attorney—Rogers heard that U.S. attorneys were given instruction to hold off until after the election in 2004 because it would seem too political.

As part of the case against the Secretary of State regarding the identification requirement, the parties also sued ACORN. At a hearing, the head of ACORN, and others aligned with the Democratic Party called as witnesses, took the 5<sup>th</sup> on the stand as to their registration practices.

Other incidents

Very recently, there have been reports of vote buying in the town of Espanola. Originally reported by the *Rio Grande Sun*, a resident of a low-income housing project is quoted as saying it has been going on for 10-12 years. The Albuquerque Journal is now reporting this as well. So far the investigation has been extremely limited.

In 1996, there were some prosecutions in Espanola, where a state district judge found registration fraud.

In 1991, the chair of Democratic Party of Bertolino County was convicted on fraud. Yet she was pardoned by Clinton on same day as Marc Rich.

Intimidation/Suppression

Rogers believes the most notable example of intimidation in the 2004 election was the discovery of a DNC Handbook from Colorado advising Democratic operatives to widely report intimidation regardless of confirmation in order to gain media attention.

In-person polling place fraud

There have only been isolated instances of people reporting that someone had voted in their name, and Rogers doesn't believe there is any large scale conspiracy. Yet he contends that perspective misses the larger point of voter confidence. Although there has been a large public outcry for voter ID in New Mexico, it has been deflected and avoided by Democrats.

In 2004, there were more Democratic lawyers at the polls than there are lawyers in New Mexico. Rogers believes these lawyers had a positive impact because they deterred people from committing bad acts.

Counting Procedures

The Secretary of State has also taken the position that canvassing of the vote should be done in private. In NM, they have a 'county canvas' where they review and certify, after which all materials—machine tapes, etc.—are centralized with the Secretary of State who does a final canvass for final certification. Conducting this in private is a serious issue, especially considering the margin in the 2000 presidential vote in New Mexico was only 366 votes. They wouldn't be

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changing machine numbers, but paper numbers are vulnerable.

On a related note, NM has adopted state procedures that will ensure their reports are slower and very late, considering the 2000 late discovery of ballots. In a close race, potential for fraud and mischief goes up astronomically in the period between poll closing and reporting. Rogers believes these changes are going to cause national embarrassment in the future.

Rogers attributes other harmful effects to what he terms the Secretary of State's incompetence and inability to discern a nonpartisan application of the law. In the 2004 election, no standards were issued for counting provisional ballots. Furthermore, the Secretary of State spent over \$1 million of HAVA money for 'voter education' in blatant self-promotional ads.

Recommendations

Rogers believes it would be unfeasible to have nonpartisan election administration and favors transparency instead. To make sure people have confidence in the election, there must be transparency in the whole process. Then you don't have the 1960 vote coming down to Illinois, or the Espanola ballot or Dona Anna County (ballots found there in the 2000 election). HAVA funds should also be restricted when you have an incompetent, partisan Secretary of State.

There should be national standards for reporting voting results so there is less opportunity for fraud in a close race. Although he is not generally an advocate of national laws, he does agree there should be more national uniformity into how votes are counted and recorded.

**Interview with Rebecca Vigil-Giron, Secretary of State, New Mexico**

March 24, 2006

Background

Vigil-Giron has been Secretary of State for twelve years and was the President of the National Association of Secretaries of State in 2004. Complaints of election fraud and intimidation are filed with the SOS office. She then decides whether to refer it to the local district attorney or the attorney general. Because the complaints are few and far between, the office does not keep a log of complaints; however, they do have all of the written complaints on file in the office.

Incidents of Fraud and Intimidation

During the 2004 election, there were a couple of complaints of polling place observers telling people outside the polling place who had just voted, and then the people outside were following the voters to their cars and videotaping them. This happened in areas that are mostly second and third generation Latinos. The Secretary sent out the sheriff in one instance of this. The perpetrators moved to a different polling place. This was the only incident of fraud or intimidation Vigil-Giron was aware of in New Mexico.

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There have not been many problems on Native reservations because, unlike in many other states, in New Mexico the polling place is on the reservation and is run by local Native Americans. Vigil-Giron said that it does not make sense to have non-Natives running those polls because it is necessary to have people there who can translate. Because most of the languages are unwritten, the HAVA requirement of accessibility through an audio device will be very helpful in this regard. Vigil-Giron said she was surprised to learn while testifying at the Voting Rights Act commission hearings of the lack of sensitivity to these issues and the common failure to provide assistance in language minority areas.

In 2004 the U.S. Attorney, a Republican, suddenly announced he was launching an investigation into voter fraud without consulting the Secretary of State's office. After all of that, there was maybe one prosecution. Even the allegations involving third party groups and voter registration are often misleading. People doing voter registration drives encourage voters to register if they are unsure if they are already registered, and the voter does not even realize that his or her name will then appear on the voter list twice. The bigger problem is where registrations do not get forwarded to election administrators and the voter does not end up on the voting list on Election Day. This is voter intimidation in itself, Vigil-Giron believes. It is very discouraging for that voter and she wonders whether he or she will try again.

Under the bill passed in 2004, third parties are required to turn around voter registration forms very quickly between the time they get them and when they must be returned. If they fail to return them within 48 hours of getting them, they are penalized. This, Vigil-Giron believes, is unfair. She has tried to get the Legislature to look at this issue again. Regarding allegations of vote buying in Espanola, Vigil-Giron said that the Attorney General is investigating. The problem in that area of New Mexico is that they are still using rural routes, so they have not been able to properly district. There has, as a result, been manipulation of where people vote. Now they seem to have pushed the envelope too far on this. The investigation is not just about vote buying, however. There have also been allegations of voters being denied translators as well as assistance at the polls.

Vigil-Giron believes there was voter suppression in Ohio in 2004. County officials knew thirty days out how many people had registered to vote, they knew how many voters there would be. Administrators are supposed to use a formula for allocation of voting machines based on registered voters. Administrators in Ohio ignored this. As a result, people were turned away at the polls or left because of the huge lines. This, she believes, was a case of intentional vote suppression.

A few years ago, Vigil-Giron heard that there may have been people voting in New Mexico and a bordering town in Colorado. She exchanged information with Colorado administrators and it turned out that there were no cases of double voting.

#### Recommendations

Vigil-Giron believes that linking voter registration databases across states may be a way to see if people who are registered twice are in fact voting twice.

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The key to improving the process is better trained poll workers, who are certified, and know what to look for on Election Day. These poll workers should then work with law enforcement to ensure there are no transgressions.

There should be stronger teeth in the voter fraud laws. For example, it should be more than a fourth degree felony, as is currently the case.

**Interview with Sarah Bell Johnson Interview**

April 19, 2006

Procedures for Handling Fraud

Fraud complaints are directed first to the state Board of Elections. Unlike boards in other states, Kentucky's has no investigative powers. Instead, they work closely with both the Attorney General and the U.S. Attorney. Especially since the current administration took office, they have found the U.S. Attorney an excellent partner in pursuing fraud cases, and have seen many prosecutions in the last six years. She believes that there has been no increase in the incidence of fraud, but rather the increase in prosecutions is related to increased scrutiny and more resources.

Major Types of Fraud and Intimidation

Johnson says that vote buying and voter intimidation go hand in hand in Kentucky. While historically fraud activity focused on election day, in the last 20 years it has moved into absentee voting. In part, this is because new voting machines aren't easy to manipulate in the way that paper ballots were open to manipulation in the past, especially in distant rural counties. For this reason, she is troubled by the proliferation of states with early voting, but notes that there is a difference between absentee ballot and early voting on machines, which is far more difficult to manipulate.

Among the cases of absentee ballot fraud they have seen, common practice involves a group of candidates conspiring together to elect their specific slate. Nursing homes are an especially frequent target. Elderly residents request absentee ballots, and then workers show up and 'help' them vote their ballots. Though there have been some cases in the Eastern district of election day fraud, most have been absentee.

Johnson argues that it is hard to distinguish between intimidation and vote buying. They have also seen instances where civic groups and church groups intimidate members to vote in a specific manner, not for reward, but under threat of being ostracized or even telling them they will go to hell.

While she is aware of allegations of intimidation by the parties regarding minority precincts in Louisville, the board hasn't received calls about it and there haven't been any prosecutions.

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### Challengers

Challengers are permitted at the polls in Kentucky. Each party is allowed two per location, and they must file proper paperwork. There is a set list of defined reasons for which they can challenge a voter, such as residency, and the challengers must also fill out paperwork to conduct a challenge.

As for allegations of challengers engaging in intimidation in minority districts, Johnson notes that challengers did indeed register in Jefferson County, and filed the proper paperwork, although they ultimately did not show up on election day.

She finds that relatively few challengers end up being officially registered, and that the practice has grown less common in recent years. This is due more to a change of fashion than anything. And after all, those wishing to affect election outcomes have little need for challengers in the precinct when they can target absentee voting instead.

In the event that intimidation is taking place, Kentucky has provisions to remove disruptive challengers, but this hasn't been used to her knowledge.

### Prosecutions

Election fraud prosecutions in Kentucky have only involved vote buying. This may be because that it is easier to investigate, by virtue of a cash and paper trail which investigators can follow. It is difficult to quantify any average numbers about the practice from this, due in part to the five year statute of limitations on vote buying charges. However, she does not believe that vote-buying is pervasive across the state, but rather confined to certain pockets.

### Vote-hauling Legislation

Vote hauling is a common form of vote buying by another name. Individuals are legally paid to drive others to the polls, and then divide that cash in order to purchase votes. Prosecutions have confirmed that vote hauling is used for this purpose. While the Secretary of State has been committed to legislation which would ban the practice, it has failed to pass in the past two sessions.

### Paying Voter Registration Workers Legislation

A law forbidding people to pay workers by the voter registration card or for obtaining cards with registrations for a specific party was passed this session. Individuals working as part of a registration campaign may still be paid by hour. Kentucky's experience in the last presidential election illustrates the problems arising from paying individuals by the card. That contest included a constitutional amendment to ban gay marriage on the ballot, which naturally attracted the attention of many national groups. One group paying people by the card resulted in the registrar being inundated with cards, including many duplicates in the same bundle, variants on names, and variants on addresses. As this practice threatens to overwhelm the voter registration process, Kentucky views it as constituting malicious fraud.

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Deceptive practices

Other than general reports in the news, Johnson hasn't received any separate confirmation or reports of deceptive practices, i.e., false and misleading information being distributed to confuse voters.

Effect of Kentucky's Database

Johnson believes Kentucky's widely praised voter registration database is a key reason why the state doesn't have as much fraud as it might, especially the types alleged elsewhere like double and felon voting. While no database is going to be perfect, the connections with other state databases such as the DMV and vital statistics have been invaluable in allowing them to aggressively purge dead weight and create a cleaner list. When parties use their database list they are notably more successful. Johnson wonders how other states are able to conduct elections without a similar system.

Some factors have made especially important to their success. When the database was instituted in 1973, they were able to make everyone in the state re-register and thus start with a clean database. However, it is unlikely any state could get away with this today.

She is also a big supporter of a full Social Security number standard, as practiced in Kentucky. The full Social Security, which is compared to date of birth and letters in the first and last name, automatically makes matching far more accurate. The huge benefits Kentucky has reaped make Johnson skeptical of privacy concerns arguing for an abbreviated Social Security number. Individuals are willing to submit their Social Security number for many lesser purposes, so why not voting? And in any event, they don't require a Social Security number to register (unlike others such as Georgia). Less than a percent of voters in Kentucky are registered under unique identifiers, which the Board of Elections then works to fill in the number through cross referencing with the DMV.

Recommendations

Johnson believes the backbone of effective elections administration must be standardized procedures, strong record keeping, and detailed statutes. In Kentucky, all counties use the same database and the same pre election day forms. Rather than seeing that as oppressive, county officials report that the uniformity makes their jobs easier.

This philosophy extends to the provisional ballot question. While they did not have a standard in place like HAVA's at the time of enactment, they worked quickly to put a uniform standard in place.

They have also modified forms and procedures based on feedback from prosecutors. Johnson believes a key to enforcing voting laws is working with investigators and prosecutors and ensuring that they have the information they need to mount cases.

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She also believes public education is important, and that the media could do more to provide information about what is legal and what is illegal. Kentucky tries to fulfill this role by information in polling places, press releases, and high profile press conferences before elections. She notes that they deliberately use language focusing on fraud *and* intimidation.

Johnson is somewhat pessimistic about reducing absentee ballot fraud. Absentee ballots do have a useful function for the military and others who cannot get to the polling place, and motivated individuals will always find a way to abuse the system if possible. At a minimum, however, she recommends that absentee ballots should require an excuse. She believes this has helped reduce abuse in Kentucky, and is wary of no-excuse practices in other states.

**Interview with Steve Ansolobhere and Chandler Davidson**  
February 17, 2006

Methodology suggestions

In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources: the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that asks whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. Mr. Ansolobhere recommended Jonathan Krosnick, Doug Rivers, and Paul Sniderman at Stanford; Donald Kinder and Arthur Lupia at Michigan; Edward Carmines at Indiana; and Phil Tetlock at Berkeley. In the alternative, Mr. Ansolobhere suggested that the EAC might work with the Census Bureau to have them ask different, additional questions in their Voter Population Surveys.

Mr. Chandler further suggested it is important to talk to private election lawyers, such as Randall Wood, who represented Ciro Rodriguez in his congressional election in Texas. Mr. Ansolobhere also recommended looking at experiments conducted by the British Election Commission.

Incidents of Fraud and Intimidation

Mr. Davidson's study for the Lawyers Committee for Civil Rights on the Voting Rights Act documented evidence of widespread difficulty in the voting process. However, he did not attempt to quantify whether this was due to intentional, malevolent acts. In his 2005 report on ballot security programs, he found that there were many allegations of fraud made, but not very many prosecutions or convictions. He saw many cases that did go to trial and the prosecutors lost on the merits.

In terms of voter intimidation and vote suppression, Mr. Davidson said he believes the following types of activities do occur: videotaping of voters' license plates; poll workers asking

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intimidating questions; groups of officious-looking poll watchers at the poll sites who seem to be some sort of authority looking for wrongdoing; spreading of false information, such as phone calls, flyers, and radio ads that intentionally mislead as to voting procedures.

Mr. Ansolobhere believes the biggest problem is absentee ballot fraud. However, many of these cases involve people who do not realize what they are doing is illegal, for example, telling someone else how to vote. Sometimes there is real illegality occurring however. For example, vote selling involving absentee ballots, the filling out of absentee ballots en masse, people at nursing homes filling out the ballots of residents, and there are stories about union leaders getting members to vote a certain way by absentee ballot. This problem will only get bigger as more states liberalize their absentee ballot rules. Mr. Chandler agreed that absentee ballot fraud was a major problem.

Recommendations

Go back to “for cause” absentee ballot rules, because it is truly impossible to ever ensure the security of a mail ballot. Even in Oregon, there was a study showing fraud in their vote by mail system.

False information campaigns should be combated with greater voter education. Los Angeles County’s voter education program should be used as a model.

**Interview with Tracy Campbell, author**

March 3, 2006

Background

Campbell’s first book on election fraud looked at Ed Pritchard, a New Deal figure who went to jail for stuffing ballot boxes. While his initial goal in writing that book was to find out why Pritchard had engaged in vote stealing, his growing understanding of a pervasive culture of electoral corruption led him to consider instead how it was that Pritchard was ever caught. In 1998, he started working on a book regarding fraud in Kentucky, which quickly became a national study. He hoped to convey the ‘real politics’ which he feels readers, not to mention academics, have little sense about. While less blatant than in previous eras, fraud certainly still occurs, and he mentions some examples in his book. The major trend of the past 60-70 years has been that these tactics have grown more subtle.

While he hasn’t conducted any scientific study of the current state of fraud, his sense as a historian is that it seems naive, after generations of watching the same patterns and practices influence elections, to view suspect election results today as merely attributable to simple error.

Vote-buying and absentee fraud

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Campbell sees fraud by absentee ballot and vote buying as the greatest threats to fair elections today. He says vote fraud is like real estate: location, location, location—the closer you can keep the ballots to the courthouse the better. Absentee ballots create a much easier target for vote brokers who can manage voting away from the polling place, or even mark a ballot directly, in exchange for, say, \$50—or even more if an individual can bring their entire family. He has noted some small counties where absentee ballots outnumber in-person ballots.

However, few people engaged in this activity would call it ‘purchasing’ a vote. Instead, it is candidate Jones’ way of ‘thanking’ you for a vote you would have cast in any event. The issue is what happens if candidate Smith offers you more. Likewise, the politicians who engage in vote fraud don’t see it as a threat to the republic but rather as a game they have to play in order to get elected.

Regional patterns

Campbell suggests such practices are more prevalent in the South than the Northern states, and even more so compared to the West. The South has long been characterized as particularly dangerous in intimidation and suppression practices—throughout history, one can find routine stories of deaths at the polls each year. While he maintains that fraud seems less likely in the Western states, he sees the explosion of mail in and absentee ballots there as asking for trouble.

Poll site closings as a means to suppress votes

Campbell points to a long historical record of moving poll sites in order to suppress votes. Polling places in the 1800s were frequently set-up on rail cars and moved further down the line to suppress black votes.

He would include door-to-door canvassing practices here, as well as voting in homes, which was in use in Kentucky until only a few years ago. All of these practices have been justified as making polling places ‘more accessible’ while their real purpose has been to suppress votes.

Purge lists

Purge lists are, of course, needed in theory, yet Campbell believes the authority to mark names off the voter rolls presents extensive opportunity for abuse. For this reason, purging must be done in a manner that uses the best databases, and looks at only the most relevant information. When voters discover their names aren’t on the list when they go to vote, for example, because they are “dead,” it has a considerable demoralizing effect. Wrongful purging takes place both because of incompetence and as a tool to intentionally disenfranchise.

Campbell believes transparency is the real issue here. An hour after the polls close, we tend to just throw up our hands and look the other way, denying voters the chance to see that discrepancies are being rectified. He believes the cost in not immediately knowing election outcomes is a small price to pay for getting results rights and showing the public a transparent process.

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Deceptive practices

Today's deceptive practices have are solidly rooted in Reconstruction-era practices—i.e. phony ballots, the Texas 'elimination' ballot. The ability to confuse voters is a powerful tool for those looking to sway elections.

Language minorities

Campbell argues there is a fine line between offering help to non-English speakers and using that help against them. A related issue, particularly in the South, is taking advantage of the illiterate.

Current intimidation

Another tactic Campbell considers an issue today is polling place layout: the further vote suppressers can keep people away from the polls, the better. Practices such as photographing people leaving a polling place may also tie into vote-buying, where photos are used to intimidate and validate purchased votes. A good way to combat such practices is by keeping electioneering as far from the polls as possible.

Recommendations

Specific voting administration recommendations Campbell advocates would include reducing the use of absentee ballots and improving the protective zone around polling places.

Campbell would also like to see enforcement against fraud stepped up and stiffer penalties enacted, as current penalties make the risk of committing fraud relatively low. He compares the risk in election fraud similar to steroid use in professional sports—the potential value of the outcome is far higher than the risk of being caught or penalized for the infraction, so it is hard to prevent people from doing it. People need to believe they will pay a price for engaging in fraud or intimidation. Moreover, we need to have the will to kick people out of office if necessary.

He is skeptical of the feasibility of nonpartisan election administration, as he believes it would be difficult to find people who care about politics yet won't lean one way or the other—such an attempt would be unlikely to get very far before accusations of partisanship emerged. He considers the judiciary the only legitimate check on election fraud.

**Interview with Wade Henderson, Executive Director, Leadership Conference for Civil Rights**

February 14, 2006

Data Collection

Mr. Henderson had several recommendations as to how to better gather additional information and data on election fraud and intimidation in recent years. He suggested interviewing the

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following individuals who have been actively involved in Election Protection and other similar efforts:

- Jon Greenbaum, Lawyers Committee for Civil Rights
- Tanya Clay, People for the American Way
- Melanie, Campbell, National Coalition for Black Political Participation
- Larry Gonzalez, National Association of Latino Election Officers
- Jacqueline Johnson, National Congress of American Indians
- Chellie Pingree, Common Cause
- Jim Dickson, disability rights advocate
- Mary Berry, former Chair of the US Commission on Civil Rights, currently at the University of Pennsylvania
- Judith Browne and Eddie Hailes, Advancement Project (former counsel to the US Commission on Civil Rights)
- Robert Rubin, Lawyers Committee for Civil Rights – San Francisco Office
- Former Senator Tom Daschle (currently a fellow at The Center for American Progress)

He also recommended we review the following documents and reports:

- The 2004 litigation brought by the Advancement Project and SEIU under the 1981 New Jersey Consent Decree
- Forthcoming LCCR state-by-state report on violations of the Voting Rights Act
- Forthcoming Lawyers Committee report on violations of the Voting Rights Act (February 21)

Types of Fraud and Intimidation Occurring

Mr. Henderson said he believed that the kinds of voter intimidation and suppression tactics employed over the last five years are ones that have evolved over many years. They are sometimes racially based, sometimes based on partisan motives. He believes the following types of activity have actually occurred, and are not just a matter of anecdote and innuendo, and rise to the level of either voter intimidation or vote suppression:

- Flyers with intentional misinformation, such as ones claiming that if you do not have identification, you cannot vote, and providing false dates for the election
- Observers with cameras, which people associate with potential political retribution or even violence
- Intimidating police presence at the polls
- Especially in jurisdictions that authorize challenges, the use of challenge lists and challengers goes beyond partisanship to racial suppression and intimidation
- Unequal deployment of voting equipment, such as occurred in Ohio. Also, he has seen situations in which historically Black colleges will have one voting machine while other schools will have more.

Mr. Henderson believes that these matters are not pursued formally because often they involve activities that current law does not reach. For example, there is no law prohibiting a Secretary of State from being the head of a political campaign, and then deploying voting machines in an uneven manner. There is no way to pursue that. Also, once the election is over, civil litigation

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becomes moot. Finally, sometimes upon reflection after the campaign, some of the activities are not as sinister as believed at the time.

Mr. Henderson believes government does not engage in a sustained investigation of these matters or pursue any kind of resolution to them. LCCR has filed a FOIA request with both the Civil Rights Division and the Criminal Division of the Department of Justice to examine this issue.

Election Protection activities will be intensified for the 2006 elections, although the focus may shift somewhat given the implementation of new HAVA requirements.

Recommendations for Reform

There was tremendous concern after the 2004 election about conflicts of interest – the “Blackwell problem” – whereby a campaign chair is also in charge of the voting system. We need to get away from that.

He also supports Senator Barak Obama’s bill regarding deceptive practices, and is opposed to the voter identification laws passing many state legislatures.

- States should adopt election-day registration, in order to boost turnout as well as to allow eligible voters to immediately rectify erroneous or improperly purged registration records
- Expansion of early voting & no-excuse absentee voting, to boost turnout and reduce the strain on election-day resources.
- Provisional ballot reforms:
  - Should be counted statewide – if cast in the wrong polling place, votes should still be counted in races for which the voter was eligible to vote (governor, etc.)
  - Provisional ballots should also function as voter registration applications, to increase the likelihood that voters will be properly registered in future elections
- Voter ID requirements: states should allow voters to use signature attestation to establish their identity
- The Department of Justice should increase enforcement of Americans with Disabilities Act and the accessibility requirements of the Help America Vote Act
- Statewide registration databases should be linked to social service agency databases
- Prohibit chief state election officials from simultaneously participating in partisan electoral campaigns within their states
- Create and enforce strong penalties for deceptive or misleading voting practices

**Interview with Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center**

Brennan Center findings on fraud

The Brennan Center’s primary work on fraud is their report for the Carter Baker Commission with commissioner Spencer Overton, written in response to the Commission’s ID

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recommendations. Brennan reviewed all existing reports and election contests related to voter fraud. They believe the contests serve as an especially good record of whether or not fraud exists, as the parties involved in contested elections have a large incentive to root out fraudulent voters. Yet despite this, the incidence of voter impersonation fraud discovered is extremely low—something on the order 1/10000<sup>th</sup> of a percentage of voters. See also the brief Brennan filed on 11<sup>th</sup> circuit in Georgia photo ID case which cites sources in Carter Baker report and argues the incidence of voter fraud too low to justify countermeasures.

Among types of fraud, they found impersonation, or polling place fraud, is probably the least frequent type, although other types, such as absentee ballot fraud are also very infrequent. Weiser believes this is because impersonation fraud is more likely to be caught and is therefore not worth the risk. Unlike in an absentee situation, actual poll workers are present to disrupt impersonation fraud, for instance, by catching the same individual voting twice. She believes perhaps one half to one quarter of the time the person will be caught. Also, there is a chance the pollworker will have personal knowledge of the person. Georgia Secretary of State Cathy Cox has mentioned that there are many opportunities for discovery of in person fraud as well. For example, if one votes in the name of another voter, and that voter shows up at the polls, the fraud will be discovered.

Weiser believes court proceedings in election contests are especially useful. Some are very extensive, with hundreds of voters brought up by each side and litigated. In both pre-election challenges and post-election contests, parties have devoted extraordinary resources into 'smoking out' fraudulent voters. Justin Leavitt at Brennan scoured such proceedings for the Carter Baker report, which includes these citations. Contact him for answers to particular questions.

Countermeasures/statewide databases

Brennan has also considered what states are doing to combat impersonation fraud besides photo ID laws, although again, it seems to be the rarest kind of fraud, beyond statistically insignificant. In the brief Brennan filed in the Georgia case, the Center detailed what states are already doing to effectively address fraud. In another on the web site includes measures that can be taken that no states have adopted yet. Weiser adds that an effort to look at strategies states have to prevent fraud, state variations, effectiveness, ease of enforcement would be very useful.

Weiser believes the best defense against fraud will be better voter lists—she argues the fraud debate is actually premature because states have yet to fully implement the HAVA database requirement. This should eliminate a great deal of 'deadwood' on voter rolls and undermine the common argument that fraud is made possible by this deadwood. This was the experience for Michigan, which was able to remove 600,000 names initially, and later removed almost 1 million names from their rolls. It is fairly easy to cull deadwood from lists due to consolidation at the state level—most deadwood is due to individuals moving within the state and poor communication between jurisdictions. (Also discuss with Chris Thomas, who masterminded the Michigan database for more information and a historical perspective.)

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Regarding the question of whether the effect of this maintenance on fraud in Michigan can be quantified, Weiser would caution against drawing direct lines between list problems and fraud. Brennan has found various groups abusing the existence of list deadwood to make claims about fraudulent voting. This is analyzed in greater detail in the Brennan Center's critique of a purge list produced by the NJ Republican party, and was illustrated by the purge list produced by the state of Florida. When compiling such lists and doing comparisons, sound statistical methods must be utilized, and often are not.

The NJ GOP created a list and asked NJ election officials to purge names of ineligible voters on it. Their list assumed that people appearing on the list twice had voted twice. Brennan found their assumptions shoddy and based on incorrect statistical practices, such as treating individuals with the same name and birthdays as duplicates, although this is highly unlikely according to proper statistical methods. Simply running algorithms on voter lists creates a number of false positives, does not provide an accurate basis for purging, and should not be taken as an indicator of fraud.

Regarding the Florida purge list, faulty assumptions caused the list to systematically exclude Hispanics while overestimating African Americans. Matching protocols required that race fields match exactly, despite inconsistent fields across databases.

The kinds of list comparisons that are frequently done to allege fraud are unreliable. Moreover, even if someone is on a voter list twice, that does not mean that voter has voted twice. That, in fact, is almost never the case.

Ultimately, even matching protocols without faulty assumptions will have a 4 percent to 35 percent error rate—that's simply the nature of database work. Private industry has been working on improving this for years. Now that HAVA has introduced a matching requirement, even greater skepticism is called for in judging the accuracy of list maintenance.

#### Intimidation and Suppression

Brennan does not have a specific focus here, although they do come across it and have provided assistance on bills to prevent suppression and intimidation. They happen to have an extensive paper file of intimidating fliers and related stories from before the 2004 election. (They can supply copies after this week).

#### Challengers

Brennan has analyzed cases where challenger laws have been beneficial and where they have been abused. See the decision and record from the 1982 NJ vs. RNC case for some of the history of these laws. Brennan is currently working on developing a model challenger law.

Weiser believes challenge laws with no requirement that the challenger have any specific basis for the challenge or showing of ineligibility are an invitation to blanket harassing challenges and have a range of pitfalls. State laws are vague and broad and often involve arcane processes such as where voters are required to meet a challenge within 5 days. There are incentives for political abuse, potential for delaying votes and disrupting the polls, and they are not necessarily directed

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toward the best result. Furthermore, when a voter receives a mailer alleging vote fraud with no basis, even the mere fact of a challenge can be chilling. A voter does not want to have to go through a quasi-court proceeding in order to vote.

Brennan recommends challenge processes that get results before election, minimize the burden for voters, and are restricted at polling place to challenges by poll workers and election officials, not voters. They believe limitless challenges can lead to pandemonium—that once the floodgates are open they won't stop.

Recommendations

**Intimidation**— Weiser believes Sen. Barak Obama's bill is a good one for combating voter harassment and deceptive practices. Many jurisdictions do not currently have laws prohibiting voter harassment and deceptive practices.

**Fraud**— Current state and federal codes seem sufficient for prosecuting fraud. Weiser doesn't consider them under-enforced, and sees no need for additional laws.

**Voter lists**— New legislation or regulations are needed to provide clear guidance and standards for generating voter lists and purging voters, otherwise states could wrongfully disenfranchise eligible voters.

**Challengers**— Challenge laws need to be reformed, especially ones that allow for pre-election mass challenges with no real basis. There is no one size fits all model for challenger legislation, but some bad models involving hurdles for voters lead to abuse and should be reformed. There should be room for poll workers to challenge fraudulent voters, but not for abuse.

Also useful would be recommendations for prosecutors investigating fraudulent activity, How should they approach these cases? How should they approach cases of large scale fraud/intimidation? While there is sufficient legislative cover to get at any election fraud activity, questions remain about what proper approaches and enforcement strategies should be.

**Interview with Bill Groth, Attorney for the Plaintiffs in Indiana Identification Litigation  
February 22, 2006**

Fraud in Indiana

Indiana has never charged or prosecuted anyone for polling place fraud. Nor has any empirical evidence of *voter impersonation* fraud or dead voter fraud been presented. In addition, there is no record of any credible complaint about *voter impersonation* fraud in Indiana. State legislators signed an affidavit that said there had never been impostor voting in Indiana. At the same time, the Indiana Supreme Court has not necessarily required evidence of voter fraud before *approving* legislative attempts to address fraud.

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The state attorney general has conceded that there is no concrete fraud in Indiana, but has instead referred to instances of fraud in other states. Groth filed a detailed motion to strike evidence such as John Fund's book relating to other states, arguing that none of that evidence was presented to the legislature and that it should have been in the form of sworn affidavits, so that it would have some indicia of verifiability.

Photo ID law

By imposing restrictive ID measures, Groth contends you will discourage 1,000 times more legitimate voters than illegitimate voters you might protect against. He feels the implementation of a REAL ID requirement is an inadequate justification for the law, as it will not affect the upcoming 2006 election where thousands of registered voters will be left without proper ID. In addition, he questions whether REAL ID will be implemented as planned in 2008 considering the backlash against the law so far. He also feels ID laws are unconstitutional because of inconsistent application.

Statewide database as remedy

Groth believes many problems will be addressed by the statewide database required under HAVA. To the extent that the rolls in Indiana are bloated, it is because state officials have not complied with NVRA list maintenance requirements. Thus, it is somewhat disingenuous for them to use bloated voter rolls as a reason for imposing additional measures such as the photo ID law. Furthermore, the state has ceded to the counties the obligation to do maintenance programs, which results in a hit or miss process (see discussion in reply brief, p 26 through p. 28).

Absentee fraud

To the extent that there has been an incidence of fraud, these have all been confined to absentee balloting. Most notably the East Chicago mayoral election case where courts found absentee voting fraud had occurred. See: Pabey vs. Pastrick 816 NE 2<sup>nd</sup> 1138 Decision by the Indiana Supreme Court in 2004.

Intimidation and vote suppression

Groth is only aware of anecdotal evidence supporting intimidation and suppression activities. While he considers the sources of this evidence credible, it is still decidedly anecdotal. Instances he is aware of include police cars parked in front of African American polling places. However, most incidents of suppression which are discussed occurred well in the past. Trevor Davidson claims a fairly large scale intimidation program in Louisville.

Challengers

There was widespread information that the state Republican Party had planned a large scale challenger operation in Democratic precincts for 2004, but abandoned the plan at the last minute.

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VOTING FRAUD-VOTER INTIMIDATION RESEARCH

Last year the legislature made a crucial change to election laws which will allow partisan challengers to be physically inside the polling area next to members of the precinct board. Previously, challengers at the polling place have been restricted to the 'chute,' which provides a buffer zone between voting and people engaging in political activity. That change will make it much easier to challenge voters. As there is no recorded legislative history in Indiana, it is difficult to determine the justification behind this change. As both chambers and the governorship are under single-party control, the challenger statute was passed under the radar screen.

Photo ID and Challengers

Observers are especially concerned about how this change will work in conjunction with the photo ID provision. Under the law, there are at least two reasons why a member of the precinct board or a challenger can raise object to an ID: whether a presented ID conforms to ID standards, and whether the photo on an ID is actually a picture of the voter presenting it. The law does not require bipartisan agreement that a challenge is valid. All it takes is one challenge to raise a challenge to that voter, and that will lead to the voter voting by provisional ballot.

Provisional ballot voting means that voter must make a second trip to the election board (located at the county seat) within 13 days to produce the conforming ID or to swear out an affidavit that they are who they claim to be. This may pose a considerable burden to voters. For example, Indianapolis and Marion County are coterminous—anyone challenged under the law will be required to make second trip to seat of government in downtown Indianapolis. If the voter in question did not have a driver's license in the first place, they will likely need to arrange transportation. Furthermore, in most cases the election result will already be known.

The law is vague about acceptable cause for challenging a voter's ID. Some requirements for valid photo ID include being issued by state or fed gov't, w/ expiration date, and the names must conform exactly. The League of Women Voters is concerned about voters with hyphenated names, as the Indiana DMV fails to put hyphens on driver's licenses potentially leading to a basis for challenge. Misspelling of names would also be a problem. The other primary mode of challenge is saying the photo doesn't look like the voter, which could be happen in a range of instances. Essentially, the law gives unbridled discretion to challengers to decide what conforms and what does not.

Furthermore, there is no way to determine whether a challenge is in good or bad faith, and *there is* little penalty for making a bad faith challenge. The fact that there are no checks on the challenges at the precinct level, or even a requirement of concurrence from an opposing party challenger leads to the concern that challenge process will be abused. The voter on the other hand, will need to get majority approval of county election board members to defeat the challenge.

Groth suggests the political situation in Indianapolis also presents a temptation to abuse this process, as electoral margins are growing increasingly close due to shifting political calculus.

Other cases

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Groth's other election law work has included a redistricting dispute, a dispute over ballot format, NVRA issues, and a case related to improper list purging, but nothing else related to fraud or intimidation. The purging case involved the election board attempting to refine its voter list by sending registration postcards to everyone on the list. When postcards didn't come back they wanted to purge those voters. Groth blames this error more on incompetence, than malevolence, however, as the county board is bipartisan. (The Indiana Election Commission and the Indiana election division are both bipartisan, but the 92 county election boards which will be administering photo id are controlled by one political party or the other—they are always an odd number, with the partisan majority determined by who controls the clerk of circuit court office.)

Recommendations

Supports nonpartisan administration of elections. Indiana specific recommendations including a longer voting day, time off for workers to vote, and an extended registration period.

He views the central problem of the Indiana photo ID law is that the list of acceptable forms of ID is too narrow and provides no fallback to voters without ID. At the least, he believes the state needs to expand the list so that most people will have at least one. If not, they should be allowed to swear an affidavit regarding their identity, under penalty of perjury/felony prosecution. This would provide sufficient deterrence for anyone considering impersonation fraud. He believes absentee ballot fraud should be addressed by requiring those voters to produce ID as well, as under HAVA.

His personal preference would be signature comparison. Indiana has never encountered an instance of someone trying to forge a name in the poll book, and while this leaves open the prospect of dead voters, that danger will be substantially diminished by the statewide database. But if we are going to have some form of ID, he believes we should apply it to everyone and avoid disenfranchisement, provided they swear an affidavit.

**Interview with Neil Bradley, February 21, 2004**

Voter Impersonation Cases (issue the Georgia ID litigation revolves around)

Mr. Bradley asserted that Georgia Secretary of State Cox stated in the case at issue: that she clearly would know if there had been any instances of voter impersonation at the polls; that she works very closely with the county and local officials and she would have heard about voter impersonation from them if she did not learn about it directly; and that she said that she had not heard of "any incident"---which includes acts that did not rise to the level of an official investigation or charges.

Mr. Bradley said that it is also possible to establish if someone has impersonated another voter at the polls. Officials must check off the type of voter identification the voter used. Voters without ID may vote by affidavit ballot. One could conduct a survey of those voters to see if they in fact voted or not.

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VOTING FRAUD-VOTER INTIMIDATION RESEARCH

The type of voter fraud that involves impersonating someone else is very unlikely to occur. If someone wants to steal an election, it is much more effective to do so using absentee ballots. In order to change an election outcome, one must steal many votes. Therefore, one would have to have lots of people involved in the enterprise, meaning there would be many people who know you committed a felony. It's simply not an efficient way to steal an election.

Mr. Bradley is not aware of any instance of voter impersonation anywhere in the country except in local races. He does not believe it occurs in statewide elections.

Voter fraud and intimidation in Georgia

Georgia's process for preventing ineligible ex-felons from casting ballots has been improved since the Secretary of State now has the power to create the felon purge list. When this was the responsibility of the counties, there were many difficulties in purging felons because local officials did not want to have to call someone and ask if he or she was a criminal.

The State Board of Elections has a docket of irregularity complaints. The most common involve an ineligible person mailing in absentee ballots on behalf of another voter.

In general, Mr. Bradley does not think voter fraud and intimidation is a huge problem in Georgia and that people have confidence in the vote. The biggest problems are the new ID law; misinformation put out by elections officials; and advertisements that remind people that vote fraud is a felony, which are really meant to be intimidating. Most fraud that does occur involves an insider, and that's where you find the most prosecutions. Any large scale fraud involves someone who knows the system or is in the courthouse.

Prosecution of Fraud and Intimidation

Mr. Bradley stated that fraud and intimidation are hard to prosecute. However, Mr. Bradley made contradictory statements. When asked whether the decision to prosecute on the county level was politically motivated, he first said "no." Later, Mr. Bradley reversed himself stating the opposite.

Mr. Bradley also stated that with respect to US Attorneys, the message to them from the top is that this is not a priority. The Georgia ACLU has turned over information about violations of the Voting Rights Act that were felonies, and the US Attorney has done nothing with the information. The Department of Justice has never been very aggressive in pursuing cases of vote suppression, intimidation and fraud. But, the Georgia ACLU has not contacted Craig Donsanto in DC with information of voter fraud.

Mr. Bradley believes that voter fraud and intimidation is difficult to prove. It is very hard to collect the necessary factual evidence to make a case, and doing so is very labor-intensive.

Recommendations

In Georgia, the Secretary of State puts a lot of work into training local officials and poll workers,

EAC SUMMARY OF EXPERT INTERVIEWS FOR  
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

and much of her budget is put into that work. Increased and improved training of poll workers, including training on how to respectfully treat voters, is the most important reform that could be made.

Mr. Bradley also suggested that increased election monitoring would be helpful.

**Interview with Justice Evelyn Stratton, Supreme Court of Ohio**

February 17, 2006

The 2004 Election

Justice Stratton stated that usually in the period right before an election filings die down due to the Ohio expedited procedures for electoral challenges. However, the 2004 election was unusual because there were motions and cases decided up to the day of the election. Justice Stratton believed that most of the allegations were knee-jerk reactions without any substance. For example, without any factual claims, suit was brought alleging that all voter challengers posed a threat to voters. Thematically, allegations were either everyday voting problems or "conspiracies" depending on where the complaint came from. The major election cases in 2004 revolved around Secretary of State Blackwell.

Justice Stratton made a point that the Ohio Supreme Court bent over backwards in the 2004 election to be fair to both sides. There was never any discussion about a ruling helping one political party more than the other.

Justice Stratton cited two cases that summarize and refute the 2004 complaints---819 NE 2d 1125 (Ohio 2004) and 105 Ohio St. 3d 458 (2004).

General Election Fraud Issues

Justice Stratton has seen very few fraud cases in Ohio. Most challenges are for technical statutory reasons. She remembered one instance where a man who assisted handicapped voters marked the ballot differently than the voter wanted. Criminal charges were brought against this man and the question that the Ohio Supreme Court had to decide was whether ballots could be opened and inspected to see how votes were cast.

Justice Stratton claimed she knew of isolated incidences of fictitious voter registration but these were not prosecuted. She has not seen any evidence of ballots being stuffed, dead people voting, etc.

Suggestions for Changes in Voting Procedures

The Ohio Supreme Court is very strict about laches---if a person sits on their rights too long, they lose the right to file suit. The Ohio expedited procedures make election challenges run very smooth. Justice Stratton does not remember any suits brought on the day of the election. She supports a non-partisan head of state elections. Justice Stratton believes that last minute

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VOTING FRAUD-VOTER INTIMIDATION RESEARCH

challenges should not be permitted and that lower courts need to follow the rules for the expedited procedures. Even given the anomalies with lower courts permitting late election challenges in 2004, the Ohio Supreme Court does not want to make a new rule unless this pattern repeats itself in 2008.

**Interview with Tony Sirvello, Executive Director, IACREOT**

April 12, 2006

Biographical

Sirvello is currently the executive director of the International Association of Clerks, Recorders, Election Officials and Treasurers, an organization of 1700 members. Formerly, he ran elections in Harris County, Texas for 29 years.

Incidents of Election Fraud

Sirvello stated that one problem with election crimes is that they are not high on the priority list of either district attorneys or grand juries. Therefore, complaints of election crime very rarely are prosecuted or are indicted by the grand jury. In 1996 in Harris County, 14 people voted twice but the grand jury refused to indict. One woman voted twice, once during early voting and once on Election Day. She said she thought there were two elections. The jury believed her. Sirvello believes none of the people intentionally voted more than once. He said that he believes double voting is not as big of an issue as people make it out to be.

In 1986, it was found that there were 300 more ballots than voter signatures. It was clear that the elections officials stuffed the ballot boxes. The case was brought before a grand jury, but there was no indictment because all of the defendants were friends and relatives of each other and none would admit what had been done.

Sirvello stated that there have been isolated circumstances where a voter would show up at the poll and his name had already been signed and he had voted.

Finally, Sirvello indicated that some people who worked in Houston but did not live in Harris County were permitted to vote.

Specific Absentee Ballot/Vote By Mail Issues

Sirvello said that mail voting presents the largest problem. With mail voting there is too much opportunity to influence voters or to fraudulently request a ballot.

If one applied for an absentee ballot, their name and address was made available to candidates and political consultants who would often send people to collect the ballot. Many did not want to give up the ballot but wanted to mail it personally. The result was to discourage voting.

EAC SUMMARY OF EXPERT INTERVIEWS FOR  
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

In Texas, a person could only apply for an absentee ballot if over 65 years of age. Parties, candidates and consultants would get the list of voters over 65 and send them a professional mail piece telling them they could vote by mail and a ballot with everything filled out except the signature. Problems ensued -- for example, voters would print their names rather than sign them, and the ballot was rejected. In other cases, the elderly would give their absentee ballot to someone else.

If a person applied for an absentee ballot but then decided not to cast it but to vote in person, that person had to bring the non-voted absentee ballot to the poll and surrender it. If they did not they would not be permitted to vote at the polling place.

Incidents of Voter Intimidation

Sirvello only reported isolated cases of intimidation or suppression in Harris County. These mostly occurred in Presidential elections. Some people perceived intimidation when being told they were not eligible to vote under the law. Sirvello stated that the big issue in elections now is whether there should be a paper trail for touch screen voting.

Recommendations

District attorneys need to put more emphasis on election crime so people will not believe that it goes unpunished.

There should be either a national holiday for Election Day or a day should be given off of work without counting as a vacation day so that better poll workers are available and there can be more public education on election administration procedures.

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
12/01/2006 03:17 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Donsanto-Tanner Interviews 

I made the correction on the titles in the report. There was one that was not correct.

There are a couple of things I may suggest that we leave in, as I don't think that DOJ would have a problem with it, (e.g. the fact that they won't release information on pending cases).

I will forward to the Cs for their review.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV  
11/30/2006 04:37 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
Subject Donsanto-Tanner Interviews

Julie:

I made some suggested edits in the attached excerpts of the Donsanto and Tanner interview summaries. You may be able to better phrase them. The most important edits are:

- I noticed that the consultants had listed Donsanto's and Tanner's titles incorrectly (which we may also need to correct in our report where we list the interviewees ). Donsanto and Tanner might be amused that our consultants "promoted" them, but their bosses may not.
- I redacted two sentences that I thought we should not publicize and one that I thought was in error from the Donsanto description. I also tried to correct the paragraph that discusses DOJ's pursuit of individual offenders.
- I moved the note about Tanner's failure to provide data and information to the end of the description (the highlighted paragraph) so that its isn't so "in your face". I also tried to edit it, but am still a bit concerned about including it at all.

If you have any questions, or want to talk about this, give me a call (703-323-9277). Also, I may be in the office tomorrow, if my insides cooperate. --- Peggy



Summaries of Interviews with Donsanto-Tanner redacted-revised.doc

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Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity Section, U.S. Department of Justice  
January 13, 2006

The Department of Justice's (DOJ) Election Crimes Branch is responsible for supervising federal criminal investigations and prosecutions of election crimes.

Questions

*How are Prosecution Decisions Made?*

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an Assistant U.S. Attorney (AUSA). Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario – a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. ~~The department grants such hearings easily because such defendants are likely to provide information about others involved.~~

The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between the Voting Section and the Election Crimes Branch.

*Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?*

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

*Does it Matter if the Complaint Comes from a Member of a Racial Minority?*

No. But if the question involves racial animus, that has also always been an aggravating factor, making it more likely the Department will take it over

*What Kinds of Complaints Would Routinely Override Principles of Federalism?*

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office on the ballot.

*Are There Too Few Prosecutions?*

DOJ can't prosecute everything.

*What Should Be Done to Improve the System?*

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to “fix” *McNally*, did not include voter fraud.

As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

*Other Information*

The Department has held four symposia for District Election Officers (DEOs) and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public. ~~(Peg will be sending us the complete training materials used at those sessions. These are confidential and are the subject of FOIA litigation).~~

There are two types of attorneys in the division: prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

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Cases:

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Donsanto provided us with three case lists: Open cases (still being investigated) as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006; and cases closed for lack of evidence as of January 13, 2006.

~~If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.~~

Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.*

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought against conspiracies when there was a pattern or scheme to corrupt the process rather than individual offenders acting alone. For deterrence purposes, charges were not brought against individuals—those cases went un-prosecuted. This change in direction, focus, and level of aggression was by the decision of the Attorney General. The reason for the change was for deterrence purposes, he Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once.

The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

1. Felon voters in Milwaukee.

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2. Alien voters in the Southern District of Florida. FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.

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3. Double voters in a variety of jurisdictions.

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The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

~~According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot~~

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**Interview with John Tanner, Director~~of~~ Chief, Voting Section, Civil Rights Division,  
U.S. Department of Justice**

February 24, 2006

The Department of Justice's (DOJ) Voting Section is charged with the civil enforcement of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), and Title III of the Help America Vote Act (HAVA).

Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. Mr. Tanner would not give us any information about or data from the section's election complaint intake phone logs; data or even general information from the Interactive Case Management (ICM) system its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws; and would give us only a selected few samples of attorney-observer reports, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. He would not discuss in any manner any current investigations or cases the section is involved in. He also did not believe it was his position to offer us recommendations as to how his office, elections, or the voting process might be improved.

Authority and Process

The Voting Section, in contrast to the Public Integrity Section as Craig Donsanto described it, typically focuses ~~looks only on~~ at systemic problems resulting from government action or inaction, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Federal voting laws enforced by the section only apply to state action, so the section only sues state and local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, with systematic changes forced upon those jurisdictions, have made it so now the section now does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14<sup>th</sup> and 15<sup>th</sup> Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter that involves ~~of~~ individual offenders or a systemic problem. When deciding what to do

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with the complaint, the section errs on the side of referring it criminally to avoid having any because they do not want civil litigation to complicate a possible criminal case.

When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

#### Voter Intimidation

Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been a formal investigation into the abusive use of challengers.

Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

However, Mr. Tanner said the Department was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the ~~voting~~ Voting Section to become involved.

Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never

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formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands of the states will be helpful because at this higher level of government you find a higher level of professionalism.

It is hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. However, the enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared, as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

The section is not filing as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore. Mr. Tanner said that race based problems are rare now.

NVRA has been effective in opening up the registration process. In terms of enforcement, Mr. Tanner said they do what they can when they have credible allegations. There is a big gap between complaints and what can be substantiated. Mr. Tanner stated that given the high quality of the attorneys now in the section, if they do not investigate it or bring action, that act complained of did not happen.

#### Recommendations

Mr. Tanner did not feel it was appropriate to make recommendations.

Note: We contend that Mr. Tanner's reluctance to share data information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. We did not have access to any information about or data from the section's election complaint intake phone logs or data or even general information from the Interactive Case Management (ICM) system its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws. Only a selected few samples of attorney-observer reports were provided reports that every Voting Section

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attorney who is observing elections at poll sites on Election Day is required to submit  
Mr. Lanner would not discuss any current investigations or cases the section is involved  
in.

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**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
11/17/2006 04:05 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc

Subject Re: Draft Voter Fraud/Voter Intimidation Report

Thanks so much for all of your help. Have a very Happy Thanksgiving.

-----  
Sent from my BlackBerry Wireless Handheld  
Margaret Sims  
----- Original Message -----

**From:** Margaret Sims  
**Sent:** 11/17/2006 02:54 PM  
**To:** Juliet Hodgkins  
**Subject:** Re: Draft Voter Fraud/Voter Intimidation Report

I'll need to refresh my memory. I'll take a look at them one more time and get back to you. Hope you enjoy your time out of the office, and have a happy turkey day. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/17/2006 09:44 AM

To Margaret Sims/EAC/GOV@EAC  
cc

Subject Re: Draft Voter Fraud/Voter Intimidation Report

Thanks for your comments.

Last night, I took the case charts and assembled into one 200 -page document. So, that is compiled. I have also amended to include Job and Tova's bios as appendix "1". I have established both your summaries and theirs into alternative appendixes and will talk to the commissioners about that. One question that I have is whether we would need to go through and "clean up" their summaries? I have compiled them into a single document (that is one for interviews and one for literature). Other than the DOJ issue, are there any other "problems" that you recall?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
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(202) 566-3100

006862

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
11/17/2006 09:44 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc

Subject Re: Draft Voter Fraud/Voter Intimidation Report 

Thanks for your comments.

Last night, I took the case charts and assembled into one 200 -page document. So, that is compiled. I have also amended to include Job and Tova's bios as appendix "1". I have established both your summaries and theirs into alternative appendixes and will talk to the commissioners about that. One question that I have is whether we would need to go through and "clean up" their summaries? I have compiled them into a single document (that is one for interviews and one for literature). Other than the DOJ issue, are there any other "problems" that you recall?

Juliet Thompson Hodgkins  
General Counsel  
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006863

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
11/15/2006 04:10 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Draft Voter Fraud/Voter Intimidation 

Thanks.

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United States Election Assistance Commission  
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Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV  
11/15/2006 04:02 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
Subject Re: Draft Voter Fraud/Voter Intimidation 

Got it, and will get back to you by Friday AM. --- Peggy

006864

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
11/15/2006 09:58 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc

Subject Draft Voter Fraud/Voter Intimidation

Peggy,

I have attached a rough draft of the report that I think that we should propose to the Commissioners. I was hoping that you could give it a read and give me your comments by Friday morning, as I have to deliver a draft to the Commissioners on Friday. I also have a couple of questions. You will notice that I have noted that several items will be attached as appendixes. First question: Should we attach these things? Second question: In cases where you have provided summaries of the summaries, should we attach yours or theirs?



EAC REPORT ON VOTER FRAUD AND VOTER INTIMIDATION STUDY.doc

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006965

**EAC REPORT ON VOTER FRAUD AND VOTER INTIMIDATION STUDY****INTRODUCTION**

Voter fraud and intimidation is a phrase familiar to many voting-aged Americans. However, it means different things to different people. Voter fraud and intimidation is a phrase used to refer to crimes, civil rights violations, and at times even the correct application of state or federal laws to the voting process. Past study of this topic has been as varied as its perceived meaning. In an effort to help understand the realities of voter fraud and voter intimidation in our elections, EAC has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the true existence and enforcement of election crimes in this country.

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the U.S. Election Assistance Commission (EAC) to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voter fraud and voter intimidation was a topic that EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voter fraud and intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voter fraud and voter intimidation actions, laws, or prosecutions. That type of research is well beyond the basic understanding that had to be established regarding what is commonly referred to as voter fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voter fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, who along with EAC staff and interns conducted the research that forms the basis of this report. Consultants were chosen based upon their experience with the topic. In addition, consultants were chosen to assure a bipartisan representation in this study. The consultants and EAC staff were charged (1) to research the current state of information on the topics of voter fraud and voter intimidation, (2) to develop a uniform definition of voter fraud and voter intimidation, and (3) to propose recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voter fraud and intimidation. In addition, EAC consultants conducted interviews with selected

experts in the field. Last, EAC consultants and staff presented their study to a working group that provided feed back. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to national Republican  
campaign committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of existing laws, cases, studies and reports on voter fraud and intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voter fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited to produce this final report.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voter fraud and voter intimidation, EAC consultants reviewed the current body of information on voter fraud and intimidation. What the world knows about these issues comes largely from a very limited body of reports, articles and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation.

Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voter fraud and voter intimidation.

### **Reports and Studies of Voter Fraud and Intimidation**

Over the years, there have been a number of studies conducted about the concepts of voter fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voter fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “\_\_”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?” A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, “A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law,” The Sentencing Project, November 2005.

- American Center for Voting Rights “Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election,” August 2, 2005.
- The Advancement Project, “America’s Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy” November 7, 2001
- The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, “Democracy at Risk: The November 2004 Election in Ohio,” DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.
- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," *Demos: A Network of Ideas and Action*, 2003.

- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

**Books**

- John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voter fraud and voter intimidation. None of the studies or reports was based on a comprehensive study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voter fraud or voter intimidation. Most reports focused on a limited number of case studies or instances of alleged voter fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voter fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate. Generally, speaking there is little agreement on what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation even legal practices that they allege suppress the vote.

One point of agreement is that absentee voting and voter registration by third-party groups create opportunities for fraud. A number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of voters of a certain party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### **Interviews with Experts**

In addition to reviewing prior studies and reports on voter fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voter fraud and voter intimidation. Persons interviewed included

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Pat Rogers**  
Attorney, New Mexico

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**  
Author, *Deliver the Vote*

**Douglas Webber**  
Assistant Attorney General, Indiana

**Heather Dawn Thompson**  
Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**  
Counsel  
Democratic National Committee

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**John Ravitz**  
Executive Director  
New York City Board of Elections

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**Sharon Priest**  
Former Secretary of State, Arkansas

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin

**John Tanner**  
Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by third-party groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud, citing as reasons that it was the most likely type of fraud to be discovered and that there are stiff penalties associated with this type of fraud.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, the location of polling places, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voter fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voter fraud and voter intimidation are difficult to prove and require resources and time that local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies

have more time and resources but have limited jurisdiction. They can only prosecute crimes related to elections involving federal candidates. Those interviewed differed on the effectiveness of the current system of enforcement, including those that allege that prosecutions are not sufficiently aggressive and those that feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “\_\_\_”.

### **Case Law and Statutes**

Consultants reviewed over 40,000 cases that were identified using a series of search terms related to voter fraud and voter intimidation. The majority of these cases came from appeal courts. This is not a surprising situation, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “\_\_\_”.

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voter fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voter fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation

throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voter fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charge and prosecutions of voter fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voter fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding of what is and what is not “voter fraud” and “voter intimidation.” Some think of voter fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. In order to come up with a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

### New Terminology

The phrase “voter fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud, n. 1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voter fraud,” it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing “voter fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voter fraud” does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, “voter fraud” does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly

refuses to register to vote an otherwise legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

To further complicate matters, the phrases “voter fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the civil division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as “voter fraud” and “voter intimidation” that would serve as the basis of a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use legal election processes are well beyond the resources available to EAC. As such, EAC has defined “election crimes,” a phrase that captures all crimes related to the voter registration and voting processes.

#### **What is an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process, eligible persons to be excluded from the election process, ineligible votes to be cast in an election, eligible votes not to be cast or counted, or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Generally speaking, election crimes can be committed by voters, candidates, election officials, or any other members of the public that desire to criminally impact the result of an election. However, crimes that are based upon knowing or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

***Acts of Deception***

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, regarding the date and time of the election or regarding a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate at one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once at the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

***Acts of Coercion***

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other valuable thing to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his vote in any election, or who requires or demands an examination or inspection by himself or another of an employee's ballot;

DRAFT – DO NOT DISTRIBUTE

- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for registering to vote.

***Acts of Damage or Destruction***

- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments for the purpose of enabling the voter to vote his or her ballot;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as he intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

### **What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All crimes or civil violations related to campaign finance reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes.” Last, actions that do not rise to the level of criminal activity, that is a misdemeanor, relative felony or felony, are not “election crimes.”

### **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can study the existence of election crimes. EAC consultants developed recommendations. In addition, the working group and some of the persons interviewed as a part of this study provided recommendations.

#### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and parties should be interviewed. It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

#### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

#### ***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a 1-800 voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints may provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and monitor field reports from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys’ Offices. By attending the symposium researchers could learn more about the following how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the

National Voter Registration Act, and the Help America Vote Act are described and explained to participants

***Recommendation 8: Conduct Statistical Research***

EAC should measure voter fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have historically been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets. The sample must include a random set of counties where there have and have not been a large number of allegations

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls in on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers can use that risk analysis to rank the types of fraud based on the ease of commission and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether deceased voters or felons actually voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are actually utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

**Accepted Recommendations**

There has never been a comprehensive study that gathered data regarding all claims, charges and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine what volume and type of election crimes are being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning voting crimes are the administrative complaint processes that states were required to establish as a part of complying with HAVA. Those complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints under those procedures with the state's chief election official and those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses can be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. This data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

*Analyze Survey Data in Light of State Laws and Procedures*

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

**CONCLUSION**

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and political pundits. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC through its clearinghouse role will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention and prosecution of election crimes.

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
11/09/2006 12:08 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Re: How are the summaries of the interviews coming? 

Thanks. Currently, on the phone with Job. Ugh!!!!

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV  
11/09/2006 12:04 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
Subject Re: How are the summaries of the interviews coming? 

Almost finished sorting through the interview summaries. I don't find them as helpful as the literature summaries, but hope to have something to you by the end of the day. (I was at the clinic yesterday, and could only work a half day.) -- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/09/2006 11:41 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject How are the summaries of the interviews coming?

I am getting close to having a first cut at a report, minus a few key sections. Just wondering how those summaries are coming along.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
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(202) 566-3100

006884

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
11/07/2006 09:47 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Re: VF and VI study 

that would be great. I am also interested in identifying the points of contention between DOJ and the consultants.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV  
11/07/2006 09:45 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
Subject Re: VF and VI study 

Yes (at T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Interviews\Interview Summaries). Do you want me to do the same with those as I did with the literature summaries? — Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/07/2006 09:33 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject VF and VI study

Did Tova and Job provide us with summaries or notes of their interviews?

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006885

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
11/06/2006 05:18 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc Thomas R. Wilkey/EAC/GOV@EAC  
Subject Re: VF\_VI Literature Review 

Peggy,

I wanted to let you know that I had a chance to review your summaries today. I think that these are some excellent conclusions that we can definitely use in our report. Thank you for doing such a detailed and thorough job. If tomorrow goes quietly, hopefully I will have some time to write.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV  
11/06/2006 11:07 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
Subject Re: VF\_VI Literature Review 

Julie:

I have not received the outline, but went ahead with reviewing the literature researched. Attached are my perspectives on what we learned and a listing of the literature with portions of the analysis for each. Both of these documents are on the shared drive under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Research Summaries. Hope these help. Let me know what else you need from me. --- Peggy



EAC-Learned from Lit Review 11-6-06.doc EAC Lit Review Notes 11-5-06.doc

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/03/2006 06:41 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Re: Job and Tova 

I appreciate it. I will send you a copy of the outline that I am working from. It is somewhat subject to change as I am still trying to get in my mind what goes first, second ....

-----  
Sent from my BlackBerry Wireless Handheld

006886

Margaret Sims

----- Original Message -----

**From:** Margaret Sims  
**Sent:** 11/03/2006 06:38 PM  
**To:** Juliet Hodgkins  
**Subject:** Re: Job and Tova

I can review them over the weekend and attempt to summarize what they tell us.--- Peggy

-----  
Sent from my BlackBerry Wireless Handheld

Juliet E. Hodgkins

----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 11/03/2006 06:14 PM  
**To:** Margaret Sims  
**Subject:** Re: Job and Tova

I think we should use the content of those articles or some summary of them as a background of what we know about VF and VI. I just didn't want to have to read all of those articles to be able to make some generalized statements about their contents.

-----  
Sent from my BlackBerry Wireless Handheld

Margaret Sims

----- Original Message -----

**From:** Margaret Sims  
**Sent:** 11/03/2006 06:11 PM  
**To:** Juliet Hodgkins  
**Subject:** Re: Job and Tova

Julie:

All of the summaries received are in the shared drawer under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Research Summaries. There are too many of them to append to this message, or I would do it. The researchers did not propose to include these summaries in the report. Are you considering adding them?

If you want, I can cross reference each of these with the list of articles and ID any missing summaries. I could do that over the weekend. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

11/03/2006 05:42 PM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Job and Tova

I spoke to Job about the documents that I need. He will send me his summary of the articles/books that he read. However, he said that Tova also summarized some of those articles/books. I don't have a contact number/email for Tova. Could you contact her and ask her to provide us with any summary of the articles/books that she read as they are listed in Appendix 2?

006887

Juliet Thompson Hodgkins  
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United States Election Assistance Commission  
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006888

**1. Everyone does not define voting fraud and voter intimidation the same way.**

In some cases, what may have been honest administrative mistakes or errors due to poor poll worker training are lumped together with genuine voter suppression efforts and labeled as voter intimidation or voting fraud. Examples: (1) many authors consider certain voter suppression tactics to be voter intimidation that do not rise to the definition used in criminal enforcement of election crimes; (2) some charge that a DOJ ballot integrity measure in South Dakota was voter intimidation; and (3) some mistakes made in the maintenance of voter registration lists are labeled as fraud.

**2. There seems to be no systematic *nationwide* study that reports all (or most) verified instances of voting fraud and voter intimidation or suppression efforts in a particular election or a particular period in U.S. history.**

Some sources focus on certain areas of the country, which can bias the study if these areas are more or less susceptible to fraud and suppression. Some focus on the alleged (but not necessarily verified) misdeeds of one political party or another. Still others focus on unverified allegations reported to a toll-free phone line. In some cases, it is not clear if the incidents were intentional voter suppression or genuine poll worker mistakes (e.g.; not providing provisional ballots or in appropriately asking voters for ID). Minnite's study is as close as they get to a systematic study.

**3. There are a number of obstacles to gathering complete data on voting fraud and voter intimidation/suppression nationwide in any election.**

Authors often have limited resources (time and money) to collect such information. Investigation and prosecution of voting fraud and voter intimidation or suppression occurs at different levels of government (Federal, state and local). These investigations and prosecutions are not reported to and recorded by a central authority. Some voting fraud is inherently more difficult to identify and to prove than others (e.g.; impersonation of another voter at the polls is more difficult, due to the transient nature of some jurisdictions and the fact that impersonators not identified as a fraud at the polls are hard to identify later, than voter registration, vote buying, and absentee ballot fraud). At least some voting fraud and voter intimidation appears to go unreported and uninvestigated, and some prosecutions are unsuccessful due to local politics and law enforcement affiliations and the lack of sufficient resources at the Federal, state, and local levels to support the labor intensive effort.

**4. Most sources seem to agree that voter registration and absentee balloting fraud are the most common forms of voting fraud. Absentee ballot fraud often is accompanied by vote buying or voter coercion. Also frequently alleged were instances of ineligible voters (usually felons, but sometime non-citizens, under aged individuals, or non-residents) that voted. But not all agree that these are the only common forms of fraud.**

Some contend that voting in the name of another at the polling place is common, but that such instances are extremely hard to prove. Most instances of ineligible voters voting were linked to improper voter list maintenance or confusion on the part of local election officials as to state law on felon disenfranchisement.

- 5. A number of sources have identified numerous instances of attempted voter suppression, but no instances of voter intimidation that could be prosecuted under Federal criminal laws is alleged.**

Examples of voter suppression efforts include: (1) phone calls and mailings deliberately directing targeted voters to vote on the wrong day or to go to the wrong polling place, or that provide incorrect and threatening information about the voter qualifications and legal consequences of voting; (2) targeted, inappropriate challenges to voters at the polls or shortly before election day; (3) people posing as law enforcement agents at targeted polling places. When such tactics target minority communities, they may be attacked through civil action by DOJ under Voting Rights Act provisions, but they do not qualify for criminal penalties under Federal voter intimidation law. Currently, there is no Federal election law providing criminal penalties for voter suppression efforts. When the suppression adversely affects a political party, but does not have a racial component, DOJ may be hard pressed to pursue the matter unless other Federal criminal law has been violated (e.g.; suppression of phone banks in New Hampshire).

- 6. Unsupervised voter registration drives by political parties and advocacy groups are a primary source of fraudulent voter registration applications and missing (perhaps deliberately) voter registration applications.**

The practice of paying persons to man voter registration drives (particularly, but not only, when the person is paid by the head) is a frequent source of fraudulent voter registration applications. Partisan drives have resulted in applications from persons of "the wrong party" being held back or destroyed. Therefore, while the applicant believes they have registered, the election official has no record of that registration.

- 7. Many authors contend that proper implementation of the National Voter Registration Act of 1993 (NVRA) and the Help America Vote Act of 2002 (HAVA) will reduce or at least not increase the potential for fraud and voter suppression, but some argue that provisions in these laws increase the likelihood of fraud or voter suppression.**

Many argue that proper implementation of the list maintenance and fail-safe voting provisions of the NVRA and HAVA's requirements for the statewide voter registration list, voter ID for certain first-time voters, and provisional voting will reduce the potential for voting fraud and voter intimidation. Others argue that the list maintenance provisions of NVRA cause "dead wood" to be left on the voter rolls, providing opportunity for fraud, or that HAVA's voter ID and list matching requirements can be used as voter suppression tactics.

EAC-LESSONS LEARNED FROM LITERATURE RESEARCH  
PRELIMINARY VOTING FRAUD-VOTER INTIMIDATION STUDY

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8. **Proper recordkeeping and post-election auditing is an important key to identifying and preventing voting fraud, and for subsequent prosecution of such activities; but is not being done consistently.**
9. **Poll worker recruitment and training is a key component to combating actions that are perceived as suppressing or intimidating voters.**
10. **Both sides on election reform debates are using incomplete data to bolster their arguments.**

EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

**Articles**

People for the American Way and the NAACP, "The Long Shadow of Jim Crow," December 6, 2004.

This report describes the pervasive and repeated practices of voter intimidation and vote suppression that have taken place in very recent years and during contemporary American history. It goes on to describe the numerous instances of voter intimidation and suppression during the 2000 election, the 1990s, the 1980s and back through the civil rights movement of the 1960s, putting current efforts in historical perspective.

Describing the chronology of events in this way demonstrates the developing patterns and strategic underpinnings of the tactics used over the last forty years. **Examples** include:

- Florida law enforcement questioned elderly African American voters in Orlando regarding the 2003 mayoral race, which had already been resolved, shortly before the 2004 election;
- the 2004 Florida felon purge list;
- the case of South Dakota in 2004 in which Native Americans were improperly and illegally required to show photo identification at the polls or denied the right to vote, and similar improper demands for ID from minorities in other parts of the country;
- the use of challengers in minority districts in many locations;
- the challenge to the right of African American students to vote in Texas in 2004;
- the presence of men looking like law enforcement challenging African American voters at the polls in Philadelphia in 2003;
- the distribution of flyers in Louisiana and elsewhere in a number of elections over the last few years in minority areas telling them to vote on the wrong day; and
- the FBI investigation into thousands of Native American voters in South Dakota in 2002.

Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.

Argues that "the discriminatory use of so-called 'ballot security' programs" has been a reoccurring scandal since the passage of the Voting Rights Act of 1965. These programs are deceptively presented as preventing voter fraud and thereby furthering good government. However, McDonald states "but far too often they [the ballot security programs] are actually designed to suppress minority voting -- and for nakedly partisan purposes." Blames the federal government as well as the states for use of suspect ballot security programs. McDonald cites several ballot security efforts that were really disguised attempts at minority voter suppression:

- SD-DOJ "voting integrity initiative".
- AR - poll watchers driving away voters in predominantly black precincts by taking photos of them and demanding identification during pre-election day balloting.
- MI - "spotters" at heavily Democratic precincts was an effort to intimidate black voters and suppress Democratic turnout
- SC - one county's officials instituted a new and unauthorized policy allowing them to challenge voters who gave rural route or box numbers for their registration address (disproportionately affecting African Americans).
- the 1981 gubernatorial election anti-fraud initiative leading to the well known consent decree prohibiting the Republicans from repeating this, a similar Republican effort in Louisiana in 1986 in Senator John Breaux's race which again resulted in prohibition by a state court judge, and a similar effort by Republicans in Senator Jesse Helms 1990 reelection.

States that HAVA "contains provisions that may enhance the opportunities for harassment and intimidation of minorities through ballot-security

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## EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

**programs** (especially voter ID). Indicates that the crux of the problem is **law enforcement of federal voters rights laws** ("there is no record of the purveyors of any ballot-security program being criminally prosecuted by federal authorities for interfering with the right to vote." The only positive case law McDonald cited was a decision by the United States Court of Appeals for the Eighth Circuit that affirmed "an award of damages ranging from \$500 to \$2,000, payable by individual poll officials to each of seven black voters who had been unlawfully challenged, harassed, denied assistance in voting or purged from the rolls in the town of Crawfordsville [Arkansas].")  
Recommends that Congress and the states should adopt "nondiscriminatory, evenly applied measures to ensure the integrity of the ballot."

Wisconsin Legislative Audit Bureau, "An Evaluation: Voter Registration Elections Board" Report 05-12, September, 2005.

Current voter registration practices were determined to be insufficient to ensure the accuracy of voter registration lists used by poll workers or to prevent ineligible persons from registering to vote. **In six municipalities where sufficient information was available, there was 105 instances of potentially improper or fraudulent voting in the 2004 elections. These included: 98 ineligible felons who may have voted; 2 individuals who may have voted twice; 1 voter who may have been underage; and 4 absentee ballots that should not have been counted because the voters who cast them died before Election Day** (all but dead voters were forwarded to appropriate district attorneys for investigation). Statutes require that clerks send cards to everyone who registers by mail or on Election Day. However, only 42.7 % of the 150 municipalities surveyed sent cards to both groups, and 46 % did not send any address verification cards to those registering to vote on Election Day in November 2004. Statutes also require clerks to provide the local district attorney with the names of any Election Day registrants whose cards are undeliverable at the address provided. However, only 24.3 % of the clerks who sent cards also forwarded names from undeliverable cards to district attorneys. District attorneys surveyed indicated that they require more information than is typically provided to conduct effective investigations. To ensure that voter registration lists contain only the names of qualified electors, municipal clerks are required by statute to remove or inactivate the names of individuals who have not voted in four years, to update registration information for individuals who move or change their names, and to remove or inactivate the names of deceased individuals. They are also required to notify registered voters before removing their names from registration lists. These statutory requirements are not consistently followed:

- 85.3 % of municipalities removed the names of inactive voters from their voter registration lists;
- 71.4 % sometimes or always notified registered voters before removing their names; and
- 54.0 % reported removing the names of ineligible felons.
- registration lists contain duplicate records and the names of ineligible individuals (e.g.; more than 348,000 electronic voter registration records from eight municipalities were reviewed, identifying 3,116 records that appear to show individuals who are registered more than once in the same municipality).

Recommendations:

- adjust the early registration deadline to provide clerks more time to prepare registration lists;
- establish more stringent requirements for special registration deputies, including prohibiting compensation based on the number of individuals registered;
- establish uniform requirements for demonstrating proof of residence for all registrants;
- provide municipal clerks with more flexibility in the use of address verification cards;
- Authorize civil penalties for local election officials and municipalities that fail to comply with election laws; and
- implement mandatory elections training requirements for municipal clerks.

Report also recognized that the new **HAVA registration procedures would help with existing registration problems.**

## EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, United States Attorney's Office "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," May 10, 2005.

On January 26, 2005, the Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, and the United States Attorney's Office formed a task force to investigate alleged voting irregularities during the November 2004 elections. The task force has made the following specific determinations based on evidence examined to date:

- **evidence of more than 100 individual instances of suspected double-voting, voting in names of persons who likely did not vote, and/or voting in names believed to be fake.**
- **more than 200 felons voted when they were not eligible to do so. (In order to establish criminal cases, the government must establish willful violations in individual instances);**
- **persons who had been paid to register voters as "deputy registrars" falsely listed approximately 65 names in order to receive compensation for the registrations. (The evidence does not indicate that these particular false registrations were later used to cast votes); and,**
- **the number of votes counted from the City of Milwaukee exceeds the number of persons recorded as voting by more than 4,500. (Evidence indicates widespread record keeping errors with respect to recording the number of voters)**

The investigation concentrated on the 70,000+ same-day registrations. It found that a large majority of the reported errors were the result of data entry errors, such as street address numbers being transposed. However, the investigation also found more than 100 instances where votes were cast in a manner suggesting fraud. These include:

- persons with the same name and date of birth recorded as voting more than once;
- persons who live outside Milwaukee, but who used non-existent City addresses to register and vote in the City (141 of them were same day registrants; in several instances, the voter explicitly listed municipality names other than Milwaukee on the registration cards);
- persons who registered and voted with identities and addresses that cannot in any way be linked to a real person;
- persons listed as voting under a name and identity of a person known to be deceased;
- persons whose identities were used to vote, but who in subsequent interviews told task force investigators that they did not, in fact, vote in the City of Milwaukee.

Investigation also found:

- **persons who were paid money to obtain registrations allegedly falsified approximately 65 names on registration forms, allegedly to obtain more money for each name submitted.**
- **more than 200 felons who were not eligible to vote in the 2004 election, but who are recorded as having done so.**
- **same-day registrations were accepted in which the card had incomplete information that would help establish identity. For example: 48 original cards for persons listed as voting had no name; 548 had no address; 28 did not have signatures; and another 23 cards had illegible information (part of approximately 1,300 same-day registrations for which votes were cast, but which election officials could not authenticate as proper voters within the City).**
- **the post-election misfiling or loss of original green registration cards that were considered duplicates, but that in fact corresponded to additional votes. These cards were used to record votes, but approximately 100 cards of interest to investigators can no longer be located. In addition, other original green registration cards continue to be found.**

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National Commission on Federal Election Reform, "Building Confidence in U.S. Elections," Center for Democracy and Election Management, American University, September 2005.

Among the observations made that are relevant to the EAC study of fraud and intimidation are the following:

- The November 2004 elections showed that irregularities and fraud still occur.
- Failure to provide voters with such basic information as their registration status and their polling site location raises a barrier to voting as significant as inconsistent procedures on provisional ballots or voter ID requirements.
- **There is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election.**
- The Commission is concerned that the different approaches to identification cards might prove to be a serious impediment to voting.
- **Voter registration lists are often inflated by the inclusion of citizens who have moved out of state but remain on the lists.** Moreover, under the National Voter Registration Act, names are often added to the list, but counties and municipalities often do not delete the names of those who moved. Inflated voter lists are also caused by phony registrations and efforts to register individuals who are ineligible. At the same time, inaccurate purges of voter lists have removed citizens who are eligible and are properly registered.
- Political party and nonpartisan voter registration drives generally contribute to the electoral process by generating interest in upcoming elections and expanding participation. However, they are occasionally abused. **There were reports in 2004 that some party activists failed to deliver voter registration forms of citizens who expressed a preference for the opposing party.**
- **Vote by mail raises concerns about privacy**, as citizens voting at home may come under pressure to vote for certain candidates, and it increases the risk of fraud.
- **While election fraud is difficult to measure, it occurs.** The U.S. Department of Justice has launched more than 180 investigations into election fraud since October 2002. These investigations have resulted in **charges for multiple voting, providing false information on their felon status, and other offenses** against 89 individuals and in convictions of 52 individuals. The convictions related to a **variety of election fraud offenses, from vote buying to submitting false voter registration information and voting-related offenses by non-citizens.** In addition to the federal investigations, state attorneys general and local prosecutors handle cases of election fraud. **Other cases are never pursued because of the difficulty in obtaining sufficient evidence for prosecution or because of the low priority given to election fraud cases.**
- **Absentee ballots remain the largest source of potential voter fraud**
- **Non-citizens have registered to vote in several recent elections**
- **The growth of "third-party" (unofficial) voter registration drives in recent elections has led to a rise in reports of voter registration fraud.**
- **Many states allow the representatives of candidates or political parties to challenge a person's eligibility to register or vote or to challenge an inaccurate name on a voter roll. This practice of challenges may contribute to ballot integrity, but it can have the effect of intimidating eligible voters, preventing them from casting their ballot, or otherwise disrupting the voting process.**

Its pertinent recommendations for reform are as follows:

- **Interoperable state voter databases** are needed to facilitate updates in the registration of voters who move to another state and to eliminate duplicate registrations, which are a source of potential fraud.
- **Voters should be informed of their right to cast a provisional ballot** if their name does not appear on the voter roll, or if an election official asserts that the individual is not eligible to vote, but **States should take additional and effective steps to inform voters as to the location of their precinct**
- The Commission recommends that states use **"REAL ID" cards for voting purposes.**
- **To verify the identity of voters who cast absentee ballots, the voter's signature on the absentee ballot can be matched with a digitized**

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**version of the signature that the election administrator maintains.** While such signature matches are usually done, they should be done consistently in all cases, so that election officials can verify the identity of every new registrant who casts an absentee ballot.

- Each **state needs to audit its voter registration files** to determine the extent to which they are accurate (with correct and current information on individuals), complete (including all eligible voters), valid (excluding ineligible voters), and secure (with protections against unauthorized use). This can be done by matching voter files with records in other state agency databases in a regular and timely manner, contacting individuals when the matches are inconclusive, and conducting survey research to estimate the number of voters who believe they are registered but who are not in fact listed in the voter files.
- Each **state should oversee political party and nonpartisan voter registration drives** to ensure that they operate effectively, that registration forms are delivered promptly to election officials, that all completed registration forms are delivered to the election officials, and that none are "culled" and omitted according to the registrant's partisan affiliation. Measures should also be adopted to track and hold accountable those who are engaged in submitting fraudulent voter registrations. Such oversight might consist of training activists who conduct voter registration drives and tracking voter registration forms to make sure they are all accounted for. In addition, states should apply a criminal penalty to any activist who deliberately fails to deliver a completed voter registration form.
- **Investigation and prosecution of election fraud should include those acts committed by individuals, including election officials, poll workers, volunteers, challengers or other nonvoters associated with the administration of elections, and not just fraud by voters.**
- **In July of even-numbered years, the U.S. Department of Justice should issue a public report on its investigations of election fraud.** This report should specify the numbers of allegations made, matters investigated, cases prosecuted, and individuals convicted for various crimes. **Each state's attorney general and each local prosecutor should issue a similar report.**
- **The U.S. Department of Justice's Office of Public Integrity should increase its staff to investigate and prosecute election-related fraud.**
- In addition to the penalties set by the Voting Rights Act, it should be a federal felony for any individual, group of individuals, or organization to engage in any act of violence, property destruction (of more than \$500 value), or threatened act of violence that is intended to deny any individual his or her lawful right to vote or to participate in a federal election.
- **To deter systemic efforts to deceive or intimidate voters, the Commission recommends federal legislation to prohibit any individual or group from deliberately providing the public with incorrect information about election procedures for the purpose of preventing voters from going to the polls.**
- **States should define clear procedures for challenges, which should mainly be raised and resolved before the deadline for voter registration.** After that, challengers will need to defend their late actions. **On Election Day, they should direct their concerns to poll workers, not to voters directly, and should in no way interfere with the smooth operation of the polling station.**
- **State and local jurisdictions should prohibit a person from handling absentee ballots other than the voter, an acknowledged family member, the U.S. Postal Service or other legitimate shipper, or election officials.** The practice in some states of allowing candidates or party workers to pick up and deliver absentee ballots should be eliminated.
- All states should consider passing legislation that attempts to minimize the fraud that has resulted from "payment by the piece" to anyone in exchange for their efforts in voter registration, absentee ballot, or signature collection.
- Nonpartisan structures of election administration are very important, and **election administrators should be neutral, professional, and impartial.**
- No matter what institutions are responsible for conducting elections, **conflict-of-interest standards should be introduced for all federal, state, and local election officials.** Election officials should be prohibited by federal and/or state laws from serving on any political campaign committee, making any public comments in support of a candidate, taking a public position on any ballot measure, soliciting campaign funds, or otherwise campaigning for or against a candidate for public office. A decision by a secretary of state to serve as co-chair of his or her party's presidential

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election committee would clearly violate these standards.

The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law "Response to the Report of the 2005 Commission on Federal Election Reform," September 19, 2005.

### Recommendation on Voter Identification -

- Report premises its burdensome identification proposals on the need to ensure ballot integrity and on the existence of or potential for widespread fraud. However, the **Report admits that there is simply "no evidence" that the type of fraud that could be solved by stricter voter identification** – individual voters who misrepresent their identity at the polls – is a widespread problem.
- The photo ID proposal guards against only one type of fraud: individuals arriving at the polls to vote using false information, such as the name of another registered voter, or a recent but not current address. Since the costs of this form of fraud are extremely high (federal law provides for up to five years' imprisonment), and the benefits to any individual voter are extremely low, it is highly unlikely that this will ever occur with any frequency. **The limited types of fraud that could be prevented by a Real ID requirement are extremely rare and difficult.**
- In the most comprehensive survey of alleged election fraud to date, Professor Loraine Minnite and David Callahan have shown that the **incidence of individual voter fraud at the polls is negligible**. A few prominent examples support their findings. In Ohio, a statewide survey found four instances of ineligible persons voting or attempting to vote in 2002 and 2004, out of 9,078,728 votes cast – a rate of 0.00004%. Earlier this year, Georgia Secretary of State Cathy Cox stated that she could not recall one documented case of voter fraud relating to the impersonation of a registered voter at the polls during her ten-year tenure as Secretary of State or Assistant Secretary of State.
- The Report attempts to support its burdensome identification requirements on four specific examples of purported fraud or potential fraud. **None of the Report's cited examples of fraud stand up under closer scrutiny.** This response report goes through each instance of fraud raised by the Commission report and demonstrates that in each case the allegation in fact turned out later not to be true or the fraud cited was not of the type that would be addressed by a photo identification requirement.
- The Report fails to provide a good reason to create greater hurdles for voters who vote at the polls than for those who vote absentee. Despite the fact that **absentee ballots are more susceptible to fraud than regular ballots**, the Report exempts absentee voters from its proposed Real ID and proof of citizenship requirements.

### Other points in ID requirement:

- **Report does not explain why the goals of improved election integrity will not be met through the existing provisions in the Help America Vote Act of 2002 (HAVA).**
- Report fails to consider alternative measures to advance its goals that are less restrictive to voters. To the extent that any limited fraud **by individuals at the polls does trickle into the system, it can be addressed by far less restrictive alternatives.** The first step is to recognize that only voters who appear on the registration list may vote a regular ballot. Proper cleaning of registration lists – and proper use of the lists at the poll – will therefore go a long way toward ensuring that every single ballot is cast by an eligible voter.
- In addition to the **better registration lists that full implementation will provide, better record keeping and administration at the polls will reduce the limited potential for voting by ineligible persons.** In the unlikely event that implementation of current law is not able to wipe out whatever potential for individual fraud remains, there are several effective and less burdensome alternatives to the Report's Real ID recommendation that received wholly insufficient consideration.
- Costs - If required as a precondition for voting, photo identification would operate as a de facto poll tax that could disenfranchise low-income voters. To alleviate this burden, the Report appropriately recommends that the "Real ID" card itself be issued free of charge. Nevertheless, the

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percentage of Americans without the documentary proof of citizenship necessary to obtain Real IDs is likely to remain high because the requisite documents are both expensive and burdensome to obtain. (Each of the documents an individual is required to show in order to obtain a "Real ID" card or other government-issued photo ID card costs money or presumes a minimal level of economic resources. Unless the federal and all state governments waive the cost of each of these other forms of identification, the indirect costs of photo IDs will be even greater than their direct costs. In addition, since government-issued IDs may only be obtained at specified government offices, which may be far from voters' residences and workplaces, individuals seeking such IDs will have to incur transportation costs and the costs of taking time off from work to visit those offices during often-abbreviated business hours.)

- Since voting generally depends on the voter's address, and since many states will not accept IDs that do not bear an individual's current voting address, an additional 41.5 million Americans each year will have ID that they may not be able to use to vote.
- The burden would fall disproportionately on the elderly, the disabled, students, the poor, and people of color.
- The ID recommendations reduce the benefits of voter registration at disability and other social service agencies provided by the National Voter Registration Act of 1993. Individuals who seek to register at those offices—which generally do not issue IDs Census data demonstrate that African Americans and Latinos are more than three times more likely than whites to register to vote at a public assistance agency, and that whites are more likely than African Americans and Latinos to register when seeking a driver's license. Accordingly, the voter registration procedure far more likely to be used by minorities than by whites will no longer provide Americans with full eligibility to vote.
- The Report's proposal to use Real ID as a condition of voting is so excessive that it would prevent eligible voters from proving their identity with even a valid U.S. passport or a U.S. military photo ID card. The Report's proposal to use Real ID as a condition of voting is so excessive that it would prevent eligible voters from proving their identity with even a valid U.S. passport or a U.S. military photo ID card

Recommendation on Database Information Sharing Across States - **serious efficacy, privacy, and security concerns raised by a nationally distributed database of the magnitude it contemplates.** These problems are exacerbated by the Report's recommendation that an individual's Social Security number be used as the broadly disseminated unique voting identifier.

Recommendation on Voting Rights of Ex-Felons - This recommendation would set a standard more generous than the policies of the most regressive thirteen states in the nation but more restrictive than the remaining thirty-seven. **The trend in the states is toward extension of the franchise.**

Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.

Focuses on **vote suppression through "ballot security programs"** (programs that, in the name of protecting against vote fraud, almost exclusively target heavily black, Latino, or Indian voting precincts and have the intent or effect of discouraging or preventing voters in those precincts from casting a ballot). Noteworthy **characteristics of these programs:**

- **focus on minority precincts almost exclusively**
- **is often on only the flimsiest evidence that vote fraud is likely to be perpetrated in such precincts;**
- **in addition to encouraging the presence of sometimes intimidating white Republican poll watchers or challengers who may slow down voting lines and embarrass potential voters by asking them humiliating questions,** these programs have sometimes posted people in official-looking uniforms with badges and side arms who question voters about their citizenship or their registration
- **warning signs may be posted near the polls, or radio ads may be targeted to minority listeners** containing dire threats of prison terms for people who are not properly registered—messages that seem designed to put minority voters on the defensive.
- **sometimes false information about voting qualifications** is sent to minority voters through the mail."
- **doing mailings, collecting returned materials, and using that as a basis for creating challenger lists** and challenging voters at the polls,

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started in the 1950s and continues to today (problem with this practice is that reasons for a mailing to be returned include a wrong address, out of date or inaccurate addresses, poor mail delivery in minority areas, and matching mistakes)

Provide numerous examples from the last 50 years to demonstrate his thesis, going through the historical development of Republican ballot security programs from the 1950s through to the present (including more recent incidents, such as 1981 in New Jersey, 1982 Dallas, Louisiana 1986, Houston 1986, Hidalgo 1988 Orange County 1988, North Carolina 1990, South Carolina 1980-1990, and South Dakota 2002). Author cites and quotes internal Republican letters and memoranda, primary sources and original documents, media reports, scholarly works, as well as the words of judges' rulings in some of the cases that ended up in litigation to prove his argument. author cites and quotes internal Republican letters and memoranda, primary sources and original documents, media reports, scholarly works, as well as the words of judges' rulings in some of the cases that ended up in litigation to prove his argument.

**Some of the features of vote suppression efforts** put forth by Republicans under the guise of ballot security programs:

1. **An organized, often widely publicized effort to field poll watchers in what Republicans call "heavily Democratic," but what are usually minority, precincts;**
2. **Stated concerns about vote fraud in these precincts, which are occasionally justified but often are not;**
3. **Misinformation and fear campaigns directed at these same precincts, spread by radio, posted signs in the neighborhoods, newspapers, fliers, and phone calls, which are often anonymously perpetrated;**
4. **Posting "official-looking" personnel at polling places, including but not limited to off-duty police—sometimes in uniform, sometimes armed;**
5. **Aggressive face-to-face challenging techniques at the polls that can confuse, humiliate, and intimidate—as well as slow the voting process—in these same minority precincts;**
6. **Challenging voters using inaccurate, unofficial lists of registrants derived from "do-not-forward" letters sent to low-income and minority neighborhoods;**
7. **Photographing, tape recording, or videotaping voters; and**
8. **Employing language and metaphors that trade on stereotypes of minority voters as venal and credulous.**

The report ends with some observations on the state of research on the incidence of fraud, which the author finds lacking. He suggests that **vote suppression of qualified minority voters by officials and partisan poll-watchers, challengers, and uniformed guards should also be considered as included in any definition of election fraud.** Recommends Democrats should not protest all programs aimed at ballot integrity, but rather work with Republicans to find solutions to problems that confront both parties and the system as a whole.

Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.

Presents results from the first nationwide study to document the implementation of American felony disenfranchisement law. Data came from two main sources: a 33-state survey of state elections officials (spring 2004) and telephone interviews with almost one hundred city, county, town, and parish officials drawn from 10 selected states.

### Major Conclusions:

1. **Broad variation and misunderstanding in interpretation and enforcement of voting laws** (more than one-third [37%] of local officials interviewed in ten states either described their state's fundamental eligibility law incorrectly, or stated that they did not know a central aspect of that law. / Local registrars differ in their knowledge of basic eligibility law, often within the same state. Differences also emerge in how they are notified of criminal convictions, what process they use to suspend, cancel, or "purge" voters from the rolls, whether particular documents are required to restore a voter to eligibility, and whether they have information about the criminal background of new arrivals to the state.)
2. **Misdemeanants disenfranchised in at least five states** (the commonly-used term "felon disenfranchisement" is not entirely accurate, since at

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least five states – Colorado, Illinois, Michigan, South Carolina, and Maryland -- also formally bar some or all people convicted of misdemeanors from voting [ it is likely that misdemeanants in other states who do retain the formal right to vote could have difficulty exercising that right, given ignorance of their eligibility and the lack of clear rules and procedures for absentee voting by people in jail who have not been convicted of a felony / Maryland excludes persons convicted of many misdemeanors, such as “Unlawful operation of vending machines,” “Misrepresentation of tobacco leaf weight,” and “Racing horse under false name.”)

3. **Significant ambiguities in voting laws (disenfranchisement in Tennessee is dependent on which of five different time periods a felony conviction occurred between 1973 and the present / in Oregon, disenfranchisement is determined not by conviction or imprisonment for a felony, but for being placed under Department of Corrections supervision / since 1997, some persons convicted of a felony and sentenced to less than 12 months’ custody have been sent to county jails and hence, are eligible to vote.**
4. **Disenfranchisement results in contradictory policies within states (the “crazy-quilt” pattern of disenfranchisement laws exists even within states / Alabama and Mississippi have both the most and least restrictive laws in the country, a result which is brought about by the fact that certain felonies result in the loss of voting rights for life, while others at least theoretically permit people in prison to vote / most felonies in Alabama result in permanent disenfranchisement, but drug and DUI offenses have been determined to not involve the “moral turpitude” that triggers the loss of voting rights / in Mississippi, ten felonies result in disenfranchisement, but do not include such common offenses as burglary and drug crimes.**
5. **Confusing policies lead to the exclusion of legal voters and the inclusion of illegal voters:** The complexity of state disenfranchisement policies results in frequent misidentification of voter eligibility, largely because officials differ in their knowledge and application of disqualification and restoration law and procedures.
6. **Significant variation and uncertainty in how states respond to persons with a felony conviction from other states:** No state has a systematic mechanism in place to address the immigration of persons with a felony conviction, and there is no consensus among indefinite-disenfranchisement states on whether the disqualification is properly confined to the state of conviction, or should be considered in the new state of residence. Interpretation and enforcement of this part of disenfranchisement law varies not only across state lines, but also from one county to another within states. Local officials have no way of knowing about convictions in other states, and many are unsure what they would do if a would-be voter acknowledged an old conviction. Because there is no prospect of a national voter roll, this situation will continue even after full HAVA implementation.
7. **Disenfranchisement is a time-consuming, expensive practice:** Enforcement requires elections officials to gather records from different agencies and bureaucracies, including state and federal courts, Departments of Corrections, Probation and Parole, the state Board of Elections, the state police, and other counties’ elections offices.

### Policy Implications

1. **Policies disenfranchising people living in the community on probation or parole, or who have completed a sentence are particularly difficult to enforce:** States which disenfranchise only persons who are currently incarcerated appear able to enforce their laws more consistently than those barring non-incarcerated citizens from voting.
2. **Given large-scale misunderstanding of disenfranchisement law, many eligible persons incorrectly believe they cannot vote, or have been misinformed by election officials:** More than one-third of election officials interviewed incorrectly described their state’s law on voting eligibility. More than 85% of the officials who misidentified their state’s law either did not know the eligibility standard or specified that the law was more restrictive than was actually the case.
3. **Occasional violation of disenfranchisement law by non-incarcerated voters not surprising:** Given the complexity of state laws and the number of state officials who lack an understanding of restoration and disqualification procedures, it should come as no surprise that many voters are ignorant of their voting status, a fact that is likely to have resulted in hundreds of persons with a felony conviction registering and voting illegally in recent years.

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4. Taken together, these findings undermine the most prominent rationale for disenfranchisement: that the policy reflects a strong, clear consensus that persons with a felony conviction are unfit to vote and constitute a threat to the polity: First, when significant numbers of the people who administer elections do not know important aspects of disenfranchisement law, it is hard to conclude that the restriction is necessary to protect social order and the "purity" of the ballot box. Second, because they are all but invisible in the sentencing process, "collateral" sanctions like disenfranchisement simply cannot accomplish the denunciatory, expressive purposes their supporters claim. We now know that disenfranchisement is not entirely "visible" even to the people running American elections. Third, deep uncertainty regarding the voting rights of people with felony convictions who move from one state to another indicates that we do not even know what purpose disenfranchisement is supposed to serve – whether it is meant to be a punishment, or simply a non-penal regulation of the franchise.

### Recommendations

1. **Clarify Policies Regarding Out-of-State Convictions:** State officials should clarify their policies and incorporate into training programs the means by which a felony conviction in another state affects an applicant's voting eligibility. For example, sentence-only disenfranchisement states should clarify that newcomers with old felony convictions from indefinite disenfranchisement states are eligible to vote. And those states which bar some people from voting even after their sentences are completed must clarify whether new arrivals with old felony convictions from sentence-only disenfranchisement states are automatically eligible, and must explain what procedures, if any, should be followed for restoration.
2. **Train Election Officials:** Clarify disenfranchisement policies and procedures for all state and local election officials through development of materials and training programs in each state. At a minimum, this should include distribution of posters, brochures and FAQ sheets to local and state elections offices.
3. **Train Criminal Justice Officials:** Provide training on disqualification and restoration policies for all correctional and criminal justice officials, particularly probation and parole staff. Correctional and criminal justice officials should also be actively engaged in describing these policies to persons under criminal justice supervision.
4. **Review Voting Restrictions on Non-Incarcerated People:** Given the serious practical difficulty of enforcing laws disqualifying people who are not incarcerated from voting – problems which clearly include both excluding eligible people from voting and allowing those who should be ineligible to vote -- state policymakers should review such policies to determine if they serve a useful public purpose.

American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.

Using court records, police reports and news articles, ACVR Legislative Fund presented this Report documenting hundreds of reported incidents and allegations from around the country. The report **most often alleges voter intimidation and voter registration fraud, and to a lesser degree absentee ballot fraud and vote buying.** This report alleges a coordinated effort by members of some organizations to rig the election system through voter registration fraud, the first step in any vote fraud scheme that corrupts the election process by burying local officials in fraudulent and suspicious registration forms. paid Democrat operatives were far more involved in voter intimidation and suppression activities than were their Republican counterparts during the 2004 presidential election. Identified five cities as "hot spots" which require additional immediate attention, based on the findings of this report and the cities' documented history of fraud and intimidation: Philadelphia, PA, Milwaukee, WI, Seattle, WA, St. Louis/East St. Louis, MO/IL, and Cleveland, OH. Refutes charges of voter intimidation and suppression made against Republican supporters, discusses similar charges against Democrats, details incidents vote fraud and illegal voting and finally discusses problems with vote fraud, voter registration fraud and election irregularities around the country. Recommends:

- **Both national political parties should formally adopt a zero-tolerance fraud and intimidation policy that commits the party to pursuing and fully prosecuting individuals and allied organizations who commit vote fraud or who seek to deter any eligible voter from participating in the election through fraud or intimidation.** No amount of legislative reform can effectively deter those who commit acts of fraud if there is no punishment for the crime and these acts continue to be tolerated.

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- States should adopt legislation requiring government-issued photo ID at the polls and for any voter seeking to vote by mail or by absentee ballot. Government-issued photo identification should be readily available to all citizens without cost and provisions made to assure availability of government-issued identification to disabled and low-income citizens.
- States should adopt legislation requiring that all polling places be fully accessible and accommodating to all voters regardless of race, disability or political persuasion and that polling locations are free of intimidation or harassment.
- States should create and maintain current and accurate statewide voter registration databases as mandated by the federal Help America Vote Act (“HAVA”) and establish procedures to assure that the statewide voter roll is current and accurate and that the names of eligible voters on the roll are consistent with the voter roll used by local election authorities in conducting the election.
- States should adopt legislation establishing a 30-day voter registration cutoff to assure that all voter rolls are accurate and that all registrants can cast a regular ballot on Election Day and the election officials have opportunity to establish a current and accurate voter roll without duplicate or fictional names and assure that all eligible voters (including all recently registered voters) are included on the voter roll at their proper precinct.
- States should adopt legislation requiring voter registration applications to be delivered to the elections office within one week of being completed so that they are processed in a timely manner and to assure the individuals registered by third party organizations are properly included on the voter roll.
- States should adopt legislation and penalties for groups violating voter registration laws, and provide the list of violations and penalties to all registration solicitors. Legislation should require those organizations obtaining a voter’s registration to deliver that registration to election officials in a timely manner and should impose appropriate penalties upon any individual or organization that obtains an eligible voter’s registration and fails to deliver it to election authorities.
- States should adopt legislation prohibiting “bounty” payment to voter registration solicitors based on the number of registration cards they collect.

### The Advancement Project, “America’s Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy” November 7, 2001

Written after the 2000 election, thesis of report is that **structural disenfranchisement**—the effect of breakdowns in the electoral system, is the new poll tax. Structural disenfranchisement includes “bureaucratic blunders, governmental indifference, and flagrant disregard for voting rights.” Blame for structural disenfranchisement is laid squarely at the feet of **states and localities that “shirk their responsibilities or otherwise manipulate election systems,” resulting in voters “either turned away from the polls or their votes are thrown out.”** Data and conclusions in the Report are taken from **eight sample case studies** of states and cities across the country and a survey of state election directors that reinforces the findings of the case studies (New York City-in six polling places Chinese translations inverted the Democrats with the Republicans; Georgia-the state computer crashed two weeks before the election, dropping thousands of voters from the rolls; Virginia-registration problems kept an untold number from voting; Chicago-in inner-city precincts with predominately minority populations, almost four out of every ten votes cast for President (in 2000) were discarded; St. Louis-thousands of qualified voters were placed on inactive lists due to an overbroad purge; Florida-a voting list purge of voters whose name and birth date closely resembled those of people convicted of felonies; and, Texas-significant Jim Crow like barriers to minority voting.) Most ballot blockers involve the structural elements of electoral administration: “ill-trained poll workers, failures to process registration cards on time or at all, inaccurate registration rolls, overbroad purges of voter rolls, unreasonably long lines, inaccurate ballot translations and a shortage of translators to assist voters who have limited English language skills.”

#### Findings:

- election directors lack the resources to effectively do their jobs and some lack the “ability or will to force local election officials to fix serious

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problems”;

- election officials are highly under funded and legislatures refuse to grant their requests for more money;
- due to a lack of funds, election officials must use old and inferior equipment and can't improve training or meet structural needs;
- election officials are generally unaware of racial disparities in voting; only three of the 50 state election administrators are non-white.

### Recommendations:

- federal policies that set nationwide and uniform election policies;
- federal guarantee of access to provisional ballots;
- enforcement of voter disability laws;
- automatic restoration of voting rights to those convicted of a crime after they have completed their sentence;
- a centralized data base of voters administered by non-partisan individuals;
- federal standards limiting precinct discarded vote rates to .25 %;
- federal requirements that jurisdiction provide voter education, including how to protect their right to vote; and laws that strengthen the ability of individuals to bring actions to enforce voting rights and anti-discrimination laws.

The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.

A September 15, 2005 Report submitted to the New Jersey Attorney General included lists of purportedly illegitimate votes in New Jersey in the 2004 general election, including lists of 10,969 individuals who purportedly voted twice and lists of 4,756 voters who were purportedly dead or incarcerated in November 2004. **Analysis of the suspect lists reveals that the evidence submitted does not show what it purports to show: cause for concern that there is serious risk of widespread fraud given the state of the New Jersey voter registration rolls.** These suspect lists were compiled by attempting to match the first name, last name, and birth date of persons on county voter registration files. **Analysis reveals several serious problems with the methodology used to compile the suspect lists that compromise the lists' practical value.** For example, middle initials were ignored throughout all counties, so that “J\_\_\_\_\_ A. Smith” was presumed to be the same person as “J\_\_\_\_\_ G. Smith.” Suffixes were also ignored, so that fathers and sons – like “B\_\_\_\_\_ Johnson” and “B\_\_\_\_\_ Johnson, Jr.” – were said to be the same person. **A presumption that two records with the same name and date of birth must represent the same person is not consistent with basic statistical principles.**

Re Claim of Double Voting by 4,497 Individuals:

- 1,803 of these 4,397 records of ostensibly illegal votes seem to be the product of a glitch in the compilation of the registration files (far more likely that data error is to blame for the doubly logged vote - to irregularities in the data processing and compilation process for one single county);
- another 1,257 entries of the 4,397 records probably represent similar data errors;
- approximately 800 of the entries on the list likely represent different people, with different addresses and different middle initials or suffixes;
- for approximately 200 of the entries in this category, however, less information is available (lack of or differences in middle initial or middle name);
- 7 voters were apparently born in January 1, 1880 – which is most likely a system default for registrations lacking date-of-birth information;
- for 227 voters, only the month and year of birth are listed: this means only that two voters with the same name were born in the same month and year, an unsurprising coincidence in a state of several million people;
- leaves approximately 289 votes cast under the same name and birth date – like votes cast by “P\_\_\_\_\_ S. Rosen,” born in the middle of the baby boom – but from two different addresses. It may appear strange, but there may be two P\_\_\_\_\_ S. Rosens, born on the same date in 1948 – and

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such coincidences are surprisingly common. . In a group of just 23 people, it is more likely than not that two will share the same birthday. For 40 people, the probability is 90%. Many, if not most, of the 289 alleged double votes of persons registered at different addresses most likely reflect two separate individuals sharing a first name, last name, middle initial, and birth date.

But there is **no doubt that there are duplicate entries on New Jersey's registration rolls**. It is well known that voter registration rolls contain "deadwood" – registration entries for individuals no longer living at a given address or deceased. There is no evidence, however, that these extra registrations are used for widespread illegal voting. Moreover, the **problem of deadwood will soon be largely resolved: both the National Voter Registration Act of 1993 and the Help America Vote Act of 2002 require states to implement several systems and procedures as of January 1, 2006, that will clean the voter rolls of duplicate or invalid entries while protecting eligible voters from unintended disfranchisement**.

Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005

Study re 2004 election in Ohio. Findings considered related to EAC study:

- **Statewide, 6 %of all voters reported feelings of intimidation: 16 percent of African Americans reported experiencing intimidation versus only 5 %of white voters.**
- **African American voters were 1.2 times more likely than white voters to be required to vote provisionally.** Of provisional voters in Cuyahoga County, 35% were African American, compared to 25% of non-provisional voters, matched by geography.
- Under Ohio law, the only voters who should have been asked for identification were those voting in their first Federal election who had registered by mail but did **not** provide identification in their registration application. **Although only 7% of all Ohio voters were newly registered (and only a small percentage of those voters registered by mail and failed to provide identification in their registration application), more than one third (37% reported being asked to provide identification.—meaning large numbers of voters were illegally required to produce identification. African American voters statewide were 47% more likely to be required to show identification than white voters. Indeed, 61% of African American men reported being asked to provide identification at the polls.**
- **Scarcity of voting machines caused long lines that deterred many people from voting: 3% of voters who went to the polls left their polling places and did not return due to the long lines; statewide, African American voters reported waiting an average of 52 minutes before voting while white voters reported waiting an average of 18 minutes; overall, 20% of white Ohio voters reported waiting more than twenty minutes, while 44% of African American voters reported doing so.**

The report also includes a useful summary and description of the reports that came through Ohio Election Protection on Election Day, which included a wide variety of problems, including voter intimidation and discrimination.

Pertinent recommendations:

- **codify into law all required election practices**, including requirements for the adequate training of official poll workers
- **adopt legislation to make clear and uniform the rules on voter registration.**
- **adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts**, to ensure adequate and nondiscriminatory access
- **improve training of official poll workers**
- **adopt clear and uniform rules on the use of, and the counting of, provisional ballots**, and distribute them for public comment well in advance of each election day
- **not adopt requirements that voters show identification at the polls, beyond those already required by federal law; vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.**

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- **make voter suppression a criminal offense at the state level**, in all states
- **implement statewide voter lists** in accordance with the Help America Vote Act ("HAVA")
- **expend significantly more resources in educating voters on where, when and how to vote.**
- **partisan officials who volunteer to work for a candidate should not oversee or administer any elections.**

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."

### **Supervision of the Justice Department's nationwide response to election crimes:**

Election Crimes Branch oversees the Department's handling of all election crime allegations other than those involving civil rights violations, which are supervised by the Voting Section of the Civil Rights Division. Specifically, the Branch supervises four types of corruption cases: crimes that involve the voting process, crimes involving the financing of federal election campaigns, crimes relating to political shakedowns and other patronage abuses, and illegal lobbying with appropriated funds. Vote frauds and campaign-financing offenses are the most significant and also the most common types of election crimes. The purpose of Headquarters' oversight of election crime matters is to ensure that the Department's nationwide response to election crime is uniform, impartial, and effective. An Election Crimes Branch, headed by a Director and staffed by Section attorneys on a case-by-case basis, was created within the Section in 1980 to handle this supervisory responsibility.

### **Voting Fraud:**

During **2002** the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. During **2003** the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virgin Islands, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. During **2004** the Branch assisted United States Attorneys' Offices in the following states in the handling of vote fraud matters that occurred in their respective districts: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Washington, and Wisconsin. This assistance included evaluating vote fraud allegations to determine whether investigation would produce a prosecutable federal criminal case, helping to structure investigations, providing legal advice concerning the formulation of charges, and assisting in establishing several task force teams of federal and state law enforcement officials to investigate vote fraud matters.

### **Litigation:**

The Branch Director or Section attorneys also prosecute selected election crimes, either by assuming total operational responsibility for the case or by handling the case jointly with a United States Attorney's Office. The Section also may be asked to supervise the handling of a case in the event of a partial recusal of the local office. For example, in 2002 the Branch continued to supervise the prosecution of a sheriff and his election attorney for using data from the National Crime Information Center regarding voters' criminal histories to wage an election contest.

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### **District Election Officer Program:**

The Branch also assists in implementing the Department's long-standing District Election Officer (DEO) Program. This Program is designed to ensure that each of the 93 United States Attorneys' Offices has a trained prosecutor available to oversee the handling of election crime matters within the district and to coordinate district responses with Headquarters regarding these matters. The DEO Program involves the appointment of an Assistant United States Attorney in each federal district to serve a two-year term as a District Election Officer; the training of these prosecutors in the investigation and prosecution of election crimes; and the coordination of election-related initiatives and other law enforcement activities between Headquarters and the field. In addition, the DEO Program is a crucial feature of the Department's nationwide Election Day Program, which occurs in connection with the federal general elections held in November of even-numbered years. The Election Day Program ensures that federal prosecutors and investigators are available both at the Department's Headquarters in Washington and in each district to receive and handle complaints of election irregularities from the public while the polls are open and that the public is aware of how these individuals can be contacted on election day. In 2002 the Department enhanced the DEO Program by establishing a Ballot Integrity Initiative.

### **Ballot Integrity Initiative:**

**Beginning in September of 2002**, the Public Integrity Section, acting at the request of the Attorney General, assisted in the implementation of a Ballot Integrity Initiative for the 2002 general election and subsequent elections. This initiative included increasing the law enforcement priority the Department gives to election crimes; holding a special day-long training event in Washington, DC for representatives of the 93 United States Attorneys' Offices; publicizing the identities and telephone numbers of the DEOs through press releases issued shortly before the November elections; and requiring the 93 U.S. Attorneys to communicate the enhanced federal prioritization of election crime matters to state and local election and law enforcement authorities. As part of Ballot Integrity Initiative, on October 8, **2002**, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a Voting Integrity Symposium for District Election Officers representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Attorney General John Ashcroft delivered the keynote address on the importance of election crime and ballot integrity enforcement. Assistant Attorney General of the Civil Rights Division Ralph Boyd and Assistant Attorney General of the Criminal Division Michael Chertoff also spoke to attendees on the protection of voting rights and the prosecution of election cases. As part of Ballot Access and Voting Integrity Initiative, on September 23 and 24, **2003**, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a two-day Symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Assistant Attorney General of the Civil Rights Division Alexander Acosta and Assistant Attorney General of the Criminal Division Christopher A. Wray delivered the keynote addresses on the importance of protecting voting rights and the prosecution of election cases. On July 20 and 21, **2004**, the Public Integrity Section and the Voting Section of the Department's Civil Rights Division co-sponsored a two-day symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes available to prosecute such cases, and the handling of civil rights matters involving voting. Attorney General John Ashcroft delivered the keynote address on the importance of protecting voting rights and the prosecution of election fraud. In addition, Assistant Attorney General Christopher A. Wray of the Criminal Division and Assistant Attorney General R. Alexander Acosta of the Civil Rights Division addressed conference attendees on voting rights and election fraud enforcement issues respectively.

As a result of the Initiative, during **2002** the number of election crime matters opened by federal prosecutors throughout the country increased significantly, as did the Section's active involvement in election crime matters stemming from the Initiative. At the end of 2002, the Section was supervising and providing advice on approximately 43 election crime matters nationwide. In addition, as of December 31, 2002, 11 matters involving possible election crimes were pending in the Section. During 2002 the Section closed two election crime matters and continued its operational supervision of 8 voting fraud cases (conspiracy to illegally obtain criminal history records to use to challenge voters (AL) and 7 cases of vote buying involving 10 defendants (KY).

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Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)

Addresses the role of the United States Department of Justice in matters of election fraud, specifically: what sort of election-related conduct is potentially actionable as a federal crime; what specific statutory theories apply to frauds occurring in elections lacking federal candidates on the ballot, what federalism; procedural, and policy considerations impact on the federalization of this type of case; and how Assistant United States Attorneys should respond to this type of complaint. As a general rule, the federal crime of voter fraud embraces only organized efforts to corrupt of the election process itself: i.e., the registration of voters, the casting of ballots, and the tabulation and certification of election results. Moreover, this definition excludes all activities that occur in connection with the political campaigning process, unless those activities are themselves illegal under some other specific law or prosecutorial theory. This definition also excludes isolated acts of individual wrongdoing that are not part of an organized effort to corrupt the voting process. Mistakes and other gaffs that inevitably occur are not included as voter fraud. Prosecuting election fraud offenses in federal court is further complicated by the constitutional limits that are placed on federal power over the election process. The conduct of elections is primarily a state rather than a federal activity.

### **Four situations where federal prosecution is appropriate:**

1. Where the objective of the conduct is to corrupt the outcome of a federal elective contest, or where the consequential effect of the corrupt conduct impacts upon the vote count for federal office;
2. Where the object of the scheme is to discriminate against racial, ethnic or language minority groups, the voting rights of which have been specifically protected by federal statutes such as the Voting Rights Act, 42 U.S.C. section 1973 et seq.;
3. Where federalization is required in order to redress longstanding patterns of electoral fraud, either at the request of state or local authorities, or in the face of longstanding inaction by state authorities who appear to be unwilling or unable to respond under local law; and,
4. Where there is a factual basis to believe that fraudulent registration or voting activity is sufficiently connected to other forms of criminal activity that perusing the voter fraud angle will yield evidence useful in the prosecution of other categories of federal offense

### **Four advantages to federal prosecution:**

1. Voter fraud investigations are labor intensive - local law enforcement agencies often lack the manpower and the financial resources to take these cases on;
2. Voter fraud matters are always politically sensitive and very high profile endeavors at the local level - local prosecutors (who are usually themselves elected) often shy away from prosecuting them for that reason; the successful prosecution of voter fraud cases demands that critical witnesses be examined under oath before criminal charges based on their testimony are filed.
3. Many states lack the broad grand jury process that exists in the federal system; and
4. The defendants in voter fraud cases are apt to be politicians - or agents of politicians - and it is often impossible for either the government or the defendant to obtain a fair trial in a case that is about politics and is tried to a locally-drawn jury. The federal court system provides for juries to be drawn from broader geographic base, thus often avoiding this problem.

Several prosecutorial theories used by United States Attorneys to federalize election frauds are discussed.

### **Four questions used by prosecutors in evaluating the credibility of election complaints:**

1. does the substance of the complaint assuming it can be proven through investigation - suggest a potential crime;
2. is the complaint sufficiently fact-specific that it provides leads for investigators to pursue;
3. is there a federal statute that can be used to federalize the criminal activity at issue; and,
4. is there a special federal interest in the matter that warrants federalization rather than deferral to state law enforcement.

All federal election investigations must avoid the following: non-interference in elections unless absolutely necessary to preserve evidence; interviewing voters during active voting periods; seizing official election documentation; investigative activity inside open polls; and prosecutors must adhere to 18 U.S.C. section 592, prohibiting the stationing of armed men at places where voting activity is taking place.

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Election crimes based on race or language minority status are treated as civil rights matters under the Voting Rights Act.

People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>

Election Protection 2004 was the nation's most far-reaching effort to protect voter rights before and on Election Day. The historic nonpartisan program included: (1) a toll-free number, 1-866-OUR-VOTE, with free, immediate and multi-lingual assistance to help voters with questions about registration and voting, and assist voters who encounter barriers to the ballot box; (2) distribution of more than five million "Voters' Bills of Rights" with state-specific information; (3) 25,000 volunteers, including 6,000 lawyers and law students, who watched for problems and assisted voters on the spot at more than 3,500 predominantly African-American and Latino precincts with a history of disenfranchisement in at least 17 states; and (4) civil rights lawyers and advocates represented voters in lawsuits, preserved access to the polls, exposed and prevented voter intimidation, worked with election officials to identify and solve problems with new voting machines, technology and ballot forms, and protected voter rights in advance and on Election Day.

### **Voter Intimidation and Suppression Stories (Abridged):**

- An Associated Press story noted Election Protection's exposure of reported voter suppression tactics in **Colorado**: Officials with the Election Protection Coalition, a voter-rights group, also said **some voters in a predominantly black neighborhood north of Denver found papers on their doorsteps giving them the wrong address for their precinct.**
- Election Protection received a report from Boulder County, **Colorado** that a **poll worker made racist comments to Asian American voter and then told her she was not on the list and turned her away.** The voter saw others filling out provisional ballots and asked for one but was denied. Another Asian American woman behind her in line was also given trouble by the same poll worker (he questioned her nationality and also turned her away).
- Election Protection received a report from Florissant County, **Missouri** from a voter who lives in predominantly white neighborhood. While waiting in line to vote, a **Republican challenger challenged the black voters by requesting more proof of identification, residence, and signature match, while asking nothing from white voters.** Also, the same voter reportedly asked a few questions about voting but an election officials refused to provide any meaningful answer, insisting that "it's very simple", but provided white voters with information when requested. There was one other black voter in line who was also singled out for same treatment while white voters were not.
- The Election Protection hotline received reports from **Pinellas County, Florida** that individuals purporting to be from the **Kerry** campaign are going door-to-door handing out absentee ballots, and asking voters to fill them out, and then taking the ballots from them, saying "Vote here for Kerry. Don't bother going to the polls."
- The Election Protection Coalition received a report from a woman whose sister lives in **Milwaukee** and is on government assistance. Her sister was reportedly told by her "case manager" that if she voted for **Kerry**, she would stop receiving her checks.
- An illiterate, older and disabled voter in **Miami-Dade** asked for assistance reading the ballot and reported that a poll worker yelled at him and refused to assist him and also refused to allow him to bring a friend into the booth in order to read the ballot to him.
- The Election Protection Coalition have gathered reports that flyers are circulating in a black community in **Lexington, South Carolina** claiming they those who are behind on child support payments will be arrested as the polls.
- **Minority voters from Palm Beach County, Florida** reported to the hotline that they received middle-of-the-night, live harassing phone calls warning them away from the polls.
- A volunteer for **Rock the Vote** reported that two illiterate voters in **Michigan** requested assistance with their ballots but were refused and reportedly mocked by poll workers.
- The hotline received a call from a radio DJ in **Hillsborough County, Florida**, who stated that he has received many calls (most of which were from **African-Americans**) claiming that poll workers were turning voters away and not "letting" them vote.

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- The hotline received a call from **Pima County, Arizona**, indicating that **Democratic voters received calls throughout Monday evening, providing incorrect information about the precinct location**. Voters have had to be transported en masse in order to correct the problem.
- A caller from **Alabama** claims that he was told at his polling place that he could vote there for everything but the President and that he would have to go elsewhere in order to vote for a presidential candidate.
- Poll monitors in **Philadelphia** reports groups of lawyers, traveling in threes, who pull voters out of line and challenge them to provide ID, but when challenged themselves, they hop into waiting cars or vans and leave. Similar activity by Republican lawyers in Philadelphia was reported in the 2002 election.
- In **Cuyahoga, Ohio**, a caller reported that all black voters are being asked to show ID, while white voters are not. Caller report that he is black and had to show ID while his girlfriend is white and did not have to show ID.
- Two months ago, **suspicious phone calls to newly registered Democrats** —telling them they weren't, in fact, registered to vote — were traced to the Republican headquarters in the **Eastern Panhandle**. On **Monday, Democrats there said the calls have started again, even after the Berkeley County Clerk — a Republican — sent the party a cease-and-desist letter**. The Berkeley prosecutor, who also is county Democratic chairman, has called on the U.S. attorney to investigate.
- In **Tuscon, Arizona** a misleading call informing voters that they should vote on **November 3** has been traced back to the state GOP headquarters. The FBI is investigating.
- **A man driving around in a big van covered in American flags and a big picture of a policeman was reportedly parked in front of a polling place; he then got out and moved within the 75 ft limit**, until he was asked to leave; he then was found inside the polling place and was again asked to leave. Election Protection volunteers contacted officials and the man was eventually removed.
- The Election Protection hotline has received a report from **individuals who claim to have received recorded telephone message coming from Bill Clinton and ACT and reminding them to vote on Nov. 3rd**.
- In **Massachusetts**, the EP Hotline has received a report that a **radio station (WILD) is broadcasting that voters will be arrested on the spot if they have outstanding parking tickets**.
- In **Richland, South Carolina** Election Protection has received a report of a **poll manager turning away individuals who do not have photo ID issued to the county or a driver's license**; an EP lawyer spoke with the Poll Manager at 8:20 am and told her that people with other forms of ID should be allowed to vote by provisional ballot.
- In **Greenville**, a caller reported that a **white poll worker was asking Blacks for multiple form of I.D.** Fortunately, the voter who reported the problem did have a second I.D. but reported that some others were turned away. Election Protection attorneys have alerted election officials.
- In **Allegheny County, Pennsylvania**, an official looking flyer advises **Democratic voters to "create a peaceful voting environment" by voting on Wednesday, November 3**
- The week before the election, **flyers were circulated in Milwaukee under the heading "Milwaukee Black Voters League" with some "warnings for election time." The flyer listed false reasons for which you would be barred from voting (such as a traffic ticket) and then warned that "If you violate any of these laws you can get ten years in prison and your children will get taken away from you."**
- There is a **Jefferson County flyer which tells voters "See you at the Poles![sic]"... on November 4.**

Craig Donsanto, "Prosecution of Electoral Fraud Under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

[NO SUMMARY FOUND] This is summary of federal role in prosecuting election crimes.

General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote,"

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Report to Congressional Requesters, September 2005.

**[SUMMARY FAILS TO NOTE ELECTION OFFICIALS' RESPONSES THAT LITTLE VOTING FRAUD OR VOTER INTIMIDATION WAS DETECTED. DETECTED VOTING FRAUD WAS RELATED TO SUBMISSION OF FALSE/MATERIALLY INCORRECT VOTER REGISTRATION APPLICATIONS AND TO ABSENTEE BALLOT FRAUD. VOTER SUPPRESSION EFFORTS OCCUR.]** This Report focuses on the efforts of local election officials in 14 jurisdictions within 7 states to manage the registration process, maintain accurate voter registration lists, and ensure that eligible citizens in those jurisdictions had the opportunity to cast ballots during the 2004 election. The Report concentrates on election officials' characterization of their experiences with regard to (1) managing the voter registration process and any challenges related to receiving voter registration applications; checking them for completeness, accuracy, and duplication; and entering information into voter registration lists; (2) removing voters' names from voter registration lists and ensuring that the names of eligible voters were not inadvertently removed; and (3) implementing HAVA provisional voting and identification requirements and addressing any challenges encountered related to these requirements. The Report also provides information on motor vehicle agency (MVA) officials' characterization of their experiences assisting citizens who apply to register to vote at MVA offices and forwarding voter registration applications to election offices. The Report analyzed information collected from elections and motor vehicle agency offices in seven states—Arizona, California, Michigan, New York, Texas, Virginia, and Wisconsin. The 14 jurisdictions we selected were Gila and Maricopa Counties, Arizona; Los Angeles and Yolo Counties, California; City of Detroit and Delta Township, Michigan; New York City and Rensselaer County, New York; Bexar and Webb Counties, Texas; Albemarle and Arlington Counties, Virginia; and the cities of Franklin and Madison, Wisconsin. Election officials representing all but one of the jurisdictions surveyed following the November 2004 election said they faced some challenges managing the voter registration process, including (1) receiving voter registration applications; (2) checking them for completeness, accuracy, and duplication; and (3) entering information into voter registration lists; when challenges occurred, election officials reported they took various steps to address them. All but 1 of the jurisdictions reported removing names from registration lists during 2004 for various reasons, including that voters requested that their names be removed from the voter registration list; information from the U.S. Postal Service (USPS) showing that voters had moved outside the jurisdiction; felony records received from federal, state, or local governments identifying voters as ineligible due to felony convictions; and death records received from state or local vital statistics offices. All of the jurisdictions reported that they permitted citizens to cast provisional ballots during the November 2004 election. In addition, 12 of the 14 jurisdictions to which this was applicable reported that they offered certain first-time voters who registered by mail the opportunity to cast provisional ballots. Local election officials in 12 of the 13 jurisdictions 13 we surveyed reported that they set up mechanisms to inform voters—without cost—about the outcome of their provisional votes during the November 2004 election. These mechanisms included toll-free telephone numbers, Web sites, and letters sent to the voters who cast provisional ballots. Election officials representing 8 of the 14 jurisdictions reported facing challenges implementing provisional voting for various reasons, including some poll workers not being familiar with provisional voting or, in one jurisdiction representing a large number of precincts, staff not having sufficient time to process provisional ballots.

Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.

A comprehensive survey and analysis of vote fraud in the United States. The methodology included doing nexis searches for all 50 states and surveying existing research and reports. In addition, Minnite did a more in-depth study of 12 diverse states by doing nexis searches, studying statutory and case law, and conducting interviews with election officials and attorneys general. Finally, the study includes an analysis of a few of the most high profile cases of alleged fraud in the last 10 years, including the Miami mayoral election (1997), Orange County congressional race (1996), and the general election in Missouri (2000). In these cases, Minnite shows that many allegations of fraud do not end up being meritorious. Minnite finds that **available evidence suggests that the incidence of election fraud is minimal and rarely affects election outcomes.** Election officials generally do a very good job of protecting against fraud. **Conditions that give rise to election fraud have steadily declined over the last century as a result of weakened political parties, strengthened election administration, and improved voting technology.** There is little available evidence that election reforms such as the National Voter Registration Act, election day registration, and mail-in voting have resulted in increases in election fraud. Election

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fraud appears also to be very rare in the 12 states examined more in-depth. Legal and news records turned up little evidence of significant fraud in these states or any indication that fraud is more than a minor problem. Interviews with state officials further confirmed this impression. Minnite found that, **overall, the absentee mail-in ballot process is the feature most vulnerable to voter fraud.** There is not a lot of evidence of absentee ballot fraud but the potential for fraud is greatest in this area because of a lack of uniformly strong security measures in place in all states to prevent fraud.

### **Suggested reforms to prevent what voter fraud does take place:**

1. effective use of new statewide voter registration databases;
2. identification requirements for first time voters who register by mail should be modified to expand the list of acceptable identifying documents;
3. fill important election administration positions with nonpartisan professionals;
4. strengthen enforcement through adequate funding and authority for offices responsible for detecting and prosecuting fraud; and
5. establish Election Day Registration because it usually requires voter identification and authorization in person before a trained election worker, which reduces the opportunity for registration error or fraud.
- 6.

People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

A description and analysis of the complaints and allegations of voting irregularities gathered by the Election Protection program during the 2004 presidential election. Election Protection received more than a thousand complaints of voter suppression or intimidation. Complaints ranged from intimidating experiences at polling places to coordinated suppression tactics. For example:

- Police stationed outside a Cook County, Illinois, polling place were requesting photo ID and telling voters if they had been convicted of a felony that they could not vote.
- In Pima, Arizona, voters at multiple polls were confronted by an individual, wearing a black tee shirt with "US Constitution Enforcer" and a military-style belt that gave the appearance he was armed. He asked voters if they were citizens, accompanied by a cameraman who filmed the encounters.
- There were numerous incidents of intimidation by partisan challengers at predominately low income and minority precincts
- Voters repeatedly complained about misinformation campaigns via flyers or phone calls encouraging them to vote on a day other than November 2, 2004 or of false information regarding their right to vote. In Polk County, Florida, for example, a voter received a call telling her to vote on November 3. Similar complaints were also reported in other counties throughout Florida. In Wisconsin and elsewhere voters received flyers that said:
  - "If you already voted in any election this year, you can't vote in the Presidential Election."
  - "If anybody in your family has ever been found guilty of anything you can't vote in the Presidential Election."
  - "If you violate any of these laws, you can get 10 years in prison and your children will be taken away from you."

There were also numerous reports of poll workers refusing to give voters provisional ballots.

The following is a summary of the types of acts of suppression and intimidation included in the report and a list of the states in which they took place. All instances of irregularities that were more administrative in nature have been omitted:

1. **Improper implementation of voter identification rules, especially asking only African Americans for proof of identity:** Florida, Ohio, Pennsylvania, Illinois, Missouri, Arkansas, Georgia, Louisiana
2. **Individuals at the polls posing as some sort of law enforcement authority and intimidating and harassing voters:** Arizona, Missouri
3. **Intimidating and harassing challengers at the polls:** Ohio, Michigan, Wisconsin, Missouri, Minnesota
4. **Deceptive practices and disinformation campaigns, such as the use of flyers with intentional misinformation about voting rights or voting procedures, often directed at minority communities; the use of phone calls giving people misinformation about polling sites and**

## EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

other procedures; and providing verbal misinformation at the polls in a way that appears to have been intentionally misleading: Florida, Pennsylvania, Illinois, Wisconsin, Missouri, North Carolina, Arkansas, Texas

5. **Refusal to provide provisional ballots to certain voters:** Ohio, Pennsylvania, Illinois, Michigan, Colorado, Missouri, Texas, Georgia, Louisiana
6. **Registration applications submitted through third parties that were not processed:** Arizona, Michigan, Nevada (registration forms destroyed by Sproul Associates)
7. **Improper removal from the voter registration list:** Arizona
8. **Individuals questioning voters' citizenship:** Arizona
9. **Police officers at the polls intimidating voters:** Illinois, Michigan, Wisconsin, Missouri, North Carolina

The report does not provide corroborating evidence for the allegations it describes. However, especially in the absence of a log of complaints received by the Department of Justice, this report provides a very useful overview of the types of experiences some voters more than likely endured on Election Day in 2004.

### Books

John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.

Focuses almost entirely on alleged transgressions by Democrats. Fund's accusations, if credible, would indicate that fraud such as voter registration fraud, absentee ballot fraud, dead people voting, and felon voting is prevalent throughout the country. However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount and types of voter fraud and voter intimidation occurring.

Fund says that "Election fraud, whether its phony voter registrations, illegal absentee ballots, shady recounts or old-fashioned ballot-box stuffing, can be found in every part of the United States, although it is probably spreading because of the ever-so-tight divisions that have polarized the country and created so many close elections lately. Fund argues that fraud **has been made easier by the passage of the National Voting Rights Act** because it allows ineligible voters to remain on the voter rolls, allowing a voter to vote in the name of someone else. He claims dead people, people who have moved, and people in jail remain on the voting list. He believes because of NVRA illegal aliens have been allowed to vote.

**Absentee balloting makes it even worse:** someone can register under false names and then use absentee ballots to cast multiple votes. Groups can get absentee ballots for the poor and elderly and then manipulate their choices.

Provides a number of examples of alleged voter fraud, mostly perpetrated by Democrats. For example, he claims much fraud in St. Louis in 2000, including illegal court orders allowing people to vote, **felons voting, people voting twice, dead people voting, voters were registered to vacant lots, election judges were not registered and evidence of false registrations.** Another case he pays a great deal of attention to are the alleged transgressions by Democrats in Indian Country in South Dakota 2002, including **voter registration fraud, suspicious absentee ballot requests, vote hauling, possible polling place fraud, abusive lawyers at polling sites, and possible vote buying.**

Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.

Bulk of the book comprises stories from United States electoral history outside the scope of this project; however, tales are instructive in showing how far back irregular and illegal voting practices go. Focuses almost entirely on alleged transgressions by Republican, although at times it does include complaints about Democratic tactics. Gumbel's accusations, if credible, especially in the Bush-Gore election, would indicate there were a number of problems in key states in such areas as **intimidation, vote counting, and absentee ballots.** However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount

## EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

and types of voter fraud and voter intimidation occurring.
<b>Tracy Campbell, <i>Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004</i>, Carroll &amp; Graf Publishers, 2005.</b>
Traces the historical persistence of voter fraud from colonial times through the 2004 Bush-Kerry election. From the textual information, it quickly becomes obvious that voter fraud was not limited to certain types of people or to certain political parties. [SKIMPY SUMMARY-DOES NOT SAY MUCH.]
<b>David E. Johnson and Jonny R. Johnson, <i>A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush</i>, Taylor Trade Publishing, 2004.</b>
<b>Adds almost nothing to the present study.</b> It contains no footnotes and no references to primary source material, save what may be able to be gleaned from the bibliography. Takes a historical look at United States Presidential elections from Andrew Jackson to George Bush by providing interesting stories and other historical information. There are only three pages out of the entire book that touches on vote fraud in the first Bush election. The authors assert that the exit polls in Florida were probably correct. The problem was the pollsters had no way of knowing that thousands of votes would be invalidated. But the authors do not believe that fraud was the cause of the tabulation inaccuracy.
<b>Mark Crispin Miller, <i>Foiled Again</i>, Basic Books, 2005.</b>
Sets out to show that the 2004 election was won by Bush through nefarious means, and indicts the news media for not taking anomalies, irregularities, and <b>alleged malfeasance</b> in the process seriously enough. However, book is well sourced, and individual instances of alleged malfeasance discussed may be worth looking at. He accuses Republicans of committing crimes and improprieties throughout the country, including:
<ol style="list-style-type: none"> <li>1. <b>deliberate disparities in voting machine distribution and long lines in Democratic jurisdictions;</b></li> <li>2. <b>misinterpretation of voting laws by elections officials to the detriment of Democratic voters;</b></li> <li>3. <b>dirty tricks and deceptive practices to mislead Democratic and minority voters about voting times, places and conditions;</b></li> <li>4. <b>machine irregularities in Democratic jurisdictions;</b></li> <li>5. <b>relocating polling sites in Democratic and minority areas;</b></li> <li>6. <b>suspicious mishandling of absentee ballots;</b></li> <li>7. <b>refusing to dispense voter registration forms to certain voter registration groups;</b></li> <li>8. <b>intimidation of students;</b></li> <li>9. <b>suspicious ballot spoilage rates in certain jurisdictions;</b></li> <li>10. <b>“strategic distribution of provisional ballots,” and trashing of provisional ballots;</b></li> <li>11. <b>harassment of Native American voters;</b></li> <li>12. <b>a Republican backed organization engaging in voter registration efforts throughout the country that allegedly destroyed the voter registration forms of Democrats;</b></li> <li>13. <b>illegitimate challenges at the polls by Republican poll watchers;</b></li> <li>14. <b>improper demands for identification in certain areas;</b></li> <li>15. <b>Republican challenges to the voter registration status of thousands of voters before the election, and the creation of lists of voters to challenge at the polls;</b></li> <li>16. <b>wrongful purging of eligible voters from voting rolls;</b></li> <li>17. <b>partisan harassment;</b></li> <li>18. <b>the selective placement of early voting sites; and</b></li> <li>19. <b>failure to send out absentee ballots in time for people to vote.</b></li> </ol>
Details what he says was the inappropriate use of the Federal Voter Assistance Program that made voting for the military easy while throwing up obstacles

EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

for civilians overseas in their efforts to vote by absentee ballot, leading many of them to be disenfranchised.

**Legal**

*Indiana Democratic Party vs. Rokita*, U.S. District Court Southern District of Indiana (Indianapolis) 1:05-cv-00634, U.S. Court of Appeals, 7<sup>th</sup> Circuit 06-2218

Although the proponents of SEA 483 asserted that the law was intended to combat voter fraud, no evidence of the existence of such fraud has ever been provided. No voter has been convicted of or even charged with the offense of misrepresenting his identity for purposes of casting a fraudulent ballot in person, King Dep. 95-96; Mahern Aff. ¶¶ 2-3, though there have been documented instances of absentee ballot fraud. King Dep. 120. Indeed, no evidence of in person, on-site voting fraud was presented to the General Assembly during the legislative process leading up to the enactment of the Photo ID Law. Mahern Aff. ¶¶ 2-

The State cannot show any compelling justification for subjecting only voters who vote in person to the new requirements of the Photo ID Law, while exempting absentee voters who vote by mail or persons who live in state-certified residential facilities.

On the other hand, absentee ballots are peculiarly vulnerable to coercion and vote tampering since there is no election official or independent election observer available to ensure that there is no illegal coercion by family members, employers, churches, union officials, nursing home administrators, and others.

Law gives virtually unbridled discretion to partisan precinct workers and challengers to make subjective determinations such as (a) whether a form of photo identification produced by a voter conforms to what is required by the Law, and (b) whether the voter presenting himself or herself at the polls is in fact the voter depicted in the photo Robertson Dep. 29-34, 45; King Dep. 86, 89. This is significant because any voter who is challenged under this Law will be required to vote by provisional ballot and to make a special trip to the election board's office in order to have his vote counted. Robertson Dep. 37; King Dep. 58.

The Photo ID Law confers substantial discretion, not on law enforcement officials, but on partisan precinct poll workers and challengers appointed by partisan political officials, to determine both whether a voter has presented a form of identification which conforms to that required by the Law and whether the person presenting the identification is the person depicted on it. Conferring this degree of discretion upon partisan precinct officials and members of election boards to enforce the facially neutral requirements of the Law has the potential for becoming a means of suppressing a particular point of view.

The State arguably might be justified in imposing uniform, narrowly-tailored and not overly-burdensome voter identification requirements if the State were able to show that there is an intolerably high incidence of fraud among voters misidentifying themselves at the polls for the purpose of casting a fraudulent ballot. But here, the State has utterly failed to show that this genre of fraud is rampant or even that it has ever occurred in the context of on-site, in-person voting (as opposed to absentee voting by mail) so as to justify these extra burdens, which will fall disproportionately on the poor and elderly.

And where the State has already provided a mechanism for matching signatures, has made it a crime to misrepresent one's identity for purposes of voting, and requires the swearing out of an affidavit if the voter's identity is challenged, it already has provisions more than adequate to prevent or minimize fraud in the context of in-person voting, particularly in the absence of any evidence that the problem the Law seeks to address is anything more than the product of hypothesis, speculation and fantasy.

In-person voter-identity fraud is notoriously difficult to detect and investigate. In his book *Stealing Elections*, John Fund observes that actual in-person voter fraud is nearly undetectable without a voter photo-identification requirement because anybody who provides a name that is on the rolls may vote and then walk away with no record of the person's actual identity. The problem is only exacerbated by the increasingly transient nature of society. Documentation of in-person voter fraud often occurs only when a legitimate voter at the polls hears a fraudulent voter trying to use her name, as happened to a woman in California in 1994. See Larry J. Sabato & Glenn R. Simpson, *Dirty Little Secrets* 292 (1996).

Regardless of the lack of extensive evidence of in-person voter fraud, the Commission on

## EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

Federal Election Reform (known as the Baker-Carter Commission) recently concluded that "there is no doubt that it occurs." State Ex. 1, p. 18.1 **Legal cases as well as newspaper and other reports confirm that in-person voter-identity fraud, including voter impersonation, double votes, dead votes, and fake addresses, plague federal and state elections. [The memorandum details several specific cases of various types of alleged voting fraud from the past several years]**

**Though they are largely unable to study verifiable data concerning in-person voter fraud, scholars are well aware of the conditions that foster fraudulent voting. See Fund, *supra*; Sabato & Simpson, *supra*, 321. In particular, fraud has become ever more likely as "it has become more difficult to keep the voting rolls clean of 'deadwood' voters who have moved or died" because such an environment makes "fraudulent voting easier and therefore more tempting for those so inclined." Sabato & Simpson, *supra*, 321. "In general, experts believe that one in five names on the rolls in Indiana do not belong there." State Ex. 25.**

For this case, Clark Benson, a nationally recognized expert in the collection and analysis of voter-registration and population data, conducted his own examination of **Indiana's voter registration lists and concluded that they are among the most highly inflated in the nation.**

The Crawford Plaintiffs cite the **concessions** by Indiana Election Division Co-Director King and the Intervenor-State that they are **unaware of any historical in-person incidence of voter fraud occurring at the polling place (Crawford Brief, p. 23) as conclusive evidence that in-person voter fraud does not exist in Indiana.** They also seek to support this conclusion with the testimony of two "veteran poll watchers," Plaintiff Crawford and former president of the Plaintiff NAACP, Indianapolis Chapter, Roderick E. Bohannon, who testified that they had never seen any instances of in-person voter fraud.

(*id.*)

While common sense, the **experiences of many other states, and the findings of the Baker-Carter Commission all lead to the reasonable inferences that (a) in-person polling place fraud likely exists, but (b) is nearly impossible to detect without requiring photo identification, the State can cite to no confirmed instances of such fraud. On the other hand, the Plaintiffs have no proof that it does not occur.**

At the level of logic, moreover, it is **just reasonable to conclude that the lack of confirmed incidents of in-person voting fraud in Indiana is the result of an ineffective identification security system as it is to conclude there is no in-person voting fraud in Indiana.** So while it is undisputed that the state has no proof that in-person polling place fraud has occurred in Indiana, there does in fact remain a dispute over the existence *vel non* of in-person polling place fraud.

It is also important to understand that the **nature of in-person election fraud is such that it is nearly impossible to detect or investigate. Unless a voter stumbles across someone else trying to use her identity, see Sabato & Simpson, *supra*, 292, or unless the over-taxed poll worker happens to notice that the voter's signature is different from her registration signature State Ex. 37, ¶ 9, the chances of detecting such in-person voter fraud are extremely small. Yet, inflated voter-registration rolls provide ample opportunity for those who wish to commit in-person voter fraud. See Fund, *supra*, 24, 65, 69, 138; Sabato & Simpson, *supra*, 321. And there is concrete evidence that the names of dead people have been used to cast fraudulent ballots. See Fund, *supra*, 64. Particularly in light of Indiana's highly inflated voter rolls State Ex. 27, p. 9, Plaintiffs' repeated claims that there has never been any in-person voter fraud in Indiana can hardly be plausible, even if the state is unable to prove that such fraud has in fact occurred.**

*Common Cause of Georgia vs. Billups*, U.S. District Court, Northern District of Georgia (Rome) 4:05-cv-00201-HLM U.S. Court of Appeals, 11<sup>th</sup> Circuit 05-15784

The Secretary of State, as the Chief Election Officer in Georgia, informed the General Assembly before the passage of Act 53 in a letter (attached hereto as Exhibit A), and also informed the Governor in a letter (attached hereto as Exhibit B) before he signed the bill into law, that **there had been no documented cases of fraudulent voting by persons who obtained ballots unlawfully by misrepresenting their identities as registered voters to poll workers reported to her office during her nine years as Secretary of State .**

Although the Secretary of State had informed the members of the General Assembly and the Governor prior to the enactment of Act 53, that her office had

## EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

received many complaints of voter fraud involving absentee ballots and no documented complaints of fraud that involve ballots that were cast in person at the polls, the General Assembly ignored this information and arbitrarily chose instead to require only those registered voters who vote in person to present a Photo ID as a condition of voting, but deliberately refused to impose the same requirement on absentee voters.

The Stated Purpose Of The Photo ID Requirement Fraud Is A Pretext.

According to a press release prepared by the Communications Office of the Georgia House of Representatives, the purpose of Act 53 is: to address the issue of voter fraud by placing tighter restrictions on voter identification procedures. Those casting ballots will now be required to bring a photo ID with them before they will be allowed to vote.

Al Marks, Vice Chairman for Public Affairs and Communication of the Hall County GOP told the Gainesville Times: I don't think we need it for voting, because I don't think there's a voter fraud problem. Gainesville Times, "States Voters Must Present Picture IDs" (September 15, 2005) ([www.gainesvilletimes.com](http://www.gainesvilletimes.com)).

**There is no evidence that the existing provisions of Georgia law have not been effective in deterring and preventing imposters from fraudulently obtaining and casting ballots at the polls by misrepresenting their true identities to election officials and passing themselves off as registered voters whose names appear on the official voter registration list.**

The pretextual nature of the purported justification for the burden which the Photo ID requirement imposes on the right to vote is shown by the following facts:

(a) Fraudulent voting was already prohibited by existing Georgia law without unduly burdening the right of a citizen to vote.

(i) Fraudulent voting was already prohibited as a crime under O.C.G.A. §§ 21-2-561, 21-2-562, 21-2-566, 21-2-571, 21-2-572 and 21-2-600, punishable by a fine of up to \$10,000 or imprisonment for up to ten years, or both.

(ii) Voter registration records are updated periodically by the Secretary of State and local election officials to eliminate people who have died, have moved, or are no longer eligible to vote in Georgia for some other reason.

(iii) Existing Georgia law also required election officials in each precinct to maintain a list of names and addresses of registered voters residing in that precinct, and to check off the names of each person from that official list as they cast their ballots.

(iv) Registered voters were also required by existing Georgia law to present at least one of the seventeen forms of documentary identification to election officials who were required, before issuing the voter a ballot, to match the name and address shown on the document to the name and address on the official roll of registered voters residing in the particular precinct. O.C.G.A. § 21-2-417 .

(b) There is no evidence that the existing Georgia law has not been effective in deterring or preventing fraudulent in-person voting by impersonators - the only kind of fraudulent voting that might be prevented by the Photo ID requirement. To the contrary, the Secretary of State, who, as the Superintendent of Elections, is the highest election official in Georgia, informed both the General Assembly (Exhibit A) and the Governor (Exhibit B) in writing that there had been no documented cases of fraudulent in person voting by imposters reported to her during her nine years in office .

(c) If the true intention of the General Assembly had been to prevent fraudulent voting by imposters, the General Assembly would have imposed the same restrictions on the casting of absentee ballots - particularly after the Secretary of State had called to their attention the fact that there had been many documented instances of fraudulent casting of absentee ballots reported to her office.

(d) Fraudulent in-person voting is unlikely, would be easily detected if it had occurred in significant numbers, and would not be likely to have a substantial impact on the outcome of an election:

(i) Many people vote at a local neighborhood polling place where they are likely to be known to and recognized by neighbors or poll workers.

(ii) Voters were required by existing Georgia law (O.C.G.A. § 21-2-417), to provide one of the seventeen means of identification to election officials.

(iii) Election officials are required, before issuing the ballot to the voter, to check off the name of either voter from an up-to-date list of the names and addresses of every registered voter residing in the precinct. If an imposter arrived at a poll and was successful in fraudulently obtaining a ballot before

## EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

the registered voter arrived at the poll, a registered voter, who having taken the time to go to the polls to vote, would undoubtedly complain to elections officials if he or she were refused a ballot and not allowed to vote because his or her name had already been checked off the list of registered voters as having voted. Likewise, if an imposter arrived at the polls after the registered voter had voted and attempted to pass himself off as someone he was not, the election official would instantly know of the attempted fraud, would not issue the imposter a ballot or allow him to vote, and presumably would have the imposter arrested or at least investigate the attempted fraud and report the attempt to the Secretary of State as Superintendent of Elections.

U.S. Department of Justice Section 5 Recommendation Memorandum (regarding HB 244), August 25, 2005 at <http://www.votingrights.org/news/downloads/Section%205%20Recommendation%20Memorandum.pdf>

**Overview:** Five career attorneys with the civil rights department investigated and analyzed Georgia's election reform law. Four of those attorneys recommended objecting to Section 59, the voter identification requirement. The provision required all voters to present government issued photo identification in order to vote. The objection was based on the attorneys' findings that there was little to no evidence of polling place fraud, the only kind of fraud an ID requirement would address, and that the measure would disenfranchise many voters, predominantly minority voters, in violation of Section 5 of the Voting Rights Act.

**Factual Analysis:** The sponsor of the measure in the state legislature said she was motivated by the fact that she is aware of vote buying in certain districts; she read John Fund's book; and that "if there are fewer black voters because of this bill, it will only be because there is less opportunity for fraud. She said that when black voters in her black precincts are not paid to vote, they do not go to the polls."

A member of the Fulton County Board of Registrations and Elections said that prior to November 2004, Fulton County received 8,112 applications containing "missing or irregular" information. Only 55 of those registrants responded to BOE letters. The member concluded that the rest must be "bogus" as a result. He also stated that 15,237 of 105,553 precinct cards came back as undeliverable, as did 3,071 cards sent to 45,907 new voters. Of these 3,071, 921 voted.

Secretary of State Cathy Cox submitted a letter testifying to the absence of any complaints of voter fraud via impersonation during her tenure. In the legal analysis, the attorneys state that if they determine that Georgia could have fulfilled its stated purpose of election fraud, while preventing or ameliorating the retrogression, an objection is appropriate. They conclude that the state could have avoided retrogression by retaining various forms of currently accepted voter ID for which no substantiated security concerns were raised. Another non-retrogressive alternative would have been to maintain the affidavit alternative for those without ID, since "There is no evidence that penalty of law is an insufficient deterrent to falsely signing an affidavit of identity." The attorneys point out that the state's recitation of a case upholding voter fraud in Dodge County does not support the purpose of the Act because that case involved vote buying and selling, not impersonation or voting under a false identity.

Juliet E. Hodgkins/EAC/GOV  
11/06/2006 12:30 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Re: VF\_VI Literature Review 

The consultant's report is a draft of an EAC report. We will take the consultant's report and finalize it into OUR report.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV  
11/06/2006 12:21 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
Subject Re: VF\_VI Literature Review 

Is this an outline of an EAC staff report to accompany the consultants' report, or has there been a decision not to publish the consultants' report at all? (Just curious, as I have been a little out of the loop.) --- Peg

006918

Juliet E. Hodgkins/EAC/GOV  
11/06/2006 11:50 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Re: VF\_VI Literature Review 

sorry, about that. Here's the outline...

I. BACKGROUND/INTRODUCTION

- A. WHAT WE KNOW ABOUT FRAUD
- B. PURPOSE OF THE EAC STUDY
- C. METHODOLOGY OF THE EAC STUDY

II. DEFINITION OF ELECTION CRIMES

- A. VOTER FRAUD IS TOO LIMITED
- B. COLLOQUIAL DEFINITION IS TOO BROAD
- C. ELECTION CRIMES
- D. WHAT IS NOT AN ELECTION CRIME FOR PURPOSES OF THIS STUDY

III. RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

- A. ACCEPTED RECOMMENDATIONS
  - i. SURVEY LAW ENFORCEMENT, INVESTIGATORY AGENCIES, AND PROSECUTORS
  - ii. REVIEW AMINISTRATIVE COMPLAINTS FILED WITH STATES
  - iii. REVIEW DOJ/USA ACTIONS
- B. REJECTED RECOMMENDATIONS
  - i. REASONS WHY REJECTED

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
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(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV  
11/06/2006 11:07 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
Subject Re: VF\_VI Literature Review 

Julie:

I have not received the outline, but went ahead with reviewing the literature researched. Attached are my perspectives on what we learned and a listing of the literature with portions of the analysis for each. Both

006919

of these documents are on the shared drive under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Research Summaries. Hope these help. Let me know what else you need from me. --- Peggy



EAC-Learned from Lit Review 11-6-06.doc EAC Lit Review Notes 11-5-06.doc

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

11/03/2006 06:41 PM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Re: Job and Tova 

I appreciate it. I will send you a copy of the outline that I am working from. It is somewhat subject to change as I am still trying to get in my mind what goes first, second ....

-----  
Sent from my BlackBerry Wireless Handheld

Margaret Sims

----- Original Message -----

**From:** Margaret Sims  
**Sent:** 11/03/2006 06:38 PM  
**To:** Juliet Hodgkins  
**Subject:** Re: Job and Tova

I can review them over the weekend and attempt to summarize what they tell us.--- Peggy

-----  
Sent from my BlackBerry Wireless Handheld

Juliet E. Hodgkins

----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 11/03/2006 06:14 PM  
**To:** Margaret Sims  
**Subject:** Re: Job and Tova

I think we should use the content of those articles or some summary of them as a background of what we know about VF and VI. I just didn't want to have to read all of those articles to be able to make some generalized statements about their contents.

-----  
Sent from my BlackBerry Wireless Handheld

Margaret Sims

----- Original Message -----

**From:** Margaret Sims  
**Sent:** 11/03/2006 06:11 PM  
**To:** Juliet Hodgkins  
**Subject:** Re: Job and Tova

Julie:

006920

All of the summaries received are in the shared drawer under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Research Summaries. There are too many of them to append to this message, or I would do it. The researchers did not propose to include these summaries in the report. Are you considering adding them?

If you want, I can cross reference each of these with the list of articles and ID any missing summaries. I could do that over the weekend. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

To Margaret Sims/EAC/GOV@EAC

11/03/2006 05:42 PM

cc

Subject Job and Tova

I spoke to Job about the documents that I need. He will send me his summary of the articles/books that he read. However, he said that Tova also summarized some of those articles/books. I don't have a contact number/email for Tova. Could you contact her and ask her to provide us with any summary of the articles/books that she read as they are listed in Appendix 2?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006921

Juliet E. Hodgkins/EAC/GOV  
11/03/2006 07:41 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Job and Tova

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Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

006922

11/03/2006 05:42 PM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Job and Tova

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1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006923

Juliet E. Hodgkins/EAC/GOV  
11/02/2006 01:37 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Re: did job and tova ever send us their working papers 

I thought what he was talking about was pretty comprehensive, like all the cases they read, etc. It's been at least a month or more since we had that conversation, probably 2 months.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV  
11/02/2006 12:33 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
Subject Re: did job and tova ever send us their working papers 

I'm not sure what he means by working papers. Job has already provided his spreadsheets on the case law reviewed and participated with Tova in drafting the pieces of the report they submitted. If he means his notes, and they were delivered during my absence, they might be in my in box. Job was moving from Arkansas to Nevada and may not have wanted to take them with him. How long ago did he ask about this? --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/01/2006 11:39 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject did job and tova ever send us their working papers

Job called me once and asked me about how to send in the working papers. Did you receive those?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006924

Juliet E. Hodgkins/EAC/GOV  
11/01/2006 12:39 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc

Subject did job and tova ever send us their working papers

Job called me once and asked me about how to send in the working papers. Did you receive those?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006925

Juliet E.  
Thompson-Hodgkins/EAC/G  
OV

08/10/2006 04:24 PM

To Margaret Sims/EAC/GOV@EAC

cc

bcc

Subject John Tanner Comments

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

— Forwarded by Juliet E. Thompson-Hodgkins/EAC/GOV on 08/10/2006 04:25 PM —



"Cameron.Quinn@usdoj.gov"  
<Cameron.Quinn@usdoj.gov  
>

08/10/2006 12:29 PM

To "jthompsonhodgkins@eac.gov"  
<jthompsonhodgkins@eac.gov>

cc

Subject

Cameron P. Quinn  
Counsel to the Assistant Attorney General  
Civil Rights Division, US Dept. of Justice  
Washington DC 20530  
202-305-9750



Tova Wang.doc

006926

Tova Wang/EAC

p 5. 2d bullet ..DOJ is bringing fewer intimidation and suppression cases now...

This clearly is a myth. The Department has brought two 11(b) cases, one of the two in this Administration. The focus of DOJ activity has shifted, in fact, to voter suppression as there are fewer cases over voter dilution (challenges to at-large election systems, etc.) being brought by anyone as the number of jurisdictions with at-large election systems has shrunk dramatically. This Administration has, in fact, brought far more voter-suppression cases in this Administration than ever in the past, including a majority of all cases under Sections 203 and 208 of the Act, and such key recent Section 2 cases as US v. City of Boston and US v. Long County, Georgia.

The Voting Section brings cases involving "systemic" discrimination because federal voting statutes focus on discriminatory action by local governments. It is criminal statutes that involve malfeasance by individuals. The difference is fundamental and key to understanding law enforcement

3d bullet.

The Voting Section of DOJ has taken action to address badly kept voter lists with recent lawsuits in Missouri and Indiana.

4<sup>th</sup> bullet

The Voting Section of DOJ has, by a large margin, included mandatory training of poll workers in avoiding discriminatory practices in more cases in this Administration than in its entire previous history.

Page 6 - first bullet

This is not true. Ms. Wang repeatedly declined to define intimidation, so that her questions were vague and unhelpful in defining or identifying problems. The facts:

The Voting Section is bringing more cases involving discrimination and violation of minority voters rights at the polls on election day than ever in its history - than in its entire history combined. That is indisputable.

The credibility of allegations depends on their specificity and corroboration. Questions as to intimidation and vote suppression are meaningless in the absence of a definition of discrimination.

Prior enforcement has indeed changed the landscape, especially in the Southeast; however, the fact that we are bringing record numbers of cases clearly shows that discrimination is not rare.

Challenges based on race and unequal implementation of ID rules are indeed actionable and we have brought lawsuits, such as in Boston and Long County; we have not identified instances of such discrimination in which we have not taken action.

006927

Juliet E.  
Thompson-Hodgkins/EAC/G  
OV

07/17/2006 10:18 AM

To Margaret Sims/EAC/GOV@EAC

cc

bcc

Subject Re: Voting Fraud-Voter Intimidation Draft Report 

That's good.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV

07/17/2006 10:15 AM

To jthompson@eac.gov

cc twilkey@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC

Subject Voting Fraud-Voter Intimidation Draft Report

Julie:

I received pieces of the draft final report on voting fraud-voter intimidation this morning. If it is OK with you, I'll hold it until all I have all of the pieces, so that you can review it as a whole document. --- Peggy

006928

Juliet E.  
Thompson-Hodgkins/EAC/G  
OV

07/11/2006 11:38 AM

To Margaret Sims/EAC/GOV@EAC

cc

bcc

Subject Re: Fraud and Intimidation Study

Will you please send me a copy of the referenced report?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV

07/11/2006 10:55 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

cc "Tom Wilkey" <twilkey@eac.gov>

Subject Re: Fraud and Intimidation Study

It sounds similar to the issues I had with the Donsanto interview. It was a classic example of the interviewers' interpreting what was said through their own biases.

It also is true that the original interview summaries failed to differentiate between the criminal definition of intimidation and the consultants use of the term.. The consultants have revised their definition to note that it goes beyond the legal definition, but we may need to repeat the statement where the DOJ interviews are referenced.

I have already brought the Donsanto matter to our contractors' attention. When they responded that they did not think they should redraft that section, I told them that the section will likely be edited. It appears that we will have to do the same with the reference to Tanner's interview.

Why don't we discuss this with Tanner (and Donsanto) after we have had a chance to review a consolidated draft of the final report? We can determine what clarifications or corrections are necessary at that time.

Peg

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Thompson-Hodgkins

**From:** Juliet E. Thompson-Hodgkins  
**Sent:** 07/11/2006 09:46 AM  
**To:** Margaret Sims  
**Subject:** Re: Fraud and Intimidation Study

His concerns are that there were inaccurate or false statements about DOJ on pages 5 and 6, that in his words demonstrated a lack of understanding of criminal law.

006929

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV

07/11/2006 09:26 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

cc

Subject Re: Fraud and Intimidation Study

Perhaps he was looking at the report that was delivered to the EAC boards. Let's find out what his concerns are so that we can address them.

Peg

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Thompson-Hodgkins

**From:** Juliet E. Thompson-Hodgkins  
**Sent:** 07/10/2006 02:34 PM  
**To:** Margaret Sims  
**Subject:** Re: Fraud and Intimidation Study

Tanner said he got it from Cameron. And referred specifically to pp. 5 and 6. I don't remember that the summaries of interviews were laid out that way.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV

07/10/2006 02:29 PM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

cc

Subject Re: Fraud and Intimidation Study

I have not yet seen a draft final report. My best guess is that Tanner is concerned about the summary of his interview. I have already had discussions with our consultants about the description of the Donsanto interview, at which I was present. Wilkey knows that I won't let it go as is. I wasn't at the Tanner interview, but would be interested in hearing where he thinks the consultants went wrong.

It is possible that, due to my objections re the Donsanto interview, the consultants may have asked Tanner to review their description of his interview. I won't know for sure until I can contact them.

005930

I gave you and Gavin a folder that included a summary of interviews, etc before the working group meeting. Also, the report delivered to the boards on this project is in the shared drawer under Research in Progress-Voting Fraud-Intimidation. That is everything I have at the moment.

Peg

---

Sent from my BlackBerry Wireless Handheld  
Juliet E. Thompson-Hodgkins

**From:** Juliet E. Thompson-Hodgkins  
**Sent:** 07/10/2006 10:55 AM  
**To:** Margaret Sims  
**Cc:** Thomas Wilkey  
**Subject:** Fraud and Intimidation Study

I received a call from John Tanner today who was upset with pages 5 and 6 of some draft paper that he had received regarding our Fraud and Intimidation Study. I am in a very uncomfortable situation in that I have not received a copy of this paper and the Office of General Counsel has not vetted this document and yet I am being questioned about why there are erroneous statements in this paper. Please provide me with a copy of this document and please explain to me how John Tanner got a copy of this document before I did.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006931

Juliet E.  
Thompson-Hodgkins/EAC/G  
OV

07/11/2006 09:46 AM

To Margaret Sims/EAC/GOV@EAC

cc

bcc

Subject Re: Fraud and Intimidation Study

His concerns are that there were inaccurate or false statements about DOJ on pages 5 and 6, that in his words demonstrated a lack of understanding of criminal law.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV

07/11/2006 09:26 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

cc

Subject Re: Fraud and Intimidation Study

Perhaps he was looking at the report that was delivered to the EAC boards. Let's find out what his concerns are so that we can address them.

Peg

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Thompson-Hodgkins

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**Sent:** 07/10/2006 02:34 PM  
**To:** Margaret Sims  
**Subject:** Re: Fraud and Intimidation Study

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General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV

07/10/2006 02:29 PM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

cc

Subject Re: Fraud and Intimidation Study

7006932

I have not yet seen a draft final report. My best guess is that Tanner is concerned about the summary of his interview. I have already had discussions with our consultants about the description of the Donsanto interview, at which I was present. Wilkey knows that I won't let it go as is. I wasn't at the Tanner interview, but would be interested in hearing where he thinks the consultants went wrong.

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I gave you and Gavin a folder that included a summary of interviews, etc before the working group meeting. Also, the report delivered to the boards on this project is in the shared drawer under Research in Progress-Voting Fraud-Intimidation. That is everything I have at the moment.

Peg

---

Sent from my BlackBerry Wireless Handheld  
Juliet E. Thompson-Hodgkins

**From:** Juliet E. Thompson-Hodgkins  
**Sent:** 07/10/2006 10:55 AM  
**To:** Margaret Sims  
**Cc:** Thomas Wilkey  
**Subject:** Fraud and Intimidation Study

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Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006933



Gracia Hillman/EAC/GOV

09/17/2005 09:09 AM

To Carol A. Paquette/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
bcc

Subject Plz Respond, Tally Vote Questions

I see only 2 consultants on the Tally Vote for the Voter Fraud/Voter Intimidation project. What happened to the third consultant?

Remind me how it is that EAC can sole source a contract to NASED? I don't have an objection; I am merely seeking information.

Thank you,

Gracia M. Hillman

Chair

U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100

Washington, DC 20005

Tel: 202-566-3100

Fax: 202-566-1392

[www.eac.gov](http://www.eac.gov)

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006934



Gracia Hillman /EAC/GOV

10/30/2006 01:48 PM

To Thomas R. Wilkey/EAC/GOV@EAC

cc pdegregorio@eac.gov, Ddavidson@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov

bcc

Subject The "Fraud/Intimidation" Report

Tom:

In light of your announcement this morning about Peg's continued illness, I am asking who has taken the responsibility to complete EAC internal review of the information that was submitted to us by the consultants and what is the timeline for completion of that review?

I am taking far too much criticism on this to just idly sit by saying "I don't know" when EAC will release the information.

Thank you,  
Gracia

006935



Gracia Hillman /EAC/GOV

11/30/2006 08:09 AM

To Juliet E. Thompson/EAC/GOV@EAC

cc

bcc

Subject Fraud Report

Julie:

When you draft proposed language for the DOJ interview section, I am asking that you put yourself in the position of the consultants. Ask yourself how you would want EAC to present this difference of opinion between what DOJ says it meant and what the consultants heard and wrote, as if you were the consultant.

Also, I just want to be clear that while I agree that we should include DOJ's retort, I do not believe we should "re-write" what the consultants presented. Rather, we should leave it intact and present the consultants writings in a context that addresses DOJ's objections.

Thanks,  
Gracia

-----  
Sent from my BlackBerry Wireless Handheld

006936

**Deliberative Process  
Privilege**



Gracia Hillman/EAC/GOV  
12/04/2006 12:52 PM

To Juliet E. Thompson/EAC/GOV@EAC  
cc pdegregorio@eac.gov, Ddavidson@eac.gov, Thomas R.  
Wilkey/EAC/GOV@EAC  
bcc

Subject Fraud Report Executive Summary

Attached are my suggested edits to the Executive Summary. (I am still reviewing the report and may comment on other sections.)



EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY.doc

006937

EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY

**EXECUTIVE SUMMARY**

The Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including "voting fraud" and "voter intimidation." In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of "voting fraud" and "voter intimidation" and to identify research methodology to conduct a comprehensive, nationwide study of these topics.

EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases "voting fraud" and "voter intimidation." Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

In order to facilitate future study of these topics, EAC developed a working definition of "election crimes." "Election crimes" are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

From EAC's review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at "election crimes." Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical provisions. EAC will study these concepts by surveying the states' chief election officials about complaints they received through their administrative complaint processes, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received, and charges filed, and final disposition of each complaint.

**Comment [GH1]:** Ethical provisions of what?

**Comment [GH2]:** We should learn about all complaints received by election officials, not just those received through the admn complaint process.

**Comment [GH3]:** Our study should also include final disposition of each case where charges were filed.

**Deliberative Process  
Privilege**



Gracia Hillman/EAC/GOV  
12/04/2006 01:49 PM

To Juliet E. Thompson/EAC/GOV@EAC  
cc pdegregorio@eac.gov, Ddavidson@eac.gov, Thomas R.  
Wilkey/EAC/GOV@EAC  
bcc

Subject Edits to the Fraud Report

I offer edits to two sections of the report, on pages 14 and 19. Please see the attached one pager. I did a copy and paste of the two sections rather than resending back to you the entire report.



What is not an Election Crime for Purposes of this Study.doc

006939

## Deliberative Process Privilege

### What is not an Election Crime for Purposes of this Study

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of "election crimes." All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not "election crimes" for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not "election crimes," even when those offenses occur in a polling place, voter registration office, or a candidate's office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate's office is not an election crime. Last, violations of ethical provisions and the Hatch Act are not "election crimes." Similarly, civil or other wrongs that do not rise to the level of criminal activity (i.e., a misdemeanor, relative felony or felony) are not "election crimes."

.....

Comment [GH1]: Ethical provisions of what?

### Survey Chief Election Officers Regarding Administrative Complaints

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. The data collected will also include complaints that have been filed outside of the administrative complaint procedures. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

Comment [GH2]: We can be pretty certain that legitimate complaints will be filed outside of the Admin Complaint Procedure.

**Deliberative Process  
Privilege**



Gracia Hillman/EAC/GOV  
12/04/2006 04:23 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc "Davidson, Donetta" <ddavidson@eac.gov>, jlayson@eac.gov, Paul DeGregorio/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Re: Revised summaries of interviews with Donsanto and Tanner 

History  This message has been forwarded.

Attached are my comments and suggested edits to this section. They should show up in green; at least that is the color on my screen.

I feel very strongly and therefore I recommend that EAC explain that it made clarifying edits to some of the text in the summaries of the DOJ interviews. The consultants provided us with lots of material and that is the only section we changed. If we don't offer a straightforward explanation, then I think we invite more problems and headaches. I offered suggested language in the attached.



DOJ Interviews.doc

006941

Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity  
Section, U.S. Department of Justice  
January 13, 2006

The Department of Justice's (DOJ) Election Crimes Branch is responsible for supervising  
federal criminal investigations and prosecutions of election crimes.

Questions

*How are Prosecution Decisions Made?*

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an Assistant U.S. Attorney (AUSA). Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario – a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings easily because such defendants are likely to provide information about others involved.

The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between the Voting Section and the Election Crimes Branch.

*Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?*

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

*Does it Matter if the Complaint Comes from a Member of a Racial Minority?*

006942

No. But if the question involves racial animus, that has also always been an aggravating factor, making it more likely the Department will take it over

*What Kinds of Complaints Would Routinely Override Principles of Federalism?*

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office on the ballot.

*Are There Too Few Prosecutions?*

DOJ can't prosecute everything.

*What Should Be Done to Improve the System?*

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to “fix” *McNally*, did not include voter fraud.

As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

*Other Information*

The Department has held four symposia for District Election Officers (DEOs) and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public. ~~(Peg will be sending us the complete training materials used at those sessions. These are confidential and are the subject of FOIA litigation).~~

There are two types of attorneys in the division: prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

006943

Cases:

Formatted: Underline

Donsanto provided us with three case lists: Open cases (still being investigated) as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006; and cases closed for lack of evidence as of January 13, 2006.

If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.*

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought against conspiracies when there was a pattern or scheme to corrupt the process rather than individual offenders acting alone. For deterrence purposes, charges were not brought against individuals – those cases went unprosecuted. This change in direction, focus, and level of aggression was by the decision of the Attorney General. The reason for the change was for deterrence purposes, he Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once.

Comment [GH1]: ??conspiracies

The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

1. Felon voters in Milwaukee.
2. Alien voters in the Southern District of Florida. FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.
3. Double voters in a variety of jurisdictions.

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The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

*According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot*

006944

**Interview with John Tanner, Director~~Chief~~, Voting Section, Civil Rights Division,  
U.S. Department of Justice**

February 24, 2006

The Department of Justice's (DOJ) Voting Section is charged with the civil enforcement of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), and Title III of the Help America Vote Act (HAVA).

Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. Mr. Tanner would not give us any information about or data from the section's election complaint intake phone logs; data or even general information from the Interactive Case Management (ICM) system its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws; and would give us only a selected few samples of attorney-observer reports, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. He would not discuss in any manner any current investigations or cases the section is involved in. He also did not believe it was his position to offer us recommendations as to how his office, elections, or the voting process might be improved.

Authority and Process

The Voting Section, in contrast to the Public Integrity Section as Craig Donsanto described it, typically focuses looks only onat systemic problems resulting from government action or inaction, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Federal voting laws enforced by the section only apply to state action, so the section only sues state and local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, with systematic changes forced upon those jurisdictions, have made it so now the section now does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14<sup>th</sup> and 15<sup>th</sup> Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter that involvesof individual offenders or a systemic problem. When deciding what to do

006945

with the complaint, the section errs on the side of referring it criminally to avoid having any because they do not want civil litigation to complicate a possible criminal case.

When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

#### Voter Intimidation

Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been a formal investigation into the abusive use of challengers.

Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

However, Mr. Tanner said the dDepartment was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the ~~voting~~ Voting Section to become involved.

Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never

006946

formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands of the states will be helpful because at this higher level of government you find a higher level of professionalism.

It is hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. However, the enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared, as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

The section is not filing as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore. Mr. Tanner said that race based problems are rare now.

NVRA has been effective in opening up the registration process. In terms of enforcement, Mr. Tanner said they do what they can when they have credible allegations. There is a big gap between complaints and what can be substantiated. Mr. Tanner stated that given the high quality of the attorneys now in the section, if they do not investigate it or bring action, that act complained of did not happen.

#### Recommendations

Mr. Tanner did not feel it was appropriate to make recommendations.

**Consultants Note:** We contend that Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. We did not have access to any information about or data from the section's election complaint intake, phone logs or data or even general information from the Interactive Case Management (ICM) system, its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws. Only a selected few samples of attorney-observer reports were provided; reports that every

**Comment [GH2]:** The consultants did not say "we contend" and I do not think EAC should put words in their mouth so to speak.

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Writing Section attorney who is observing elections at poll sites on Election Day is required to submit. Mr. Fanner would not discuss any current investigations or cases the section is involved in.

EAC made clarifying edits to this portion of the consultants' report.

**Comment [GH3]:** I feel quite strongly that EAC needs to acknowledge that it edited this portion of the consultants' report because of all the materials they submitted and that we are attaching as appendices; this is the only section we are changing.

**Deliberative Process  
Privilege**



Gracia Hillman/EAC/GOV  
12/11/2006 11:26 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov  
cc  
bcc

Subject Re: Draft response to Tova Wang 

History:  This message has been replied to and forwarded.

Julie and Jeannie:

Thank you for the quick turn around on drafting a response to Tova Wang.

I have made substantial edits because I think the first draft offered too much information, which is not germane to Tova's complaint. Additionally, too much verbiage masks the strength of our good report and seemed to obscure the main points in our response.

I hope you will find the attached helpful.

BTW, who will sign the letter ?



Tova Wang, Dec06.doc

Gracia M. Hillman  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, DC 20005  
Tel: 202-566-3100  
Fax: 202-566-1392  
www.eac.gov

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006949

**Deliberative Process  
Privilege**

December 8, 2006

Ms. Tova Wang  
(Address)  
(Address)

Dear Ms. Wang:

~~The U.S. Election Assistance Commission believes that voting fraud and voter intimidation are very important, complex topics that should be studied and reported on fairly and accurately. As a clearinghouse of election administration information, EAC is committed to providing complete and comprehensive information to the election community and the public.~~

We are writing in response to your December 7, 2006 memorandum.

In its December 2006 report on voting fraud and voter intimidation, As you know, the U.S. Election Assistance Commission (EAC) issued its first report on election crimes last week, based in large part on the work that was done for EAC by Job and you. The report contains EAC honored this commitment by providing the readers of its report with the full and complete summaries of every interview conducted as well as every book, article, report or case that was reviewed. It is incumbent upon us to provide them with the best and most complete data and research that we can. Rather than provide only the synopsis of these interviews, EAC provided the readers with the individual entire summaries created by the consultants so readers could reach their own conclusions about the substance of the interviews.

With regard to the interviews of two of the personnel from the Department of Justice, EAC made clarifying edits. Upon reviewing initial information about their Department of Justice interviews contained in the status report that was provided to the EAC Standards Board and EAC Board of Advisors and the information provided by the consultants at the working group meeting in May 2006, those persons interviewed at the Department of Justice did not agree with certain characterizations of their statements contained in these materials. Therefore, EAC exercised its responsibility to make clarifying edits. The Department of Justice is an important prosecutorial agency engaged in enforcing Federal anti-fraud and anti-intimidation laws. Thus, it was important to EAC to assure that the summary of their comments did not lend confusion to an already complex and hotly-debated topic.

Because of the lack of organization and cohesion in the draft provided by the consultants, that document would have led to greater confusion and division regarding the issues of voting fraud and voter intimidation. As such, EAC revised the draft report and provided the entirety of the supporting documentation to the public.

006950

~~For these reasons,~~ The report on voting fraud and voter intimidation will stand as adopted on December 7, 2006. Again, we thank you for the contributions you made to the EAC's initial research of these important issues.

Sincerely,

000951



Gracia Hillman/EAC/GOV  
12/11/2006 02:16 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc "Davidson, Donetta" <ddavidson@eac.gov>, Paul  
DeGregorio/EAC/GOV@EAC  
bcc  
Subject Re: Fw: Draft response to Tova Wang 

With respect to how the letter to Tova is signed, either way is fine with me.

000952



Gracia Hillman/EAC/GOV  
12/11/2006 03:43 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc "Davidson, Donetta" <ddavidson@eac.gov>, Paul  
DeGregorio/EAC/GOV@EAC  
bcc  
Subject Re: Fw: Draft response to Tova Wang 

I agree with the Chairman's recommended additional language.

006953



Gracia Hillman /EAC/GOV  
12/11/2006 04:18 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fw: Draft response to Tova Wang

Diligence was misspelled. Otherwise OK by me.

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
12/11/2006 03:50 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC  
Subject Re: Fw: Draft response to Tova Wang

Commissioners,

Consistent with the changes requested by both Commissioners DeGregorio and Hillman, I have revised the draft response. Please take one more look at the letter. If possible, it would be nice to get this out today.



tova wang response 121106.doc

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV  
12/11/2006 03:40 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC  
Subject Re: Fw: Draft response to Tova Wang

Julie,

I am ok with the edits Commissioner made to the letter; however, I do think that because of the tone of Tova's letter, which is likely to be supplied to others (as was their report to us). that we need a paragraph in the letter that makes it clear that the process used in producing this final report was consistent with the process we have used in all the reports and studies we have issued to date. What she needs to know (in writing) is that while we review the work of our researchers and consultants on a topic closely to draw various conclusions, our staff and the commissioners themselves have input into the final product

006954

that becomes the public report issued by a majority vote of the EAC. Since I've been on the EAC, we have consistently questioned statistics, statements and conclusions drawn by those doing work for the EAC. We have also drawn upon our collect resources and wisdom to produce the best report possible. I think that was true in this case as it has been with all the other reports we have issued. In the end, it is the EAC--and the commissioners in particular--who are held accountable for what we adopt and release; not our paid consultants or organizations we contract with to do studies.

Paul DeGregorio  
Chairman  
US Election Assistance Commission  
1225 New York Ave, NW  
Suite 1100  
Washington, DC 20005  
1-866-747-1471 toll-free  
202-566-3100  
202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
12/11/2006 11:40 AM

To "Davidson, Donetta" <ddavidson@eac.gov>, Paul  
DeGregorio/EAC/GOV@EAC  
cc Gracia Hillman/EAC/GOV@EAC  
Subject Fw: Draft response to Tova Wang

commisisoners,

See below edits that Gracia has offered to the letter. Let me know if you agree. I would like to send this out today. Also, in response to Gracia's question below, I believe that since her letter was addressed to the Commissioners that the Commissioners should respond (either collectively or through the Chairman). Please let me know if you agree with the edits. It would be nice to get this out today.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

— Forwarded by Juliet E. Hodgkins/EAC/GOV on 12/11/2006 11:37 AM —

Gracia Hillman/EAC/GOV  
12/11/2006 11:26 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov  
cc  
Subject Re: Draft response to Tova Wang



Julie and Jeannie:

006955

Thank you for the quick turn around on drafting a response to Tova Wang.

I have made substantial edits because I think the first draft offered too much information, which is not germane to Tova's complaint. Additionally, too much verbiage masks the strength of our good report and seemed to obscure the main points in our response.

I hope you will find the attached helpful.

**BTW, who will sign the letter ?**

[attachment "Tova Wang, Dec06.doc" deleted by Paul DeGregorio/EAC/GOV]

Gracia M. Hillman  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, DC 20005  
Tel: 202-566-3100  
Fax: 202-566-1392  
[www.eac.gov](http://www.eac.gov)

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- 006956

December 11, 2006

Ms. Tova Wang  
c/o The Century Foundation  
1333 H Street NW, 10<sup>th</sup> Floor  
Washington, DC 20005

**Via U.S. Mail and Facsimile Transmission**  
**202-483-9430**

Dear Ms. Wang:

We are writing in response to your December 7, 2006 memorandum. As you know, the U.S. Election Assistance Commission (EAC) issued its first report on election crimes last week, based in large part on the work that was done for EAC by Job and you. The report contains the full and complete summaries of every interview conducted as well as every book, article, report or case that was reviewed. Rather than provide the synopsis of these interviews, EAC provided the individual summaries so readers could reach their own conclusions about the substance of the interviews.

As the agency responsible for these final reports, it is incumbent upon EAC to assure that the information contained in the reports is accurate and fairly presented. With each of the reports, best practices documents, quick start guides, and other documents that EAC publishes, EAC makes changes as needed to make certain that our constituents are receiving the best and most complete information. This due diligence process is observed regardless of whether the document was created in-house or was created by consultants or contractors.

Upon reviewing initial information about the Department of Justice interviews contained in the status report that was provided to the EAC Standards Board and EAC Board of Advisors and the information provided at the working group meeting in May 2006, those persons interviewed at the Department of Justice did not agree with certain characterizations of their statements contained in these materials. Therefore, EAC exercised its responsibility to make clarifying edits. The Department of Justice is an important prosecutorial agency engaged in enforcing Federal anti-fraud and anti-intimidation laws. Thus, it was important to EAC to assure that the summary of their comments did not lend confusion to an already complex and hotly-debated topic.

006957

The report on voting fraud and voter intimidation will stand as adopted on December 7, 2006. Again, we thank you for the contributions you made to the EAC's initial research of these important issues.

Sincerely,

Paul DeGregorio  
Chairman

Donetta Davidson  
Commissioner

Gracia Hillman  
Commissioner

006953



Paul DeGregorio/EAC/GOV  
12/11/2006 03:40 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC  
bcc

Subject Re: Fw: Draft response to Tova Wang

History: This message has been replied to

Julie,

I am ok with the edits Commissioner made to the letter; however, I do think that because of the tone of Tova's letter, which is likely to be supplied to others (as was their report to us). that we need a paragraph in the letter that makes it clear that the process used in producing this final report was consistent with the process we have used in all the reports and studies we have issued to date. What she needs to know (in writing) is that while we review the work of our researchers and consultants on a topic closely to draw various conclusions, our staff and the commissioners themselves have input into the final product that becomes the public report issued by a majority vote of the EAC. Since I've been on the EAC, we have consistently questioned statistics, statements and conclusions drawn by those doing work for the EAC. We have also drawn upon our collect resources and wisdom to produce the best report possible. I think that was true in this case as it has been with all the other reports we have issued. In the end, it is the EAC--and the commissioners in particular--who are held accountable for what we adopt and release; not our paid consultants or organizations we contract with to do studies.

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Chairman  
US Election Assistance Commission  
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Washington, DC 20005  
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202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
12/11/2006 11:40 AM

To "Davidson, Donetta" <ddavidson@eac.gov>, Paul DeGregorio/EAC/GOV@EAC  
cc Gracia Hillman/EAC/GOV@EAC  
Subject Fw: Draft response to Tova Wang

commisisoners,

See below edits that Gracia has offered to the letter. Let me know if you agree. I would like to send this out today. Also, in response to Gracia's question below, I believe that since her letter was addressed to the Commissioners that the Commissioners should respond (either collectively or through the Chairman). Please let me know if you agree with the edits. It would be nice to get this out today.

006959

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

— Forwarded by Juliet E. Hodgkins/EAC/GOV on 12/11/2006 11:37 AM —



Gracia Hillman/EAC/GOV

12/11/2006 11:26 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov

cc

Subject Re: Draft response to Tova Wang 

Julie and Jeannie:

Thank you for the quick turn around on drafting a response to Tova Wang.

I have made substantial edits because I think the first draft offered too much information, which is not germane to Tova's complaint. Additionally, too much verbiage masks the strength of our good report and seemed to obscure the main points in our response.

I hope you will find the attached helpful.

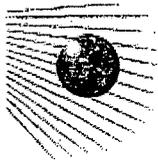
BTW, who will sign the letter ?

[attachment "Tova Wang, Dec06.doc" deleted by Paul DeGregorio/EAC/GOV]

Gracia M. Hillman  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, DC 20005  
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Fax: 202-566-1392  
www.eac.gov

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006960



Paul DeGregorio /EAC/GOV  
12/08/2006 05:40 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Draft response to Tova Wang 

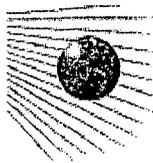
I saw that...and feel it's VERY appropriate considering the unprofessional conduct she had shown in dealing with this matter.  
Have a great weekend.

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 12/08/2006 05:37 PM  
**To:** Paul DeGregorio  
**Subject:** Re: Draft response to Tova Wang

I can certainly do that. I was focusing on trying to use her own words against her.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV  
12/08/2006 05:29 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
Subject Re: Draft response to Tova Wang 

Julie,

The letter is good, but don't you want to point out that in every report we issue that the research provided by paid consultants/organizations is provided under contract to the EAC, who by law is ultimately responsible for any final report issued to the public. And that such reports always takes into consideration the research provided but the EAC is obligated to consider all factors when making determinations to insure fairness and integrity of the process.

Paul

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 12/08/2006 04:38 PM  
**To:** Paul DeGregorio; Gracia Hillman; Donetta Davidson; Thomas Wilkey  
**Cc:** Bert Benavides; Sheila Banks; Elieen Collver; Matthew Masterson; Jeannie Layson

006961

**Subject:** Draft response to Tova Wang

Commissioners,

Jeannie and I have collaborated on the following draft response to Tova Wang's letter. Please let me know if you agree or have comments/edits.

[attachment "draft response to Tova Wang.doc" deleted by Paul DeGregorio/EAC/GOV]

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

006962



Gracia Hillman/EAC/GOV

03/06/2007 11:28 AM

To klynn-dyson@eac.gov

cc Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov

bcc

Subject Further to the Eagleton Study

I forgot to add the following comment.

If the Eagleton testimony from February 8 is not included as an attachment to our Statement, then at the very least I think our statement should inform the reader that Eagleton testified on Feb 8 and the statement is posted on our website.

296506



Gracia Hillman/EAC/GOV  
03/06/2007 11:24 AM

To klynn-dyson@eac.gov  
cc Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov  
bcc

Subject Feedback on Draft Statement

Karen:

Following up on yesterday's briefing about the Draft Statement on the Voter ID study, here is my feedback.

1. I agree that we should send out all of the appendices. I think EAC needs to send out as much information as we have available at this time from the Eagleton study.
2. The statement should clarify that at a minimum we are looking to compare 2008 voter participation stats with the 2004 stats used in the Eagleton report. (FYI - The term voter participation includes registration and turnout)

Perhaps that explanation should be the fourth paragraph on Page 1, explaining why EAC decided to not perform an analysis at this time of the impact of voter id requirements on turnout

3. I agree that the last section of the statement should include EAC's intention to convene a (one) large working group of advocates, academics (statisticians included) and election officials to discuss what the next EAC study on this topic should cover and what the time frame for such study should be.

Lastly, I read this as a draft and "assume" it will be edited to take care of grammatical and spelling errors.

Thanks,  
Gracia M. Hillman  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, DC 20005  
Tel: 202-566-3100  
Fax: 202-566-1392  
www.eac.gov

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006964

**Deliberative Process  
Privilege**



Gracia Hillman/EAC/GOV  
03/07/2007 12:33 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC, Juliet E.  
bcc

Subject Re: Revised EAC Statement 

I have inserted my thoughts and suggested edits to Karen's latest draft -- see tracked changes and comments.

Karen: If there is more back and forth that needs to be discussed on this, it may be best to have a briefing by you later this afternoon that could include commissioners Hunter and Rodriguez



New EAC Voter ID Report.doc

Gracia M. Hillman  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, DC 20005  
Tel: 202-566-3100  
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006965

## EAC Statement on Future Study of Voter Identification Requirements

### Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University, to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the contractor was to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

Comment [GH1]: We should state the same entity, precisely as it is named in the contract. We could then name which institutions performed the work, were subcontractors, etc.

The contractor also performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data-- aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau-- the contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.

Comment [GH2]: With respect to the last sentence in paragraph one above, it is my opinion that it would have been reasonable for Eagleton to have considered the statistical analysis they conducted as being covered by that task. Therefore, I recommend striking the word "also" from this sentence.

On February 8, 2007 in an EAC public meeting, the contractor presented testimony summarizing the findings from this statistical and data analysis which it elected to perform on voter identification requirements. A summary of voter identification requirements by State, court decisions and literature on voter identification and related issues, court decisions, an annotated bibliography on voter identification issues and state statutes and regulations affecting voter identification can be found along with the contractor's testimony, on EAC's website: [www.EAC.gov](http://www.EAC.gov).

OR

On February 8, 2007 in an EAC public meeting, the contractor presented testimony summarizing its findings from this statistical and data analysis at a February 8, 2007 meeting of which it elected to perform on voter identification requirements. The contractor's full report describing the statistical and data analysis which it performed along with the testimony and its findings on that was delivered summarizing this can be found on EAC's website. A summary of voter identification requirements by State, court decisions and literature on voter identification and related issue court decisions (??), the statistical and data analysis of the effect of voter identification requirements on turnout, an annotated bibliography on voter identification issues and state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website: [www.EAC.gov](http://www.EAC.gov).

## EAC Recommendations for further study and next steps

EAC finds the contractor's summary of States' voter identification requirements and summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be an important beginning step in the Commission's consideration of voter identification requirements.

However, EAC has concerns regarding the research and statistical methodology the contractor chose to employ in order to categorize and analyze voter identification requirements. Therefore, EAC will consider it advisable to engage in a longer-term, more systematic review of voter identification requirements and is recommending that a additional study on the topic must take into account will include more than one Federal election cycle, must consider additional environmental and political factors that effect voter participation, and must take into account the numerous changing in state laws and regulations related to voter identification requirements that have occurred since 2004.

At a minimum EAC will undertake the following activities engage on an ongoing basis, beginning with the 2008 federal elections:

- A state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Using some of the information collected by Eagleton and assembling data from states, EAC will establish a baseline of information on what factors may effect or influence Citizen Voting Age Population (CVAP) voter participation, including — At a minimum data on voter participation statistics for the 2004 and 2008 election cycles would be collected. Other factors to be examined will include various voter identification requirements, whether or not the race was "hotly" contested and, other environmental or political factors.
- — Analysis of this and other data to begin to determine what, if any impact,
- From this ongoing review and tracking EAC can determine the feasibility and advisability of further research and study into whether voter identification requirements have had an impact over several elections on factors such as voter turnout, registration, and fraud.

Comment [GH3]: I cannot craft the words right now, but there must be another way to say this.

Other activities — is likely to consider implementing one or more of the following research studies that will serve to augment the work begun by the Eagleton Institute of Politics: to enhance EAC research on the correlation between identification requirements and various aspects of voter participation will include:

**• Convening a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include specific issues to be covered in the study and timelines for completing an EAC study on voter identification.**

- A study of how certain voter identification provisions that have been in place for two or more Federal elections have had an impact on voter turnout, voter registration figures, and fraud. Included in this study would be an examination of the relationship between voter turnout and race and gender;
- Publication of a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating pollworkers and voters about various voter identification requirements. Included in the case studies would be detail on the policies and practices used to educate and inform pollworkers and voters;
- A state-by-state tracking of early voting, absentee voting, and vote-by-mail policies and procedures. The data collected through this tracking would then be compared to the various state voter identification policies and procedures described above.

DRAFT

**Deliberative Process  
Privilege**



Gracia Hillman /EAC/GOV

03/07/2007 12:51 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC, Juliet E.

bcc

Subject Statement w/o Tracked Changes 

I thought it might be useful to send my suggested revisions without all the tracked changes for an easier read. Same document that I sent a minute ago and it still has my comments



Voter ID Draft, Mar07,07.doc

006969

## EAC Statement on Future Study of Voter Identification Requirements

### Background

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### EAC Recommendations for further study and next steps

EAC finds the contractor's summary of States' voter identification requirements and summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be an important beginning step in the Commission's consideration of voter identification requirements.

However, EAC has concerns regarding the research and statistical methodology the contractor chose to employ in order to categorize and analyze voter identification requirements. Therefore, EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

At a minimum EAC will undertake the following activities on an ongoing basis, beginning with the 2008 federal elections:

- A state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Using some of the information collected by Eagleton and assembling data from states, EAC will establish a baseline of information on what factors may effect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, ~~whether or not the race was hotly contested~~ and, other environmental or political factors.
- Analysis of this and other data to begin to determine what, if any impact, voter identification requirements have voter turnout, registration, and fraud.

Comment [GH3]: I cannot craft the words right now, but there must be another way to say this

Other activities to enhance EAC research on the correlation between identification requirements and various aspects of voter participation will include:

- Convening a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- A study of how certain voter identification provisions that have been in place for two or more Federal elections have had an impact on voter turnout, voter registration figures, and fraud. Included in this study would be an examination of the relationship between voter turnout and race and gender;
- Publication of a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating pollworkers and voters about various voter identification requirements. Included in the case studies would be detail on the policies and practices used to educate and inform pollworkers and voters;
- A state-by-state tracking of early voting, absentee voting, and vote-by-mail policies and procedures. The data collected through this tracking would then be compared to the various state voter identification policies and procedures described above.



U.S. ELECTION ASSISTANCE COMMISSION  
OFFICE OF INSPECTOR GENERAL  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

April 20, 2007

To: Thomas Wilkey  
Executive Director

From: Curtis W. Crider *Curtis W. Crider*  
Inspector General

Subject: Evaluation of Contracting Procedures Related to the Research Projects for the  
Vote Fraud Report and the Voter Intimidation Reports (Assignment Number I-  
EV-EAC-02-07)

The Office of Inspector General plans to start the subject evaluation on or about April 20, 2007. The initial objective of the review will be to answer the questions that you posed in your April 16, 2007 memorandum requesting the review. Additional objectives may be added by the Office of Inspector General during the course of the evaluation.

Please feel free to contact me if you have any questions about this evaluation, and thank you in advance for your assistance.

cc: Chair  
General Counsel

006972

# Deliberative Process Privilege

## Analysis of Effects of Voter Identification Requirements on Turnout

Tim Vercellotti  
Eagleton Institute of Politics  
Rutgers University

### Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns how such requirements affect voter turnout. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics argue that requiring voters to produce some form of government-issued photo identification on Election Day is more demanding than requiring, for example, that they state their names at the polling place because of the various steps needed to procure a photo identification card, such as a driver's license. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. It draws on two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

### Types of voter identification requirements

Each state is classified as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).<sup>1</sup> It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification. Laws in those states set a minimum standard that a

<sup>1</sup> Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

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voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

### Analysis of aggregate data

If one treats maximum voter identification requirements as an ordinal variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with voter identification requirements ( $r = -.21$ ,  $p < .0001$ ). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ( $r = -.16$ ,  $p < .0001$ ). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

Differences in voter turnout at the state level in 2004 varied based on voter identification requirements.<sup>2</sup> Taking into account the maximum requirements, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof.

Voter identification requirements alone, however, do not determine voter turnout. Multivariate models that take into account other predictors of turnout can place the effects of voter identification in a more accurate context. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. To capture electoral context I

<sup>2</sup> Voter turnout is defined here as the percentage of the adult voting-age population that voted in November 2004, based on county vote totals reported by the states and U.S. Census population projections for the counties from 2003. McDonald and Popkin (2001) contend that using the voting-age population to calculate turnout understates turnout for a number of reasons. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

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included whether the county was in a presidential battleground state (any state in which the margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the percentage of individuals who fell below the poverty line in each county in the 2000 Census.

I estimated a series of random intercept models to account for the likelihood that data from counties were correlated within each state (for further explanation of random intercept and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).<sup>3</sup> The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, those requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county had no effect, but the percentage of Hispanic adults exerted a negative effect on voter turnout, as did the percentage of individuals living below the poverty line.

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities and the poor, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum voter identification requirements and the percentage of African-Americans, Hispanics, and poor individuals in the counties. The interaction involving African-Americans was not significant, but those involving Hispanics and poor individuals were significant.<sup>4</sup> Thus voter identification requirements have a greater effect for Hispanics and those living below the poverty line. A chi-square test of the difference in the deviance for each model (represented by  $-2 \log$  likelihood in Table 2), shows that the model with interactions provides a better fit to the data ( $p = 0.0003$ ).

Comment [01]:

I also estimated the effects of the minimum voter identification requirements holding constant the effects of electoral context and the demographic variables.

<sup>3</sup> The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the intercept as a predictor generated an intraclass correlation of .40, indicating considerable variation between the states.

<sup>4</sup> The interactions are labeled in Tables 2 and 3 as VID\*African-American, VID\*Hispanic, and VID\*Poverty. To calculate the effects of voter identification requirements for a specific group, one must add the estimates for voter identification, the group, and the interaction. Doing so for Hispanic adults results in an estimate of -0.36 [-0.04 (voter id) - 0.38 (Hispanic) + 0.06 (voter id X Hispanic)].

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[Table 3 here]

The effects of the minimum requirements are not statistically significant ( $p = 0.15$ ). The battleground state variable continues to exert a positive influence on turnout, while the presence of a competitive race for governor and/or U.S. Senate has no statistically significant effect. As in the maximum identification requirements models, as the percentage of the population that is Hispanic or poor increases, turnout declines. As the percentage of elderly increases, so does turnout. The proportion of African-Americans in the population does not affect turnout. Adding interactive effects to the model results in a statistically significant and negative effect of minimum voter identification requirements on turnout. But one must interpret this estimate with caution. A chi-square test for the difference in fit between the two models shows no significant difference ( $p = 0.08$ ), and thus no improvement to the fit when adding the interactions between voter identification requirements and the percentages of the county that is Hispanic or lives below the poverty line.

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991). Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

#### Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm-Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.<sup>5</sup> The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not

<sup>5</sup> It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

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registered to vote. I also excluded those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S. citizens.

It is important to note here that the voter turnout rate for the CPS sample is much higher than the turnout rates presented in the aggregate data analysis. The U.S. Census Bureau reported that 89 percent of registered voters in the CPS sample said they voted (U.S. Census Bureau 2005). Turnout among the voting-age population was 58 percent in 2004, according to the aggregate data analysis. The difference is a result of several factors. One factor consists of the different denominators in calculating the turnout rate – registered voters versus the much larger voting-age population. Also, previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of a level of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be much higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

~~In addition, I eliminated from the sample respondents who said they were not U.S. citizens.~~

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The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.<sup>6</sup> In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a competitive gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less. At the individual level, I controlled for gender, age in years, education, household income, and dummy variables representing whether a voter was Black/non-Hispanic, Hispanic, or another non-white race (with white/non-Hispanic voters as the omitted category for reference purposes). Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and

<sup>6</sup> The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

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Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

## Results

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, and estimated robust standard errors to control for correlated error terms for observations from within the same state.

[Table 4 here]

The two models in Table 4 use either the maximum or minimum voter identification requirements in each state. The two models generate virtually identical results. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters to say they had cast a ballot, while those of other non-white races were less likely than white voters to say they had turned out. Hispanic voters were not statistically different from white voters in terms of reported turnout. Consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.<sup>7</sup> I calculated the probabilities taking into account both maximum and minimum requirements, with photo identification serving as the most demanding of the maximum requirements and affidavits as the most demanding minimum requirement.

[Table 5 here]

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names for stating one's name to 88.7 percent if all voters had to

<sup>7</sup> In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

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provide for photo identification under the maximum requirements. In other words, the probability of voting dropped with each level of voter identification requirement, with a total drop of .025, or 2.5 percent, across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it was possible to break the sample into sub-samples along those demographic lines to explore variation in predicted probability by group. I disaggregated the sample by the variable of interest (such as race, for example), omitting that variable while I re-ran the probit model with the remaining predictors of voter turnout, including the voter identification requirements.<sup>8</sup> If the analysis showed that the voter identification requirements had a statistically significant effect on turnout, I used the probit coefficients from the model to calculate the predicted probability of voting for each group across the five requirements while holding the other variables in the model constant.

[Table 6 here]

Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be was the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

[Table 7 here]

Voters in that age group had a predicted probability of 83.9 percent if when the maximum requirement would be to as stating one's name, and the probability drops dropped 8.9 percentage points if voters would have to provide photo identification. The range was from 83.1 percent to 75.4 percent under the minimum requirements. The gap in probability narrowed in older age groups (4.8 percent for the maximum requirements and 5.8 percent for the minimum requirements for those ages 25 to 44; 1.8 percent for the minimum requirements for those ages 45 to 64, and 2.4 percent for the minimum requirements for those ages 65 and older).

**Comment [o2]:** The turnout figures shown in the analysis of the aggregate data range of 57.3% turnout to 63.1% turnout. When using the individual data, based on self-reports, the turnout figures approach 90%. I think a couple of sentences explaining the difference in the data between the two different analyses would be helpful here, even for readers comfortable with the statistical techniques used.

<sup>8</sup> See Nagler 1991 for a similar approach in analyzing the effects of registration closing dates broken down by education levels.

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Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.<sup>9</sup>

[Table 8 here]

While the maximum set of requirements did not have a statistically significant effect for voters living below the poverty line, the minimum set of requirements had a significant and negative effect. The probability of voting was .784 for poor voters if they would have to identify themselves by giving their name, and the probability declined to .731 if they would have to provide an affidavit attesting to their identity. Both the maximum and minimum sets of requirements had a significant and negative effect on voters living above the poverty line, but the difference in probability across the effects was narrower (2.3 percent for the maximum requirements and 3.1 percent for the minimum requirements).

The effects of voter identification requirements varied across education levels as well, with those lowest in education demonstrating the widest variation in probabilities as identification requirements ranged from least to most demanding.

[Table 9 here]

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The difference from the lowest to the highest requirement among the minimum requirements was 7.4 percent. The difference in probabilities ranged from 3.3 percent for the maximum requirements to 4.5 percent for the minimum requirements for voters with a high school diploma. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

#### Discussion and conclusion

The results presented here provide evidence that as the level of demand associated with voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election.

The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appeared to be less likely to vote ifas the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey

<sup>9</sup> I coded respondents as being above or below the U.S. Census Bureau's 2004 poverty line based on respondents' reported annual household income and size of the household.

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respondents living in poor households would be 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit.

Effects of voter requirements also varied with education. Registered voters who had not graduated from high school would be 6.7 percent less likely to say they voted if the maximum requirement is photo identification as opposed to stating one's name as the maximum requirements ranged from stating one's name to providing photo identification. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name. Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.

Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the elderly, while they would be slightly less likely to vote as requirements ranged from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?<sup>10</sup> Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers election judges to handle questions about, and potential disputes over, voter identification requirements.

<sup>10</sup> The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not registered). Neither the maximum nor minimum array of voter identification requirements had a statistically significant effect on the probability that a survey respondent was registered to vote.

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*Avg. ? Weighted by what?*

<b>Maximum Requirement</b>		<b>Minimum Requirement</b>	
<b>Voter Identification Required in the States</b>	<b>Mean Voter Turnout for States in that Category</b>	<b>Voter Identification Required in the States</b>	<b>Mean Voter Turnout for States in that Category</b>
State Name	63.1 %	State Name	61.3 %
Sign Name	58.6 %	Sign Name	60.4 %
Match Signature	62.1 %	Match Signature	59.2 %
Provide Non-Photo ID	57.8 %	Provide Non-Photo ID	57.6 %
Provide Photo ID	57.3 %	Swear Affidavit	58.7 %
<b>Average Turnout for All States</b>	<b>59.6 %</b>		

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**Table 2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements**

Variable	Basic Model		Model with Interactions	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Intercept	0.64	0.01	0.70	0.02
Voter ID requirements	-0.02**	0.004	-0.04**	0.005
Battleground State	0.04*	0.02	0.04*	0.02
Competitive Senate/Governor's Race	0.04*	0.02	0.04*	0.02
% Age 65 and Older	0.50**	0.03	0.51**	0.03
% African-American	0.02	0.01	0.04	0.04
% Hispanic	-0.17**	0.01	-0.38**	0.05
% Below poverty line	-0.01**	0.0002	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.06**	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8234.5		-8253.5	

Coefficients are restricted maximum likelihood estimates. N = 3,112. \* p < .05 \*\* p < .01 (two-tailed tests)

006985

**Table 3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements**

Variable	Basic Model		Model with Interactions	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Intercept	0.62	0.01	0.66	0.02
Voter ID requirements	-0.008	0.005	-0.02**	0.006
Battleground State	0.04**	0.01	0.04*	0.02
Competitive Senate/Governor's Race	0.03	0.02	0.03	0.02
% Age 65 and Older	0.50**	0.03	0.49**	0.03
% African-American	0.02	0.01	0.02	0.03
% Hispanic	-0.17**	0.01	-0.37**	0.05
% Below poverty line	-0.01**	0.0003	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.06**	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8222.7		-8229.4	

Coefficients are restricted maximum likelihood estimates. N = 3,112. \* p < .05 \*\* p < .01 (two-tailed tests)

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<b>Table 4. Probit model of voter turnout.</b>				
	<b>Maximum requirements</b>		<b>Minimum requirements</b>	
<b>Variable</b>	<b>Unstandardized Estimate</b>	<b>Standard Error</b>	<b>Unstandardized Estimate</b>	<b>Standard error</b>
<b>Voter ID requirements</b>	-0.04*	0.01	-0.05**	0.01
<b>Hispanic</b>	-0.06	0.05	-0.05	0.05
<b>Black</b>	0.22**	0.04	0.22**	0.04
<b>Other race</b>	-0.23**	0.04	-0.23**	0.04
<b>Age in years</b>	0.01**	0.001	0.01**	0.001
<b>Education</b>	0.12**	0.005	0.11**	0.005
<b>Household income</b>	0.03**	0.003	0.03**	0.003
<b>Married</b>	0.20**	0.02	0.20**	0.02
<b>Female</b>	0.09**	0.01	0.09**	0.01
<b>Battleground state</b>	0.18**	0.04	0.19**	0.04
<b>Competitive race</b>	0.05	0.05	0.05	0.05
<b>Employed</b>	0.05	0.04	0.05	0.04
<b>Member of workforce</b>	-0.04	0.05	-0.04	0.05
<b>Native-born citizen</b>	0.03	0.04	0.04	0.05
<b>Moved within past 6 months</b>	-0.27**	0.03	-0.27**	0.03
<b>Constant</b>	-4.48**	0.20	-4.46**	0.20
<b>Pseudo-R-Squared</b>	0.09		0.09	
<b>Notes:</b>				
N = 54,973 registered voters				
p < .05** p < .01** (two-tailed tests)				
Models were estimated with robust standard errors to correct for correlated error terms within each state.				
Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.				

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<b>Table 5. Predicted probability of voter turnout – full model</b>		
	<b>Maximum requirement</b>	<b>Minimum requirement</b>
<b>State name</b>	0.912	0.911
<b>Sign name</b>	0.906	0.903
<b>Match signature</b>	0.900	0.895
<b>Non-photo ID</b>	0.894	0.887
<b>Photo ID</b>	0.887	---
<b>Affidavit</b>	---	0.878
<b>Total difference from lowest to highest</b>	0.025	0.033
<b>N</b>	54,973	
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>		

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**Table 6. Predicted probability of voter turnout – White and Hispanic voters**

	White voters		Hispanic voters
	Maximum requirement	Minimum requirement	Minimum requirement
State name	0.920	0.922	0.870
Sign name	0.915	0.915	0.849
Match signature	0.909	0.907	0.826
Non-photo ID	0.902	0.899	0.800
Photo ID	0.895	----	----
Affidavit	----	0.890	0.773
Total difference from lowest to highest	0.025	0.032	0.097
N	44,760		2,860
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for Hispanic voters. Maximum and minimum voter identification requirements were not a significant predictor for African-American voters.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>			

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	18 - 24		25 - 44		45 - 64	65 and older
	Maximum requirements	Minimum requirements	Maximum requirements	Minimum requirements	Minimum requirements	Minimum requirements
State name	0.839	0.831	0.831	0.831	0.936	0.916
Sign name	0.819	0.814	0.820	0.817	0.932	0.910
Match signature	0.797	0.759	0.808	0.803	0.927	0.904
Non-photo ID	0.774	0.775	0.796	0.788	0.923	0.898
Photo ID	0.750	----	0.783	----	----	----
Affidavit	----	0.754	----	0.773	0.918	0.892
Total difference -- lowest to highest	0.089	0.077	0.048	0.058	0.018	0.024
N	5,065		20,066		20,758	9,084
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters ages 45 to 64 and 65 and older.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>						

**Comment [63]:** Can you add something to this footnote to once again clarify the difference between the very high turnout figures derived from the CPS respondents self-reports and actual measures of turnout which tend to be in the 50% – 65% range.

**Table 8. Predicted probability of voter turnout – Voters above and below the poverty line**

	Voters above the poverty line		Voters below the poverty line
	Maximum requirement	Minimum requirement	Minimum requirement
State name	0.920	0.922	0.784
Sign name	0.915	0.915	0.772
Match signature	0.909	0.907	0.758
Non-photo ID	0.903	0.899	0.745
Photo ID	0.897	----	----
Affidavit	----	0.891	0.731
Total difference from lowest to highest	0.023	0.031	0.053
N	49,935		5,038

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters who were below the poverty line.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

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Table 9. Predicted probability of voter turnout – By education								
	Less than high school		High school		College		Graduate school	
	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement
State name	0.775	0.779	0.866	0.869	0.960	0.959	0.977	0.979
Sign name	0.759	0.762	0.858	0.859	0.956	0.954	0.973	0.973
Match signature	0.743	0.743	0.850	0.848	0.951	0.950	0.968	0.967
Non-photo ID	0.725	0.724	0.842	0.836	0.945	0.945	0.963	0.959
Photo ID	0.708	----	0.833	----	0.939	----	0.957	----
Affidavit	-----	0.705	----	0.824	----	0.940	-----	0.950
Total difference – lowest to highest	0.067	0.074	0.033	0.045	0.021	0.019	0.020	0.029
N	4,903		16,361		11,017		5,739	
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum and minimum voter identification requirements were not a significant predictor of voting for those with some college education.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>								

006990

**Report to the  
U. S. Election Assistance Commission  
On  
Best Practices to Improve Voter Identification Requirements  
Pursuant to the  
HELP AMERICA VOTE ACT OF 2002  
Public Law 107-252**

June 28, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

The Moritz College of Law, The Ohio State University

## The Research Team

This research report on Voter Identification Requirements in the 2004 election is part of a broader analysis that also includes a study of Provisional Voting, which has already been submitted to the EAC. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

**The Eagleton Institute** explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

**The Moritz College of Law** has served the citizens of Ohio and the nation since its establishment in 1891. It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

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# **REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES**

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## **Report Background**

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the United States Election Assistance Commission (EAC) (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

This study provides information on voter identification practices in the 2004 election. It makes recommendations for best practices to evaluate future proposals for voter ID requirements, including the systematic collection and evaluation of information from the states. The research was conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University under a contract with the EAC, dated May 24, 2005. The work included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

## **EXECUTIVE SUMMARY AND RECOMMENDATIONS**

### Background and Methods

This report arrives at a time of considerable ferment over the issue of voter identification. The debate across the nation over requiring voters to produce a specific identification document before being permitted to cast a regular (as opposed to a provisional) ballot, has revealed supporters and opponents in polarized camps.

- Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for one kind of vote fraud --multiple voting or voting by those who are not eligible. The proponents argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election.

turnout and on vote fraud is to collect more information on both topics systematically and regularly.

Making a statistical estimate of the effect of voting regulations on turnout is difficult. The dynamics of turnout are complex, much studied, and only partially understood. Some agreement exists, however, that three factors that exert substantial influence on voter turnout are:<sup>1</sup> the socioeconomic status of the potential voter; legal requirements to vote; and the political context of the election. By focusing on how voters identify themselves at the polls, this report emphasizes legal requirements. The statistical analysis also considers some of the socioeconomic, racial, and age characteristics of the electorate, as well as the political context in 2004 (such as whether a state was a battleground in the presidential race).

Examining tradeoffs between ballot security and ballot access requires some measure of the effectiveness of voter ID requirements in reducing multiple voting or voting by ineligible voters. The existing evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification, is not sufficient to evaluate those tradeoffs.<sup>2</sup> Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud, nor does it estimate the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. Our analysis also cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

Despite these qualifications regarding the quality of the available data and the limitations of statistical analysis, however, the different statistical methods and two different sets of data on turnout in 2004 election used in the study point to the same general finding. Stricter voter identification requirements (for example, requiring voters to present non-photo ID compared to simply stating their names) were correlated with reduced turnout in the models employed, as described in detail in Appendix C.<sup>3</sup> As explained below, these models find that a statistically

Why not?  
Data  
limitations?  
Use of  
census  
data?

<sup>1</sup> See, for example, Tom William Rice and Patrick J. Kenney, "Voter Turnout in Presidential Primaries." 1985. Political Behavior, 7: 101-112. Identification requirements are not the only legal restrictions on voting. States also differ, for example, in their registration requirements (including how long before the election registration must take place and the identity documents required register).

<sup>2</sup> The EAC has contracted with other researchers to study vote fraud issues.

<sup>3</sup> Appendix C: Tim Vercellotti, Eagleton Institute of Politics, *Analysis of Effects of Voter Identification Requirements on Turnout*. Using the aggregate data, photo ID did not have a significant effect on turnout, possibly because in the

challenge process). We have included “maximum” requirements in our analysis, and not simply “minimum” requirements, because simply asking voters to produce particular identifying information may have a deterrent effect, even if voters are ultimately allowed to cast a regular ballot without that identification. For example, in a state where voters are asked to show photo ID at the polling place, but still allowed to vote by completing an affidavit confirming their eligibility, the “maximum” of being asked to show photo ID may deter some voters even though the “minimum” would allow them to vote without photo ID.

It is worth emphasizing that, at the time of the 2004 election, there was *no* state that had a “minimum” requirement of showing photo ID – in other words, there was no state that required voters to show photo ID in order to cast a regular ballot. For this reason, our report does not measure the impact of laws, like those recently enacted in Indiana and Georgia, which require voters to show photo ID in order to cast a regular ballot without an affidavit exception.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, the statistical analysis drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

*Data does not cover same spectrum - one reg. voters - one census*

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided so far on this issue. The decisions so far provide some guidance on the constitutional and other constraints as to voter ID requirements.

### Summary of Findings

As voter identification requirements vary, voter turnout varies as well. This finding emerged from both the statistical analysis's aggregate data and the individual-level data, although not always

knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Our analysis of litigation suggests that the courts will look more strictly at requirements that voters produce a photo ID in order to cast a regular ballot, than at non-photo ID laws. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, a best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

The current lack of understanding of precisely how voter ID requirements affect turnout could be ameliorated by requiring the collection and reporting of additional data, including the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.<sup>5</sup> And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

#### Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements may affect the decision by potential voters to go or stay away from the polls-- are not perfectly understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements and the two important goals of ensuring ballot access and ensuring ballot integrity.

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<sup>5</sup> Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

statutory or regulatory requirements. Such reports should be available to the public.

4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots<sup>6</sup>, and the safe harbor provision in presidential elections.
5. Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is less certain.

## **SUMMARY OF RESEARCH**

### **Background and Approach of the Study**

Voter ID requirements are just one set of rules governing voting that may affect turnout. Social scientists have long studied how election rules affect participation in elections. The general view today is that the individual citizen makes the choice of whether to vote in a way similar to other decisions that a rational citizen makes, by comparing costs and benefits. The benefits of voting are fairly stable and hard to specify given the remote probability that any one vote will make a difference in an election. But whatever the benefit as perceived by an individual voter, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decrease. Not all groups in the population calculate the cost of participation in the same way, so that election laws (such as registration or identification requirements) may affect different groups differently.

A short summary of some of the social science literature illustrates what may be a broad consensus that the rules of elections affect turnout, but note the important differences in the details of what groups may be most affected.

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<sup>6</sup> Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

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- Squire, Wolfinger, and Glass in "Residential Mobility and Voter Turnout." *American Political Science Review*. 81:1 (March 1987) found that people who move constitute a major demographic group affected by registration laws. They estimated that altering laws to facilitate voting by recently moved people could increase turnout by 9%. Highton in "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior*. 22:2 (June 2000) also found that people who move have lower turnout than stable residents, and estimated that the decline was more a result of registration laws than a loss of social connections.
- Highton and Wolfinger in "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior*. 20:2 (June 1998) concluded that the Motor Voter laws led to a significant increase in voting; that eliminating voter purges for not voting also increases voting; and that these effects are felt most heavily by the young (under 30) and the mobile (moved within past 2 years). Knack, in "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics*., 57:3 (August 1995), also found that motor voter does lead to increased registration and voting, but that other parts of NVRA of 1993, like mail-in registrations, agency-based registrations, and limitations on voter purges had not been as influential two years after the passage of the act.

While voter ID may not have been the subject of as much research as the registration process, establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

#### Voter ID requirements on Election Day

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related.<sup>7</sup> The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

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<sup>7</sup> As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

increased understanding of the factual evidence relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our study of the possible effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.<sup>10</sup> Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- may divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.<sup>11</sup> And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls.

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<sup>10</sup> For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

<sup>11</sup> The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

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5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?<sup>16</sup>
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. How neutral is the effect of the Voter ID requirement on the composition of the qualified and eligible electorate? Might it, intentionally or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another without an offsetting decrease in vote fraud?

### **Voter ID and Turnout**

Based on research for this study by the Moritz College of Law, states had one of five types of maximum requirements in place on Election Day 2004. These are shown in Table 1, *Voter ID Requirements*. The five categories: at the polling place, voters were asked to either: state their names (10 states); sign their names (13 states and the District of Columbia); sign their names, to be matched to a signature on file (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).<sup>17</sup> Using this information made it possible to code the states according to these requirements, and examine the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification, however, in all "photo ID" states in 2004, voters without photo ID could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID). The report refers to this set of ID requirements as "maximum," the most rigorous ID the voter can be asked to present at the polling place in order to cast a regular ballot.<sup>18</sup>

Election laws in several states offer exceptions to these requirements if potential voters lack the necessary form of identification. Laws in those states set a minimum standard – that is the

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<sup>16</sup> For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 *Washington and Lee Law Review* 937 (2005).

<sup>17</sup> Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

<sup>18</sup> As noted above, our analysis does not consider additional requirements that particular voters may be subjected to as part of an official challenge process, in the event that their eligibility is called into question.

**TABLE 1 – Voter ID Requirements<sup>20</sup>**

State	Maximum Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID <sup>1</sup>	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID <sup>2</sup>	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID <sup>^^</sup>	Photo ID	Photo ID <sup>^^</sup>	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID <sup>^</sup>	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit
Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID <sup>4</sup>	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration

<sup>20</sup> See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

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Findings of the statistical analysis

The analysis looked at the voter identification requirements in two ways, as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements are ranked according to how demanding they were judged to be, with photo ID as the most demanding requirement. As discrete variables, the statistical analysis assume that stating name is the least demanding ID requirement and compare each other requirement to it.

The analysis treating the requirements as a continuous variable offers some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ( $r = -.30, p < .05$ ). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant ( $r = -.20, p = .16$ ). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

**Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements**

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	64.2 %	State Name	63.0 %
Sign Name	61.1 %	Sign Name	60.4 %
Match Signature	60.9 %	Match Signature	61.7 %
Provide Non-Photo ID	59.3 %	Provide Non-Photo ID	59.0 %
Provide Photo ID	58.1 %	Swear Affidavit	60.1 %
Average Turnout (All States)	60.9 %		

This table displays the mean turnout using the aggregate county level data for each state in 2004.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend

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to register to vote becomes more challenging. Thus our model takes into account the number of days between each state's registration deadline and the election.

The dependent variable in each model using the aggregate data was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The results of this modeling suggest that the stricter voter identification requirements of matching one's signature to a signature on file with election authorities or presenting a non-photo ID are associated with lower turnout compared to turnout in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Contextual factors, such as whether the county was in a battleground state or whether that state had a competitive race for governor and/or U.S. Senate, were associated with increased voter turnout. The time between the closing date for registration and the election was correlated with a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income were associated with higher turnout. The percentage of African-Americans in the county did not have a significant effect in the model. The percentage of senior citizens in the county and household median income showed a positive correlation with turnout. In this aggregate model, the percentage of African-Americans in the county was not associated with a significant difference in turnout.

The relationship of the minimum voter identification requirements to turnout was not demonstrated. None of the dummy variables for voter identification requirements were statistically significant. (A "dummy variable" represents a particular attribute and has the value zero or one for each observation, e.g. 1 for male and 0 for female.) Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to be associated with reduced turnout, as was the number of days between the closing date for registration and the election.<sup>23</sup>

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<sup>23</sup> This test incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. See tables A-1 and A-2 in the appendix of Vercellotti's paper in the appendices.

addition to the voter identification requirements, the models include other socioeconomic, demographic, and political environment factors that might have influenced turnout in 2004.<sup>26</sup> The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.<sup>27</sup>

In the model, three of the voter identification requirements have a statistically significant correlation with whether survey respondents said they had voted in 2004. That is, compared to states that require voters only to state their names, the requirement to sign one's name, provide a non-photo ID, or photo ID in the maximum requirements or affidavit in the minimum is associated with lower turnout.

Of the other state factors, only the competitiveness of the presidential race showed a significant, correlation with increased turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had not finished high school.

While the probit models provide statistical evidence for the relationship of voter identification requirements and other variables to turnout, probit coefficients do not lend themselves to intuitive interpretation.<sup>28</sup> Table 3 below shows predicted probabilities (calculated from the probit

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<sup>26</sup> The models are estimated using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted and using robust standard errors to control for correlated error terms for observations from within the same state.

<sup>27</sup> The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

<sup>28</sup> A probit model is a popular specification of a generalized linear regression model, using the probit link function.

requirement compared to states where stating one's name was the maximum or minimum requirement.

Race and ethnicity have generated particular interest in the debate over voter ID requirements.<sup>31</sup> The analysis using the aggregate data shed no light on the association between voter ID requirements and turnout for African-American and Hispanic voters. But in the models using the individual data, some significant relationships emerged for African-American, Hispanic and Asian citizens. For the entire population, the signature, non-photo identification and photo identification requirements all were associated with lower turnout compared to the requirement that voters simply state their names. These correlations translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters.

The model also showed that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to stating one's name. Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name.

More rigorous voter identification requirements were associated with lower turnout rates for Asian-American voters as well. Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement.

#### Conclusions of the Statistical Analysis

The statistical analysis found that, as voter identification requirements vary, voter turnout varies as well. This finding emerged from both the aggregate data and the individual-level data,

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<sup>31</sup> Incorporating discrete variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, the sample is divided into sub-samples and the model re-run to calculate the data discussed and shown in Tables 5, 6, and 7 in Appendix C.

## Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only two cases have considered laws requiring voters to show photo ID (*Common Cause v. Billups* and *Indiana Democratic Party v. Rokita*). Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

*Non-photo identification.* For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the only form accepted. In *Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at \*1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

*Photo ID.* Since the 2004 election, two states have adopted laws requiring photo identification at the polls in order to have one's vote counted, without an affidavit exception: Georgia and Indiana.<sup>32</sup> Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the plaintiffs' motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a

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<sup>32</sup> Indiana's law does allow voters without ID to cast provisional ballots, and then to appear before the county board of elections to execute an affidavit saying that they are indigent and unable to obtain the requisite ID without payment of a fee. But in contrast to other states, voters cannot cast a ballot that will be counted by submitting an affidavit at the polls, affirming that they are the registered voter and are otherwise eligible to vote.

balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

#### **Developments since 2004**

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgement in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

#### **State Voter Databases and Voter ID**

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the

The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That might include longitudinal studies of jurisdictions that have changed voter ID requirements, as well as precinct-level analyses that would allow more finely tuned assessment of the correlation between stricter identification requirements and turnouts. Further research could also identify methods to eliminate the need for voters to bring specific identity documents with them to the polls, while assuring that each voter who casts a ballot is eligible and votes only once.

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difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

## **EAC Statement on Future Study of Voter Identification Requirements**

### **Background**

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. HAVA Section 303 (b) mandates that first time voters who register by mail are required to show proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the States for its implementation. The EAC sought to examine how these voter identification requirements were implemented in the 2004 general elections and to prepare guidance for the states on this topic.

In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the contractor was to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data-- aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau-- the contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic which are detailed in the attached report.

### **EAC Recommendations for further study and next steps**

EAC finds this initial review of States' voter identification requirements, state laws and litigation surrounding the implementation of voter identification requirements an important beginning step in its consideration of voter identification requirements. From this study and compilation of data EAC considers it advisable to engage in a longer-term, systematic review of voter identification requirements and is recommending that at a minimum the agency engage on an ongoing basis in:

- A state-by-state review, reporting and tracking of voter identification requirements.
- A review and study of how voter identification requirements are implemented and how these practices may vary from state law and statute.

From this ongoing review and tracking EAC can determine the feasibility and advisability of further research and study into how voter identification requirements have had an impact over time on factors such as voter turnout and voter registration.

EAC believes that the findings from this initial study of voter identification requirements are helping inform additional studies it is conducting on a variety of related topics. The EAC study on first time voters who have registered to vote by mail and several forthcoming studies related to voter registration processes will provide necessary additional data to help inform discussions and debate related to ballot access and ballot security. The EAC also anticipates that follow-on study it does related to election crimes and various aspects of voting accessibility will also help inform and guide these ballot security and ballot access discussions.

Finally, EAC is likely to consider implementing one or more of the following research studies that will serve to augment the work begun by the Eagleton Institute of Politics:

- A study of how certain voter identification provisions that have been in place for two or more Federal elections have had an impact on voter turnout and voter registration figures;
- A research study which examines, in greater detail, the relationship between race and voter turnout, and race and methods for registering voters;
- Studies on the inter-relationship between various voter registration processes, voter turnout and number of election crimes reported or litigated;
- Publication of a series of case studies which detail a particular state's or jurisdiction's experiences with various voter identification and voter registration regimes;
- A policy paper or memorandum exploring the alternatives to current voter identification processes and regimes.

## EAC Report on Voter Identification

### Executive Summary

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. HAVA Section 303 (b) mandates that first time voters who register by mail are required to show proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the States for its implementation. The EAC sought to examine how these voter identification requirements were implemented in the 2004 general elections and to prepare guidance for the states on this topic.

In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the contractor was to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data, aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau, the contractor found the overall relationship between the stringency of ID requirements and turnout to be fairly small, but statistically significant.

Based on The Eagleton Institute year-long inquiry into voter identification requirements EAC will implement one or more of the following recommendations:

- Further research into the connection between voter ID requirements and the number of ballots cast and counted;
- A state-by-state review of the impact that voter ID requirements are having on voter's participation;
- A state-by-state review of the relationship between ballot access and ballot security and the number of voters whose ballot is counted;
- A state-by-state review of time periods between voters casting of provisional ballots and the time allowed to return with an ID as well as a review of acceptable forms of identification other than photo ID.

## Introduction

This study was conducted at a time in which considerable attention is being paid to the issue of voter identification. Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for multiple voting or voting by those who are not eligible. The goal is to ensure that only those legally entitled to vote do so, and do so only once at each election. Opponents of stricter ID requirements seek to ensure board access to a regular ballot. There is a fear that some voters -- racial and ethnic minorities, young and elderly voters-- lack convenient access to required ID documents, or that these voters may be fearful of submitting their ID documents for official scrutiny.

This report considers policy issues associated with the voter ID debate. It examines the relationships between voter ID requirements and voter turnout along with the various policy implications of the issue.

*Review of 2004 election data*

## Methodology of the Study

In May 2005, under contract with the EAC, the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University undertook a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. The contract also included research and study related to provisional voting requirements. These research findings were submitted and reviewed by the EAC as a separate study.

The Eagleton Institute of Politics gathered information on the voter identification requirements in 50 states and the District of Columbia for 2004. Based on interpretations of state statutes and supplemental information provided through conversations with state election officials, state ID requirements were divided into five categories, with each category of identification more rigorous than the one preceding: stating name, signing name, signature match, presenting an ID, and the most rigorous, presenting a government photo ID. The Eagleton Institute also categorized and identified each state according to maximum and minimum identification requirements. Maximum requirements refer to the most that voters may be asked to do or show at the polling place. Minimum requirements refer to the most that voters can be required to do or show in order to cast a regular ballot. These definitions and the subsequent state-by-state analysis of voter identification requirements omitted those cases in which a particular voter's eligibility might be questioned using a state's voter ballot challenge process.

Two data sets were used to apply the criteria (variables) that were developed above: aggregate voter turnout data at the county level which was gathered from the EAC's 2004 Election Day Survey and; reports of individual voters collected through the November 2004 Current Population Survey administered by the U.S. Census Bureau. Use of EAC

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survey data and Census Bureau CPS data provided a way to cross-check the validity of the analysis and conclusions that would be drawn regarding the effect of voter ID requirements on voter turnout.

## Study Oversight and Methodological Review

A draft of the Eagleton Institute report and findings on voter identification requirements was critiqued by a peer review group convened by the Eagleton Institute. A second review of the study's research and statistical methodologies was conducted using a group of research and statistical experts independently convened by the EAC. Comments and insights of the peer review group members were taken into account in the drafting of a study report although there was not unanimous agreement among the individual reviewers regarding the study findings and recommendations.

*Eagleton report*

### The Eagleton Institute of Politics Peer Review Group

R Michael Alvarez, California Institute of Technology  
John C. Harrison, University of Virginia School of Law  
Martha E. Kropf, University of Missouri-Kansas City  
Daniel H. Lowenstein, University of California at Los Angeles  
Timothy G. O'Rourke, Salisbury University  
Bradley Smith, Capital University Law School  
Tim Storey, National Conference of State Legislatures  
Peter G. Verniero, former Attorney General, State of New Jersey

### The EAC Peer Review Group

Jonathan Nagler, New York University  
Jan Leighley, University of Arizona  
Adam Berninsky, Massachusetts Institute of Technology

## Summary of the Research

### Maximum and Minimum Voter Identification Requirements

In order to analyze what, if any, correlation may exist between a State's voter identification requirements and voter turnout, the Eagleton Institute first coded a state according to how demanding its voter ID requirement was. The voter ID requirement, ranked from lowest to highest was as follows: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification and, providing a form of photo identification. Several possible caveats to this ranking system were noted. For all states which had photo identification requirements in 2004, voters

*do we need this?  
seems to reflect adopting*

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without a photo ID were permitted to cast a regular ballot after signing an affidavit regarding his or her identity and eligibility. These voters were also allowed to provide other forms of ID. The researchers also noted that while each state may be assigned to a category, that categorization may not reflect the actual practice related to voter identification that may or may not have taken place at many polling places.

Research performed for this study by the Moritz College of Law found that states had five different types of **maximum** identification requirements in place on Election Day 2004. For the purposes of this study a requirement that called for a signed affidavit or the provision of other forms of ID was considered the most rigorous or the "maximum" requirement. At the polling place voters were asked to:

- State his or her name (10 states)
- Sign his or her name (13 states and the District of Columbia)
- Sign his or her name, which would be matched to a signature on file (seven states)
- Provide a form of identification that did not necessarily include a photo (15 states)
- Provide a photo identification (five states)

Using the same criteria, but applying them as **minimum** rather than maximum criteria for voting the research showed: **(check this section- it doesn't really make sense)**

- State his or her name (12 states)
- Sign his or her name (14 states and the District of Columbia)
- Matching the voter's signature to the signature on file (6 states)
- Provide a non-photo identification (14 states)
- Swear by an affidavit (4 states)

The results of the research are summarized in Table 1.

Election laws in several states offer exceptions to these ID requirements if potential voters lack the necessary form of identification. Laws in these states set a minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. In 2004 none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID were allowed to vote in all states, if he or she was able to meet another ID requirement.

### **The Relationship of Voter Identification Requirements to Voter Turnout**

A statistical analysis examining the variation in turnout rates based on the type of voter ID required by each state in the 2004 election was conducted using two sets of data: 1) aggregate turnout data at the county level for each state (compiled by the Eagleton Institute of Politics-footnote about how they collected the data) and 2) individual level survey data included in the November 2004 Current Population Survey (CPS), conducted by the U.S. Census Bureau.

The analysis looked at the voter identification requirements as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements were ranked according to how demanding they were judged to be, with photo identification considered to be the most demanding requirement (**what about affidavit?????**). Used as discrete variable, the statistical analysis considered stating the name as the least demanding ID requirement; the other ID requirements were then compared to that requirement.

### Aggregate-level statistical analysis

The statistical analysis performed by the Eagleton Institute of Politics found that when averaging across counties in each state, statewide turnout is negatively correlated to maximum voter identification requirements ( $r = -.30$ ,  $p$  less than .05). When a statistical analysis is performed on the other minimum voter ID requirements (with affidavit being the most demanding requirement), the correlation between voter identification and turnout is negative, but not statistically significant ( $r = -.20$ ,  $p = .16$ ). These findings would suggest that the relationship between turnout rates and minimum requirements may not be linear.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend was found when analyzing minimum ID requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their name, compared to 60.1 percent in states that required an affidavit from voters. This analysis showed there was not a clear, consistent linear relationship between turnout and minimum identification requirements.

(insert table 2- Variation in 2004 State Turnout Based on Voter Identification Requirements)

### Multivariate models of analysis using aggregate-level data

The Eagleton Institute of Politics performed an additional analysis that would estimate the effects of voter identification requirements, that took into account the electoral context in 2004 and, the demographic characteristics of the population in each county. The model also considers such variables as whether or not the county was 1) in a presidential battleground state, 2) if the county was in a state with a competitive race for government and/or the U.S. Senate, 3) the percentage of voting-age population in each county that was Hispanic or African-American 4) the percentage of county residents age 65 and older, 5) the percent of county residents below the poverty line, and 6) the number of days between each state's registration deadline and the election.

*Need a simpler version, too.*

The results of this statistical modeling and subsequent analysis indicated that the stricter voter ID requirements of matching a voter's signature to a signature on file or with presenting a non-photo identification are associated with lower voter turnout when compared to voter turnout in states that required voters to simply state his or her name. These conclusions were reached when variables 1-5 listed above were held constant.

Other results from the Eagleton Institute analysis of stricter voter identification requirements showed that:

- Increased voter turnout was associated with whether the county was in a battleground state or whether that state have a competitive race for governor and/or U.S.Senate.
- A slight negative effect on turnout was correlated with those state's with a longer time between the closing date for registration and the election.
- Voter turnout declined as the percentage of Hispanics in a county's population increased.
- Higher turnout (and a positive correlation) was associated with a higher percentage of senior citizens and household median income.
- The percentage of African-Americans in the county did not have a significant effect on turnout.

The Eagleton Institute analysis of minimum voter identification requirements showed that:

- A relationship between minimum voter ID requirements and turnout was not demonstrated.
- Battleground states and those with competitive state races had a significant and positive correlation to turnout.
- A higher percentage of senior citizens in the county and higher household median income were associated with higher turnout and showed a positive correlation to turnout.
- The percentage of Hispanics in the county was associated with reduced turnout.
- The increased number of days between the closing date for registration was associated with reduced turnout.

The analysis of these aggregate, county-level data showed a significant correlation, between maximum voter identification requirements (a signature match and non-photo

do they have any charts?

What does this mean? 6 087018

identification, but not a photo identification) and lower turnout in the 2004 election. This correlation was also significant when compared to the minimum voter ID requirement of the voter simply having to state his or her name.

### **Multivariate analysis using individual level turnout data**

This analysis which used November 2004 Current Population Survey data conducted by the U.S. Census Bureau is based on reports from self-described registered voters. Not included in the analysis are persons who said they are not registered to vote, those who said they cast absentee ballots and those who said they were not U.S. citizens. The CPS' Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents. ( why is the N is Table 3 54,973?)

In addition to the five maximum voter identification requirements (enumerated on page XX) the analysis performed included other socioeconomic, demographic and political factors that could have influenced turnout in the 2004 election. These independent variables were analyzed against the dependent variable of whether or not the respondent said he or she voted in the November 2004 election.

In this analysis three of the voter identification requirements were shown to have a statistically significant correlation with whether or not the survey respondents said they have voted in 2004. Lower voter turnout was associated with:

- those states with maximum voter requirements to sign one's name,
- those states with maximum voter requirements to provide a non-photo ID or photo ID, or
- those states with the minimum voter requirement to swear by an affidavit in order to cast a ballot without the state-required identification

Increased voter turnout showed:

- A significant correlation with the competitiveness of the Presidential race **(explain)**.
- African-American voters were more likely than white or other voters to say they have voted.
- Income and marital status were positive predictors of voting **(high income or low income, single, married?)**,
- Women were more likely to say they voted than men.
- Those ages 45 to 64 and 65 and older were more likely to say they voted than those ages 18 to 24.
- Those who earned a high school diploma, attended some college, graduated from college or attended graduate school were more likely to say they have voted than those who had not finished high school.

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## Analysis of the predicted probability of voter turnout using the individual data

Using this Census Bureau Current Population Survey data the Eagleton Institute of Politics performed an additional statistical analysis in which they calculated the effect of various independent variables on the probability that a respondent said he or she voted. This analysis, involving 54,973 voters cross-tabulated the maximum and minimum voter identification requirements in each state with the five levels of voting requirements: stating name, signing name, matching the signature, a non-photo ID, photo-ID signing an affidavit. The results of these **Predicted Probability of Voter Turnout for all Voter** tabulations are summarized in Table 3 below:

From this analysis, the Eagleton Institute of Politics found that three of the voter identification requirements (**which ones?**) exerted a statistically significant, negative effect on whether or not the CPS survey respondents said they had voted in 2004. That is, compared to states that require voters to only state their name, those states which require the voter to sign his or her name, to provide a non-photo ID, or to provide a photo ID as a maximum requirement, were shown to have a negative influence on turnout. Also, a negative influence on turnout was found when comparing those states that require voters to only state their name, as compared to those states which have as a minimum requirement for verifying voter ID, signing an affidavit.

This probability analysis also found that the competitiveness of the presidential race had a significant effect on turnout as well as some significant demographic and educational effects. For the entire voting population signature, non-photo identification and photo identification requirements were all associated with lower turnout rates compared to the requirements that voter simply state their names. The analysis further found that:

- The predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names and that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to only having to state one's name. *based on?*
- Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name. African American and Asian-American voters were about 6 percent less likely, while white voters were about 2 percent less likely.
- Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, while they were 6.1

*How does this compare to "normal" factors such as whether the race is hotly contested?*

percent less likely to vote where non-photo identification was the minimum requirement.

- For those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in those states that required an affidavit as the minimum requirement. These percentages were arrived at when comparing these states to ones that use as a minimum or maximum requirement, the voter to merely state his or her name.

### **Conclusions from the statistical analysis**

The statistical analysis found that as voter identification requirements vary, so do voter turnout rates. These findings were borne out through analyses conducted on aggregate data and individual-level data. There were, however, some distinctions found depending upon whether or not the state's particular voter identification requirements were set as minimums or maximums.

- The overall relationship between voter identification requirements and turnout for all registered voters was found to be small but statistically significant.
- Using the aggregate data the signature match and the non-photo identification requirement correlated with lower turnout. The photo identification requirement did not have a statistically significant effect.
- In the individual-level data the signature, no-photo identification and photo identification requirement were all correlated with lower turnout when compared to the requirements that voter simply state their names.
- Across various demographic groups (African-Americans, Asian-Americans and Hispanics) a statistically significant relationship was found between the non-photo identification requirement and voter turnout

### **Caveats to the Analysis**

The Eagleton Institute for Politics and the EAC make note that while this analysis is a good beginning, significant questions remain regarding the relationship between voter identification requirements and turnout. These analyses are unable, for example, to capture how or why identification requirements might lower turnout. That is, is it because voters are aware of the identification requirements and stay away from the polls because of them? Alternatively, do the requirements result in some voters being turned away when they cannot provide the identification, or must cast a provisional ballot?

Knowing more about the "on the ground" experience of voters regarding various identification requirements will guide state and local level policy makers in their efforts to educate voters about the requirements. These experiences could also help instruct election judges on how to handle questions and possible disputes over voter identification requirements.

poll workers

## Public Policy and Administrative Considerations

Voter Identification, often described as the critical step in protecting the integrity of the ballot, is a process which can ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot. A voting system that requires voters to produce an identification document or documents may prevent the ineligible from voting, but also may prevent the eligible from casting a ballot.

Evaluating the effect of different voter identification regimes can be most effective when based on clear legal, equitable and practical standards. The questions outlined below might point policymakers to standards that can be created around voter identification requirements.

1. Is the voter ID system designed on the basis of valid and reliable empirical studies that will address concerns regarding certain types of voting fraud?
2. Does the voter ID requirement comply with the letter and spirit of the Voting Rights Act?
3. How effective is the voter ID requirement on increasing the security of the ballot and can it be coordinated with the statewide voter registration database?
4. How feasible is the voter identification requirement? That is, are there administrative or budgetary considerations or concerns? How easy or difficult will it be for pollworkers who must administer the requirement?
5. How cost effective is the voter ID system? That is, what are the monetary and non-monetary costs to the voter and to the state for implementing the ID system?
6. If voter ID requirements are shown to reduce voter turnout (generally, or with some particular groups), what possible steps should be taken to ameliorate this problem?

## Recommendations and Next Steps

As the Federal agency charged with informing election officials and the public about various issues related to the administration of elections EAC believes it should, in its capacity as a supporter of elections research, undertake additional study into the topic of voter identification requirements and the implementation of them in the following ways:

- Longitudinal studies of jurisdictions that have changed voter identification requirements.

- State-by-state and precinct-level analyses that will examine the correlations between various voter identification requirements and voter registration and turnout
- Alternative forms and methods for verifying a voter's identity.
- Continuing research into the connection between various voter identification requirements and the number of ballots cast and counted
- A continuing state-by-state update on changes to voter identification requirements.
- Continued collection of state-by-state data which will help examine the impact that voter identification requirements are having on the number of voters who are casting provisional ballots because of voter identification verification issues.

Appendix A: Summary of Voter Identification Requirements by State

Appendix B: Court Decisions and Literature on Voter Identification and Related Issue Court Decisions

Appendix C: Annotated Bibliography on Voter Identification Issues

**Deliberative Process  
Privilege**

## **EAC Statement on Future Study of Voter Identification Requirements**

### **Background**

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The ~~contractor~~ Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data-- aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau-- the ~~contractor~~ Contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.

The ~~contractor~~ Contractor presented testimony summarizing its findings from this statistical and data analysis at a ~~the~~ February 8, 2007 public meeting of the U.S. Election Assistance Commission. The ~~contractor's~~ Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, [www.EACeac.gov](http://www.EACeac.gov).

### **EAC Recommendations for further study and next steps**

EAC finds the ~~contractor's~~ Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be an important first step in the Commission's consideration of voter identification requirements.

However, EAC has concerns regarding the research and statistical methodology the ~~contractor~~ Contractor chose to employ in order to analyze voter identification requirements. Therefore, EAC is not adopting the ~~contractor's~~ Contractor's full report that was submitted and is not releasing this report

EAC will engage in a longer-term, more systematic review of voter identification requirements and the potential variation in turnout rates based on the types of voter identification requirements. EAC's additional study on the topic will include more than

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one Federal election cycle, examine additional environmental and political factors that effect voter participation, and consider the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:-

- Conduct ~~A~~an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- ~~Using some of the information collected by Eagleton and assembling data from states, EAC will e~~Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- ~~Convening~~Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include specific issues to be covered in the study, research and statistical methodologies to be employed and timelines for completing an EAC study on voter identification.
- ~~A s~~Study of how certain voter identification provisions that have been in place for two or more Federal elections ~~have had an impacted~~ on voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
- ~~Publisheation~~ of a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.
- ~~A state by state t~~Tracking state policies and procedures for ~~e~~early voting, absentee voting, and vote-by-mail ~~policies and procedures.~~ The data collected through this tracking will then be compared to various state voter identification policies and procedures.

# EAC Statement on Future Study of Voter Identification Requirements

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The contractor presented testimony summarizing its findings from this statistical and data analysis at a February 8, 2007 public meeting of the U.S. Election Assistance Commission. The contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, [www.EAC.gov](http://www.EAC.gov).

## EAC Recommendations for further study and next steps

EAC finds the contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be an important first step in the Commission's consideration of voter identification requirements.

However, EAC has concerns regarding the research and statistical methodology the contractor chose to employ in order to analyze voter identification requirements. Therefore, EAC is not adopting the contractor's full report that was submitted and is not releasing this report. Therefore, EAC will engage in a longer-term, more systematic review of voter identification requirements and the potential variation in turnout rates based on the types of voter identification requirements. --EAC's additional study on the topic will include more than one Federal election cycle, examine additional environmental and political factors that effect voter participation, and consider the

Comment (GH1) In respect to the last sentence in paragraph one above, it is my opinion that it would have been reasonable for Eagleton to have considered the statistical analysis not conducted as being covered by that task. Therefore, I recommend striking the word "also" from this sentence.

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numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

*Conducting*

An ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identity;

- Using some of the information collected by Eagleton and assembling data from states, EAC will establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors.

*EAC will use some of the information collected by Eagleton and*

**Comment (GH2) / cannot craft the word**

- Convening, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include specific issues to be covered in the study, research and statistical methodologies to be employed and timelines for completing an EAC study on voter identification.

*Will assemble additional data from the states to facilitate developing this baseline.*

- ms* A study of how certain voter identification provisions that have been in place for two or more Federal elections have had an *impacted* impact on voter turnout, voter registration figures, and fraud. Included in this study would will be an examination of the relationship between voter turnout and race and gender.

- Publishing* Publication of a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating pollworkers and voters about various voter identification requirements. Included in the case studies would will be detail on the policies and practices used to educate and inform pollworkers and voters.

- A state-by-state *Tracking* tracking of early voting, absentee voting, and vote-by-mail policies and procedures. The data collected through this tracking would will then be compared to various state voter identification policies and procedures.

*State-by-state*

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### EAC Recommendations for further study and next steps

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However, EAC has concerns regarding the <sup>data analysis</sup> research and statistical methodology the Contractor chose to employ in order to analyze voter identification requirements and the potential variation in turnout rates based on the type of voter identification requirements. *The Contractor*  
*thus,* EAC is not adopting the <sup>data</sup> report submitted by the Contractor and ~~therefore~~, is not releasing the report. *will not be issuing a report based upon this study.*

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election

ETA believes that Contractor's  
recommendation is so  
fundamentally flawed  
that none of the  
draft findings can  
reliably be adopted as  
a reliable ~~and~~ accurate  
rehabilitated to form  
useful Federal  
product.

used a single election's statistics, including statistics provided through  
the Census Bureau that clearly include persons who were not  
eligible to and did not vote. Furthermore, the categorization  
of voter identification requirements included classifications  
that actually require no identification at all. These  
data and the statistical analysis used by Contractor were  
rightly criticized by an independent working and peer review  
group composed of social scientists and statisticians.

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cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

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## FINAL DRAFT REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

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### Report Background

This report to the United States Election Assistance Commission (EAC) presents an analysis of voter identification requirements across the country and makes recommendations for best practices to improve implementation of voter ID requirements at the polls. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under a contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting, a sample survey of local election officials, and a statistical analysis of the effects of various requirements for voter identification on turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the EAC (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

### Executive Summary

#### Methods

To explore the effects of voter ID requirements on electoral participation in 2004, as measured by turnout, we gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. We assigned each state to one of five categories based on its ID requirements. The five categories are progressively more rigorous based on the demands they make on both voters<sup>1</sup> (and, to some extent) on election workers. The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample,

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<sup>1</sup> Even the most relaxed provisions for identification at the polls — anything stricter than the honor system used in North Dakota — will impose some burden on particular voters. *Harvard Law Review* 119:1146

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voters to state their names, compared to 57.3 percent in states that required photo identification. Those figures, however, probably overstate the effect since the inclusion of other factors beyond voter ID requirements in the analysis diminishes the extent of influence of voter ID on turnout. After taking account of the other factors, the analysis still offers some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or people living below the poverty line.

Our analysis of litigation suggests that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification is not now sufficient to evaluate the tradeoffs between ensuring ballot access and ensuring ballot integrity. The lack of full understanding of the dynamics of voter ID requirements on political participation can be remedied by requiring the collection and reporting of data on the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of exit polling of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.<sup>2</sup> And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

A voting system that requires voters to produce an identify document or documents may indeed prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the

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<sup>2</sup> Arizona held its first election with new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways not possible with the current lack of information on this subject.

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were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.

- Polling to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
- Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots<sup>3</sup>, and the safe harbor provision in presidential elections.
- Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional.

### **Background and Approach of the Study**

Establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The stress on voters to provide required ID documents may be greater at the polls on Election Day than when registering. The pressures arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may be faced with long lines and limited time.

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<sup>3</sup> Our research on provisional voting reveals that states that provide more than week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

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A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has informed us that it has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our analysis of the effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.<sup>7</sup> Voter ID requirements that require voters to bring a document to the polls—rather than simply sign their names—can divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.<sup>8</sup> And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the

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<sup>7</sup> For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

<sup>8</sup> The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

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impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.

5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?<sup>13</sup>
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. Does the Voter ID requirement have a neutral result on the composition of the qualified and eligible electorate? ID requirements should not be designed to, or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another. Whatever the requirement may be, can all citizens comply with it easily and at no or minimal cost?

### **Voter ID and Turnout**

As of the 2004 election, the states and the District of Columbia could be divided into 5 different Voter ID regimes. These are shown in Table 1, *Voter ID Requirements*. Nine states required that voters give their names; 14 that they sign their names; 8 match the signature to a sample in the registration book; 15 require some form of ID (ranging from a utility bill to a government-issued photo ID), and 5 states in 2004 required a photo ID, although in all those states voters without that credential could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID.

This neat assignment in the following table and map of each state to one category no doubt fails to reflect actual practice at many polling places. Like any system run by fallible people, the voter ID process is subject to wide variation in practice. Voters may be confronted with demands for identification different from the directives in state statutes or regulation. Some voters may be waved through the process without a look at any document, no matter what the regulations say. Under the press of long lines and unfamiliar requirements, there is, in short, no sure way to report the wide variety of conditions voters actually encounter.

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administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." *Harvard Law Review* 127:1144 (2006)

<sup>13</sup> For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen Hasen's has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 *Washington and Lee Law Review* 937 (2005).

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Utah	Give Name	HAVA	Give Name	Bring ID Later
Vermont	Give Name	HAVA	Give Name	Affidavit
Virginia	Provide ID	HAVA	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	HAVA	Match Sig.	Address & Registration
Wisconsin	Give Name	HAVA	Give Name	Bring ID Later
Wyoming	Give Name	HAVA	Give Name	Affidavit

^In Florida and Louisiana, states that required a photo id in 2004, voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

^^In these states in 2004, voters lacking a photo ID could vote by providing other ID.

\*Arizona voters who lack a photo ID may present 2 forms of ID with no photograph, such as 2 utility bills.

\*\*State only requires ID for first-time voters who register by mail without providing ID. They accept all forms of ID listed in the statute.

\*\*\*Georgia is currently enjoined from implementing this law, returning them for the time being to their 2004 requirement of provide ID.

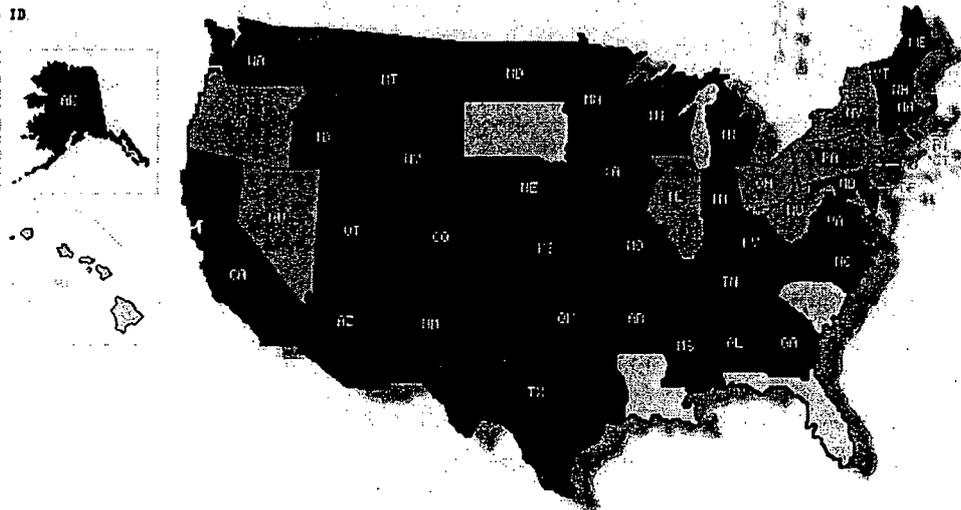
\*\*\*\*Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

\*\*\*\*\*Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compare to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with registration.

\*\*\*\*\*Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Figure 1

- ◆ - Give Name
- ◆ - Sign Name
- ◆ - Match Signature
- ◆ - ID
- ◆ - Photo ID



Voter ID Requirements 2004

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### Methods and Findings

We classified each state as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (9 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (8 states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (5 states). We then tested the assumption that voter identification requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous.

The analysis recognized that election laws in numerous states offer exceptions to these requirements if a prospective voter lacked the ID. Laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot. We therefore also categorized states based on the minimum requirement for voting with a regular ballot. None of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit is regarded as the most rigorous.

Voter turnout at the state level in 2004 declined as voter identification requirements became more demanding, as shown in Table 2. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. Using the maximum requirements as the independent variable, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when using the minimum requirements as the independent variable. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters.

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Information collected for the Census Bureau Current Population Survey in November 2004 makes it possible to examine the influence of voter ID requirements at the individual level. Self-identified registered voters reported their experience at the polls in the survey. Note that the voter turnout rate for the CPS sample, an average of 89%, is much higher than the turnout rates presented in the aggregate data analysis, which average 58%. The difference is a result of several factors, including different denominators in calculating the turnout rate – self-reported registered voters in the CPS versus the much larger voting-age population for the aggregate data. Also some survey respondents overstate their incidence of voting. Nevertheless, the CPS serves as a widely accepted source of data on voting behavior.

The dependent variable in the individual analyses is whether respondents said they voted in the 2004 election. As in the aggregate analysis the contextual variables consist of whether the state was a battleground state or had competitive state-level races. The analysis also controlled for gender, age, education, household income, race or ethnicity, and employment status, marital status, and residential mobility.

The analysis revealed that voter identification requirements exerted a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names to 88.7 percent if all voters had to provide photo identification. (Note that these turnout figures are higher than actual because of the factors involved in the CPS's self-reported survey, but that the difference in effect is reasonably related to the results obtained in the aggregate analysis.) In other words, the probability of voting dropped with each level of the maximum voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

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- Self-reported registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.
- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.
- Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the self-reports of elderly voters, while indicating that they would be slightly less likely to vote as ID requirements become stricter, do not show a dramatic effect.

The data examined in this analysis could not capture the dynamics of how identification requirements lower turnout. Do you know the voter ID and stay away from the polls because they cannot or do not want to meet them? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers to handle questions about, and potential disputes over, voter identification requirements.

It is important to note that the 2004 data do not allow us to draw conclusions about the effect of laws such as those recently passed in Georgia and Indiana, which require government-issued photo ID. No such laws were in place in 2004, and the five states that then required photo ID at the time allowed voters who signed an affidavit or provided another form of identification to cast a regular ballot.

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Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement without an affidavit exception (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). Cross-motions for summary judgment are currently pending. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at \*1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at \*1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at \*1, 3. The court's decision in this case indicates that courts are likely to look strictly on photo ID requirements.

*Privacy.* In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions

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HAVA does not require that the states notify registrants to remedy any failure to provide either of these numbers or to confirm that they have provided a verifiable number. Verification at the time of registration could forestall difficulties at the polling place. HAVA is silent on how the ID might be required at the polling place for new voters whose driving license or Social Security number could not be verified. Errors in recording those numbers are sure to occur.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the SVRL. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

### 6. Conclusions

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack good data on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased.<sup>15</sup>

The dynamics of Voter ID requirements—how the more rigorous Voter ID requirements—affect the decision by potential voters to go or stay away from the polls are not well understood. This lack of understanding should be recognized in the policy process. The debate over voter ID in

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<sup>15</sup> In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

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**Appendices**

- a. Summary of case law on Voter ID issues (included with this draft)
- b. Analysis of Effects of Voter ID Requirements on Turnout (attached as a separate document)
- c. Indexed database of major articles on Voter ID Requirements and related topics (included with this draft)
- d. Compendium of states' legislation, procedures, and litigation

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- Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
- Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

### *McKay v. Thompson, 2000*

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
  - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
  - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
  - Substantive due process: ruled that internal use of SS# not a burden
  - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
  - P&I, Article IV: does not protect in-state citizens
  - P&I, 14<sup>th</sup> Amend.: no protection for privilege where Congress authorized its infringement

### *Kemp v. Tucker, 1975*

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
  - VRA: ruled that race was not made a "qualification" for voting
  - 15<sup>th</sup> Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
  - 14<sup>th</sup> Amendment EPC: ruled there was no distinction among voters

### *Perez v. Riddlehoover, 1966*

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
  - VRA: ruled that it was not a "test or device" because it applied equally
  - 15<sup>th</sup> Amendment: same reasons

### **Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:**

#### ***American Civil Liberties Union of Minnesota v. Kiffmeyer, No. 04-CV-4653, 2004 WL 2428690, at \*1 (D. Minn. Oct. 28, 2004).***

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at \*1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

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provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at \*1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at \*6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at \*10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

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**Georgia** (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)<sup>18</sup>. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.<sup>19</sup> As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

**Indiana** (*Indiana Democratic Party v. Rokita and Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

<sup>18</sup> Litigation documents are available at the Election Law @ Moritz website.  
<http://moritzlaw.osu.edu/electionlaw/litigation/index.php>

<sup>19</sup> GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

## FINAL D R A F T

### APPENDIX

#### Annotated Bibliography on Voter Identification Issues

##### Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
  - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico*, 3 ELECTION L.J. 513 (2004).
  - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico*, 3 ELECTION L.J. 584 (2004).
  - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act*, 40 HARV. J. ON LEGIS. 579 (Summer 2003).
  - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
  - Discusses changes in AL to their election law in 2003, including adding voter ID
  - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania*, 41 Duq. L. Rev. 153 (Fall, 2002).
  - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election*, 18 GA. ST. U. L. REV. 114 (Fall 2001).
  - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests*, 28 Tex. Tech L. Rev. 1095 (1997).
  - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions*, 74 U. DET. MERCY L. REV. 291 (Winter 1997).
  - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14<sup>th</sup> amendment)
  - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote*, 96 YALE L.J. 1615 (1987).
  - Discusses voter registration as a way to combat fraud & several different ways to do it

##### Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act*, 31 FORDHAM URB. L.J. 235 (November 2003).
  - Lot of analysis on HAVA and voter ID
  - Little bit of historical
  - Arguments for and against certain types of voter ID laws

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----- "The Political Implications of Higher Turnout." *British Journal of Political Science*. 31:1 (January 2001).

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U.S. ELECTION ASSISTANCE COMMISSION  
 1225 NEW YORK AVENUE, N.W., SUITE 1100  
 WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

BEFORE THE ELECTION ASSISTANCE COMMISSION

In the Matter of )  
 )  
 Draft Voter Identification Report, Research and )  
 Future Study of Voter Identification Requirements )  
 )

CERTIFICATION

I, Donetta Davidson, Chair of the Election Assistance Commission, do hereby certify that on March 30, 2007 the Commission decided by a vote of 4-0. The following action(s) were taken:

1.

The Commission should approve the Voter Identification Report, Research and Future Study of Voter Identification Requirements.

Commissioner Rodriguez noted: I am persuaded by the Consultant that better data collection is essential to future EAC research projects. I am not chafed by the use of the CPS because, historically, it has been used as a barometer of voter behavior. It was more important for me to support the recommendation in order to release the Report than argue the use of the CPS.

Commissioners Davidson, Hillman, Hunter and Rodriguez voted affirmatively for the decision.

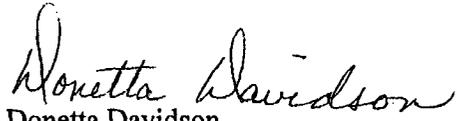
Attest:

3/30/07  
 Date

  
 Donetta Davidson  
 Chair for Donetta Davidson

March 29, 2007

This is to authorize Elieen Collver to sign correspondence and tally votes in my absence.

  
Donetta Davidson  
Chair

007055



**U.S. ELECTION ASSISTANCE COMMISSION**  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

**TALLY VOTE MATTER**

**DATE & TIME OF TRANSMITTAL:** March 29, 2007, 12:30p.m.

**BALLOT DEADLINE:** April 02, 2007, 12:30p.m.

**COMMISSIONERS:** DAVIDSON, HILLMAN, HUNTER AND RODRIGUEZ

**SUBJECT:** DRAFT VOTER IDENTIFICATION REPORT, RESEARCH AND  
FUTURE STUDY OF VOTER IDENTIFICATION REQUIREMENTS

- ( ) I approve the recommendation.
- ( ) I disapprove the recommendation.
- ( ) I object to the recommendation.
- ( ) I am recused from voting.

**COMMENTS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DATE:** \_\_\_\_\_ **SIGNATURE:** \_\_\_\_\_

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR

007856



**U.S. ELECTION ASSISTANCE COMMISSION**  
**1225 New York Ave. NW - Suite 1100**  
**Washington, DC 20005**

MEMORANDUM

TO: Commissioners Davidson, Hillman, Hunter, and Rodriguez

FROM:  Thomas R. Wilkey  
Executive Director

DATE: March 29, 2007

RE: Draft Voter Identification Report, Research and Future Study of Voter  
Identification Requirements

In 2005, EAC contracted with the Eagleton Institute of Politics to conduct a study of the voter identification requirements that were in existence in the 50 states and 5 territories during the 2004 election. As a part of that study, Eagleton conducted research concerning the status of laws in the states and also conducted statistical analysis regarding the impact of the existence of voter identification requirements on the turnout of voters.

A draft statement capturing proposed action on the draft report as well as recommended next steps for research and analysis of voter identification requirements has been attached to this memorandum.

I recommend approval of this statement.

# EAC Statement on Study of Voter Identification Requirements

## Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document<sup>1</sup> was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates<sup>2</sup> and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.<sup>3</sup>

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, [www.eac.gov](http://www.eac.gov).

## EAC Declines to Adopt Draft Report

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<sup>1</sup> In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

<sup>2</sup> The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. These data did not differentiate between citizens and non-citizens; because these numbers include non-citizens, the Contractor applied the percentage of citizens included in voting age population statistics in 2000 to the U.S. Census Bureau estimated voting age population in 2004. Thus, 2004 estimates of voting age population include persons who are not registered to vote.

<sup>3</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The study only focused on one federal election. An analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. A second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced some evidence of correlation between voter identification requirements and turnout. The initial categorization of voter identification requirements included classifications that, actually, require no identification documentation, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by an EAC review group comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers and both agree the study should have covered more than one federal election.<sup>4</sup> Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached.

#### **Further EAC Study on Voter Identification Requirements**

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

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<sup>4</sup> See Transcript of EAC Public Meeting, February 8, 2007, page 109.

- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

DRAFT



U. S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: March 29, 2007, 12:30p.m.

BALLOT DEADLINE: April 02, 2007, 12:30p.m.

COMMISSIONERS: DAVIDSON, HILLMAN, HUNTER AND RODRIGUEZ

SUBJECT: DRAFT VOTER IDENTIFICATION REPORT, RESEARCH AND FUTURE STUDY OF VOTER IDENTIFICATION REQUIREMENTS

- I approve the recommendation.
- I disapprove the recommendation.
- I object to the recommendation.
- I am recused from voting.

COMMENTS: *I am persuaded by the Consultant that better data collection is essential to future EAC research projects. I am not chafed by the use of the CPS because, historically, it has been used as a barometer of voter behavior. It was more important for me to support the recommendation in order to release the Report than argue the use of the CPS.*

*I agree with the Consultant that "stating one's names" is a form of voter identification in those states where that is the statutory provision.*

*Based on my experience in Colorado, I am concerned about the rights of citizens when strict picture ID requirements are imposed. For a variety of reasons, picture IDs are beyond the reach of some citizens and entitled citizens lose access to opportunity and programs for lack of picture ID. It would not be acceptable to me for them to also lose their voting rights.*

DATE: 3-29-2007

SIGNATURE: *Gregory E. Rodriguez* 3:44p.m.

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR

007051



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

**TALLY VOTE MATTER**

DATE & TIME OF TRANSMITTAL: March 29, 2007, 12:30p.m.

BALLOT DEADLINE: April 02, 2007, 12:30p.m.

COMMISSIONERS: DAVIDSON, HILLMAN, HUNTER AND RODRIGUEZ

SUBJECT: DRAFT VOTER IDENTIFICATION REPORT, RESEARCH AND FUTURE STUDY OF VOTER IDENTIFICATION REQUIREMENTS

- I approve the recommendation.
- I disapprove the recommendation.
- I object to the recommendation.
- I am recused from voting.

COMMENTS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

DATE: 3/20/07 SIGNATURE: [Signature]

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: March 29, 2007, 12:30p.m.

BALLOT DEADLINE: April 02, 2007, 12:30p.m.

COMMISSIONERS: DAVIDSON, HILLMAN, HUNTER AND RODRIGUEZ

SUBJECT: DRAFT VOTER IDENTIFICATION REPORT, RESEARCH AND  
FUTURE STUDY OF VOTER IDENTIFICATION REQUIREMENTS

- I approve the recommendation.
- I disapprove the recommendation.
- I object to the recommendation.
- I am recused from voting.

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: 3/29/07 SIGNATURE: *Glenn*  
*for Chair Donetta Davidson*

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR

007063



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: March 29, 2007, 12:30p.m.

BALLOT DEADLINE: April 02, 2007, 12:30p.m.

COMMISSIONERS: DAVIDSON, HILLMAN, HUNTER AND RODRIGUEZ

SUBJECT: DRAFT VOTER IDENTIFICATION REPORT, RESEARCH AND FUTURE STUDY OF VOTER IDENTIFICATION REQUIREMENTS

I approve the recommendation.

I disapprove the recommendation.

I object to the recommendation.

I am recused from voting.

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: 3/29/07 SIGNATURE: Carole C. Hunter

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR

007064



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

**TALLY VOTE MATTER**

**DATE & TIME OF TRANSMITTAL:** March 26, 2007, 1:00p.m.

**BALLOT DEADLINE:** March 28, 2007, 1:00p.m.

**COMMISSIONERS:** DAVIDSON, HILLMAN, HUNTER AND RODRIGUEZ

**SUBJECT:** DRAFT VOTER IDENTIFICATION REPORT, RESEARCH AND  
FUTURE STUDY OF VOTER IDENTIFICATION REQUIREMENTS

- ( ) I approve the recommendation.
- ( ) I disapprove the recommendation.
- ( ) I object to the recommendation.
- ( ) I am recused from voting.

**COMMENTS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DATE:** \_\_\_\_\_ **SIGNATURE:** \_\_\_\_\_

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR

007065



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

MEMORANDUM

TO: Commissioners Davidson, Hillman, Hunter, and Rodriguez

FROM: Thomas R. Wilkey *TRW*  
Executive Director

DATE: March 26, 2007

RE: Draft Voter Identification Report, Research and Future Study of Voter  
Identification Requirements

BACKGROUND

In 2005, EAC contracted with the Eagleton Institute of Politics to conduct a study of the voter identification requirements that were in existence in the 50 states and 5 territories during the 2004 election. As a part of that study, Eagleton conducted research concerning the status of laws in the states and also conducted statistical analysis regarding the impact of the existence of voter identification requirements on the turnout of voters.

The Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements are a first step in the Commission's efforts to study the possible impact of voter identification requirements. However, the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements raise concerns. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians.

ANALYSIS

As you may know, the Deliberative Process Privilege to the Freedom of Information Act (FOIA) protects intra-agency documents that are (1) pre-decisional in nature and (2) part of the deliberative process. In other words, the documents must be part of a process that recommends or presents opinions on a policy matter or governmental decision before that matter is finally decided. It is a well settled matter of law that the work of contract employees and contractors (“consultants”) constitute intra-agency documents.<sup>1</sup> This is true even where the consultants are deemed to be independent contractors and are not subject to the degree of control that agency employment entails.<sup>2</sup> The courts have made this determination after recognizing that agencies have a special need for the opinions and recommendations of temporary consultants.<sup>3</sup> Ultimately, deliberative documents are exempt from release (1) to encourage open and frank discussions on policy matters between agency subordinates and superiors, (2) to protect against premature disclosure of proposed policies and (3) to protect against public confusion that might result from disclosure of rationales that were not in fact the ultimate basis for agency action.<sup>4</sup>

The draft report presented by Eagleton represents one phase of the deliberative process—before the document was vetted by staff, approved by the Executive Director and reviewed and approved by the Commissioners (the relevant policy makers). Ultimately, the draft document was created by Eagleton in order to aid the EAC’s Commissioners in their decisions regarding voter identification requirements. The contractor had no personal interest in their submissions and had no agency decision-making authority. Eagleton was tasked with simply providing pre-decisional research and information to the EAC. Their efforts were limited to creating a truthful, comprehensive, and unbiased draft report. Only when a report is finalized and is adopted by EAC does it constitute an EAC decision or a policy determination.

The Voter Identification draft report was created by Eagleton in conjunction with the Moritz College of Law (Ohio State University) to “...provide research assistance to the EAC for the development of voluntary guidance on provisional voting and voter identification procedures.” The stated objective of the contract was to:

...obtain assistance with the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements for the purpose of drafting guidance on these topics... The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

Eagleton was provided guidance, information, and were directed by EAC personnel. The final product that they were to deliver (draft report) was identified in the contract as “a guidance document for EAC adoption.” Clearly, as noted by the contract, the issuance of Federal guidance to states is a matter of government policy and limited to official EAC action.

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<sup>1</sup> Department of the Interior v. Klamath Water Users Protective Association, 532 U.S. 1, 9-11 (2001) (Citing Harry E. Hoover v. Dept. of the Interior, 611 F.2d 1132, at 1138 (1980); Lead Industries Assn. v. OSHA, 610 F.2d 70, 83 (C.A.5 1980) (applying exemption 5 to draft reports prepared by contractors); and Government Land Bank v. GSA, 671 F.2d 663, 665 (CA1 1982)); See also Hertzberg v. Veneman, 273 F. Supp. 2d 67, 76 n.2 (D.D.C. 2003).

<sup>2</sup> Klamath, at 10.

<sup>3</sup> Hoover, 611 F.2d at 1138.

<sup>4</sup> NLRB v. Sears, Roebuck & Co., 41 U.S. at 151.

EAC's interpretation of HAVA and its determination of what it will study and how it will use its resources to study it are matters of agency policy and decision. It would be irresponsible for EAC to accept the product of contracted employees and publish that information without exercising due diligence in vetting the product of the employees' work and the veracity of the information used to produce that product. EAC, along with working and peer review groups have conducted this review of the draft voter identification report provided by Eagleton. EAC found that the draft report raised more questions than it answered, because of the limited data that was analyzed and the analysis that was conducted on those data.

As a part of its review of the draft report, EAC staff have determined that the contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements are a first step in the Commission's efforts to study the possible impact of voter identification requirements. In addition, staff recommends a series of next steps for future study and analysis of voter identification requirements, including:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identity.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

A draft statement capturing proposed action on the draft report as well as recommended next steps for research and analysis of voter identification requirements has been attached to this memorandum.

**RECOMMENDATIONS:**

- (1) EAC should exercise its authority in making policy concerning the study of voter identification requirements and decline to adopt the draft report provided by Eagleton;
- (2) EAC should adopt the recommendations of staff regarding future study and analysis of voter identification requirements;
- (3) EAC should adopt and publish the attached statement concerning the research and draft report presented by Eagleton as well as the future plans of EAC to conduct research in this area; and
- (4) EAC should publish the data, information and draft report provided by Eagleton.

# EAC Study of Voter Identification Requirements

## Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document<sup>1</sup> was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates<sup>2</sup> and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.<sup>3</sup>

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, [www.eac.gov](http://www.eac.gov).

## EAC Declines to Adopt Draft Report

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<sup>1</sup> In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

<sup>2</sup> The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. These data did not differentiate between citizens and non-citizens; because these numbers include non-citizens, the Contractor applied the percentage of citizens included in voting age population statistics in 2000 to the U.S. Census Bureau estimated voting age population in 2004. Thus, 2004 estimates of voting age population include persons who are not registered to vote.

<sup>3</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.<sup>4</sup> Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached.

#### **Further EAC Study on Voter Identification Requirements**

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

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<sup>4</sup> See Transcript of EAC Public Meeting, February 8, 2007, page 109.

- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

DRAFT

007072



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

**TALLY VOTE MATTER**

DATE & TIME OF TRANSMITTAL: March 28, 2007, 3:00p.m.

BALLOT DEADLINE: March 30, 2007, 3:00p.m.

COMMISSIONERS: DAVIDSON, HILLMAN, HUNTER AND RODRIGUEZ

SUBJECT: DRAFT VOTER IDENTIFICATION REPORT, RESEARCH AND  
FUTURE STUDY OF VOTER IDENTIFICATION REQUIREMENTS

- ( ) I approve the recommendation.
- ( ) I disapprove the recommendation.
- ( ) I object to the recommendation.
- ( ) I am recused from voting.

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

A definite vote is required. All ballots must be signed and dated. Please return  
ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than  
date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR

007073



**U.S. ELECTION ASSISTANCE COMMISSION**  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

MEMORANDUM

TO: Commissioners Davidson, Hillman, Hunter, and Rodriguez

FROM:  Thomas R. Wilkey  
Executive Director

DATE: March 28, 2007

RE: Draft Voter Identification Report, Research and Future Study of Voter Identification Requirements

BACKGROUND

In 2005, EAC contracted with the Eagleton Institute of Politics to conduct a study of the voter identification requirements that were in existence in the 50 states and 5 territories during the 2004 election. As a part of that study, Eagleton conducted research concerning the status of laws in the states and also conducted statistical analysis regarding the impact of the existence of voter identification requirements on the turnout of voters.

The Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements are a first step in the Commission's efforts to study the possible impact of voter identification requirements. However, the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements raise concerns. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians.

ANALYSIS

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<sup>3</sup> Hoover, 611 F.2d at 1138.

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- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
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A draft statement capturing proposed action on the draft report as well as recommended next steps for research and analysis of voter identification requirements has been attached to this memorandum.

**RECOMMENDATIONS:**

- (1) EAC should exercise its authority in making policy concerning the study of voter identification requirements and decline to adopt the draft report provided by Eagleton;
- (2) EAC should adopt the recommendations of staff regarding future study and analysis of voter identification requirements;
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**U.S. ELECTION ASSISTANCE COMMISSION**  
**1225 New York Ave. NW - Suite 1100**  
**Washington, DC 20005**

May 12, 2006

**MEMORANDUM**

**TO:** EAC Commissioners

**FROM:** Peggy Sims, Election Research Specialist *PS*

**SUBJECT:** Voting Fraud-Voter Intimidation Working Group Meeting

The first meeting of the Voting Fraud-Voter Intimidation Working Group will take place from 1:00 PM to 5:30 PM on Thursday, May 18th, 2006 at the offices of the U.S. Election Assistance Commission (EAC), 1225 New York Avenue, NW, 11<sup>th</sup> Floor, Washington, DC.

As you know, Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that the agency make research on these matters a high priority. Consequently, in September 2005, EAC contracted with two consultants (Job Serebrov and Tova Wang) to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;

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- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

For your information, the folder accompanying this letter includes a number of items related to our consultants' preliminary research and the upcoming meeting:

- a meeting agenda;
- a list of Working Group members;
- a draft definition of election fraud;
- a list of reports and literature reviewed;
- a summary of interviews conducted and a list of experts interviewed;
- a list of experts interviewed;
- an analysis of news articles researched through Nexis;
- a summary of Department of Justice, Public Integrity Section cases, October 2002-January 2006;
- an analysis of case law review;
- a summary of research methodology recommendations from political scientists and experts in the field; and
- a CD with summaries of individual reports and literature reviewed, summaries of individual interviews, charts and summaries of news articles, and case law summary charts.

Please let me know if you have any questions.

Enclosures

cc: Tom Wilkey, Executive Director  
 Julie Thompson-Hodgkins, General Counsel  
 Gavin Gilmour, Associate General Counsel



## VOTING FRAUD-VOTER INTIMIDATION WORKING GROUP MEETING

Thursday, May 18, 2006

1:00 PM - 5:30 PM

U.S. Election Assistance Commission  
1225 New York Avenue, N.W., 11<sup>th</sup> Floor  
Washington, D.C. 20005

### AGENDA

- |                   |   |
|-------------------|---|
| 1:00 PM - 1:30 PM | Introduction  |
|                   | EAC Authority                                       |
|                   | Overview and Purpose of Current Project             |
|                   | Purpose and Members of the Working Group            |
|                   | Related EAC Research                                |
| 1:30 PM - 2:00 PM | Review of Preliminary Research                      |
|                   | Literature & Reports                                |
|                   | Interviews  |
|                   | News Articles                                       |
|                   | Court Cases   |
| 2:00 PM - 3:15 PM | Definition & Findings from Current Project Research |
| 3:15 PM - 3:30 PM | Break   |
| 3:30 PM - 5:00 PM | Ideas for Future EAC Activities                     |
|                   | Recommended Research Methodologies                  |
|                   | Consultant Recommendations                          |
|                   | Working Group Ideas                                 |
| 5:00 PM - 5:30 PM | EAC Next Steps                                      |

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## Voting Fraud-Voter Intimidation Working Group

### **The Honorable Todd Rokita**

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

### **Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

### **J.R. Perez**

Guadalupe County Elections Administrator, TX

### **Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

*(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)*

### **Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, DC

National Counsel for Voter Protection, Democratic National Committee

### **Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

### **Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, MO

National Counsel to the American Center for Voting Rights

### **Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S.

Department of Justice

*EAC Invited Technical Advisor:*

### **Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice

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## **Defining Election Fraud**

Election fraud is any intentional action, or intentional failure to act when there is a duty to do so, that corrupts the election process in a manner that can impact on election outcomes. This includes interfering in the process by which persons register to vote; the way in which ballots are obtained, marked, or tabulated; and the process by which election results are canvassed and certified.

Examples include the following:

- falsifying voter registration information pertinent to eligibility to cast a vote, (e.g. residence, criminal status, etc);
- altering completed voter registration applications by entering false information;
- knowingly destroying completed voter registration applications (other than spoiled applications) before they can be submitted to the proper election authority;
- knowingly removing eligible voters from voter registration lists, in violation of HAVA, NVRA, or state election laws;
- intentional destruction by election officials of voter registration records or balloting records, in violation of records retention laws, to remove evidence of election fraud;
- vote buying;
- voting in the name of another;
- voting more than once;
- coercing a voter's choice on an absentee ballot;
- using a false name and/or signature on an absentee ballot;
- destroying or misappropriating an absentee ballot;
- felons, or in some states ex-felons, who vote when they know they are ineligible to do so;
- misleading an ex-felon about his or her right to vote;
- voting by non-citizens who know they are ineligible to do so;
- intimidating practices aimed at vote suppression or deterrence, including the abuse of challenge laws;
- deceiving voters with false information (e.g.; deliberately directing voters to the wrong polling place or providing false information on polling hours and dates);
- knowingly failing to accept voter registration applications, to provide ballots, or to accept and count voted ballots in accordance with the Uniformed and Overseas Citizens Absentee Voting Act;
- intentional miscounting of ballots by election officials;
- intentional misrepresentation of vote tallies by election officials;

- acting in any other manner with the intention of suppressing voter registration or voting, or interfering with vote counting and the certification of the vote.

Voting fraud does not include mistakes made in the course of voter registration, balloting, or tabulating ballots and certifying results. For purposes of the EAC study, it also does not include violations of campaign finance laws.

## **Existing Literature Reviewed**

### **Reports**

The Long Shadow of Jim Crow, People for the American Way and the NAACP

The New Poll Tax, Laughlin McDonald

Wisconsin Audit Report, Voter Registration Elections Board

Preliminary Findings, Milwaukee Joint Task Force Investigating Possible Election Fraud

Building Confidence in U.S. Elections, National Commission on Federal Election Reform (Carter/Baker Report)

Response to the Report of the 2005 Commission on Federal Election Reform (Carter/Baker Report), The Brennan Center and Professor Spencer Overton

Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?, Chandler Davidson

A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law, Alec Ewald

Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election, American Center for Voting Rights

America's Modern Poll Tax, The Advancement Project

Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General, The Brennan Center and Professor Michael McDonald

Democracy at Risk: The November 2004 Election in Ohio, Democratic National Committee

Department of Justice Public Integrity Reports 2002, 2003, 2004

Prosecution of Election Fraud under United States Federal Law, Craig Donsanto

Election Protection 2004, Election Protection Coalition

The Federal Crime of Election Fraud, Craig Donsanto

Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote, General Accounting Office

Securing the Vote: An Analysis of Election Fraud, Lori Minnite

Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections, People for the American Way, NAACP, Lawyers Committee for Civil Rights

**Books**

Stealing Elections, John Fund

Steal this Vote: Dirty Elections and the Rotten History of Democracy in American, Andrew Gumbel

Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004, Tracey Campbell

A Funny Thing Happened on the Way to the White House, David E. Johnson and Jonny R. Johnson

Fooled Again, Mark Crispin Miller

**Legal**

*Indiana Democratic Party vs. Rokita*

*Common Cause of Georgia vs. Billup*

U.S. Department of Justice Section 5 Recommendation Memorandum (Georgia voter identification)

## Interviews

### Common Themes

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, “dead” voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud, although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.
- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate – including representatives from DOJ -- that for various reasons, the Department of Justice is bringing fewer voter intimidation and suppression cases now and is focusing on matters such as noncitizen voting, double voting and felon voting. While the civil rights section continues to focus on systemic patterns of malfeasance, the public integrity section is focusing now on individuals, on isolated instances of fraud.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

Common Recommendations:

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.
  - With respect to the civil rights section, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one’s definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and the section has not pursued any such cases.
  - Craig Donsanto of the public integrity section says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases the department is investigating and the number of indictments the section is pursuing are both up dramatically. Since 2002, the department has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so it can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment
- Several people advocate passage of Senator Barak Obama’s “deceptive practices” bill
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected nonpartisanly they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas is a problem that must be addressed in some fashion. Suggestions included moving

election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.

- A few recommend returning to allowing use of absentee ballots "for cause" only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the scheme contemplated in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

**List of Experts Interviewed**

Wade Henderson, Executive Director, Leadership Conference for Civil Rights

Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center

William Groth, attorney for the plaintiffs in the Indiana voter identification litigation

Lori Minnite, Barnard College, Columbia University

Neil Bradley, ACLU Voting Rights Project

Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

Pat Rogers, attorney, New Mexico

Rebecca Vigil-Giron, Secretary of State, New Mexico

Sarah Ball Johnson, Executive Director of the State Board of Elections, Kentucky

Stephen Ansolobehere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Tracey Campbell, author, *Deliver the Vote*

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights

Robin DeJarnette, Executive Director, American Center for Voting Rights

Joseph Rich, former Director of the Voting Section, Civil Rights Division, U.S. Department of Justice

Joseph Sandler, Counsel to the Democratic National Committee

John Ravitz, Executive Director, New York City Board of Elections

John Tanner, Director, Voting Section, Civil Rights Division, U.S. Department of Justice

Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin

Evelyn Stratton, Justice, Supreme Court of Ohio

Tony Sirvello, Executive Director, International Association of  
Clerks, Recorders, Election Officials and Treasurers

Harry Van Sickle, Commissioner of Elections, Pennsylvania

Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice

Sharon Priest, former Secretary of State, Arkansas

## Nexis Articles Analysis

Note: The search terms used were ones agreed upon by both Job Serebrov and Tova Wang and are available upon request. A more systematic, numerical analysis of the data contained in the Nexis charts is currently being undertaken. What follows is an overview.

Recommendation: In phase 2, consultants should conduct a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

## Overview of the Articles

### *Absentee Ballots*

According to press reports, absentee ballots are abused in a variety of ways:

1. Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters
2. Workers for groups and individuals have attempted to vote absentee in the names of the deceased
3. Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

### *Voter Registration Fraud*

According to press reports, the following types of allegations of voter registration fraud are most common:

1. Registering in the name of dead people
2. Fake names and other information on voter registration forms
3. Illegitimate addresses used on voter registration forms
4. Voters being tricked into registering for a particular party under false pretenses

5. Destruction of voter registration forms depending on the party the voter registered with

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported on included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota and Wisconsin.

*Voter Intimidation and Suppression*

This is the area which had the most articles in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places.
- Improper demands for identification
- Poll watchers harassing voters
- Poll workers being hostile to or aggressively challenging voters
- Disproportionate police presence
- Poll watchers wearing clothes with messages that seemed intended to intimidate
- Insufficient voting machines and unmanageably long lines

Although the incidents reported on occurred everywhere, not surprisingly, many came from "battleground" states. There were several such reports out of Florida, Ohio and Pennsylvania.

*"Dead Voters and Multiple Voting"*

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations

turning out to be accurate according to investigations by the newspapers themselves, elections officials and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking of voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person taking criminal advantage of that. In total, the San Francisco Chronicle found 5 such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

#### *Vote Buying*

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations in three particular jurisdictions as detailed in the vote buying summary. There were more official investigations, indictments and convictions/pleas in this area. All of these cases are concentrated in the Midwest and South.

#### *Deceptive Practices*

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction

of voter registration forms. There were no reports of prosecutions or any other legal proceeding.

#### *Non-citizen Voting*

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case charges were filed against ten individuals. In one case a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this nexis search, remained just allegations of noncitizen voting.

#### *Felon Voting*

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem has the large number of ineligible felons that remained on the voting list.

#### *Election Official Fraud*

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

**Rough Summary of Department of Justice, Public Integrity Section Activities,  
October 2002-January 2006\***

Prosecutions and Convictions-- Individuals

Noncitizen voting: 20  
Vote buying: 49  
Double voting: 12  
Registration fraud: 13  
Civil Rights: 4  
Voter Intimidation: 2  
Unclear: 1

Open Investigations (note: a few cases overlap with prosecutions and convictions)

Noncitizen voting: 3  
Vote buying: 25  
Double voting: 15  
Registration fraud: 29  
Absentee ballot fraud: 9  
Official: 8  
Ineligibles: 4  
Deceptive Practices: 1  
Civil Rights: 14  
Intimidation: 6  
Other: 2

Cases and Investigations Closed for Lack of Evidence

Civil Rights: 8  
Official: 12  
Registration Fraud: 12  
Absentee Ballot Fraud: 14  
Ineligible Voting: 3  
Intimidation: 8  
Double Voting: 5  
Ballot Box Stuffing: 1  
Vote Buying: 14  
Ballot/machine tampering: 2  
Other: 8  
Unclear: 3

\*Based upon information available as of January 2006

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## Case Summaries

After reviewing over 40,000 cases, the majority of which came from appeals courts, I have found comparatively very few which are applicable to this study. Of those that are applicable, no apparent thematic pattern emerges. However, it seems that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility. But because so few cases provided a picture of these current problems, I suggest that case research for the second phase of this project concentrate on state trial-level decisions.

*Job Serebrov*  
*May 2006*

**Determining a Methodology for Measuring Voter Fraud and Intimidation:  
Recommendations of Political Scientists**

The following is a summary of interviews conducted with a number of political scientists and experts in the field as to how one might undertake a comprehensive examination of voter fraud and intimidation. A list of the individuals interviewed and their ideas are available, and all of the individuals welcome any further questions or explanations of their recommended procedures.

- 1) In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources: the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that ask whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. (Stephen Ansolobhere, MIT)
- 2) Several political scientists with expertise in these types of studies recommended a methodology that includes interviews, focus groups, and a limited survey. In determining who to interview and where the focus groups should be drawn from, they recommend the following procedure:
  - Pick a number of places that have historically had many reports of fraud and/or intimidation; from that pool pick 10 that are geographically and demographically diverse, and have had a diversity of problems
  - Pick a number of places that have not had many reports of fraud and/or intimidation; from that pool pick 10 places that match the geographic and demographic make-up of the previous ten above (and, if possible, have comparable elections practices)
  - Assess the resulting overall reports and impressions resulting from these interviews and focus groups, and examine comparisons and differences among the states and what may give rise to them.

In conducting a survey of elections officials, district attorneys, district election officers, they recommend that:

- The survey sample be large in order to be able to get the necessary subsets
- The survey must include a random set of counties where there have and have not been a large number of allegations

(Allan Lichtman, American University; Thad Hall, University of Utah; Bernard Grofman, UC – Irvine)

- 3) Another political scientist recommended employing a methodology that relies on qualitative data drawn from in-depth interviews with key critics and experts on all sides of the debate on fraud; quantitative data collected through a survey of state and local elections and law enforcement officials; and case studies. Case studies should focus on the five or ten states, regions or cities where there has been a history of election fraud to examine past and present problems. The survey should be mailed to each state's attorney general and secretary of state, each county district attorney's office and each county board of elections in the 50 states. (Lorraine Minnite, Barnard College)
- 4) The research should be a two-step process. Using LexisNexis and other research tools, a search should be conducted of news media accounts over the past decade. Second, interviews with a systematic sample of election officials nationwide and in selected states should be conducted. (Chandler Davidson, Rice University)
- 5) One expert in the field posits that we can never come up with a number that accurately represents either the incidence of fraud or the incidence of voter intimidation. Therefore, the better approach is to do an assessment of what is most likely to happen, what election violations are most likely to be committed – in other words, a risk analysis. This would include an analysis of what it would actually take to commit various acts, e.g. the cost/benefit of each kind of violation. From there we could rank the likely prevalence of each type of activity and examine what measures are or could be effective in combating them. (Wendy Weiser, Brennan Center of New York University)
- 6) Replicate a study in the United States done abroad by Susan Hyde of the University of California- San Diego examining the impact of impartial poll site observers on the incidence of election fraud. Doing this retrospectively would require the following steps:
  - Find out where there were federal observers
  - Get precinct level voting information for those places
  - Analyze whether there was any difference in election outcomes in those places with and without observers, and whether any of these results seem anomalous.

Despite the tremendous differences in the political landscapes of the countries examined by Hyde in previous studies and the U.S., Hyde believes this study could be effectively replicated in this country by sending observers to a random sample of precincts. Rather than compare the incumbent's vote share, such factors such as voter complaints, voter turnout, number of provisional ballots used, composition of the electorate, as well as any anomalous voting results could be compared between sites with and without monitors.

For example, if intimidation is occurring, and if reputable monitors make intimidation less likely or voters more confident, then turnout should be higher on average in monitored precincts than in unmonitored precincts. If polling station officials are intentionally refusing to issue provisional ballots, and the polling station officials are

more likely to adhere to regulations while being monitored, the average number of provisional ballots should be higher in monitored precincts than in unmonitored precincts. If monitors cause polling station officials to adhere more closely to regulations, then there should be fewer complaints (in general) about monitored than unmonitored precincts (this could also be reversed if monitors made voters more likely to complain).

Again, random assignment controls for all of the other factors that otherwise influence these variables.

One of the downsides of this approach is it does not get at some forms of fraud, e.g. absentee ballot fraud; those would have to be analyzed separately

7) Another political scientist recommends conducting an analysis of vote fraud claims and purging of registration rolls by list matching. Allegations of illegal voting often are based on matching of names and birth dates. Alleged instances of double voting are based on matching the names and birth dates of persons found on voting records. Allegations of ineligible felon (depending on state law), deceased, and of non-citizen voting are based on matching lists of names, birth dates, and sometimes addresses of such people against a voting records. Anyone with basic relational database skills can perform such matching in a matter of minutes.

However, there are a number of pitfalls for the unwary that can lead to grossly over-estimating the number of fraudulent votes, such as missing or ignored middle names and suffixes or matching on missing birth dates. Furthermore, there is a surprising statistical fact that a group of about three hundred people with the same first and last name are almost assured to share the exact same birth date, including year. In a large state, it is not uncommon for hundreds of Robert Smiths (and other common names) to have voted. Thus, allegations of vote fraud or purging of voter registration rolls by list matching almost assuredly will find a large proportion of false positives: people who voted legally or are registered to vote legally.

Statistics can be rigorously applied to determine how many names would be expected to be matched by chance. A simulation approach is best applied here: randomly assign a birth date to an arbitrary number of people and observe how many match within the list or across lists. The simulation is repeated many times to average out the variation due to chance. The results can then be matched back to actual voting records and purge lists, for example, in the hotly contested states of Ohio or Florida, or in states with Election Day registration where there are concerns that easy access to voting permits double voting. This analysis will rigorously identify the magnitude alleged voter fraud, and may very well find instances of alleged fraud that exceed what might have otherwise happened by chance.

This same political scientist also recommends another way to examine the problem: look at statistics on provisional voting: the number cast might provide indications of intimidation (people being challenged at the polls) and the number of those not counted

would be indications of "vote fraud." One could look at those jurisdictions in the Election Day Survey with a disproportionate number of provisional ballots cast and cross reference it with demographics and number of provisional ballots discarded. (Michael McDonald, George Mason University)

- 8) Spencer Overton, in a forthcoming law review article entitled *Voter Identification*, suggests a methodology that employs three approaches— investigations of voter fraud, random surveys of voters who purported to vote, and an examination of death rolls provide a better understanding of the frequency of fraud. He says all three approaches have strengths and weaknesses, and thus the best studies would employ all three to assess the extent of voter fraud. An excerpt follows:

1. *Investigations and Prosecutions of Voter Fraud*

Policymakers should develop databases that record all investigations, allegations, charges, trials, convictions, acquittals, and plea bargains regarding voter fraud. Existing studies are incomplete but provide some insight. For example, a statewide survey of each of Ohio's 88 county boards of elections found only four instances of ineligible persons attempting to vote out of a total of 9,078,728 votes cast in the state's 2002 and 2004 general elections. This is a fraud rate of 0.00000045 percent. The Carter-Baker Commission's Report noted that since October 2002, federal officials had charged 89 individuals with casting multiple votes, providing false information about their felon status, buying votes, submitting false voter registration information, and voting improperly as a non-citizen. Examined in the context of the 196,139,871 ballots cast between October 2002 and August 2005, this represents a fraud rate of 0.0000005 percent (note also that not all of the activities charged would have been prevented by a photo identification requirement).

A more comprehensive study should distinguish voter fraud that could be prevented by a photo identification requirement from other types of fraud — such as absentee voting and stuffing ballot boxes — and obtain statistics on the factors that led law enforcement to prosecute fraud. The study would demand significant resources because it would require that researchers interview and pour over the records of local district attorneys and election boards.

Hard data on investigations, allegations, charges, pleas, and prosecutions is important because it quantifies the amount of fraud officials detect. Even if prosecutors vigorously pursue voter fraud, however, the number of fraud cases charged probably does not capture the total amount of voter fraud. Information on official investigations, charges, and prosecutions should be supplemented by surveys of voters and a comparison of voting rolls to death rolls.

2. *Random Surveys of Voters*

Random surveys could give insight about the percentage of votes cast fraudulently. For example, political scientists could contact a statistically representative sampling of 1,000 people who purportedly voted at the polls in the last election, ask them if they actually voted, and confirm the percentage who are valid voters. Researchers should conduct the survey soon after an election to locate as many legitimate voters as possible with fresh memories.

Because many respondents would perceive voting as a social good, some who did not vote might claim that they did, which may underestimate the extent of fraud. A surveyor might mitigate this skew through the framing of the question ("I've got a record that you voted. Is that true?").

Further, some voters will not be located by researchers and others will refuse to talk to researchers. Photo identification proponents might construe these non-respondents as improper registrations that were used to commit voter fraud.

Instead of surveying all voters to determine the amount of fraud, researchers might reduce the margin of error by focusing on a random sampling of voters who signed affidavits in the three states that request photo identification but also allow voters to establish their identity through affidavit—Florida, Louisiana, and South Dakota. In South Dakota, for example, only two percent of voters signed affidavits to establish their identity. If the survey indicates that 95 percent of those who signed affidavits are legitimate voters (and the other 5 percent were shown to be either fraudulent or were non-responsive), this suggests that voter fraud accounts for, at the maximum, 0.1 percent of ballots cast.

The affidavit study, however, is limited to three states, and it is unclear whether this sample is representative of other states (the difficulty may be magnified in Louisiana in the aftermath of Hurricane Katrina's displacement of hundreds of thousands of voters). Further, the affidavit study reveals information about the amount of fraud in a photo identification state with an affidavit exception—more voter fraud may exist in a state that does not request photo identification.

### 3. *Examining Death Rolls*

A comparison of death rolls to voting rolls might also provide an estimate of fraud.

Imagine that one million people live in state A, which has no documentary identification requirement. Death records show that 20,000 people passed away in state A in 2003. A cross-referencing of this list to the voter rolls shows that 10,000 of those who died were registered voters, and these names remained on the voter rolls during the November 2004 election. Researchers would look at what percentage of the 10,000 dead-but-registered people who "voted" in the November 2004 election. A researcher should distinguish the votes cast in the name of the dead at the polls from those cast

absentee (which a photo identification requirement would not prevent). This number would be extrapolated to the electorate as a whole.

This methodology also has its strengths and weaknesses. If fraudulent voters target the dead, the study might overestimate the fraud that exists among living voters (although a low incidence of fraud among deceased voters might suggest that fraud among all voters is low). The appearance of fraud also might be inflated by false positives produced by a computer match of different people with the same name. Photo identification advocates would likely assert that the rate of voter fraud could be higher among fictitious names registered, and that the death record survey would not capture that type of fraud because fictitious names registered would not show up in the death records. Nevertheless, this study, combined with the other two, would provide important insight into the magnitude of fraud likely to exist in the absence of a photo identification requirement.



U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

October 19, 2006

Ralph G. Neas  
President, People for the American Way Foundation  
2000 M Street, NW  
Suite 400  
Washington, DC 20036

Via Facsimile Transmission ONLY  
202-293-2672

RE: October 18, 2006 Letter

Dear Mr. Neas:

Your letter of October 18, 2006 requests the release of EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study -- finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud -- as it will serve as the basis of the EAC report on this study.

Thank you for your letter. You can be assured that as soon as a final report on the fraud and intimidation study is available, a copy will be made available to the public.

Sincerely,

Paul S. DeGregorio  
Chairman




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**FACSIMILE TRANSMITTAL SHEET**

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**FROM: RALPH G. NEAS  
PRESIDENT, PEOPLE FOR THE AMERICAN WAY FOUNDATION**

**DATE: 10/18/06**

**TOTAL NO. OF PAGES INCLUDING COVER: 3**

**RE: REPORT COMMISSIONED BY THE EAC ON VOTER FRAUD**

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**NOTES/COMMENTS:**

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**007104**



October 18, 2006

Chairman Paul DeGregorio  
Commissioner Donetta L. Davidson  
Commissioner Gracia M. Hillman  
United States Election Assistance Commission  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005  
Fax: (202) 566-3127

Dear Commissioners,

On October 11<sup>th</sup>, *USA Today* published an article describing the report commissioned by the EAC on voter fraud. We write today to urge the EAC to release this report.

As a 25 year old civil rights and civil liberties organization, People For the American Way Foundation (PFAWF) and our sister organization, People For the American Way (PFAW) have long been dedicated to ensuring the integrity of our elections. In particular in the years since the 2000 election, PFAWF and other principle partners such as the NAACP and the Lawyers' Committee for Civil Rights Under Law, have carried out a program called Election Protection to ensure that all eligible voters are able to vote and have that vote counted as cast.

We know that voter fraud and intimidation occur- we've seen the long lines, the erroneous purges, the misleading flyers and phone calls. And yet there seems to be little attention to these matters on the state and federal level.

Instead, a disproportionate amount of time and energy are spent on measures that purport to curb voter fraud by requiring voters to produce proof of citizenship and identity to vote. In actuality, these measures do little to secure the elections and much to disenfranchise otherwise eligible voters. Indeed we are weeks away from an election where thousands of eligible voters may be disenfranchised by overly restrictive voter identification laws. That presents a real threat to the integrity of our elections and the health of our democracy.

The report that the EAC commissioned from voting experts would make a vitally important contribution to the national discourse on the reality of voter fraud. In light of the numerous claims regarding the prevalence of voter fraud, this report provides a much

needed analysis about the state of our electoral process. While media reports indicate that this tax-payer funded report is final, even if there are outstanding concerns within the EAC, we implore you to move forward with releasing the report as is, and to hold a public hearing to address any potential issues. Again, the importance of the information in this report is paramount and the public deserves such full disclosure. The report should be released immediately so that those who are concerned about ensuring the integrity of elections can benefit from its findings.

Sincerely,



Ralph G. Neas

President, People For the American Way Foundation

Cc: Senate Majority Leader Bill Frist  
Senate Minority Leader Harry Reid  
Senator Trent Lott, Chair, Senate Rules and Administration  
Senator Chris Dodd, Ranking Member, Senate Rules and Administration  
House Majority Leader John Boehner  
House Minority Leader Nancy Pelosi  
Representative Vernon Ehlers, Chair, House Administration  
Representative Juanita Millender-McDonald, Ranking Member, House Administration

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

October 19, 2006

Ralph G. Neas  
President, People for the American Way Foundation  
2000 M Street, NW  
Suite 400  
Washington, DC 20036

**Via Facsimile Transmission ONLY**  
**202-293-2672**

RE: October 18, 2006 Letter

Dear Mr. Neas:

Your letter of October 18, 2006 requests the release of EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study -- finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud -- as it will serve as the basis of the EAC report on this study.

Thank you for your letter. You can be assured that as soon as a final report on the fraud and intimidation study is available, a copy will be made available to the public.

Sincerely,

Paul S. DeGregorio  
Chairman



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425

WWW.USCCR.GOV

MICHAEL YAKI  
COMMISSIONER

October 17, 2006

The Honorable Gerald Reynolds  
Chair, United States Commission on Civil Rights  
624 9<sup>th</sup> Street, N.W.  
Washington, DC 20425

RE: Elections Assistance Commission Report

VIA ELECTRONIC MAIL

Dear Mr. Chairman

I am writing to urge you and my fellow Commissioners to exercise our Congressionally-authorized subpoena power to compel the production of the report on voting fraud that the United States Election Assistance Commission ("EAC") refuses to release. It was clearly evident during our briefing last week on Voter Fraud and Intimidation that the results of the EAC report could have a significant impact on the quality and quantitative analysis of any briefing report that might be issued by the Commission.

According to an article in the October 11<sup>th</sup> edition of USA Today, "the bipartisan report by two consultants to the election commission casts doubt on the problem those laws are intended to address." Indeed, "there is widespread but not unanimous agreement that there is little polling-place fraud, or at least much less than is claimed, including voter impersonation, 'dead' voters, non-citizen voting and felon voters" according to the article. Further, the USA Today article states that the report, "prepared by Tova Wang, an elections expert at the Century Foundation think tank, and Job Serebrov, an Arkansas attorney, says most fraud occurs in the absentee ballot process, such as through coercion or forgery."

Just based on this news article, the report has information clearly germane to our briefing and subsequent analysis of the testimony provided. I believe that in carrying out our Congressional mandate, the need to have access to and analyze the Election Assistance Commission report is a necessary prerequisite to an unbiased and informed report on Voter Fraud.

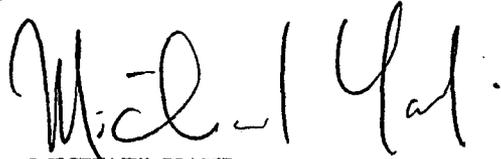
It is my understanding that the Chair has the authority under law to sign a subpoena on his own accord or, alternatively to seek a vote of the Commission to issue said subpoena. I believe the subpoena would be very short and direct: the production of the suppressed report.

Page 2  
Letter from Commissioner Yaki to Chair Reynolds

I respectfully request that the Chair immediately issue a subpoena or, in the alternative, conduct an immediate notational vote on the matter of issuing a subpoena to compel production of the report.

Thank you for your time and attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "Michael Yaki". The signature is written in a cursive style with a large initial "M" and a long horizontal stroke.

MICHAEL YAKI  
Commissioner  
United States Commission on Civil Rights

TAMARA's  
Comments

EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY

~~the~~ voter INTRODUCTION

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the correct application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun ~~this phase of~~ a comprehensive study on election crimes. In ~~the~~ <sup>one</sup> phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the existence and enforcement of election crimes in ~~this country~~, the United States.

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct ~~that type of extensive research~~ <sup>later comprehensive</sup>, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,<sup>1</sup> who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic ~~and~~ <sup>the goal of</sup> to assure a bipartisan representation in this study. The consultants and EAC staff were charged ~~to~~ <sup>to</sup> (1) research the current state of information on the topic of voting ~~to~~ <sup>with</sup>

<sup>1</sup> Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".

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fraud and voter intimidation; (2) develop a uniform definition of voting fraud and voter intimidation; and (3) propose recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to National Republican  
Campaign Committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation, as well as summaries of the interviews ~~that they~~ conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

### **Reports and Studies of Voting fraud and Intimidation**

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.

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- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

### Books

- John Fund, *Stealing Elections: How Voting fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as

“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement <sup>concerning</sup> ~~on~~ what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, ~~over~~ legal practices, that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. <sup>including</sup> ~~A~~ number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### Interviews with Experts

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Pat Rogers**  
Attorney, New Mexico

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Lori Minnite**  
Barnard College, Columbia University

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Neil Bradley**  
ACLU Voting Rights Project

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

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**Tracey Campbell**

Author, *Deliver the Vote*

**Douglas Webber**

Assistant Attorney General, Indiana

**Heather Dawn Thompson**

Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**

Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**

Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**

Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**

Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**

Counsel  
Democratic National Committee

**John Ravitz**

Executive Director  
New York City Board of Elections

**Sharon Priest**

Former Secretary of State, Arkansas

**Kevin Kennedy**

Executive Director  
State Board of Elections, Wisconsin

**Evelyn Stratton**

Justice  
Supreme Court of Ohio

**Joseph Rich**

Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Craig Donsanto**

Director, Public Integrity Section  
U.S. Department of Justice

**John Tanner**

Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it was the most likely type of fraud to be discovered, the stiff penalties associated with this type of fraud, and ~~it~~ it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,

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voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix "3".

### **Case Law and Statutes**

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix "4".

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,

- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

### New Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud, n. 1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usually a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms, <sup>EAC defines</sup> ~~to form a definition of~~ “voting fraud,” it ~~means~~ <sup>means</sup> fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter

registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing “voting fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voting fraud” does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, “voting fraud” does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

To further complicate matters, the phrases “voting fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as “voting fraud” and “voter intimidation” that would serve as the basis for a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined “election crimes,” a phrase that captures all crimes related to the voter registration and voting processes.

### **The Definition of an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

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The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to, qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

### *Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
- Intentionally making a false affidavit, swearing falsely; or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote; requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

### *Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint; or inflicting, threatening to inflict, or causing to be inflicted damage harm; or loss; upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

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- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

### *Acts of Damage or Destruction*

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

### *Failure or Refusal to Act*

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;

- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

### **What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes,” and actions that do not rise to the level of criminal activity, such as a misdemeanor, relative felony or felony, are not “election crimes.”

## **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such

activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

### **Accepted Recommendations**

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

#### ***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition

of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

***Analyze Survey Data in Light of State Laws and Procedures***

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from

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areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

## CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.

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## EXECUTIVE SUMMARY

The Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including "voting fraud" and "voter intimidation." In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of "voting fraud" and "voter intimidation" and to identify research methodology to conduct a comprehensive, nationwide study of these topics.

EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases "voting fraud" and "voter intimidation." Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

In order to facilitate future study of these topics, EAC developed a working definition of "election crimes." "Election crimes" are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

From EAC's review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at "election crimes." Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical provisions. EAC will study these concepts by surveying the states' chief election officials about complaints they received through their administrative complaint processes, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received and charges filed.

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## INTRODUCTION

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the lawful application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a working definition of election crimes and adopted research methodology on how to assess the existence and enforcement of election crimes in the United States.

### PURPOSE AND METHODOLOGY OF THE EAC STUDY

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

*italics*  
EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. The initial study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,<sup>1</sup> who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic

<sup>1</sup> Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".



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of voting fraud and voter intimidation; (2) developing a uniform definition of voting fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to National Republican  
Campaign Committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants

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or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

## EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

### Reports and Studies of Voting fraud and Intimidation

Over the years, there <sup>has?</sup> have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix "2":

#### Articles and Reports

- People for the American Way and the NAACP, "The Long Shadow of Jim Crow," December 6, 2004.
- Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, "An Evaluation: Voter Registration Elections Board" Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, United States Attorney's Office "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," May 10, 2005.
- National Commission on Federal Election Reform, "Building Confidence in U.S. Elections," Center for Democracy and Election Management, American University, September 2005.

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- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law "Response to the Report of the 2005 Commission on Federal Election Reform," September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."



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- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.
- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," *Demos: A Network of Ideas and Action*, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

**Books**

- John Fund, *Stealing Elections: How Voting Fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.



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During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### Interviews with Experts

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:



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**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**  
Author, *Deliver the Vote*

**Douglas Webber**  
Assistant Attorney General, Indiana

**Heather Dawn Thompson**  
Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**  
Counsel  
Democratic National Committee

**John Ravitz**  
Executive Director  
New York City Board of Elections

**Sharon Priest**  
Former Secretary of State, Arkansas

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin



**U.S. Election Assistance Commission**  
**Election Crimes: An Initial Review and Recommendations for Future Study**

**December 2006**

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**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**John Tanner**  
Chief  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix "3".

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## Case Law and Statutes

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix "4".

## Media Reports

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters on voter registration list and/or voting,
- multiple voting,
- felon voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a "battleground" or "swing" state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not



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provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes "voting fraud" and "voter intimidation." Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future. As a result, EAC has adopted the use of the term "election crimes" for its future study.

### Current Terminology

The phrase "voting fraud" is really a misnomer for a concept that is much broader. "Fraud" is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud, n. 1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu[ally] a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black's Law Dictionary, Eighth Edition, p. 685.

"Voting" is the act of casting votes to decide an issue or contest. Black's Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of "voting fraud," it means fraudulent or deceptive acts committed to influence the act of voting. Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing "voting fraud." Similarly, a person who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter. <sup>By?</sup> <sub>that</sub>

The phrase "voting fraud" does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, "voting fraud" does not capture actions or willful inaction in the voter registration process. When an election official willfully and knowingly refuses <sup>end?</sup>



to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases "voting fraud" and "voter intimidation" are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

### New Terminology

The goal of this study was to develop a common definition of what is generically referred to as "voting fraud" and "voter intimidation" that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, "voting fraud" and "voter intimidation" can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

*another word?*

Thus, EAC has adopted the use of the phrase "election crimes" to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, we recognize that the resources, both financial and human capital, needed to study all "voting fraud" and "voter intimidation," including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to case. A more complete discussion of the concept of "election crimes" follows along with a list of excluded actions.

*activities that EAC does not define as . . . . .*



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## The Definition of an Election Crime for Purposes of this Study

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

### *Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;



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- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a materially false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

#### *Acts of Coercion*

- Using, threatening to use, or causing <sup>the use of?</sup> to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage, harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.



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### *Acts of Damage or Destruction*

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

### *Failure or Refusal to Act*

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

### **What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of "election crimes." All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not "election crimes" for purposes of this study and any future



study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Last, violations of ethical provisions and the Hatch Act are not “election crimes.” Similarly, civil or other wrongs that do not rise to the level of criminal activity (i.e., a misdemeanor, relative felony or felony) are not “election crimes.”

## RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

### *Recommendation 1: Conduct More Interviews*

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

### *Recommendation 2: Follow Up on Media Research*

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

### *Recommendation 3: Follow Up on Allegations Found in Literature Review*

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were ~~certainly~~ limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations ~~discovered~~ in the literature review.

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**Recommendation 4: Review Complaints Filed With "MyVote1" Voter Hotline**

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

**Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice**

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and "monitor field reports" from Election Day.

**Recommendation 6: Review Reports Filed By District Election Officers**

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

**Recommendation 7: Attend Ballot Access and Voting Integrity Symposium**

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public

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Spell out necessary?



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Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

**Recommendation 8: Conduct Statistical Research**

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- o Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- o Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

*Relics*

**Recommendation 9: Explore Improvements to Federal Law**

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

**Recommendation 10: Use Observers to Collect Data on Election Day**

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

**Recommendation 11: Study Absentee Ballot Fraud**

~~Because~~ *Therefore,* absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide



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recommendations on more effective measures for preventing fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the "ease of commission" and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

*the*  
***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

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Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.



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## Accepted Recommendations

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

### *Survey Chief Election Officers Regarding Administrative Complaints*

The Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.



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In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.



*Analyze Survey Data in Light of State Laws and Procedures*

Once a reliable <sup>2w</sup> data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

CONCLUSION <sup>for the</sup>

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.



**APPENDIX 1 – BIOGRAPHIES OF JOB SEREBROV AND TOVA WANG**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 2 – SUMMARIES OF BOOKS, REPORTS AND ARTICLES**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 3 – SUMMARIES OF INTERVIEWS**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 4 – SUMMARIES OF CASES REVIEWED**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

Attorney-Client  
Privilege

Margaret Sims /EAC/GOV  
11/13/2006 10:27 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject VF-VI Another DOJ Objection

Julie:

I just remembered that there was one other DOJ objection. It was about the way the consultants described the Election Crimes Branch focus on cases. In the interview with Donsanto (the only interview I attended), he made reference to the fact that the Election Crimes Branch used to only go after conspiracies, not individuals. Now, however, they had begun prosecuting individuals for noncitizen and felon voting. The consultants heard an unexpressed "instead", which would mean that DOJ had dropped pursuing conspiracies in favor of going after individuals. Based on my previous experience, I heard and unexpressed "in addition", meaning that DOJ was not just prosecuting conspiracies, the department also had begun to prosecute individuals.

I had lengthy discussions with the consultants over this issue as well. Donsanto confirmed that he meant "in addition", and the lists of cases he provided indicates that the department continues to pursue conspiracies. (It doesn't make sense any other way, unless you believe that the government is out to get the little guy.) --- Peggy

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EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

Deliberative Process  
Privilege

Articles
<p>People for the American Way and the NAACP, "The Long Shadow of Jim Crow," December 6, 2004.</p> <p>This report describes the pervasive and repeated practices of voter intimidation and vote suppression that have taken place in very recent years and during contemporary American history. It goes on to describe the numerous instances of voter intimidation and suppression during the 2000 election, the 1990s, the 1980s and back through the civil rights movement of the 1960s, putting current efforts in historical perspective. Describing the chronology of events in this way demonstrates the developing patterns and strategic underpinnings of the tactics used over the last forty years. Examples include:</p> <ul style="list-style-type: none"> <li>• Florida law enforcement questioned elderly African American voters in Orlando regarding the 2003 mayoral race, which had already been resolved, shortly before the 2004 election;</li> <li>• the 2004 Florida felon purge list;</li> <li>• the case of South Dakota in 2004 in which Native Americans were improperly and illegally required to show photo identification at the polls or denied the right to vote, and similar improper demands for ID from minorities in other parts of the country;</li> <li>• the use of challengers in minority districts in many locations;</li> <li>• the challenge to the right of African American students to vote in Texas in 2004;</li> <li>• the presence of men looking like law enforcement challenging African American voters at the polls in Philadelphia in 2003;</li> <li>• the distribution of flyers in Louisiana and elsewhere in a number of elections over the last few years in minority areas telling them to vote on the wrong day; and</li> <li>• the FBI investigation into thousands of Native American voters in South Dakota in 2002.</li> </ul>
<p>Laughlin McDonald, "The New Poll Tax," <i>The American Prospect</i> vol. 13 no. 23, December 30, 2002.</p> <p>Argues that "the discriminatory use of so-called 'ballot security' programs" has been a reoccurring scandal since the passage of the Voting Rights Act of 1965. These programs are deceptively presented as preventing voter fraud and thereby furthering good government. However, McDonald states "but far too often they [the ballot security programs] are actually designed to suppress minority voting -- and for nakedly partisan purposes." Blames the federal government as well as the states for use of suspect ballot security programs. McDonald cites several ballot security efforts that were really disguised attempts at minority voter suppression:</p> <ul style="list-style-type: none"> <li>• SD-DOJ "voting integrity initiative".</li> <li>• AR - poll watchers driving away voters in predominantly black precincts by taking photos of them and demanding identification during pre-election day balloting.</li> <li>• MI - "spotters" at heavily Democratic precincts was an effort to intimidate black voters and suppress Democratic turnout</li> <li>• SC - one county's officials instituted a new and unauthorized policy allowing them to challenge voters who gave rural route or box numbers for their registration address (disproportionately affecting African Americans).</li> <li>• the 1981 gubernatorial election anti-fraud initiative leading to the well known consent decree prohibiting the Republicans from repeating this, a similar Republican effort in Louisiana in 1986 in Senator John Breaux's race which again resulted in prohibition by a state court judge, and a similar effort by Republicans in Senator Jesse Helms 1990 reelection.</li> </ul> <p>States that HAVA "contains provisions that may enhance the opportunities for harassment and intimidation of minorities through ballot-security</p>

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**programs** (especially voter ID). Indicates that the crux of the problem is **law enforcement of federal voters rights laws** ("there is no record of the purveyors of any ballot-security program being criminally prosecuted by federal authorities for interfering with the right to vote." The only positive case law McDonald cited was a decision by the United States Court of Appeals for the Eighth Circuit that affirmed "an award of damages ranging from \$500 to \$2,000, payable by individual poll officials to each of seven black voters who had been unlawfully challenged, harassed, denied assistance in voting or purged from the rolls in the town of Crawfordsville [Arkansas].")  
Recommends that Congress and the states should adopt "nondiscriminatory, evenly applied measures to ensure the integrity of the ballot."

Wisconsin Legislative Audit Bureau, "An Evaluation: Voter Registration Elections Board" Report 05-12, September, 2005.

Current voter registration practices were determined to be insufficient to ensure the accuracy of voter registration lists used by poll workers or to prevent ineligible persons from registering to vote. **In six municipalities where sufficient information was available, there was 105 instances of potentially improper or fraudulent voting in the 2004 elections. These included: 98 ineligible felons who may have voted; 2 individuals who may have voted twice; 1 voter who may have been underage; and 4 absentee ballots that should not have been counted because the voters who cast them died before Election Day** (all but dead voters were forwarded to appropriate district attorneys for investigation). Statutes require that clerks send cards to everyone who registers by mail or on Election Day. However, only 42.7 % of the 150 municipalities surveyed sent cards to both groups, and 46 % did not send any address verification cards to those registering to vote on Election Day in November 2004. Statutes also require clerks to provide the local district attorney with the names of any Election Day registrants whose cards are undeliverable at the address provided. However, only 24.3 % of the clerks who sent cards also forwarded names from undeliverable cards to district attorneys. District attorneys surveyed indicated that they require more information than is typically provided to conduct effective investigations. To ensure that voter registration lists contain only the names of qualified electors, municipal clerks are required by statute to remove or inactivate the names of individuals who have not voted in four years, to update registration information for individuals who move or change their names, and to remove or inactivate the names of deceased individuals. They are also required to notify registered voters before removing their names from registration lists. These statutory requirements are not consistently followed:

- 85.3 % of municipalities removed the names of inactive voters from their voter registration lists;
- 71.4 % sometimes or always notified registered voters before removing their names; and
- 54.0 % reported removing the names of ineligible felons.
- registration lists contain duplicate records and the names of ineligible individuals (e.g.; more than 348,000 electronic voter registration records from eight municipalities were reviewed, identifying 3,116 records that appear to show individuals who are registered more than once in the same municipality).

Recommendations:

- adjust the early registration deadline to provide clerks more time to prepare registration lists;
- establish more stringent requirements for special registration deputies, including prohibiting compensation based on the number of individuals registered;
- establish uniform requirements for demonstrating proof of residence for all registrants;
- provide municipal clerks with more flexibility in the use of address verification cards;
- Authorize civil penalties for local election officials and municipalities that fail to comply with election laws; and
- implement mandatory elections training requirements for municipal clerks.

Report also recognized that the new **HAVA registration procedures would help with existing registration problems.**

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Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, United States Attorney's Office "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," May 10, 2005.

On January 26, 2005, the Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, and the United States Attorney's Office formed a task force to investigate alleged voting irregularities during the November 2004 elections. The task force has made the following specific determinations based on evidence examined to date:

- evidence of more than 100 individual instances of suspected double-voting, voting in names of persons who likely did not vote, and/or voting in names believed to be fake.
- more than 200 felons voted when they were not eligible to do so. (In order to establish criminal cases, the government must establish willful violations in individual instances);
- persons who had been paid to register voters as "deputy registrars" falsely listed approximately 65 names in order to receive compensation for the registrations. (The evidence does not indicate that these particular false registrations were later used to cast votes); and,
- the number of votes counted from the City of Milwaukee exceeds the number of persons recorded as voting by more than 4,500. (Evidence indicates widespread record keeping errors with respect to recording the number of voters)

The investigation concentrated on the 70,000+ same-day registrations. It found that a large majority of the reported errors were the result of data entry errors, such as street address numbers being transposed. However, the investigation also found more than 100 instances where votes were cast in a manner suggesting fraud. These include:

- persons with the same name and date of birth recorded as voting more than once;
- persons who live outside Milwaukee, but who used non-existent City addresses to register and vote in the City (141 of them were same day registrants; in several instances, the voter explicitly listed municipality names other than Milwaukee on the registration cards);
- persons who registered and voted with identities and addresses that cannot in any way be linked to a real person;
- persons listed as voting under a name and identity of a person known to be deceased;
- persons whose identities were used to vote, but who in subsequent interviews told task force investigators that they did not, in fact, vote in the City of Milwaukee.

Investigation also found:

- persons who were paid money to obtain registrations allegedly falsified approximately 65 names on registration forms, allegedly to obtain more money for each name submitted.
- more than 200 felons who were not eligible to vote in the 2004 election, but who are recorded as having done so.
- same-day registrations were accepted in which the card had incomplete information that would help establish identity. For example: 48 original cards for persons listed as voting had no name; 548 had no address; 28 did not have signatures; and another 23 cards had illegible information (part of approximately 1,300 same-day registrations for which votes were cast, but which election officials could not authenticate as proper voters within the City).
- the post-election misfiling or loss of original green registration cards that were considered duplicates, but that in fact corresponded to additional votes. These cards were used to record votes, but approximately 100 cards of interest to investigators can no longer be located. In addition, other original green registration cards continue to be found.

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National Commission on Federal Election Reform, "Building Confidence in U.S. Elections," Center for Democracy and Election Management, American University, September 2005.

Among the observations made that are relevant to the EAC study of fraud and intimidation are the following:

- The November 2004 elections showed that irregularities and fraud still occur.
- Failure to provide voters with such basic information as their registration status and their polling site location raises a barrier to voting as significant as inconsistent procedures on provisional ballots or voter ID requirements.
- **There is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election.**
- The Commission is concerned that the different approaches to identification cards might prove to be a serious impediment to voting.
- **Voter registration lists are often inflated by the inclusion of citizens who have moved out of state but remain on the lists.** Moreover, under the National Voter Registration Act, names are often added to the list, but counties and municipalities often do not delete the names of those who moved. Inflated voter lists are also caused by phony registrations and efforts to register individuals who are ineligible. At the same time, inaccurate purges of voter lists have removed citizens who are eligible and are properly registered.
- Political party and nonpartisan voter registration drives generally contribute to the electoral process by generating interest in upcoming elections and expanding participation. However, they are occasionally abused. **There were reports in 2004 that some party activists failed to deliver voter registration forms of citizens who expressed a preference for the opposing party.**
- **Vote by mail raises concerns about privacy, as citizens voting at home may come under pressure to vote for certain candidates, and it increases the risk of fraud.**
- **While election fraud is difficult to measure, it occurs.** The U.S. Department of Justice has launched more than 180 investigations into election fraud since October 2002. These investigations have resulted in **charges for multiple voting, providing false information on their felon status, and other offenses** against 89 individuals and in convictions of 52 individuals. The convictions related to a **variety of election fraud offenses, from vote buying to submitting false voter registration information and voting-related offenses by non-citizens.** In addition to the federal investigations, state attorneys general and local prosecutors handle cases of election fraud. Other cases are never pursued because of the difficulty in obtaining sufficient evidence for prosecution or because of the low priority given to election fraud cases.
- **Absentee ballots remain the largest source of potential voter fraud**
- **Non-citizens have registered to vote in several recent elections**
- **The growth of "third-party" (unofficial) voter registration drives in recent elections has led to a rise in reports of voter registration fraud.**
- **Many states allow the representatives of candidates or political parties to challenge a person's eligibility to register or vote or to challenge an inaccurate name on a voter roll. This practice of challenges may contribute to ballot integrity, but it can have the effect of intimidating eligible voters, preventing them from casting their ballot, or otherwise disrupting the voting process.**

Its pertinent recommendations for reform are as follows:

- **Interoperable state voter databases** are needed to facilitate updates in the registration of voters who move to another state and to eliminate duplicate registrations, which are a source of potential fraud.
- **Voters should be informed of their right to cast a provisional ballot** if their name does not appear on the voter roll, or if an election official asserts that the individual is not eligible to vote, but **States should take additional and effective steps to inform voters as to the location of their precinct**
- The Commission recommends that states use "REAL ID" cards for voting purposes.
- **To verify the identity of voters who cast absentee ballots, the voter's signature on the absentee ballot can be matched with a digitized**

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**version of the signature that the election administrator maintains.** While such signature matches are usually done, they should be done consistently in all cases, so that election officials can verify the identity of every new registrant who casts an absentee ballot.

- **Each state needs to audit its voter registration files** to determine the extent to which they are accurate (with correct and current information on individuals), complete (including all eligible voters), valid (excluding ineligible voters), and secure (with protections against unauthorized use). This can be done by matching voter files with records in other state agency databases in a regular and timely manner, contacting individuals when the matches are inconclusive, and conducting survey research to estimate the number of voters who believe they are registered but who are not in fact listed in the voter files.
- **Each state should oversee political party and nonpartisan voter registration drives** to ensure that they operate effectively, that registration forms are delivered promptly to election officials, that all completed registration forms are delivered to the election officials, and that none are "culled" and omitted according to the registrant's partisan affiliation. Measures should also be adopted to track and hold accountable those who are engaged in submitting fraudulent voter registrations. Such oversight might consist of training activists who conduct voter registration drives and tracking voter registration forms to make sure they are all accounted for. In addition, states should apply a criminal penalty to any activist who deliberately fails to deliver a completed voter registration form.
- **Investigation and prosecution of election fraud should include those acts committed by individuals, including election officials, poll workers, volunteers, challengers or other nonvoters associated with the administration of elections, and not just fraud by voters.**
- **In July of even-numbered years, the U.S. Department of Justice should issue a public report on its investigations of election fraud.** This report should specify the numbers of allegations made, matters investigated, cases prosecuted, and individuals convicted for various crimes. **Each state's attorney general and each local prosecutor should issue a similar report.**
- **The U.S. Department of Justice's Office of Public Integrity should increase its staff to investigate and prosecute election-related fraud.**
- **In addition to the penalties set by the Voting Rights Act, it should be a federal felony for any individual, group of individuals, or organization to engage in any act of violence, property destruction (of more than \$500 value), or threatened act of violence that is intended to deny any individual his or her lawful right to vote or to participate in a federal election.**
- **To deter systemic efforts to deceive or intimidate voters, the Commission recommends federal legislation to prohibit any individual or group from deliberately providing the public with incorrect information about election procedures for the purpose of preventing voters from going to the polls.**
- **States should define clear procedures for challenges, which should mainly be raised and resolved before the deadline for voter registration.** After that, challengers will need to defend their late actions. **On Election Day, they should direct their concerns to poll workers, not to voters directly, and should in no way interfere with the smooth operation of the polling station.**
- **State and local jurisdictions should prohibit a person from handling absentee ballots other than the voter, an acknowledged family member, the U.S. Postal Service or other legitimate shipper, or election officials.** The practice in some states of allowing candidates or party workers to pick up and deliver absentee ballots should be eliminated.
- **All states should consider passing legislation that attempts to minimize the fraud that has resulted from "payment by the piece" to anyone in exchange for their efforts in voter registration, absentee ballot, or signature collection.**
- **Nonpartisan structures of election administration are very important, and election administrators should be neutral, professional, and impartial.**
- **No matter what institutions are responsible for conducting elections, conflict-of-interest standards should be introduced for all federal, state, and local election officials.** Election officials should be prohibited by federal and/or state laws from serving on any political campaign committee, making any public comments in support of a candidate, taking a public position on any ballot measure, soliciting campaign funds, or otherwise campaigning for or against a candidate for public office. A decision by a secretary of state to serve as co-chair of his or her party's presidential

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election committee would clearly violate these standards.

The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law "Response to the Report of the 2005 Commission on Federal Election Reform," September 19, 2005.

### Recommendation on Voter Identification -

- Report premises its burdensome identification proposals on the need to ensure ballot integrity and on the existence of or potential for widespread fraud. However, the **Report admits that there is simply "no evidence" that the type of fraud that could be solved by stricter voter identification** – individual voters who misrepresent their identity at the polls – is a widespread problem.
- The photo ID proposal guards against only one type of fraud: individuals arriving at the polls to vote using false information, such as the name of another registered voter, or a recent but not current address. Since the costs of this form of fraud are extremely high (federal law provides for up to five years' imprisonment), and the benefits to any individual voter are extremely low, it is highly unlikely that this will ever occur with any frequency. **The limited types of fraud that could be prevented by a Real ID requirement are extremely rare and difficult.**
- ~~In the most comprehensive survey of alleged election fraud to date, Professor Loraine Minnite and David Callahan have shown that the incidence of individual voter fraud at the polls is negligible.~~ A few prominent examples support their findings. In Ohio, a statewide survey found four instances of ineligible persons voting or attempting to vote in 2002 and 2004, out of 9,078,728 votes cast – a rate of 0.00004%. Earlier this year, Georgia Secretary of State Cathy Cox stated that she could not recall one documented case of voter fraud relating to the impersonation of a registered voter at the polls during her ten-year tenure as Secretary of State or Assistant Secretary of State.
- The Report attempts to support its burdensome identification requirements on four specific examples of purported fraud or potential fraud. **None of the Report's cited examples of fraud stand up under closer scrutiny.** This response report goes through each instance of fraud raised by the Commission report and demonstrates that in each case the allegation in fact turned out later not to be true or the fraud cited was not of the type that would be addressed by a photo identification requirement.
- The Report fails to provide a good reason to create greater hurdles for voters who vote at the polls than for those who vote absentee. Despite the fact that **absentee ballots are more susceptible to fraud than regular ballots**, the Report exempts absentee voters from its proposed Real ID and proof of citizenship requirements.

Other points in ID requirement:

- **Report does not explain why the goals of improved election integrity will not be met through the existing provisions in the Help America Vote Act of 2002 (HAVA).**
- Report fails to consider alternative measures to advance its goals that are less restrictive to voters. To the extent that any limited fraud by **individuals at the polls does trickle into the system, it can be addressed by far less restrictive alternatives.** The first step is to recognize that only voters who appear on the registration list may vote a regular ballot. Proper cleaning of registration lists – and proper use of the lists at the poll – will therefore go a long way toward ensuring that every single ballot is cast by an eligible voter.
- In addition to the **better registration lists that full implementation will provide, better record keeping and administration at the polls will reduce the limited potential for voting by ineligible persons.** In the unlikely event that implementation of current law is not able to wipe out whatever potential for individual fraud remains, there are several effective and less burdensome alternatives to the Report's Real ID recommendation that received wholly insufficient consideration.
- Costs - If required as a precondition for voting, photo identification would operate as a de facto poll tax that could disenfranchise low-income voters. To alleviate this burden, the Report appropriately recommends that the "Real ID" card itself be issued free of charge. Nevertheless, the

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percentage of Americans without the documentary proof of citizenship necessary to obtain Real IDs is likely to remain high because the requisite documents are both expensive and burdensome to obtain. (Each of the documents an individual is required to show in order to obtain a "Real ID" card or other government-issued photo ID card costs money or presumes a minimal level of economic resources. Unless the federal and all state governments waive the cost of each of these other forms of identification, the indirect costs of photo IDs will be even greater than their direct costs. In addition, since government-issued IDs may only be obtained at specified government offices, which may be far from voters' residences and workplaces, individuals seeking such IDs will have to incur transportation costs and the costs of taking time off from work to visit those offices during often-abbreviated business hours.)

- Since voting generally depends on the voter's address, and since many states will not accept IDs that do not bear an individual's current voting address, an additional 41.5 million Americans each year will have ID that they may not be able to use to vote.
- The burden would fall disproportionately on the elderly, the disabled, students, the poor, and people of color.
- The ID recommendations reduce the benefits of voter registration at disability and other social service agencies provided by the National Voter Registration Act of 1993. Individuals who seek to register at those offices—which generally do not issue IDs Census data demonstrate that African Americans and Latinos are more than three times more likely than whites to register to vote at a public assistance agency, and that whites are more likely than African Americans and Latinos to register when seeking a driver's license. Accordingly, the voter registration procedure far more likely to be used by minorities than by whites will no longer provide Americans with full eligibility to vote.
- The Report's proposal to use Real ID as a condition of voting is so excessive that it would prevent eligible voters from proving their identity with even a valid U.S. passport or a U.S. military photo ID card. The Report's proposal to use Real ID as a condition of voting is so excessive that it would prevent eligible voters from proving their identity with even a valid U.S. passport or a U.S. military photo ID card

**Recommendation on Database Information Sharing Across States -serious efficacy, privacy, and security concerns raised by a nationally distributed database of the magnitude it contemplates.** These problems are exacerbated by the Report's recommendation that an individual's Social Security number be used as the broadly disseminated unique voting identifier.

**Recommendation on Voting Rights of Ex-Felons - This recommendation would set a standard more generous than the policies of the most regressive thirteen states in the nation but more restrictive than the remaining thirty-seven. The trend in the states is toward extension of the franchise.**

Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.

Focuses on **vote suppression through "ballot security programs"** (programs that, in the name of protecting against vote fraud, almost exclusively target heavily black, Latino, or Indian voting precincts and have the intent or effect of discouraging or preventing voters in those precincts from casting a ballot). **Noteworthy characteristics of these programs:**

- **focus on minority precincts almost exclusively**
- **is often on only the flimsiest evidence that vote fraud is likely to be perpetrated in such precincts;**
- **in addition to encouraging the presence of sometimes intimidating white Republican poll watchers or challengers who may slow down voting lines and embarrass potential voters by asking them humiliating questions, these programs have sometimes posted people in official-looking uniforms with badges and side arms who question voters about their citizenship or their registration**
- **warning signs may be posted near the polls, or radio ads may be targeted to minority listeners containing dire threats of prison terms for people who are not properly registered—messages that seem designed to put minority voters on the defensive.**
- **sometimes false information about voting qualifications is sent to minority voters through the mail."**
- **doing mailings, collecting returned materials, and using that as a basis for creating challenger lists and challenging voters at the polls,**

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started in the 1950s and continues to today (problem with this practice is that reasons for a mailing to be returned include a wrong address, out of date or inaccurate addresses, poor mail delivery in minority areas, and matching mistakes)

Provide numerous examples from the last 50 years to demonstrate his thesis, going through the historical development of Republican ballot security programs from the 1950s through to the present (including more recent incidents, such as 1981 in New Jersey, 1982 Dallas, Louisiana 1986, Houston 1986, Hidalgo 1988 Orange County 1988, North Carolina 1990, South Carolina 1980-1990, and South Dakota 2002). Author cites and quotes internal Republican letters and memoranda, primary sources and original documents, media reports, scholarly works, as well as the words of judges' rulings in some of the cases that ended up in litigation to prove his argument. author cites and quotes internal Republican letters and memoranda, primary sources and original documents, media reports, scholarly works, as well as the words of judges' rulings in some of the cases that ended up in litigation to prove his argument.

**Some of the features of vote suppression efforts put forth by Republicans under the guise of ballot security programs:**

- 1. An organized, often widely publicized effort to field poll watchers in what Republicans call "heavily Democratic," but what are usually minority, precincts;**
- 2. Stated concerns about vote fraud in these precincts, which are occasionally justified but often are not;**
- 3. Misinformation and fear campaigns directed at these same precincts, spread by radio, posted signs in the neighborhoods, newspapers, fliers, and phone calls, which are often anonymously perpetrated;**
- 4. Posting "official-looking" personnel at polling places, including but not limited to off-duty police—sometimes in uniform, sometimes armed;**
- 5. Aggressive face-to-face challenging techniques at the polls that can confuse, humiliate, and intimidate—as well as slow the voting process—in these same minority precincts;**
- 6. Challenging voters using inaccurate, unofficial lists of registrants derived from "do-not-forward" letters sent to low-income and minority neighborhoods;**
- 7. Photographing, tape recording, or videotaping voters; and**
- 8. Employing language and metaphors that trade on stereotypes of minority voters as venal and credulous.**

The report ends with some observations on the state of research on the incidence of fraud, which the author finds lacking. He suggests that **vote suppression of qualified minority voters by officials and partisan poll-watchers, challengers, and uniformed guards should also be considered as included in any definition of election fraud.** Recommends Democrats should not protest all programs aimed at ballot integrity, but rather work with Republicans to find solutions to problems that confront both parties and the system as a whole.

Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.

Presents results from the first nationwide study to document the implementation of American felony disenfranchisement law. Data came from two main sources: a 33-state survey of state elections officials (spring 2004) and telephone interviews with almost one hundred city, county, town, and parish officials drawn from 10 selected states.

### Major Conclusions:

- 1. Broad variation and misunderstanding in interpretation and enforcement of voting laws** (more than one-third [37%] of local officials interviewed in ten states either described their state's fundamental eligibility law incorrectly, or stated that they did not know a central aspect of that law. / Local registrars differ in their knowledge of basic eligibility law, often within the same state. Differences also emerge in how they are notified of criminal convictions, what process they use to suspend, cancel, or "purge" voters from the rolls, whether particular documents are required to restore a voter to eligibility, and whether they have information about the criminal background of new arrivals to the state.)
- 2. Misdemeanants disenfranchised in at least five states** (the commonly-used term "felon disenfranchisement" is not entirely accurate, since at

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least five states – Colorado, Illinois, Michigan, South Carolina, and Maryland – also formally bar some or all people convicted of misdemeanors from voting [ it is likely that misdemeanants in other states who do retain the formal right to vote could have difficulty exercising that right, given ignorance of their eligibility and the lack of clear rules and procedures for absentee voting by people in jail who have not been convicted of a felony / Maryland excludes persons convicted of many misdemeanors, such as “Unlawful operation of vending machines,” “Misrepresentation of tobacco leaf weight,” and “Racing horse under false name.”]

3. **Significant ambiguities in voting laws (disenfranchisement in Tennessee is dependent on which of five different time periods a felony conviction occurred between 1973 and the present / in Oregon, disenfranchisement is determined not by conviction or imprisonment for a felony, but for being placed under Department of Corrections supervision / since 1997, some persons convicted of a felony and sentenced to less than 12 months' custody have been sent to county jails and hence, are eligible to vote.**
4. **Disenfranchisement results in contradictory policies within states (the “crazy-quilt” pattern of disenfranchisement laws exists even within states / Alabama and Mississippi have both the most and least restrictive laws in the country, a result which is brought about by the fact that certain felonies result in the loss of voting rights for life, while others at least theoretically permit people in prison to vote / most felonies in Alabama result in permanent disenfranchisement, but drug and DUI offenses have been determined to not involve the “moral turpitude” that triggers the loss of voting rights / in Mississippi, ten felonies result in disenfranchisement, but do not include such common offenses as burglary and drug crimes.**
5. **Confusing policies lead to the exclusion of legal voters and the inclusion of illegal voters:** The complexity of state disenfranchisement policies results in frequent misidentification of voter eligibility, largely because officials differ in their knowledge and application of disqualification and restoration law and procedures.
6. **Significant variation and uncertainty in how states respond to persons with a felony conviction from other states:** No state has a systematic mechanism in place to address the immigration of persons with a felony conviction, and there is no consensus among indefinite-disenfranchisement states on whether the disqualification is properly confined to the state of conviction, or should be considered in the new state of residence. Interpretation and enforcement of this part of disenfranchisement law varies not only across state lines, but also from one county to another within states. Local officials have no way of knowing about convictions in other states, and many are unsure what they would do if a would-be voter acknowledged an old conviction. Because there is no prospect of a national voter roll, this situation will continue even after full HAVA implementation.
7. **Disenfranchisement is a time-consuming, expensive practice:** Enforcement requires elections officials to gather records from different agencies and bureaucracies, including state and federal courts, Departments of Corrections, Probation and Parole, the state Board of Elections, the state police, and other counties' elections offices.

### Policy Implications

1. **Policies disenfranchising people living in the community on probation or parole, or who have completed a sentence are particularly difficult to enforce:** States which disenfranchise only persons who are currently incarcerated appear able to enforce their laws more consistently than those barring non-incarcerated citizens from voting.
2. **Given large-scale misunderstanding of disenfranchisement law, many eligible persons incorrectly believe they cannot vote, or have been misinformed by election officials:** More than one-third of election officials interviewed incorrectly described their state's law on voting eligibility. More than 85% of the officials who misidentified their state's law either did not know the eligibility standard or specified that the law was more restrictive than was actually the case.
3. **Occasional violation of disenfranchisement law by non-incarcerated voters not surprising:** Given the complexity of state laws and the number of state officials who lack an understanding of restoration and disqualification procedures, it should come as no surprise that many voters are ignorant of their voting status, a fact that is likely to have resulted in hundreds of persons with a felony conviction registering and voting illegally in recent years.

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4. Taken together, these findings undermine the most prominent rationale for disenfranchisement: that the policy reflects a strong, clear consensus that persons with a felony conviction are unfit to vote and constitute a threat to the polity: First, when significant numbers of the people who administer elections do not know important aspects of disenfranchisement law, it is hard to conclude that the restriction is necessary to protect social order and the "purity" of the ballot box. Second, because they are all but invisible in the sentencing process, "collateral" sanctions like disenfranchisement simply cannot accomplish the denunciatory, expressive purposes their supporters claim. We now know that disenfranchisement is not entirely "visible" even to the people running American elections. Third, deep uncertainty regarding the voting rights of people with felony convictions who move from one state to another indicates that we do not even know what purpose disenfranchisement is supposed to serve – whether it is meant to be a punishment, or simply a non-penal regulation of the franchise.

### Recommendations

1. **Clarify Policies Regarding Out-of-State Convictions:** State officials should clarify their policies and incorporate into training programs the means by which a felony conviction in another state affects an applicant's voting eligibility. For example, sentence-only disenfranchisement states should clarify that newcomers with old felony convictions from indefinite disenfranchisement states are eligible to vote. And those states which bar some people from voting even after their sentences are completed must clarify whether new arrivals with old felony convictions from sentence-only disenfranchisement states are automatically eligible, and must explain what procedures, if any, should be followed for restoration.
2. **Train Election Officials:** Clarify disenfranchisement policies and procedures for all state and local election officials through development of materials and training programs in each state. At a minimum, this should include distribution of posters, brochures and FAQ sheets to local and state elections offices.
3. **Train Criminal Justice Officials:** Provide training on disqualification and restoration policies for all correctional and criminal justice officials, particularly probation and parole staff. Correctional and criminal justice officials should also be actively engaged in describing these policies to persons under criminal justice supervision.
4. **Review Voting Restrictions on Non-Incarcerated People:** Given the serious practical difficulty of enforcing laws disqualifying people who are not incarcerated from voting – problems which clearly include both excluding eligible people from voting and allowing those who should be ineligible to vote -- state policymakers should review such policies to determine if they serve a useful public purpose.

### American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.

Using court records, police reports and news articles, ACVR Legislative Fund presented this Report documenting hundreds of reported incidents and allegations from around the country. The report **most often alleges voter intimidation and voter registration fraud, and to a lesser degree absentee ballot fraud and vote buying.** This report alleges a coordinated effort by members of some organizations to rig the election system through voter registration fraud, the first step in any vote fraud scheme that corrupts the election process by burying local officials in fraudulent and suspicious registration forms. paid Democrat operatives were far more involved in voter intimidation and suppression activities than were their Republican counterparts during the 2004 presidential election. Identified five cities as "hot spots" which require additional immediate attention, based on the findings of this report and the cities' documented history of fraud and intimidation: Philadelphia, PA, Milwaukee, WI, Seattle, WA, St. Louis/East St. Louis, MO/IL, and Cleveland, OH. Refutes charges of voter intimidation and suppression made against Republican supporters, discusses similar charges against Democrats, details incidents vote fraud and illegal voting and finally discusses problems with vote fraud, voter registration fraud and election irregularities around the country. Recommends:

- **Both national political parties should formally adopt a zero-tolerance fraud and intimidation policy that commits the party to pursuing and fully prosecuting individuals and allied organizations who commit vote fraud or who seek to deter any eligible voter from participating in the election through fraud or intimidation.** No amount of legislative reform can effectively deter those who commit acts of fraud if there is no punishment for the crime and these acts continue to be tolerated.

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- States should adopt legislation requiring government-issued photo ID at the polls and for any voter seeking to vote by mail or by absentee ballot. Government-issued photo identification should be readily available to all citizens without cost and provisions made to assure availability of government-issued identification to disabled and low-income citizens.
- States should adopt legislation requiring that all polling places be fully accessible and accommodating to all voters regardless of race, disability or political persuasion and that polling locations are free of intimidation or harassment.
- States should create and maintain current and accurate statewide voter registration databases as mandated by the federal Help America Vote Act ("HAVA") and establish procedures to assure that the statewide voter roll is current and accurate and that the names of eligible voters on the roll are consistent with the voter roll used by local election authorities in conducting the election.
- States should adopt legislation establishing a 30-day voter registration cutoff to assure that all voter rolls are accurate and that all registrants can cast a regular ballot on Election Day and the election officials have opportunity to establish a current and accurate voter roll without duplicate or fictional names and assure that all eligible voters (including all recently registered voters) are included on the voter roll at their proper precinct.
- States should adopt legislation requiring voter registration applications to be delivered to the elections office within one week of being completed so that they are processed in a timely manner and to assure the individuals registered by third party organizations are properly included on the voter roll.
- States should adopt legislation and penalties for groups violating voter registration laws, and provide the list of violations and penalties to all registration solicitors. Legislation should require those organizations obtaining a voter's registration to deliver that registration to election officials in a timely manner and should impose appropriate penalties upon any individual or organization that obtains an eligible voter's registration and fails to deliver it to election authorities.
- States should adopt legislation prohibiting "bounty" payment to voter registration solicitors based on the number of registration cards they collect.

### The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001

Written after the 2000 election, thesis of report is that structural disenfranchisement—the effect of breakdowns in the electoral system, is the new poll tax. Structural disenfranchisement includes "bureaucratic blunders, governmental indifference, and flagrant disregard for voting rights." Blame for structural disenfranchisement is laid squarely at the feet of states and localities that "shirk their responsibilities or otherwise manipulate election systems," resulting in voters "either turned away from the polls or their votes are thrown out." Data and conclusions in the Report are taken from eight sample case studies of states and cities across the country and a survey of state election directors that reinforces the findings of the case studies (New York City—in six polling places Chinese translations inverted the Democrats with the Republicans; Georgia—the state computer crashed two weeks before the election, dropping thousands of voters from the rolls; Virginia—registration problems kept an untold number from voting; Chicago—in inner-city precincts with predominately minority populations, almost four out of every ten votes cast for President (in 2000) were discarded; St. Louis—thousands of qualified voters were placed on inactive lists due to an overbroad purge; Florida—a voting list purge of voters whose name and birth date closely resembled those of people convicted of felonies; and, Texas—significant Jim Crow like barriers to minority voting.) Most ballot blockers involve the structural elements of electoral administration: "ill-trained poll workers, failures to process registration cards on time or at all, inaccurate registration rolls, overbroad purges of voter rolls, unreasonably long lines, inaccurate ballot translations and a shortage of translators to assist voters who have limited English language skills."

#### Findings:

- election directors lack the resources to effectively do their jobs and some lack the "ability or will to force local election officials to fix serious

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problems”;

- election officials are highly under funded and legislatures refuse to grant their requests for more money;
- due to a lack of funds, election officials must use old and inferior equipment and can't improve training or meet structural needs;
- election officials are generally unaware of racial disparities in voting; only three of the 50 state election administrators are non-white.

### Recommendations:

- federal policies that set nationwide and uniform election policies;
- federal guarantee of access to provisional ballots;
- enforcement of voter disability laws;
- automatic restoration of voting rights to those convicted of a crime after they have completed their sentence;
- a centralized data base of voters administered by non-partisan individuals;
- federal standards limiting precinct discarded vote rates to .25 %;
- federal requirements that jurisdiction provide voter education, including how to protect their right to vote; and laws that strengthen the ability of individuals to bring actions to enforce voting rights and anti-discrimination laws.

The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.

A September 15, 2005 Report submitted to the New Jersey Attorney General included lists of purportedly illegitimate votes in New Jersey in the 2004 general election, including lists of 10,969 individuals who purportedly voted twice and lists of 4,756 voters who were purportedly dead or incarcerated in November 2004. **Analysis of the suspect lists reveals that the evidence submitted does not show what it purports to show: cause for concern that there is serious risk of widespread fraud given the state of the New Jersey voter registration rolls.** These suspect lists were compiled by attempting to match the first name, last name, and birth date of persons on county voter registration files. **Analysis reveals several serious problems with the methodology used to compile the suspect lists that compromise the lists' practical value.** For example, middle initials were ignored throughout all counties, so that “J\_\_\_\_\_ A. Smith” was presumed to be the same person as “J\_\_\_\_\_ G. Smith.” Suffixes were also ignored, so that fathers and sons – like “B\_\_\_\_\_ Johnson” and “B\_\_\_\_\_ Johnson, Jr.” – were said to be the same person. **A presumption that two records with the same name and date of birth must represent the same person is not consistent with basic statistical principles.**

Re Claim of Double Voting by 4,497 Individuals:

- 1,803 of these 4,397 records of ostensibly illegal votes seem to be the product of a glitch in the compilation of the registration files (far more likely that data error is to blame for the doubly logged vote - to irregularities in the data processing and compilation process for one single county);
- another 1,257 entries of the 4,397 records probably represent similar data errors;
- approximately 800 of the entries on the list likely represent different people, with different addresses and different middle initials or suffixes;
- for approximately 200 of the entries in this category, however, less information is available (lack of or differences in middle initial or middle name);
- 7 voters were apparently born in January 1, 1880 – which is most likely a system default for registrations lacking date-of-birth information;
- for 227 voters, only the month and year of birth are listed: this means only that two voters with the same name were born in the same month and year, an unsurprising coincidence in a state of several million people;
- leaves approximately 289 votes cast under the same name and birth date – like votes cast by “P\_\_\_\_\_ S. Rosen,” born in the middle of the baby boom – but from two different addresses. It may appear strange, but there may be two P\_\_\_\_\_ S. Rosens, born on the same date in 1948 – and

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such coincidences are surprisingly common. . In a group of just 23 people, it is more likely than not that two will share the same birthday. For 40 people, the probability is 90%. Many, if not most, of the 289 alleged double votes of persons registered at different addresses most likely reflect two separate individuals sharing a first name, last name, middle initial, and birth date.

But there is **no doubt that there are duplicate entries on New Jersey's registration rolls.** It is well known that voter registration rolls contain "deadwood" – registration entries for individuals no longer living at a given address or deceased. There is no evidence, however, that these extra registrations are used for widespread illegal voting. **Moreover, the problem of deadwood will soon be largely resolved: both the National Voter Registration Act of 1993 and the Help America Vote Act of 2002 require states to implement several systems and procedures as of January 1, 2006, that will clean the voter rolls of duplicate or invalid entries while protecting eligible voters from unintended disfranchisement.**

Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio;" DNC Services Corporation, 2005

Study re 2004 election in Ohio. Findings considered related to EAC study:

- **Statewide, 6 % of all voters reported feelings of intimidation: 16 percent of African Americans reported experiencing intimidation versus only 5 % of white voters.**
- **African American voters were 1.2 times more likely than white voters to be required to vote provisionally.** Of provisional voters in Cuyahoga County, 35% were African American, compared to 25% of non-provisional voters, matched by geography.
- Under Ohio law, the only voters who should have been asked for identification were those voting in their first Federal election who had registered by mail but did **not** provide identification in their registration application. **Although only 7% of all Ohio voters were newly registered (and only a small percentage of those voters registered by mail and failed to provide identification in their registration application), more than one third (37% reported being asked to provide identification.—meaning large numbers of voters were illegally required to produce identification. African American voters statewide were 47% more likely to be required to show identification than white voters. Indeed, 61% of African American men reported being asked to provide identification at the polls.**
- **Scarcity of voting machines caused long lines that deterred many people from voting: 3% of voters who went to the polls left their polling places and did not return due to the long lines; statewide, African American voters reported waiting an average of 52 minutes before voting while white voters reported waiting an average of 18 minutes; overall, 20% of white Ohio voters reported waiting more than twenty minutes, while 44% of African American voters reported doing so.**

The report also includes a useful summary and description of the reports that came through Ohio Election Protection on Election Day, which included a wide variety of problems, including voter intimidation and discrimination.

Pertinent recommendations:

- **codify into law all required election practices**, including requirements for the adequate training of official poll workers
- adopt legislation to **make clear and uniform the rules on voter registration.**
- adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts, to ensure adequate and nondiscriminatory access
- improve **training of official poll workers**
- adopt **clear and uniform rules on the use of, and the counting of, provisional ballots**, and distribute them for public comment well in advance of each election day
- not adopt requirements that voters show identification at the polls, beyond those already required by federal law; **vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.**

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- **make voter suppression a criminal offense at the state level**, in all states
- **implement statewide voter lists** in accordance with the Help America Vote Act ("HAVA")
- **expend significantly more resources in educating voters on where, when and how to vote.**
- **partisan officials who volunteer to work for a candidate should not oversee or administer any elections.**

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."

### **Supervision of the Justice Department's nationwide response to election crimes:**

Election Crimes Branch oversees the Department's handling of all election crime allegations other than those involving civil rights violations, which are supervised by the Voting Section of the Civil Rights Division. Specifically, the Branch supervises four types of corruption cases: crimes that involve the voting process, crimes involving the financing of federal election campaigns, crimes relating to political shakedowns and other patronage abuses, and illegal lobbying with appropriated funds. **Vote frauds and campaign-financing offenses are the most significant and also the most common types of election crimes.** The purpose of Headquarters' oversight of election crime matters is to ensure that the Department's nationwide response to election crime is uniform, impartial, and effective. An Election Crimes Branch, headed by a Director and staffed by Section attorneys on a case-by-case basis, was created within the Section in 1980 to handle this supervisory responsibility.

### **Voting Fraud:**

During **2002** the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. During **2003** the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virgin Islands, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. During **2004** the Branch assisted United States Attorneys' Offices in the following states in the handling of vote fraud matters that occurred in their respective districts: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Washington, and Wisconsin. This assistance included evaluating vote fraud allegations to determine whether investigation would produce a prosecutable federal criminal case, helping to structure investigations, providing legal advice concerning the formulation of charges, and assisting in establishing several task force teams of federal and state law enforcement officials to investigate vote fraud matters.

### **Litigation:**

The Branch Director or Section attorneys also prosecute selected election crimes, either by assuming total operational responsibility for the case or by handling the case jointly with a United States Attorney's Office. The Section also may be asked to supervise the handling of a case in the event of a partial recusal of the local office. For example, in 2002 the Branch continued to supervise the prosecution of a sheriff and his election attorney for using data from the National Crime Information Center regarding voters' criminal histories to wage an election contest.

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### **District Election Officer Program:**

The Branch also assists in implementing the Department's long-standing District Election Officer (DEO) Program. This Program is designed to ensure that each of the 93 United States Attorneys' Offices has a trained prosecutor available to oversee the handling of election crime matters within the district and to coordinate district responses with Headquarters regarding these matters. The DEO Program involves the appointment of an Assistant United States Attorney in each federal district to serve a two-year term as a District Election Officer; the training of these prosecutors in the investigation and prosecution of election crimes; and the coordination of election-related initiatives and other law enforcement activities between Headquarters and the field. In addition, the DEO Program is a crucial feature of the Department's nationwide Election Day Program, which occurs in connection with the federal general elections held in November of even-numbered years. The Election Day Program ensures that federal prosecutors and investigators are available both at the Department's Headquarters in Washington and in each district to receive and handle complaints of election irregularities from the public while the polls are open and that the public is aware of how these individuals can be contacted on election day. In 2002 the Department enhanced the DEO Program by establishing a Ballot Integrity Initiative.

### **Ballot Integrity Initiative:**

**Beginning in September of 2002**, the Public Integrity Section, acting at the request of the Attorney General, assisted in the implementation of a Ballot Integrity Initiative for the 2002 general election and subsequent elections. This initiative included increasing the law enforcement priority the Department gives to election crimes; holding a special day-long training event in Washington, DC for representatives of the 93 United States Attorneys' Offices; publicizing the identities and telephone numbers of the DEOs through press releases issued shortly before the November elections; and requiring the 93 U.S. Attorneys to communicate the enhanced federal prioritization of election crime matters to state and local election and law enforcement authorities. As part of Ballot Integrity Initiative, on October 8, 2002, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a Voting Integrity Symposium for District Election Officers representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Attorney General John Ashcroft delivered the keynote address on the importance of election crime and ballot integrity enforcement. Assistant Attorney General of the Civil Rights Division Ralph Boyd and Assistant Attorney General of the Criminal Division Michael Chertoff also spoke to attendees on the protection of voting rights and the prosecution of election cases. As part of Ballot Access and Voting Integrity Initiative, on September 23 and 24, 2003, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a two-day Symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Assistant Attorney General of the Civil Rights Division Alexander Acosta and Assistant Attorney General of the Criminal Division Christopher A. Wray delivered the keynote addresses on the importance of protecting voting rights and the prosecution of election cases. On July 20 and 21, 2004, the Public Integrity Section and the Voting Section of the Department's Civil Rights Division co-sponsored a two-day symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes available to prosecute such cases, and the handling of civil rights matters involving voting. Attorney General John Ashcroft delivered the keynote address on the importance of protecting voting rights and the prosecution of election fraud. In addition, Assistant Attorney General Christopher A. Wray of the Criminal Division and Assistant Attorney General R. Alexander Acosta of the Civil Rights Division addressed conference attendees on voting rights and election fraud enforcement issues respectively.

As a result of the Initiative, during 2002 the number of election crime matters opened by federal prosecutors throughout the country increased significantly, as did the Section's active involvement in election crime matters stemming from the Initiative. At the end of 2002, the Section was supervising and providing advice on approximately 43 election crime matters nationwide. In addition, as of December 31, 2002, 11 matters involving possible election crimes were pending in the Section. During 2002 the Section closed two election crime matters and continued its operational supervision of 8 voting fraud cases (conspiracy to illegally obtain criminal history records to use to challenge voters (AL) and 7 cases of vote buying involving 10 defendants (KY).

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Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)

Addresses the role of the United States Department of Justice in matters of election fraud, specifically: what sort of election-related conduct is potentially actionable as a federal crime; what specific statutory theories apply to frauds occurring in elections lacking federal candidates on the ballot, what federalism; procedural, and policy considerations impact on the federalization of this type of case; and how Assistant United States Attorneys should respond to this type of complaint. As a general rule, the federal crime of voter fraud embraces only organized efforts to corrupt of the election process itself: i.e., the registration of voters, the casting of ballots, and the tabulation and certification of election results. Moreover, this definition excludes all activities that occur in connection with the political campaigning process, unless those activities are themselves illegal under some other specific law or prosecutorial theory. This definition also excludes isolated acts of individual wrongdoing that are not part of an organized effort to corrupt the voting process. Mistakes and other gaffs that inevitably occur are not included as voter fraud. Prosecuting election fraud offenses in federal court is further complicated by the constitutional limits that are placed on federal power over the election process. The conduct of elections is primarily a state rather than a federal activity.

### **Four situations where federal prosecution is appropriate:**

1. Where the objective of the conduct is to corrupt the outcome of a federal elective contest, or where the consequential effect of the corrupt conduct impacts upon the vote count for federal office;
2. Where the object of the scheme is to discriminate against racial, ethnic or language minority groups, the voting rights of which have been specifically protected by federal statutes such as the Voting Rights Act, 42 U.S.C. section 1973 et seq.;
3. Where federalization is required in order to redress longstanding patterns of electoral fraud, either at the request of state or local authorities, or in the face of longstanding inaction by state authorities who appear to be unwilling or unable to respond under local law; and,
4. Where there is a factual basis to believe that fraudulent registration or voting activity is sufficiently connected to other forms of criminal activity that perusing the voter fraud angle will yield evidence useful in the prosecution of other categories of federal offense

### **Four advantages to federal prosecution:**

1. Voter fraud investigations are labor intensive - local law enforcement agencies often lack the manpower and the financial resources to take these cases on;
2. Voter fraud matters are always politically sensitive and very high profile endeavors at the local level - local prosecutors (who are usually themselves elected) often shy away from prosecuting them for that reason; the successful prosecution of voter fraud cases demands that critical witnesses be examined under oath before criminal charges based on their testimony are filed.
3. Many states lack the broad grand jury process that exists in the federal system; and
4. The defendants in voter fraud cases are apt to be politicians - or agents of politicians - and it is often impossible for either the government or the defendant to obtain a fair trial in a case that is about politics and is tried to a locally-drawn jury. The federal court system provides for juries to be drawn from broader geographic base, thus often avoiding this problem.

Several prosecutorial theories used by United States Attorneys to federalize election frauds are discussed.

### **Four questions used by prosecutors in evaluating the credibility of election complaints:**

1. does the substance of the complaint assuming it can be proven through investigation - suggest a potential crime;
2. is the complaint sufficiently fact-specific that it provides leads for investigators to pursue;
3. is there a federal statute that can be used to federalize the criminal activity at issue; and,
4. is there a special federal interest in the matter that warrants federalization rather than deferral to state law enforcement.

All federal election investigations must avoid the following: non-interference in elections unless absolutely necessary to preserve evidence; interviewing voters during active voting periods; seizing official election documentation; investigative activity inside open polls; and prosecutors must adhere to 18 U.S.C. section 592, prohibiting the stationing of armed men at places where voting activity is taking place.

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Election crimes based on race or language minority status are treated as civil rights matters under the Voting Rights Act.

People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>

Election Protection 2004 was the nation's most far-reaching effort to protect voter rights before and on Election Day. The historic nonpartisan program included: (1) a toll-free number, 1-866-OUR-VOTE, with free, immediate and multi-lingual assistance to help voters with questions about registration and voting, and assist voters who encounter barriers to the ballot box; (2) distribution of more than five million "Voters' Bills of Rights" with state-specific information; (3) 25,000 volunteers, including 6,000 lawyers and law students, who watched for problems and assisted voters on the spot at more than 3,500 predominantly African-American and Latino precincts with a history of disenfranchisement in at least 17 states; and (4) civil rights lawyers and advocates represented voters in lawsuits, preserved access to the polls, exposed and prevented voter intimidation, worked with election officials to identify and solve problems with new voting machines, technology and ballot forms, and protected voter rights in advance and on Election Day.

### **Voter Intimidation and Suppression Stories (Abridged):**

- An Associated Press story noted Election Protection's exposure of reported voter suppression tactics in **Colorado**: Officials with the Election Protection Coalition, a voter-rights group, also said **some voters in a predominantly black neighborhood north of Denver found papers on their doorsteps giving them the wrong address for their precinct.**
- Election Protection received a report from Boulder County, **Colorado** that a **poll worker made racist comments to Asian American voter and then told her she was not on the list and turned her away.** The voter saw others filling out provisional ballots and asked for one but was denied. Another Asian American woman behind her in line was also given trouble by the same poll worker (he questioned her nationality and also turned her away).
- Election Protection received a report from Florissant County, **Missouri** from a voter who lives in predominantly white neighborhood. While waiting in line to vote, a **Republican challenger challenged the black voters by requesting more proof of identification, residence, and signature match, while asking nothing from white voters.** Also, the same voter reportedly asked a few questions about voting but an election officials refused to provide any meaningful answer, insisting that "it's very simple", but provided white voters with information when requested. There was one other black voter in line who was also singled out for same treatment while white voters were not.
- The Election Protection hotline received reports from Pinellas County, **Florida** that individuals purporting to be from the Kerry campaign are going door-to-door handing out absentee ballots, and asking voters to fill them out, and then taking the ballots from them, saying "Vote here for Kerry. Don't bother going to the polls."
- The Election Protection Coalition received a report from a woman whose sister lives in **Milwaukee** and is on government assistance. Her sister was reportedly told by her "case manager" that if she voted for Kerry, she would stop receiving her checks.
- An illiterate, older and disabled voter in **Miami-Dade** asked for assistance reading the ballot and reported that a poll worker yelled at him and refused to assist him and also refused to allow him to bring a friend into the booth in order to read the ballot to him.
- The Election Protection Coalition have gathered reports that flyers are circulating in a black community in **Lexington, South Carolina** claiming they those who are behind on child support payments will be arrested as the polls.
- **Minority voters from Palm Beach County, Florida** reported to the hotline that they received middle-of-the-night, live harassing phone calls warning them away from the polls.
- A volunteer for Rock the Vote reported that two illiterate voters in **Michigan** requested assistance with their ballots but were refused and reportedly mocked by poll workers.
- The hotline received a call from a radio DJ in **Hillsborough County, Florida**, who stated that he has received many calls (most of which were from **African-Americans**) claiming that poll workers were turning voters away and not "letting" them vote.

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- The hotline received a call from **Pima County, Arizona**, indicating that **Democratic voters received calls throughout Monday evening, providing incorrect information about the precinct location**. Voters have had to be transported en masse in order to correct the problem.
- A caller from **Alabama** claims that he was told at his polling place that he could vote there for everything but the President and that he would have to go elsewhere in order to vote for a presidential candidate.
- Poll monitors in **Philadelphia** reports groups of lawyers, traveling in threes, who pull voters out of line and challenge them to provide ID, but when challenged themselves, they hop into waiting cars or vans and leave. Similar activity by Republican lawyers in Philadelphia was reported in the 2002 election.
- In **Cuyahoga, Ohio**, a caller reported that all black voters are being asked to show ID, while white voters are not. Caller report that he is black and had to show ID while his girlfriend is white and did not have to show ID.
- Two months ago, **suspicious phone calls to newly registered Democrats —telling them they weren't, in fact, registered to vote —** were traced to the Republican headquarters in the **Eastern Panhandle**. On Monday, Democrats there said the calls have started again, even after the **Berkeley County Clerk — a Republican — sent the party a cease-and-desist letter**. The Berkeley prosecutor, who also is county Democratic chairman, has called on the U.S. attorney to investigate.
- In **Tuscon, Arizona** a **misleading call informing voters that they should vote on November 3** has been traced back to the state GOP headquarters. The FBI is investigating.
- **A man driving around in a big van covered in American flags and a big picture of a policeman was reportedly parked in front of a polling place; he then got out and moved within the 75 ft limit**, until he was asked to leave; he then was found inside the polling place and was again asked to leave. Election Protection volunteers contacted officials and the man was eventually removed.
- The Election Protection hotline has received a report from individuals who claim to have received recorded telephone message coming from **Bill Clinton and ACT and reminding them to vote on Nov. 3rd**.
- In **Massachusetts**, the EP Hotline has received a report that a radio station (**WILD**) is broadcasting that voters will be arrested on the spot if they have outstanding parking tickets.
- In **Richland, South Carolina** Election Protection has received a report of a poll manager turning away individuals who do not have photo ID issued to the county or a driver's license; an EP lawyer spoke with the Poll Manager at 8:20 am and told her that people with other forms of ID should be allowed to vote by provisional ballot.
- In **Greenville**, a caller reported that a **white poll worker was asking Blacks for multiple form of I.D.** Fortunately, the voter who reported the problem did have a second I.D. but reported that some others were turned away. Election Protection attorneys have alerted election officials.
- In **Allegheny County, Pennsylvania**, an official looking flyer advises Democratic voters to "create a peaceful voting environment" by voting on Wednesday, November 3
- The week before the election, flyers were circulated in **Milwaukee** under the heading "Milwaukee Black Voters League" with some "warnings for election time." The flyer listed false reasons for which you would be barred from voting (such as a traffic ticket) and then warned that "If you violate any of these laws you can get ten years in prison and your children will get taken away from you."
- There is a **Jefferson County** flyer which tells voters "See you at the Poles!sic]"... on November 4.

Craig Donsanto, "Prosecution of Electoral Fraud Under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

[NO SUMMARY FOUND] This is summary of federal role in prosecuting election crimes.

General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote,"

## EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

Report to Congressional Requesters, September 2005.

**[SUMMARY FAILS TO NOTE ELECTION OFFICIALS' RESPONSEs THAT LITTLE VOTING FRAUD OR VOTER INTIMIDATION WAS DETECTED. DETECTED VOTING FRAUD WAS RELATED TO SUBMISSION OF FALSE/MATERIALLY INCORRECT VOTER REGISTRATION APPLICATIONS AND TO ABSENTEE BALLOT FRAUD. VOTER SUPPRESSION EFFORTS OCCUR.]**

This Report focuses on the efforts of local election officials in 14 jurisdictions within 7 states to manage the registration process, maintain accurate voter registration lists, and ensure that eligible citizens in those jurisdictions had the opportunity to cast ballots during the 2004 election. The Report concentrates on election officials' characterization of their experiences with regard to (1) managing the voter registration process and any challenges related to receiving voter registration applications; checking them for completeness, accuracy, and duplication; and entering information into voter registration lists; (2) removing voters' names from voter registration lists and ensuring that the names of eligible voters were not inadvertently removed; and (3) implementing HAVA provisional voting and identification requirements and addressing any challenges encountered related to these requirements. The Report also provides information on motor vehicle agency (MVA) officials' characterization of their experiences assisting citizens who apply to register to vote at MVA offices and forwarding voter registration applications to election offices. The Report analyzed information collected from elections and motor vehicle agency offices in seven states—Arizona, California, Michigan, New York, Texas, Virginia, and Wisconsin. The 14 jurisdictions we selected were Gila and Maricopa Counties, Arizona; Los Angeles and Yolo Counties, California; City of Detroit and Delta Township, Michigan; New York City and Rensselaer County, New York; Bexar and Webb Counties, Texas; Albemarle and Arlington Counties, Virginia; and the cities of Franklin and Madison, Wisconsin.

Election officials representing all but one of the jurisdictions surveyed following the November 2004 election said they faced some challenges managing the voter registration process, including (1) receiving voter registration applications; (2) checking them for completeness, accuracy, and duplication; and (3) entering information into voter registration lists; when challenges occurred, election officials reported they took various steps to address them. All but 1 of the jurisdictions reported removing names from registration lists during 2004 for various reasons, including that voters requested that their names be removed from the voter registration list; information from the U.S. Postal Service (USPS) showing that voters had moved outside the jurisdiction; felony records received from federal, state, or local governments identifying voters as ineligible due to felony convictions; and death records received from state or local vital statistics offices. All of the jurisdictions reported that they permitted citizens to cast provisional ballots during the November 2004 election. In addition, 12 of the 14 jurisdictions to which this was applicable reported that they offered certain first-time voters who registered by mail the opportunity to cast provisional ballots. Local election officials in 12 of the 13 jurisdictions 13 we surveyed reported that they set up mechanisms to inform voters—without cost—about the outcome of their provisional votes during the November 2004 election. These mechanisms included toll-free telephone numbers, Web sites, and letters sent to the voters who cast provisional ballots. Election officials representing 8 of the 14 jurisdictions reported facing challenges implementing provisional voting for various reasons, including some poll workers not being familiar with provisional voting or, in one jurisdiction representing a large number of precincts, staff not having sufficient time to process provisional ballots.

Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.

A comprehensive survey and analysis of vote fraud in the United States. The methodology included doing nexis searches for all 50 states and surveying existing research and reports. In addition, Minnite did a more in-depth study of 12 diverse states by doing nexis searches, studying statutory and case law, and conducting interviews with election officials and attorneys general. Finally, the study includes an analysis of a few of the most high profile cases of alleged fraud in the last 10 years, including the Miami mayoral election (1997), Orange County congressional race (1996), and the general election in Missouri (2000). In these cases, Minnite shows that many allegations of fraud do not end up being meritorious. Minnite finds that available evidence suggests that the incidence of election fraud is minimal and rarely affects election outcomes. Election officials generally do a very good job of protecting against fraud. Conditions that give rise to election fraud have steadily declined over the last century as a result of weakened political parties, strengthened election administration, and improved voting technology. There is little available evidence that election reforms such as the National Voter Registration Act, election day registration, and mail-in voting have resulted in increases in election fraud. Election

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fraud appears also to be very rare in the 12 states examined more in-depth. Legal and news records turned up little evidence of significant fraud in these states or any indication that fraud is more than a minor problem. Interviews with state officials further confirmed this impression. Minnite found that, **overall, the absentee mail-in ballot process is the feature most vulnerable to voter fraud.** There is not a lot of evidence of absentee ballot fraud but the potential for fraud is greatest in this area because of a lack of uniformly strong security measures in place in all states to prevent fraud.

### **Suggested reforms to prevent what voter fraud does take place:**

1. effective use of new statewide voter registration databases;
2. identification requirements for first time voters who register by mail should be modified to expand the list of acceptable identifying documents;
3. fill important election administration positions with nonpartisan professionals;
4. strengthen enforcement through adequate funding and authority for offices responsible for detecting and prosecuting fraud; and
5. establish Election Day Registration because it usually requires voter identification and authorization in person before a trained election worker, which reduces the opportunity for registration error or fraud.
- 6.

People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

A description and analysis of the complaints and allegations of voting irregularities gathered by the Election Protection program during the 2004 presidential election. Election Protection received more than a thousand complaints of voter suppression or intimidation. Complaints ranged from intimidating experiences at polling places to coordinated suppression tactics. For example:

- Police stationed outside a Cook County, Illinois, polling place were requesting photo ID and telling voters if they had been convicted of a felony that they could not vote.
- In Pima, Arizona, voters at multiple polls were confronted by an individual, wearing a black tee shirt with "US Constitution Enforcer" and a military-style belt that gave the appearance he was armed. He asked voters if they were citizens, accompanied by a cameraman who filmed the encounters.
- There were numerous incidents of intimidation by partisan challengers at predominately low income and minority precincts
- Voters repeatedly complained about misinformation campaigns via flyers or phone calls encouraging them to vote on a day other than November 2, 2004 or of false information regarding their right to vote. In Polk County, Florida, for example, a voter received a call telling her to vote on November 3. Similar complaints were also reported in other counties throughout Florida. In Wisconsin and elsewhere voters received flyers that said:
  - o "If you already voted in any election this year, you can't vote in the Presidential Election."
  - o "If anybody in your family has ever been found guilty of anything you can't vote in the Presidential Election."
  - o "If you violate any of these laws, you can get 10 years in prison and your children will be taken away from you."

There were also numerous reports of poll workers refusing to give voters provisional ballots.

The following is a summary of the types of acts of suppression and intimidation included in the report and a list of the states in which they took place. All instances of irregularities that were more administrative in nature have been omitted:

1. **Improper implementation of voter identification rules, especially asking only African Americans for proof of identity:** Florida, Ohio, Pennsylvania, Illinois, Missouri, Arkansas, Georgia, Louisiana
2. **Individuals at the polls posing as some sort of law enforcement authority and intimidating and harassing voters:** Arizona, Missouri
3. **Intimidating and harassing challengers at the polls:** Ohio, Michigan, Wisconsin, Missouri, Minnesota
4. **Deceptive practices and disinformation campaigns, such as the use of flyers with intentional misinformation about voting rights or voting procedures, often directed at minority communities; the use of phone calls giving people misinformation about polling sites and**

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other procedures; and providing verbal misinformation at the polls in a way that appears to have been intentionally misleading: Florida, Pennsylvania, Illinois, Wisconsin, Missouri, North Carolina, Arkansas, Texas

5. **Refusal to provide provisional ballots to certain voters:** Ohio, Pennsylvania, Illinois, Michigan, Colorado, Missouri, Texas, Georgia, Louisiana
6. **Registration applications submitted through third parties that were not processed:** Arizona, Michigan, Nevada (registration forms destroyed by Sproul Associates)
7. **Improper removal from the voter registration list:** Arizona
8. **Individuals questioning voters' citizenship:** Arizona
9. **Police officers at the polls intimidating voters:** Illinois, Michigan, Wisconsin, Missouri, North Carolina

The report does not provide corroborating evidence for the allegations it describes. However, especially in the absence of a log of complaints received by the Department of Justice, this report provides a very useful overview of the types of experiences some voters more than likely endured on Election Day in 2004.

### Books

John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.

Focuses almost entirely on alleged transgressions by Democrats. Fund's accusations, if credible, would indicate that fraud such as voter registration fraud, absentee ballot fraud, dead people voting, and felon voting is prevalent throughout the country. However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount and types of voter fraud and voter intimidation occurring.

Fund says that "Election fraud, whether its phony voter registrations, illegal absentee ballots, shady recounts or old-fashioned ballot-box stuffing, can be found in every part of the United States, although it is probably spreading because of the ever-so-tight divisions that have polarized the country and created so many close elections lately. Fund argues that fraud **has been made easier by the passage of the National Voting Rights Act** because it allows ineligible voters to remain on the voter rolls, allowing a voter to vote in the name of someone else. He claims dead people, people who have moved, and people in jail remain on the voting list. He believes because of NVRA illegal aliens have been allowed to vote.

**Absentee balloting makes it even worse:** someone can register under false names and then use absentee ballots to cast multiple votes. Groups can get absentee ballots for the poor and elderly and then manipulate their choices.

Provides a number of examples of alleged voter fraud, mostly perpetrated by Democrats. For example, he claims much fraud in St. Louis in 2000, including illegal court orders allowing people to vote, **felons voting, people voting twice, dead people voting, voters were registered to vacant lots, election judges were not registered and evidence of false registrations.** Another case he pays a great deal of attention to are the alleged transgressions by Democrats in Indian Country in South Dakota 2002, including **voter registration fraud, suspicious absentee ballot requests, vote hauling, possible polling place fraud, abusive lawyers at polling sites, and possible vote buying.**

Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.

Bulk of the book comprises stories from United States electoral history outside the scope of this project; however, tales are instructive in showing how far back irregular and illegal voting practices go. Focuses almost entirely on alleged transgressions by Republican, although at times it does include complaints about Democratic tactics. Gumbel's accusations, if credible, especially in the Bush-Gore election, would indicate there were a number of problems in key states in such areas as **intimidation, vote counting, and absentee ballots.** However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount

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and types of voter fraud and voter intimidation occurring.
Tracy Campbell, <i>Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004</i> , Carroll & Graf Publishers, 2005.
Traces the historical persistence of voter fraud from colonial times through the 2004 Bush-Kerry election. From the textual information, it quickly becomes obvious that voter fraud was not limited to certain types of people or to certain political parties. [SKIMPY SUMMARY-DOES NOT SAY MUCH.]
David E. Johnson and Jonny R. Johnson, <i>A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush</i> , Taylor Trade Publishing, 2004.
<b>Adds almost nothing to the present study.</b> It contains no footnotes and no references to primary source material, save what may be able to be gleaned from the bibliography. Takes a historical look at United States Presidential elections from Andrew Jackson to George Bush by providing interesting stories and other historical information. There are only three pages out of the entire book that touches on vote fraud in the first Bush election. The authors assert that the exit polls in Florida were probably correct. The problem was the pollsters had no way of knowing that thousands of votes would be invalidated. But the authors do not believe that fraud was the cause of the tabulation inaccuracy.
Mark Crispin Miller, <i>Fooled Again</i> , Basic Books, 2005.
Sets out to show that the 2004 election was won by Bush through nefarious means, and indicts the news media for not taking anomalies, irregularities, and <b>alleged malfeasance</b> in the process seriously enough. However, book is well sourced, and individual instances of alleged malfeasance discussed may be worth looking at. He accuses Republicans of committing crimes and improprieties throughout the country, including: <ol style="list-style-type: none"> <li>1. <b>deliberate disparities in voting machine distribution and long lines in Democratic jurisdictions;</b></li> <li>2. <b>misinterpretation of voting laws by elections officials to the detriment of Democratic voters;</b></li> <li>3. <b>dirty tricks and deceptive practices to mislead Democratic and minority voters about voting times, places and conditions;</b></li> <li>4. <b>machine irregularities in Democratic jurisdictions;</b></li> <li>5. <b>relocating polling sites in Democratic and minority areas;</b></li> <li>6. <b>suspicious mishandling of absentee ballots;</b></li> <li>7. <b>refusing to dispense voter registration forms to certain voter registration groups;</b></li> <li>8. <b>intimidation of students;</b></li> <li>9. <b>suspicious ballot spoilage rates in certain jurisdictions;</b></li> <li>10. <b>“strategic distribution of provisional ballots,” and trashing of provisional ballots;</b></li> <li>11. <b>harassment of Native American voters;</b></li> <li>12. <b>a Republican backed organization engaging in voter registration efforts throughout the country that allegedly destroyed the voter registration forms of Democrats;</b></li> <li>13. <b>illegitimate challenges at the polls by Republican poll watchers;</b></li> <li>14. <b>improper demands for identification in certain areas;</b></li> <li>15. <b>Republican challenges to the voter registration status of thousands of voters before the election, and the creation of lists of voters to challenge at the polls;</b></li> <li>16. <b>wrongful purging of eligible voters from voting rolls;</b></li> <li>17. <b>partisan harassment;</b></li> <li>18. <b>the selective placement of early voting sites; and</b></li> <li>19. <b>failure to send out absentee ballots in time for people to vote.</b></li> </ol> <p>Details what he says was the inappropriate use of the Federal Voter Assistance Program that made voting for the military easy while throwing up obstacles</p>

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for civilians overseas in their efforts to vote by absentee ballot, leading many of them to be disenfranchised.

**Legal**

*Indiana Democratic Party vs. Rokita*, U.S. District Court Southern District of Indiana (Indianapolis) 1:05-cv-00634, U.S. Court of Appeals, 7<sup>th</sup> Circuit 06-2218

Although the proponents of SEA 483 asserted that the law was intended to combat voter fraud, no evidence of the existence of such fraud has ever been provided. No voter has been convicted of or even charged with the offense of misrepresenting his identity for purposes of casting a fraudulent ballot in person, King Dep. 95-96; Mahern Aff. ¶¶ 2-3, though there have been documented instances of absentee ballot fraud. King Dep. 120. Indeed, no evidence of in person, on-site voting fraud was presented to the General Assembly during the legislative process leading up to the enactment of the Photo ID Law. Mahern Aff. ¶¶ 2-

The State cannot show any compelling justification for subjecting only voters who vote in person to the new requirements of the Photo ID Law, while exempting absentee voters who vote by mail or persons who live in state-certified residential facilities.

On the other hand, absentee ballots are peculiarly vulnerable to coercion and vote tampering since there is no election official or independent election observer available to ensure that there is no illegal coercion by family members, employers, churches, union officials, nursing home administrators, and others.

Law gives virtually unbridled discretion to partisan precinct workers and challengers to make subjective determinations such as (a) whether a form of photo identification produced by a voter conforms to what is required by the Law, and (b) whether the voter presenting himself or herself at the polls is in fact the voter depicted in the photo Robertson Dep. 29-34, 45; King Dep. 86, 89. This is significant because any voter who is challenged under this Law will be required to vote by provisional ballot and to make a special trip to the election board's office in order to have his vote counted. Robertson Dep. 37; King Dep. 58.

The Photo ID Law confers substantial discretion, not on law enforcement officials, but on partisan precinct poll workers and challengers appointed by partisan political officials, to determine both whether a voter has presented a form of identification which conforms to that required by the Law and whether the person presenting the identification is the person depicted on it. Conferring this degree of discretion upon partisan precinct officials and members of election boards to enforce the facially neutral requirements of the Law has the potential for becoming a means of suppressing a particular point of view.

The State arguably might be justified in imposing uniform, narrowly-tailored and not overly-burdensome voter identification requirements if the State were able to show that there is an intolerably high incidence of fraud among voters misidentifying themselves at the polls for the purpose of casting a fraudulent ballot. But here, the State has utterly failed to show that this genre of fraud is rampant or even that it has ever occurred in the context of on-site, in-person voting (as opposed to absentee voting by mail) so as to justify these extra burdens, which will fall disproportionately on the poor and elderly.

And where the State has already provided a mechanism for matching signatures, has made it a crime to misrepresent one's identity for purposes of voting, and requires the swearing out of an affidavit if the voter's identity is challenged, it already has provisions more than adequate to prevent or minimize fraud in the context of in-person voting, particularly in the absence of any evidence that the problem the Law seeks to address is anything more than the product of hypothesis, speculation and fantasy.

In-person voter-identity fraud is notoriously difficult to detect and investigate. In his book *Stealing Elections*, John Fund observes that actual in-person voter fraud is nearly undetectable without a voter photo-identification requirement because anybody who provides a name that is on the rolls may vote and then walk away with no record of the person's actual identity. The problem is only exacerbated by the increasingly transient nature of society. Documentation of in-person voter fraud often occurs only when a legitimate voter at the polls hears a fraudulent voter trying to use her name, as happened to a woman in California in 1994. See Larry J. Sabato & Glenn R. Simpson, *Dirty Little Secrets* 292 (1996).

Regardless of the lack of extensive evidence of in-person voter fraud, the Commission on

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Federal Election Reform (known as the Baker-Carter Commission) recently concluded that "there is no doubt that it occurs." State Ex. 1, p. 18.1 **Legal cases as well as newspaper and other reports confirm that in-person voter-identity fraud, including voter impersonation, double votes, dead votes, and fake addresses, plague federal and state elections. [The memorandum details several specific cases of various types of alleged voting fraud from the past several years]**

**Though they are largely unable to study verifiable data concerning in-person voter fraud, scholars are well aware of the conditions that foster fraudulent voting. See Fund, *supra*; Sabato & Simpson, *supra*, 321. In particular, fraud has become ever more likely as "it has become more difficult to keep the voting rolls clean of 'deadwood' voters who have moved or died" because such an environment makes "fraudulent voting easier and therefore more tempting for those so inclined." Sabato & Simpson, *supra*, 321. "In general, experts believe that one in five names on the rolls in Indiana do not belong there." State Ex. 25.**

For this case, Clark Benson, a nationally recognized expert in the collection and analysis of voter-registration and population data, conducted his own examination of Indiana's voter registration lists and concluded that they are among the most highly inflated in the nation.

The Crawford Plaintiffs cite the concessions by Indiana Election Division Co-Director King and the Intervenor-State that they are unaware of any historical in-person incidence of voter fraud occurring at the polling place (Crawford Brief, p. 23) as conclusive evidence that in-person voter fraud does not exist in Indiana. They also seek to support this conclusion with the testimony of two "veteran poll watchers," Plaintiff Crawford and former president of the Plaintiff NAACP, Indianapolis Chapter, Roderick E. Bohannon, who testified that they had never seen any instances of in-person voter fraud.

(*Id.*)

While common sense, the experiences of many other states, and the findings of the Baker-Carter Commission all lead to the reasonable inferences that (a) in-person polling place fraud likely exists, but (b) is nearly impossible to detect without requiring photo identification, the State can cite to no confirmed instances of such fraud. On the other hand, the Plaintiffs have no proof that it does not occur.

At the level of logic, moreover, it is just reasonable to conclude that the lack of confirmed incidents of in-person voting fraud in Indiana is the result of an ineffective identification security system as it is to conclude there is no in-person voting fraud in Indiana. So while it is undisputed that the state has no proof that in-person polling place fraud has occurred in Indiana, there does in fact remain a dispute over the existence *vel non* of in-person polling place fraud.

It is also important to understand that the nature of in-person election fraud is such that it is nearly impossible to detect or investigate. Unless a voter stumbles across someone else trying to use her identity, see Sabato & Simpson, *supra*, 292, or unless the over-taxed poll worker happens to notice that the voter's signature is different from her registration signature State Ex. 37, ¶ 9, the chances of detecting such in-person voter fraud are extremely small. Yet, inflated voter-registration rolls provide ample opportunity for those who wish to commit in-person voter fraud. See Fund, *supra*, 24, 65, 69, 138; Sabato & Simpson, *supra*, 321. And there is concrete evidence that the names of dead people have been used to cast fraudulent ballots. See Fund, *supra*, 64. Particularly in light of Indiana's highly inflated voter rolls State Ex. 27, p. 9, Plaintiffs' repeated claims that there has never been any in-person voter fraud in Indiana can hardly be plausible, even if the state is unable to prove that such fraud has in fact occurred.

*Common Cause of Georgia vs. Billups*, U.S. District Court, Northern District of Georgia (Rome) 4:05-cv-00201-HLM U.S. Court of Appeals, 11<sup>th</sup> Circuit 05-15784

The Secretary of State, as the Chief Election Officer in Georgia, informed the General Assembly before the passage of Act 53 in a letter (attached hereto as Exhibit A), and also informed the Governor in a letter (attached hereto as Exhibit B) before he signed the bill into law, that there had been no documented cases of fraudulent voting by persons who obtained ballots unlawfully by misrepresenting their identities as registered voters to poll workers reported to her office during her nine years as Secretary of State .

Although the Secretary of State had informed the members of the General Assembly and the Governor prior to the enactment of Act 53, that her office had

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received many complaints of voter fraud involving absentee ballots and no documented complaints of fraud that involve ballots that were cast in person at the polls, the General Assembly ignored this information and arbitrarily chose instead to require only those registered voters who vote in person to present a Photo ID as a condition of voting, but deliberately refused to impose the same requirement on absentee voters.

The Stated Purpose Of The Photo ID Requirement Fraud Is A Pretext.

According to a press release prepared by the Communications Office of the Georgia House of Representatives, the purpose of Act 53 is: to address the issue of voter fraud by placing tighter restrictions on voter identification procedures. Those casting ballots will now be required to bring a photo ID with them before they will be allowed to vote.

Al Marks, Vice Chairman for Public Affairs and Communication of the Hall County GOP told the Gainesville Times: I don't think we need it for voting, because I don't think there's a voter fraud problem. Gainesville Times, "States Voters Must Present Picture IDs" (September 15, 2005) ([www.gainesvilletimes.com](http://www.gainesvilletimes.com)).

**There is no evidence that the existing provisions of Georgia law have not been effective in deterring and preventing imposters from fraudulently obtaining and casting ballots at the polls by misrepresenting their true identities to election officials and passing themselves off as registered voters whose names appear on the official voter registration list.**

The pretextual nature of the purported justification for the burden which the Photo ID requirement imposes on the right to vote is shown by the following facts:

(a) Fraudulent voting was already prohibited by existing Georgia law without unduly burdening the right of a citizen to vote.

(i) Fraudulent voting was already prohibited as a crime under O.C.G.A. §§ 21-2-561, 21-2-562, 21-2-566, 21-2-571, 21-2-572 and 21-2-600, punishable by a fine of up to \$10,000 or imprisonment for up to ten years, or both.

(ii) Voter registration records are updated periodically by the Secretary of State and local election officials to eliminate people who have died, have moved, or are no longer eligible to vote in Georgia for some other reason.

(iii) Existing Georgia law also required election officials in each precinct to maintain a list of names and addresses of registered voters residing in that precinct, and to check off the names of each person from that official list as they cast their ballots.

(iv) Registered voters were also required by existing Georgia law to present at least one of the seventeen forms of documentary identification to election officials who were required, before issuing the voter a ballot, to match the name and address shown on the document to the name and address on the official roll of registered voters residing in the particular precinct. O.C.G.A. § 21-2-417.

(b) There is no evidence that the existing Georgia law has not been effective in deterring or preventing fraudulent in-person voting by impersonators - the only kind of fraudulent voting that might be prevented by the Photo ID requirement. To the contrary, the Secretary of State, who, as the Superintendent of Elections, is the highest election official in Georgia, informed both the General Assembly (Exhibit A) and the Governor (Exhibit B) in writing that there had been no documented cases of fraudulent in person voting by imposters reported to her during her nine years in office.

(c) If the true intention of the General Assembly had been to prevent fraudulent voting by imposters, the General Assembly would have imposed the same restrictions on the casting of absentee ballots - particularly after the Secretary of State had called to their attention the fact that there had been many documented instances of fraudulent casting of absentee ballots reported to her office.

(d) Fraudulent in-person voting is unlikely, would be easily detected if it had occurred in significant numbers, and would not be likely to have a substantial impact on the outcome of an election:

(i) Many people vote at a local neighborhood polling place where they are likely to be known to and recognized by neighbors or poll workers.

(ii) Voters were required by existing Georgia law (O.C.G.A. § 21-2-417), to provide one of the seventeen means of identification to election officials.

(iii) Election officials are required, before issuing the ballot to the voter, to check off the name of either voter from an up-to-date list of the names and addresses of every registered voter residing in the precinct. If an imposter arrived at a poll and was successful in fraudulently obtaining a ballot before

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the registered voter arrived at the poll, a registered voter, who having taken the time to go to the polls to vote, would undoubtedly complain to elections officials if he or she were refused a ballot and not allowed to vote because his or her name had already been checked off the list of registered voters as having voted. Likewise, if an imposter arrived at the polls after the registered voter had voted and attempted to pass himself off as someone he was not, the election official would instantly know of the attempted fraud, would not issue the imposter a ballot or allow him to vote, and presumably would have the imposter arrested or at least investigate the attempted fraud and report the attempt to the Secretary of State as Superintendent of Elections.

U.S. Department of Justice Section 5 Recommendation Memorandum (regarding HB 244), August 25, 2005 at <http://www.votingrights.org/news/downloads/Section%205%20Recommendation%20Memorandum.pdf>

**Overview:** Five career attorneys with the civil rights department investigated and analyzed Georgia's election reform law. Four of those attorneys recommended objecting to Section 59, the voter identification requirement. The provision required all voters to present government issued photo identification in order to vote. The objection was based on the attorneys' findings that there was little to no evidence of polling place fraud, the only kind of fraud an ID requirement would address, and that the measure would disenfranchise many voters, predominantly minority voters, in violation of Section 5 of the Voting Rights Act.

**Factual Analysis:** The sponsor of the measure in the state legislature said she was motivated by the fact that she is aware of vote buying in certain districts; she read John Fund's book; and that "if there are fewer black voters because of this bill, it will only be because there is less opportunity for fraud. She said that when black voters in her black precincts are not paid to vote, they do not go to the polls."

A member of the Fulton County Board of Registrations and Elections said that prior to November 2004, Fulton County received 8,112 applications containing "missing or irregular" information. Only 55 of those registrants responded to BOE letters. The member concluded that the rest must be "bogus" as a result. He also stated that 15,237 of 105,553 precinct cards came back as undeliverable, as did 3,071 cards sent to 45,907 new voters. Of these 3,071, 921 voted.

**Secretary of State Cathy Cox** submitted a letter testifying to the absence of any complaints of voter fraud via impersonation during her tenure. In the legal analysis, the attorneys state that if they determine that Georgia could have fulfilled its stated purpose of election fraud, while preventing or ameliorating the retrogression, an objection is appropriate. They conclude that the state could have avoided retrogression by retaining various forms of currently accepted voter ID for which no substantiated security concerns were raised. Another non-retrogressive alternative would have been to maintain the affidavit alternative for those without ID, since "There is no evidence that penalty of law is an insufficient deterrent to falsely signing an affidavit of identity." The attorneys point out that the state's recitation of a case upholding voter fraud in Dodge County does not support the purpose of the Act because that case involved vote buying and selling, not impersonation or voting under a false identity.

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VOTING FRAUD-VOTER INTIMIDATION RESEARCH

Deliberative Process  
Privilege

Wade Henderson, Executive Director, Leadership Conference for Civil Rights

Data Collection

Mr. Henderson had **several recommendations as to how to better gather additional information and data on election fraud and intimidation in recent years. He suggested interviewing the following individuals who have been actively involved in Election Protection and other similar efforts:**

- Jon Greenbaum, Lawyers Committee for Civil Rights
- Tanya Clay, People for the American Way
- Melanie, Campbell, National Coalition for Black Political Participation
- Larry Gonzalez, National Association of Latino Election Officers
- Jacqueline Johnson, National Congress of American Indians
- Chellie Pingree, Common Cause
- Jim Dickson, disability rights advocate
- Mary Berry, former Chair of the US Commission on Civil Rights, currently at the University of Pennsylvania
- Judith Browne and Eddie Hailes, Advancement Project (former counsel to the US Commission on Civil Rights)
- Robert Rubin, Lawyers Committee for Civil Rights – San Francisco Office
- Former Senator Tom Daschle (currently a fellow at The Center for American Progress)

He also recommended we **review the following documents and reports:**

- The 2004 litigation brought by the Advancement Project and SEIU under the 1981 New Jersey Consent Decree
- Forthcoming LCCR state-by-state report on violations of the Voting Rights Act
- Forthcoming Lawyers Committee report on violations of the Voting Rights Act (February 21)

Types of Fraud and Intimidation Occurring

Mr. Henderson said he believed that the kinds of voter intimidation and suppression tactics employed over the last five years are ones that have evolved over many years. They are sometimes racially based, sometimes based on partisan motives. He believes the following types of activity have actually occurred, and are not just a matter of anecdote and innuendo, and rise to the level of either voter intimidation or vote suppression:

- **Flyers with intentional misinformation, such as ones claiming that if you do not have identification, you cannot vote, and providing false dates for the election**
- **Observers with cameras, which people associate with potential political retribution or even violence**
- **Intimidating police presence at the polls**
- **Especially in jurisdictions that authorize challenges, the use of challenge lists and challengers goes beyond partisanship to racial suppression and intimidation**
- **Unequal deployment of voting equipment, such as occurred in Ohio. Also, he has seen situations in which historically Black colleges will have one voting machine while other schools will have more.**

Mr. Henderson believes that these matters are not pursued formally because often they involve activities that current law does not reach. For example, there is no law prohibiting a Secretary of State from being the head of a political campaign, and then deploying voting machines in an uneven manner. There is no way to pursue that. Also, once the election is over, civil litigation becomes moot. Finally, sometimes upon reflection after the campaign, some of the activities are not as sinister as believed at the time.

Mr. Henderson believes government does not engage in a sustained investigation of these matters or pursue any kind of resolution to

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them. LCCR has filed a FOIA request with both the Civil Rights Division and the Criminal Division of the Department of Justice to examine this issue.

Election Protection activities will be intensified for the 2006 elections, although the focus may shift somewhat given the implementation of new HAVA requirements.

Recommendations for Reform

There was tremendous concern after the 2004 election about conflicts of interest – the “Blackwell problem” – whereby a campaign chair is also in charge of the voting system. We need to get away from that.

He also supports Senator Barak Obama’s bill regarding deceptive practices, and is opposed to the voter identification laws passing many state legislatures.

- States should adopt **election-day registration**, in order to boost turnout as well as to allow eligible voters to immediately rectify erroneous or improperly purged registration records
- **Expansion of early voting & no-excuse absentee voting**, to boost turnout and reduce the strain on election-day resources.
- **Provisional ballot reforms:**
  - Should be **counted statewide** – if cast in the wrong polling place, votes should still be counted in races for which the voter was eligible to vote (governor, etc.)
  - Provisional ballots should also **function as voter registration applications**, to increase the likelihood that voters will be properly registered in future elections
- Voter ID requirements: **states should allow voters to use signature attestation to establish their identity**
- The **Department of Justice should increase enforcement of Americans with Disabilities Act and the accessibility requirements of the Help America Vote Act**
- **Statewide registration databases should be linked to social service agency databases**
- **Prohibit chief state election officials from simultaneously participating in partisan electoral campaigns within their states**
- **Create and enforce strong penalties for deceptive or misleading voting practices**

Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center

Brennan Center findings on fraud

The Brennan Center’s primary work on fraud is their report for the Carter Baker Commission with commissioner Spencer Overton, written in response to the Commission’s ID recommendations. Brennan reviewed all existing reports and election contests related to voter fraud. They believe the contests serve as an especially good record of whether or not fraud exists, as the parties involved in contested elections have a large incentive to root out fraudulent voters. Yet despite this, the incidence of voter impersonation fraud discovered is extremely low—something on the order 1/10000<sup>th</sup> of a percentage of voters. See also the brief Brennan filed on 11<sup>th</sup> circuit in Georgia photo ID case which cites sources in Carter Baker report and argues the incidence of voter fraud too low to justify countermeasures.

Among types of fraud, they found **impersonation, or polling place fraud, is probably the least frequent type, although other types, such as absentee ballot fraud are also very infrequent. Weiser believes this is because impersonation fraud is more likely to be caught and is therefore not worth the risk. Unlike in an absentee situation, actual poll workers are present to disrupt impersonation fraud, for instance, by catching the same individual voting twice. She believes perhaps one half to one quarter of the time the person will be caught. Also, there is a chance the pollworker will have personal knowledge of the person. Georgia Secretary of State Cathy Cox has mentioned that there are many opportunities for discovery of in person fraud as well. For example, if one votes in the name of another voter, and that**

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**voter shows up at the polls, the fraud will be discovered.**

Weiser believes court proceedings in election contests are especially useful. Some are very extensive, with hundreds of voters brought up by each side and litigated. In both pre-election challenges and post-election contests, **parties have devoted extraordinary resources into 'smoking out' fraudulent voters.** Justin Leavitt at Brennan scoured such proceedings for the Carter Baker report, which includes these citations. Contact him for answers to particular questions.

Countermeasures/statewide databases

Brennan has also considered what **states are doing to combat impersonation fraud besides photo ID laws**, although again, it seems to be the rarest kind of fraud, beyond statistically insignificant. In the **brief Brennan filed in the Georgia case, the Center detailed what states are already doing to effectively address fraud.** In another **on the web site includes measures that can be taken that no states have adopted yet.** Weiser adds that an effort to look at strategies states have to prevent fraud, state variations, effectiveness, ease of enforcement would be very useful.

Weiser believes the **best defense against fraud will be better voter lists**—she argues the fraud debate is actually premature because states have yet to fully implement the HAVA database requirement. This should eliminate a great deal of 'deadwood' on voter rolls and undermine the common argument that fraud is made possible by this deadwood. This was the experience for Michigan, which was able to remove 600,000 names initially, and later removed almost 1 million names from their rolls. It is fairly easy to cull deadwood from lists due to consolidation at the state level—most deadwood is due to individuals moving within the state and poor communication between jurisdictions. (Also discuss with Chris Thomas, who masterminded the Michigan database for more information and a historical perspective.)

Regarding the question of whether the effect of this maintenance on fraud in Michigan can be quantified, Weiser would caution against drawing direct lines between list problems and fraud. **Brennan has found various groups abusing the existence of list deadwood to make claims about fraudulent voting.** This is analyzed in greater detail in the Brennan Center's critique of a purge list produced by the NJ Republican party, and was illustrated by the purge list produced by the state of Florida. **When compiling such lists and doing comparisons, sound statistical methods must be utilized, and often are not.**

The NJ GOP created a list and asked NJ election officials to purge names of ineligible voters on it. Their list assumed that people appearing on the list twice had voted twice. Brennan found their assumptions shoddy and based on incorrect statistical practices, such as treating individuals with the same name and birthdays as duplicates, although this is highly unlikely according to proper statistical methods. Simply running algorithms on voter lists creates a number of false positives, does not provide an accurate basis for purging, and should not be taken as an indicator of fraud.

Regarding the Florida purge list, faulty assumptions caused the list to systematically exclude Hispanics while overestimating African Americans. Matching protocols required that race fields match exactly, despite inconsistent fields across databases.

The kinds of list comparisons that are frequently done to allege fraud are unreliable. Moreover, even if someone is on a voter list twice, that does not mean that voter has voted twice. That, in fact, is almost never the case.

Ultimately, even matching protocols without faulty assumptions will have a 4 percent to 35 percent error rate—that's simply the nature of database work. Private industry has been working on improving this for years. Now that HAVA has introduced a matching requirement, even greater skepticism is called for in judging the accuracy of list maintenance.

Intimidation and Suppression

Brennan does not have a specific focus here, although they do come across it and have provided assistance on bills to prevent suppression and intimidation. They happen to have an extensive paper file of intimidating fliers and related stories from before the 2004 election. (They can supply copies after this week).

Challengers

**Brennan has analyzed cases where challenger laws have been beneficial and where they have been abused. See the decision and record**

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from the 1982 NJ vs. RNC case for some of the history of these laws. Brennan is currently working on developing a model challenger law. Weiser believes challenge laws with no requirement that the challenger have any specific basis for the challenge or showing of ineligibility are an invitation to blanket harassing challenges and have a range of pitfalls. State laws are vague and broad and often involve arcane processes such as where voters are required to meet a challenge within 5 days. There are incentives for political abuse, potential for delaying votes and disrupting the polls, and they are not necessarily directed toward the best result. Furthermore, when a voter receives a mailer alleging vote fraud with no basis, even the mere fact of a challenge can be chilling. A voter does not want to have to go through a quasi-court proceeding in order to vote.

Brennan recommends challenge processes that get results before election, minimize the burden for voters, and are restricted at polling place to challenges by poll workers and election officials, not voters. They believe limitless challenges can lead to pandemonium—that once the floodgates are open they won't stop.

Recommendations

- **Intimidation**— Weiser believes Sen. Barak Obama's bill is a good one for combating voter harassment and deceptive practices. Many jurisdictions do not currently have laws prohibiting voter harassment and deceptive practices.
- **Fraud**— Current state and federal codes seem sufficient for prosecuting fraud. Weiser doesn't consider them under-enforced, and sees no need for additional laws.
- **Voter lists**— New legislation or regulations are needed to provide clear guidance and standards for generating voter lists and purging voters, otherwise states could wrongfully disenfranchise eligible voters.
- **Challengers**—Challenge laws need to be reformed, especially ones that allow for pre-election mass challenges with no real basis. There is no one size fits all model for challenger legislation, but some bad models involving hurdles for voters lead to abuse and should be reformed. There should be room for poll workers to challenge fraudulent voters, but not for abuse.

Also useful would be recommendations for prosecutors investigating fraudulent activity, How should they approach these cases? How should they approach cases of large scale fraud/intimidation? While there is sufficient legislative cover to get at any election fraud activity, questions remain about what proper approaches and enforcement strategies should be.

William Groth, attorney for the plaintiffs in the Indiana voter identification litigation

Fraud in Indiana

Indiana has never charged or prosecuted anyone for polling place fraud. Nor has any empirical evidence of voter impersonation fraud or dead voter fraud been presented. In addition, there is no record of any credible complaint about voter impersonation fraud in Indiana. State legislators signed an affidavit that said there had never been impostor voting in Indiana. At the same time, the Indiana Supreme Court has not necessarily required evidence of voter fraud before approving legislative attempts to address fraud.

The state attorney general has conceded that there is no concrete fraud in Indiana, but has instead referred to instances of fraud in other states. Groth filed a detailed motion to strike evidence such as John Fund's book relating to other states, arguing that none of that evidence was presented to the legislature and that it should have been in the form of sworn affidavits, so that it would have some indicia of verifiability.

Photo ID law

By imposing restrictive ID measures, Groth contends you will discourage 1,000 times more legitimate voters than illegitimate voters you might protect against. He feels the implementation of a REAL ID requirement is an inadequate justification for the law, as it will not affect the upcoming 2006 election where thousands of registered voters will be left without proper ID. In addition, he questions whether REAL ID will be

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implemented as planned in 2008 considering the backlash against the law so far. **He also feels ID laws are unconstitutional because of inconsistent application.**

Statewide database as remedy

Groth believes **many problems will be addressed by the statewide database required under HAVA.** To the extent that the rolls in Indiana are bloated, it is because state officials have not complied with NVRA list maintenance requirements. Thus, it is somewhat disingenuous for them to use bloated voter rolls as a reason for imposing additional measures such as the photo ID law. Furthermore, the state has ceded to the counties the obligation to do maintenance programs, which results in a hit or miss process (see discussion in reply brief, p 26 through p. 28).

Absentee fraud

**To the extent that there has been an incidence of fraud, these have all been confined to absentee balloting.** Most notably the East Chicago mayoral election case where courts found absentee voting fraud had occurred. See: Pabey vs. Pastrick 816 NE 2<sup>nd</sup> 1138 Decision by the Indiana Supreme Court in 2004.

Intimidation and vote suppression

**Groth is only aware of anecdotal evidence supporting intimidation and suppression activities.** While he considers the sources of this evidence credible, it is still decidedly anecdotal. Instances he is aware of include **police cars parked in front of African American polling places.** However, **most incidents of suppression which are discussed occurred well in the past.** Trevor Davidson claims a fairly large scale intimidation program in Louisville.

Challengers

**There was widespread information that the state Republican Party had planned a large scale challenger operation in Democratic precincts for 2004, but abandoned the plan at the last minute.**

Last year the legislature made a crucial change to election laws which will allow partisan challengers to be physically inside the polling area next to members of the precinct board. **Previously, challengers at the polling place have been restricted to the 'chute,'** which provides a buffer zone between voting and people engaging in political activity. That change will make it **much easier to challenge voters.** As there is no recorded legislative history in Indiana, it is difficult to determine the justification behind this change. As both chambers and the governorship are under single-party control, the challenger statute was passed under the radar screen.

Photo ID and Challengers

Observers are especially concerned **about how this change will work in conjunction with the photo ID provision.** Under the law, there are at least two reasons why a member of the precinct board or a challenger can raise object to an ID: whether a presented ID conforms to ID standards, and whether the photo on an ID is actually a picture of the voter presenting it. The law does not require bipartisan agreement that a challenge is valid. **All it takes is one challenge to raise a challenge to that voter, and that will lead to the voter voting by provisional ballot.**

**Provisional ballot voting means that voter must make a second trip to the election board (located at the county seat) within 13 days to produce the conforming ID or to swear out an affidavit that they are who they claim to be.** This may pose a considerable burden to voters. For example, Indianapolis and Marion County are coterminous—anyone challenged under the law will be required to make second trip to seat of government in downtown Indianapolis. If the voter in question did not have a driver's license in the first place, they will likely need to arrange transportation. Furthermore, in most cases the election result will already be known.

**The law is vague about acceptable cause for challenging a voter's ID.** Some requirements for valid photo ID include being issued by state or fed gov't, w/ expiration date, and the names must conform exactly. **The League of Women Voters is concerned about voters with hyphenated names, as the Indiana DMV fails to put hyphens on driver's licenses potentially leading to a basis for challenge.** Misspelling of names would also be a problem. The other primary mode of challenge is saying the photo doesn't look like the voter, which could be happen in a range of instances. Essentially, the law gives unbridled discretion to challengers to decide what conforms and what does not.

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Furthermore, there is no way to determine whether a challenge is in good or bad faith, and *there is* little penalty for making a bad faith challenge. The fact that there are no checks on the challenges at the precinct level, or even a requirement of concurrence from an opposing party challenger leads to the concern that challenge process will be abused. The voter on the other hand, will need to get majority approval of county election board members to defeat the challenge.

Groth suggests the political situation in Indianapolis also presents a temptation to abuse this process, as electoral margins are growing increasingly close due to shifting political calculus.

Other cases

Groth's other election law work has included a redistricting dispute, a dispute over ballot format, NVRA issues, and a case related to improper list purging, but nothing else related to fraud or intimidation. The purging case involved the election board attempting to refine its voter list by sending registration postcards to everyone on the list. When postcards didn't come back they wanted to purge those voters. Groth blames this error more on incompetence, than malevolence, however, as the county board is bipartisan. (The Indiana Election Commission and the Indiana election division are both bipartisan, but the 92 county election boards which will be administering photo id are controlled by one political party or the other—they are always an odd number, with the partisan majority determined by who controls the clerk of circuit court office.)

Recommendations

- **Supports nonpartisan administration of elections.**
- Indiana specific recommendations including a longer voting day, time off for workers to vote, and an extended registration period.
- He views the central problem of the Indiana photo ID law is that the list of acceptable forms of ID is too narrow and provides no fallback to voters without ID. At the least, he believes the state needs to expand the list so that most people will have at least one. If not, they should be allowed to swear an affidavit regarding their identity, under penalty of perjury/felony prosecution. This would provide sufficient deterrence for anyone considering impersonation fraud. He believes absentee ballot fraud should be addressed by requiring those voters to produce ID as well, as under HAVA.
- His personal preference would be signature comparison. Indiana has never encountered an instance of someone trying to forge a name in the poll book, and while this leaves open the prospect of dead voters, that danger will be substantially diminished by the statewide database. But if we are going to have some form of ID, he believes we should apply it to everyone and avoid disenfranchisement, provided they swear an affidavit.

Lori Minnite, Barnard College, Columbia University

Securing the Vote

In *Securing the Vote*, Ms. Minnite found very little evidence of voter fraud because the historical conditions giving rise to fraud have weakened over the past twenty years. She stated that for fraud to take root a conspiracy was needed with a strong local political party and a complicit voter administration system. Since parties have weakened and there has been much improvement in the administration of elections and voting technology, the conditions no longer exist for large scale incidents of polling place fraud.

Ms. Minnite concentrates on fraud committed by voters not fraud committed by voting officials. She has looked at this issue on the national level and also concentrated on analyzing certain specific states. Ms. Minnite stressed that it is important to keep clear who the perpetrators of the fraud are and where the fraud occurs because that effects what the remedy should be. Often, voters are punished for fraud committed by voting officials.

Other Fraud Issues

Ms. Minnite found no evidence that NVRA was leading to more voter fraud. She supports non-partisan election administration. Ms.

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Minnite has found evidence that there is absentee ballot fraud. She can't establish that there is a certain amount of absentee ballot fraud or that it is the major kind of voter fraud.

Recommendations

- Assure there are accurate voter records and centralize voter databases
- Reduce partisanship in electoral administration.

Neil Bradley, ACLU Voting Rights Project

Voter Impersonation Cases (issue the Georgia ID litigation revolves around)

Mr. Bradley asserted that Georgia **Secretary of State Cox** stated in the case at issue: that she clearly would know if there had been any instances of voter impersonation at the polls; that she works very closely with the county and local officials and she **would have heard about voter impersonation** from them if she did not learn about it directly; and that she said that she had not heard of "any incident"---which includes acts that did not rise to the level of an official investigation or charges.

Mr. Bradley said that it is also **possible to establish if someone has impersonated another voter at the polls. Officials must check off the type of voter identification the voter used. Voters without ID may vote by affidavit ballot. One could conduct a survey of those voters to see if they in fact voted or not.**

The type of voter fraud that involves impersonating someone else is very unlikely to occur. If someone wants to steal an election, it is much more effective to do so using absentee ballots. In order to change an election outcome, one must steal many votes. Therefore, one would have to have lots of people involved in the enterprise, meaning there would be many people who know you committed a felony. It's simply not an efficient way to steal an election.

Mr. Bradley is not aware of any instance of voter impersonation anywhere in the country except in local races. He does not believe it occurs in statewide elections.

Voter fraud and intimidation in Georgia

Georgia's process for preventing ineligible ex-felons from casting ballots has been improved since the Secretary of State now has the power to create the felon purge list. When this was the responsibility of the counties, there were many difficulties in purging felons because local officials did not want to have to call someone and ask if he or she was a criminal.

The State Board of Elections has a docket of irregularity complaints. The most common involve an ineligible person mailing in absentee ballots on behalf of another voter.

In general, Mr. Bradley does not think voter fraud and intimidation is a huge problem in Georgia and that people have confidence in the vote. The biggest problems are the new ID law; misinformation put out by elections officials; and advertisements that remind people that vote fraud is a felony, which are really meant to be intimidating. Most fraud that does occur involves an insider, and that's where you find the most prosecutions. Any large scale fraud involves someone who knows the system or is in the courthouse.

Prosecution of Fraud and Intimidation

Mr. Bradley stated that fraud and intimidation are hard to prosecute. However, Mr. Bradley made contradictory statements. When asked whether the decision to prosecute on the county level was politically motivated, he first said "no." Later, Mr. Bradley reversed himself stating the opposite.

Mr. Bradley also stated that with respect to US Attorneys, the message to them from the top is that this is not a priority. The Georgia ACLU has turned over information about violations of the Voting Rights Act that were felonies, and the US Attorney has done nothing with the information. The Department of Justice has never been very aggressive in pursuing cases of vote suppression, intimidation

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and fraud. But, the Georgia ACLU has not contacted Craig Donsanto in DC with information of voter fraud. Mr. Bradley believes that voter fraud and intimidation is difficult to prove. It is very hard to collect the necessary factual evidence to make a case, and doing so is very labor-intensive.

Recommendations

In Georgia, the Secretary of State puts a lot of work into training local officials and poll workers, and much of her budget is put into that work. Increased and improved training of poll workers, including training on how to respectfully treat voters, is the most important reform that could be made. Mr. Bradley also suggested that increased election monitoring would be helpful.

Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

Ms. Perales did not seem to have a sense of the overall electoral issues in her working region (the southwest) effecting Hispanic voters and did not seem to want to offer her individual experiences and work activities as necessarily a perfect reflection of the challenges Hispanic voters face.

Largest Election Problems Since 2000

- Santa Anna County, New Mexico-2004-Intimidated voters by video taping them.
- San Antonio-One African American voter subjected to a racial slur.
- San Antonio-Relocated polling places at the last minute without Section 5 pre-clearance.
- San Antonio-Closed polls while voters were still in line.
- San Antonio-2003-only left open early voting polls in predominantly white districts.
- San Antonio-2005-racially contested mayoral run-off election switched from touch screen voting to paper ballots.

Voter Fraud and Intimidation

In Texas, the counties are refusing to open their records with respect to Section 203 compliance (bilingual voting assistance), and those that did respond to MALDEF's request submitted incomplete information. Ms. Perales believes this in itself is a form of voter intimidation.

Ms. Perales said it is hard to say if the obstacles minorities confront in voting are a result of intentional acts or not because the county commission is totally incompetent. There have continuously been problems with too few ballots, causing long lines, especially in places that had historically lower turnout. There is no formula in Texas for allocating ballots – each county makes these determinations.

When there is not enough language assistance at the polls, forcing a non-English speaker to rely on a family member to vote, that can suppress voter turnout.

Ms. Perales is not aware of deceptive practices or dirty tricks targeted at the Latino community.

There have been no allegations of illegal noncitizen voting in Texas. Indeed, the sponsor of a bill that would require proof of citizenship to vote could not provide any documentation of noncitizen voting in support of the bill. The bill was defeated in part because of the racist comments of the sponsor. In Arizona, such a measure was passed. Ms. Perales was only aware of one case of noncitizen voting in Arizona, involving a man of limited mental capacity who said he was told he was allowed to register and vote. Ms. Perales believes proof of citizenship requirements discriminate against Latinos.

Recommendations

Ms. Perales feels the laws are adequate, but that her organization does not have enough staff to do the monitoring necessary. This could be done by the federal government. However, even though the Department of Justice is focusing on Section 203 cases now, they have not even begun to scratch the surface. Moreover, the choices DOJ has made with respect to where they have brought claims do not seem to be based on any systematic analysis of where the biggest problems are. This may be because the administration is so ideological and partisan.

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Ms. Perales does not believe making election administration nonpartisan would have a big impact. In Texas, administrators are appointed in a nonpartisan manner, but they still do not always have a nonpartisan approach. Each administrator tends to promote his or her personal view regardless of party.

Pat Rogers, attorney, New Mexico

Major issues in NM w/ regard to vote fraud

**Registration fraud seems to be the major issue**, and while the legislature has taken some steps, Rogers is skeptical of the effect they will have, considering the history of unequal application of election laws. He also believes there are **holes in the 3<sup>rd</sup> party registration requirement deadlines**.

Rogers **views a national law requiring ID as the best solution to registration problems**. Rather than imposing a burden he contends it will enhance public confidence in the simplest way possible.

Registration Fraud in 2004 election

It came to light that **ACORN had registered a 13 year old**. The father was an APD officer and received the confirmation, but it was sent to the next door address, a vacant house. They traced this to an ACORN employee and it was established that this employee had been registering others under 18.

Two weeks later, in a crack cocaine bust of Cuban nationals, one of those raided said his job was registering voters for ACORN, and the police found signatures in his possession for fictitious persons.

**In a suspicious break-in at an entity that advertised itself as nonpartisan, only GOP registrations were stolen.**

In another instance, a college student was allegedly fired for registering too many Republicans.

Rogers said he **believed these workers were paid by the registration rather than hourly**.

There have been **no prosecution or convictions related to these incidents**. In fact, there have been no prosecutions for election fraud in New Mexico in recent history. However, Rogers is skeptical that much action can be expected considering the positions of Attorney General, Governor, and Secretary of State are all held by Democrats. Nor has there been any interest from the U.S. attorney—**Rogers heard that U.S. attorneys were given instruction to hold off until after the election in 2004 because it would seem too political**.

As part of the case against the Secretary of State regarding the identification requirement, the parties also sued ACORN. At a hearing, the head of ACORN, and others aligned with the Democratic Party called as witnesses, took the 5<sup>th</sup> on the stand as to their registration practices.

Other incidents

**Very recently, there have been reports of vote buying in the town of Espanola**. Originally reported by the *Rio Grande Sun*, a resident of a low-income housing project is quoted as saying it has been going on for 10-12 years. The Albuquerque Journal is now reporting this as well. So far the investigation has been extremely limited.

In 1996, there were some prosecutions in Espanola, where a state district judge found registration fraud.

In 1991, the chair of Democratic Party of Bertolino County was convicted on fraud. Yet she was pardoned by Clinton on same day as Marc Rich.

Intimidation/Suppression

Rogers believes the most notable example of intimidation in the 2004 election was the discovery of a DNC Handbook from Colorado advising Democratic operatives to widely report intimidation regardless of confirmation in order to gain media attention.

In-person polling place fraud

There have only been isolated instances of people reporting that someone had voted in their name, and Rogers doesn't believe there is any large scale conspiracy. Yet he contends that perspective misses the larger point of voter confidence. Although there has been a large

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public outcry for voter ID in New Mexico, it has been deflected and avoided by Democrats.

In 2004, there were more Democratic lawyers at the polls than there are lawyers in New Mexico. Rogers believes these lawyers had a positive impact because they deterred people from committing bad acts.

Counting Procedures

The **Secretary of State has also taken the position that canvassing of the vote should be done in private.** In NM, they have a 'county canvas' where they review and certify, after which all materials—machine tapes, etc.—are centralized with the Secretary of State who does a final canvass for final certification. Conducting this in private is a serious issue, especially considering the margin in the 2000 presidential vote in New Mexico was only 366 votes. **They wouldn't be changing machine numbers, but paper numbers are vulnerable.**

On a related note, NM has adopted state procedures that will ensure their reports are slower and very late, considering the 2000 late discovery of ballots. In a close race, potential for fraud and mischief goes up astronomically in the period between poll closing and reporting. Rogers believes these changes are going to cause national embarrassment in the future.

Rogers attributes other harmful effects to what he terms the Secretary of State's incompetence and inability to discern a nonpartisan application of the law. **In the 2004 election, no standards were issued for counting provisional ballots.** Furthermore, the Secretary of State spent over \$1 million of HAVA money for 'voter education' in blatant self-promotional ads.

Recommendations

- Rogers believes it would be unfeasible to have nonpartisan election administration and favors transparency instead. To make sure people have confidence in the election, there must be transparency in the whole process. Then you don't have the 1960 vote coming down to Illinois, or the Espanola ballot or Dona Anna County (ballots found there in the 2000 election). HAVA funds should also be restricted when you have an incompetent, partisan Secretary of State.
- There should be national standards for reporting voting results so there is less opportunity for fraud in a close race. Although he is not generally an advocate of national laws, he does agree there should be more national uniformity into how votes are counted and recorded.

Rebecca Vigil-Giron, Secretary of State, New Mexico

Complaints of election fraud and intimidation are filed with the SOS office. She then decides whether to refer it to the local district attorney or the attorney general. Because the complaints are few and far between, the office does not keep a log of complaints; however, they do have all of the written complaints on file in the office.

Incidents of Fraud and Intimidation

During the 2004 election, there were a couple of complaints of polling place observers telling people outside the polling place who had just voted, and then **the people outside were following the voters to their cars and videotaping them.** This happened in areas that are mostly **second and third generation Latinos.** The Secretary sent out the sheriff in one instance of this. The perpetrators moved to a different polling place. This was the **only incident of fraud or intimidation Vigil-Giron was aware of in New Mexico.**

There have **not been many problems on Native reservations because, unlike in many other states, in New Mexico the polling place is on the reservation and is run by local Native Americans.** Vigil-Giron said that it does not make sense to have non-Natives running those polls because it is necessary to have people there who can translate. Because most of the languages are unwritten, the HAVA requirement of accessibility through an audio device will be very helpful in this regard. Vigil-Giron said she was surprised to learn while testifying at the Voting Rights Act commission hearings of the lack of sensitivity to these issues and the common failure to provide assistance in language minority areas.

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In 2004 the U.S. Attorney, a Republican, suddenly announced he was launching an investigation into voter fraud without consulting the Secretary of State's office. After all of that, there was maybe one prosecution. Even the allegations involving third party groups and voter registration are often misleading. People doing voter registration drives encourage voters to register if they are unsure if they are already registered, and the voter does not even realize that his or her name will then appear on the voter list twice. The bigger problem is where registrations do not get forwarded to election administrators and the voter does not end up on the voting list on Election Day. This is voter intimidation in itself, Vigil-Giron believes. It is very discouraging for that voter and she wonders whether he or she will try again.

Under the bill passed in 2004, third parties are required to turn around voter registration forms very quickly between the time they get them and when they must be returned. If they fail to return them within 48 hours of getting them, they are penalized. This, Vigil-Giron believes, is unfair. She has tried to get the Legislature to look at this issue again.

Regarding allegations of vote buying in Espanola, Vigil-Giron said that the Attorney General is investigating. The problem in that area of New Mexico is that they are still using rural routes, so they have not been able to properly district. There has, as a result, been manipulation of where people vote. Now they seem to have pushed the envelope too far on this. The investigation is not just about vote buying, however. There have also been allegations of voters being denied translators as well as assistance at the polls.

Vigil-Giron believes there was voter suppression in Ohio in 2004. County officials knew thirty days out how many people had registered to vote, they knew how many voters there would be. Administrators are supposed to use a formula for allocation of voting machines based on registered voters. Administrators in Ohio ignored this. As a result, people were turned away at the polls or left because of the huge lines. This, she believes, was a case of intentional vote suppression.

A few years ago, Vigil-Giron heard that there may have been people voting in New Mexico and a bordering town in Colorado. She exchanged information with Colorado administrators and it turned out that there were no cases of double voting.

Recommendations

- Vigil-Giron believes that linking voter registration databases across states may be a way to see if people who are registered twice are in fact voting twice.
- The key to improving the process is better trained poll workers, who are certified, and know what to look for on Election Day. These poll workers should then work with law enforcement to ensure there are no transgressions.
- There should be stronger teeth in the voter fraud laws. For example, it should be more than a fourth degree felony, as is currently the case.

Sarah Ball Johnson, Executive Director of the State Board of Elections, Kentucky

Procedures for Handling Fraud

Fraud complaints are directed first to the state Board of Elections. Unlike boards in other states, Kentucky's has no investigative powers. Instead, they work closely with both the Attorney General and the U.S. Attorney. Especially since the current administration took office, they have found the U.S. Attorney an excellent partner in pursuing fraud cases, and have seen many prosecutions in the last six years. She believes that there has been no increase in the incidence of fraud, but rather the increase in prosecutions is related to increased scrutiny and more resources.

Major Types of Fraud and Intimidation

Johnson says that vote buying and voter intimidation go hand in hand in Kentucky. While historically fraud activity focused on election day, in the last 20 years it has moved into absentee voting. In part, this is because new voting machines aren't easy to manipulate in the way

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that paper ballots were open to manipulation in the past, especially in distant rural counties. For this reason, she is troubled by the proliferation of states with early voting, but notes that there is a difference between absentee ballot and early voting on machines, which is far more difficult to manipulate.

Among the cases of absentee ballot fraud they have seen, **common practice involves a group of candidates conspiring together to elect their specific slate. Nursing homes are an especially frequent target.** Elderly residents request absentee ballots, and then workers show up and 'help' them vote their ballots. **Though there have been some cases in the Eastern district of election day fraud, most have been absentee.**

Johnson argues that it is **hard to distinguish between intimidation and vote buying.** They have also seen instances where **civic groups and church groups intimidate members to vote in a specific manner, not for reward, but under threat of being ostracized or even telling them they will go to hell.**

While she is aware of allegations of intimidation by the parties regarding minority precincts in Louisville, the board hasn't received calls about it and there haven't been any prosecutions.

Challengers

**Challengers are permitted at the polls in Kentucky.** Each party is allowed two per location, and they must file proper paperwork. **There is a set list of defined reasons for which they can challenge a voter, such as residency, and the challengers must also fill out paperwork to conduct a challenge.**

As for allegations of challengers engaging in intimidation in minority districts, Johnson notes that challengers did indeed register in Jefferson County, and filed the proper paperwork, although they ultimately did not show up on election day.

She finds that **relatively few challengers end up being officially registered, and that the practice has grown less common in recent years.** This is due more to a change of fashion than anything. **And after all, those wishing to affect election outcomes have little need for challengers in the precinct when they can target absentee voting instead.**

In the event that intimidation is taking place, Kentucky has provisions to remove disruptive challengers, but this hasn't been used to her knowledge.

Prosecutions

**Election fraud prosecutions in Kentucky have only involved vote buying.** This may be because that it is easier to investigate, by virtue of a cash and paper trail which investigators can follow. It is difficult to quantify any average numbers about the practice from this, due in part to the five year statute of limitations on vote buying charges. However, she does not believe that vote-buying is pervasive across the state, but rather confined to certain pockets.

Vote-hauling Legislation

**Vote hauling is a common form of vote buying by another name.** Individuals are legally paid to drive others to the polls, and then divide that cash in order to purchase votes. Prosecutions have confirmed that vote hauling is used for this purpose. While the Secretary of State has been committed to legislation which would ban the practice, it has failed to pass in the past two sessions.

Paying Voter Registration Workers Legislation

**A law forbidding people to pay workers by the voter registration card or for obtaining cards with registrations for a specific party was passed this session.** Individuals working as part of a registration campaign may still be paid by hour. Kentucky's experience in the last presidential election illustrates the problems arising from paying individuals by the card. That contest included a constitutional amendment to ban gay marriage on the ballot, which naturally attracted the attention of many national groups. **One group paying people by the card resulted in the registrar being inundated with cards, including many duplicates in the same bundle, variants on names, and variants on addresses.** As this practice threatens to overwhelm the voter registration process, Kentucky views it as constituting malicious fraud.

Deceptive practices

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**Other than general reports in the news, Johnson hasn't received any separate confirmation or reports of deceptive practices, i.e., false and misleading information being distributed to confuse voters.**

Effect of Kentucky's Database

**Johnson believes Kentucky's widely praised voter registration database is a key reason why the state doesn't have as much fraud as it might, especially the types alleged elsewhere like double and felon voting.** While no database is going to be perfect, the connections with other state databases such as the DMV and vital statistics have been invaluable in allowing them to aggressively purge dead weight and create a cleaner list. When parties use their database list they are notably more successful. Johnson wonders how other states are able to conduct elections without a similar system.

**Some factors have made especially important to their success.**

- **When the database was instituted in 1973, they were able to make everyone in the state re-register and thus start with a clean database. However, it is unlikely any state could get away with this today.**
- **She is also a big supporter of a full Social Security number standard, as practiced in Kentucky.** The full Social Security, which is compared to date of birth and letters in the first and last name, automatically makes matching far more accurate. The huge benefits Kentucky has reaped make Johnson skeptical of privacy concerns arguing for an abbreviated Social Security number. Individuals are willing to submit their Social Security number for many lesser purposes, so why not voting? And in any event, they **don't require a Social Security number to register (unlike others such as Georgia).** **Less than a percent of voters in Kentucky are registered under unique identifiers, which the Board of Elections then works to fill in the number through cross referencing with the DMV.**

Recommendations

- **Johnson believes the backbone of effective elections administration must be standardized procedures, strong record keeping, and detailed statutes. In Kentucky, all counties use the same database and the same pre election day forms. Rather than seeing that as oppressive, county officials report that the uniformity makes their jobs easier.**
- **This philosophy extends to the provisional ballot question.** While they did not have a standard in place like HAVA's at the time of enactment, they worked quickly to put a uniform standard in place.
- **They have also modified forms and procedures based on feedback from prosecutors.** Johnson believes a key to enforcing voting laws is **working with investigators and prosecutors and ensuring that they have the information they need to mount cases.**
- **She also believes public education is important, and that the media could do more to provide information about what is legal and what is illegal.** Kentucky tries to fulfill this role by information in polling places, press releases, and high profile press conferences before elections. **She notes that they deliberately use language focusing on fraud and intimidation.**
- **Johnson is somewhat pessimistic about reducing absentee ballot fraud.** Absentee ballots do have a useful function for the military and others who cannot get to the polling place, and motivated individuals will always find a way to abuse the system if possible. **At a minimum, however, she recommends that absentee ballots should require an excuse. She believes this has helped reduce abuse in Kentucky, and is wary of no-excuse practices in other states.**

Stephen Ansolobhere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Methodology suggestions

**In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources:**

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the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that asks whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. Mr. Ansolobohere recommended Jonathan Krosnick, Doug Rivers, and Paul Sniderman at Stanford; Donald Kinder and Arthur Lupia at Michigan; Edward Carmines at Indiana; and Phil Tetlock at Berkeley. In the alternative, Mr. Ansolobohere suggested that the EAC might work with the Census Bureau to have them ask different, additional questions in their Voter Population Surveys.

Mr. Chandler further suggested it is important to talk to private election lawyers, such as Randall Wood, who represented Ciro Rodriguez in his congressional election in Texas. Mr. Ansolobohere also recommended looking at experiments conducted by the British Election Commission.

Incidents of Fraud and Intimidation

Mr. Davidson's study for the Lawyers Committee for Civil Rights on the Voting Rights Act documented evidence of widespread difficulty in the voting process. However, he did not attempt to quantify whether this was due to intentional, malevolent acts. In his 2005 report on ballot security programs, he found that there were many allegations of fraud made, but not very many prosecutions or convictions. He saw many cases that did go to trial and the prosecutors lost on the merits.

In terms of voter intimidation and vote suppression, Mr. Davidson said he believes the following types of activities do occur:

- videotaping of voters' license plates;
- poll workers asking intimidating questions;
- groups of officious-looking poll watchers at the poll sites who seem to be some sort of authority looking for wrongdoing;
- spreading of false information, such as phone calls, flyers, and radio ads that intentionally mislead as to voting procedures.

Mr. Ansolobohere believes the biggest problem is absentee ballot fraud. However, many of these cases involve people who do not realize what they are doing is illegal, for example, telling someone else how to vote. Sometimes there is real illegality occurring however. For example:

- vote selling involving absentee ballots,
- the filling out of absentee ballots en masse,
- people at nursing homes filling out the ballots of residents, and
- there are stories about union leaders getting members to vote a certain way by absentee ballot.

This problem will only get bigger as more states liberalize their absentee ballot rules. Mr. Chandler agreed that absentee ballot fraud was a major problem.

Recommendations

- Go back to "for cause" absentee ballot rules, because it is truly impossible to ever ensure the security of a mail ballot. Even in Oregon, there was a study showing fraud in their vote by mail system.
- False information campaigns should be combated with greater voter education. Los Angeles County's voter education program should be used as a model.

Tracey Campbell, author, *Deliver the Vote*

While less blatant than in previous eras, fraud certainly still occurs, and he mentions some examples in his book. The major trend of the past 60-70 years has been that these tactics have grown more subtle.

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While he hasn't conducted any scientific study of the current state of fraud, his sense as a historian is that it seems naive, after generations of watching the same patterns and practices influence elections, to view suspect election results today as merely attributable to simple error.

Vote-buying and absentee fraud

Campbell sees fraud by absentee ballot and vote buying as the greatest threats to fair elections today. He says vote fraud is like real estate: location, location, location—the closer you can keep the ballots to the courthouse the better. Absentee ballots create a much easier target for vote brokers who can manage voting away from the polling place, or even mark a ballot directly, in exchange for, say, \$50—or even more if an individual can bring their entire family. He has noted some small counties where absentee ballots outnumber in-person ballots.

However, few people engaged in this activity would call it 'purchasing' a vote. Instead, it is candidate Jones' way of 'thanking' you for a vote you would have cast in any event. The issue is what happens if candidate Smith offers you more. Likewise, the politicians who engage in vote fraud don't see it as a threat to the republic but rather as a game they have to play in order to get elected.

Regional patterns

Campbell suggests such practices are more prevalent in the South than the Northern states, and even more so compared to the West. The South has long been characterized as particularly dangerous in intimidation and suppression practices—throughout history, one can find routine stories of deaths at the polls each year. While he maintains that fraud seems less likely in the Western states, he sees the explosion of mail in and absentee ballots there as asking for trouble.

Poll site closings as a means to suppress votes

Campbell points to a long historical record of moving poll sites in order to suppress votes. Polling places in the 1800s were frequently set up on rail cars and moved further down the line to suppress black votes.

He would include door-to-door canvassing practices here, as well as voting in homes, which was in use in Kentucky until only a few years ago. All of these practices have been justified as making polling places 'more accessible' while their real purpose has been to suppress votes.

Purge lists

Purge lists are, of course, needed in theory, yet Campbell believes the authority to mark names off the voter rolls presents extensive opportunity for abuse. For this reason, purging must be done in a manner that uses the best databases, and looks at only the most relevant information. When voters discover their names aren't on the list when they go to vote, for example, because they are "dead," it has a considerable demoralizing effect. Wrongful purging takes place both because of incompetence and as a tool to intentionally disenfranchise.

Campbell believes transparency is the real issue here. An hour after the polls close, we tend to just throw up our hands and look the other way, denying voters the chance to see that discrepancies are being rectified. He believes the cost in not immediately knowing election outcomes is a small price to pay for getting results right and showing the public a transparent process.

Deceptive practices

Today's deceptive practices have are solidly rooted in Reconstruction-era practices—i.e. phony ballots, the Texas 'elimination' ballot. The ability to confuse voters is a powerful tool for those looking to sway elections.

Language minorities

Campbell argues there is a fine line between offering help to non-English speakers and using that help against them. A related issue, particularly in the South, is taking advantage of the illiterate.

Current intimidation

Another tactic Campbell considers an issue today is polling place layout: the further vote suppressers can keep people away from the

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polls, the better. Practices such as **photographing people leaving a polling place may also tie into vote-buying, where photos are used to intimidate and validate purchased votes. A good way to combat such practices is by keeping electioneering as far from the polls as possible.**

Recommendations

- Specific voting administration recommendations Campbell advocates would include **reducing the use of absentee ballots and improving the protective zone around polling places.**
- Campbell would also like to see **enforcement against fraud stepped up and stiffer penalties enacted, as current penalties make the risk of committing fraud relatively low.** He compares the risk in election fraud similar to steroid use in professional sports—the potential value of the outcome is far higher than the risk of being caught or penalized for the infraction, so it is hard to prevent people from doing it. People need to believe they will pay a price for engaging in fraud or intimidation. Moreover, we need to have the will to kick people out of office if necessary.
- He is **skeptical of the feasibility of nonpartisan election administration, as he believes it would be difficult to find people who care about politics yet won't lean one way or the other—such an attempt would be unlikely to get very far before accusations of partisanship emerged. He considers the judiciary the only legitimate check on election fraud.**

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Litigation

Status of litigation in Indiana: On January 12 the briefing was completed. The parties are waiting for a decision from the U.S. district judge. The judge understood that one of the parties would seek a stay from the 7<sup>th</sup> Circuit Court of Appeals. The parties anticipate a decision in late March or early April. Mr. Webber did the discovery and depositions for the litigation. Mr. Webber feared the plaintiffs were going to state in their reply brief that HAVA's statewide database requirement would resolve the problems alleged by the state. However, the plaintiffs failed to do so, relying on a Motor Voter Act argument instead. **Mr. Webber believes that the voter ID at issue will make the system much more user-friendly for the poll workers.** The Legislature passed the ID legislation, and the state is defending it, on the basis of the problem of the *perception* of fraud.

Incidents of fraud and intimidation

Mr. Webber thinks that **no one can put his or her thumb on whether there has been voter fraud in Indiana. For instance, if someone votes in place of another, no one knows about it. There have been no prosecuted cases of polling place fraud in Indiana. There is no recorded history of documented cases, but it does happen.** In the litigation, he used articles from around the country about instances of voter fraud, but even in those examples there were ultimately no prosecutions, for example the case of Milwaukee. He also stated in the litigation that there are all kinds of examples of dead people voting—totaling in the hundreds of thousands of votes across the country.

One interesting example of actual fraud in Indiana occurred when a poll worker, in a poll using punch cards, **glued the chads back and then punched out other chads for his candidate.** But this would not be something that would be addressed by an ID requirement.

He also believes that the perception that the polls are loose can be addressed by the legislature. The legislature does not need to wait to see if the statewide database solves the problems and therefore affect the determination of whether an ID requirement is necessary. When he took the deposition of the Republican Co-Director, he said he thought Indiana was getting ahead of the curve. That is, there have been problems around the country, and confidence in elections is low. Therefore Indiana is now in front of getting that confidence back.

Mr. Webber stated that the **largest vote problem in Indiana is absentee ballots. Absentee ballot fraud and vote buying are the most documented cases.** It used to be the law that applications for absentee ballots could be sent anywhere. In one case absentee votes were

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exchanged for "a job on election day"---meaning one vote for a certain price. The election was contested and the trial judge found that although there was vote fraud, the incidents of such were less than the margin of victory and so he refused to overturn the election. Mr. Webber appealed the case for the state and argued the judge used the wrong statute. The Indiana Supreme Court agreed and reversed. **Several people were prosecuted as a result – those cases are still pending.**

Process

In Indiana, voter complaints first come to the attorney for the county election board who can recommend that a hearing be held. If criminal activity was found, the case could be referred to the county prosecutor or in certain instances to the Indiana Attorney General's Office. In practice, the Attorney General almost never handles such cases.

Mr. Webber has had experience training county of election boards in preserving the integrity and security of the polling place from political or party officials. Mr. Webber stated that the Indiana voter rolls need to be culled. He also stated that in Southern Indiana a large problem was vote buying while in Northern Indiana a large problem was based on government workers feeling compelled to vote for the party that gave them their jobs.

Recommendations

- Mr. Webber believes that all election fraud and intimidation complaints should be referred to the Attorney General's Office to circumvent the problem of local political prosecutions. The Attorney General should take more responsibility for complaints of fraud because at the local level, politics interferes. At the local level, everyone knows each other, making it harder to prosecute.
- Indiana currently votes 6 am to 6 pm on a weekday. Government workers and retirees are the only people who are available to work the polls. Mr. Webber suggested that the biggest change should be to move elections to weekends. This would involve more people acting as poll workers who would be much more careful about what was going on.
- Early voting at the clerk's office is good because the people there know what they are doing. People would be unlikely to commit fraud at the clerk's office. This should be expanded to other polling places in addition to that of the county clerk.
- Finally, Mr. Webber believes polling places should be open longer, run more professionally but that there needs to be fewer of them so that they are staffed by only the best, most professional people.

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Recent trends

Native election protection operations have intensified recently for several reasons. While election protection efforts in Native areas have been ongoing, leaders realized that they were failing to develop internal infrastructure or cultivate locally any of the knowledge and expertise which would arrive and leave with external protection groups.

Moreover, in recent years partisan groups have become more aware of the power of the native vote, and have become more active in native communities. This has partly resulted in an extreme increase in voter intimidation tactics. **As native communities are easy to identify, easy to target, and generally dominated by a single party, they are especially vulnerable to such tactics.**

Initially, reports of intimidation were only passed along by word of mouth. But it became such a problem in the past 5 to 6 years that tribal leaders decided to raise the issue to the national level. Thompson points to the Cantwell election in 2000 and the Johnson election in South Dakota in 2002 as tipping points where many began to realize the Indian vote could matter in Senate and national elections.

Thompson stressed that Native Vote places a great deal of importance on being nonpartisan. While a majority of native communities vote Democratic, there are notable exceptions, including communities in Oklahoma and Alaska, and they have both parties engaging in aggressive tactics. However, she believes the most recent increase in suppression and intimidation tactics have come from Republican Party organizations.

Nature of Suppression/Intimidation of Native Voters

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Thompson categorizes suppression into judge related and poll-watcher related incidents, both of which may be purposeful or inadvertent, as well as longstanding legal-structural constraints.

Structural problems

One example of inadvertent suppression built into the system stems from the fact that many Indian communities also include significant numbers of non-Indians due to allotment. Non-Indians tend to be most active in the state and local government while Indians tend to be more involved in the tribal government. Thus, the individuals running elections end up being non-Indian. Having Indians vote at polling places staffed by non-Indians often results in incidents of disrespect towards Native voters (Thompson emphasized the considerable racism which persists against Indians in these areas). Also, judges aren't familiar with Indian last names and are more dismissive of solving discrepancies with native voters.

Structural problems also arise from laws which mandate that the tribal government cannot run state or local elections. In places like South Dakota, political leaders used to make it intentionally difficult for Native Americans to participate in elections. For example, state, local and federal elections could not be held in the same location as tribal elections, leading to confusion when tribal and other elections are held in different locations. Also, it is common to have native communities with few suitable sites, meaning that a state election held in a secondary location can suddenly impose transportation obstacles.

Photo ID Issues

Thompson believes both state level and HAVA photo ID requirements have a considerable negative impact. For a number of reasons, many Indian voters don't have photo ID. Poor health care and poverty on reservations means that many children are born at home, leading to a lack of birth certificates necessary to obtain ID. Also, election workers and others may assume they are Hispanic, causing additional skepticism due to citizenship questions. There is a cultural issue as well—historically, whenever Indians register with the federal government it has been associated with a taking of land or removal of children. Thus many Indians avoid registering for anything with the government, even for tribal ID.

Thompson also offered examples of how the impact of ID requirements had been worsened by certain rules and the discriminatory way they have been carried out. In the South Dakota special election of 2003, poll workers told Native American voters that if they did not have ID with them and they lived within sixty miles of the precinct, the voter had to come back with ID. The poll workers did not tell the voters that they could vote by affidavit ballot and not need to return, as required by law. This was exacerbated by the fact that the poll workers didn't know the voters—as would be the case with non-Indian poll workers and Indian voters. Many left the poll site without voting and did not return.

In Minnesota, the state tried to prohibit the use of tribal ID's for voting outside of a reservation, even though Minnesota has a large urban Native population. Thompson believes this move was very purposeful, and despite any reasonable arguments from the Secretary of State, they had to file a lawsuit to stop the rule. They were very surprised to find national party representatives in the courtroom when they went to deal with lawsuit, representatives who could only have been alerted through a discussion with the Secretary of State.

Partisan Poll-Monitoring

Thompson believes the most purposeful suppression has been perpetrated by the party structures on an individual basis, of which South Dakota is a great example.

Some negative instances of poll monitoring are not purposeful. Both parties send in non-Indian, non-Western lawyers, largely from the East Coast, which can lead to uncomfortable cultural clashes. These efforts display a keen lack of understanding of these communities and the best way to negotiate within in them. But while it may be intimidating, it is not purposeful.

Yet there are also many instances of purposeful abuse of poll monitoring. While there were indeed problems during the 2002 Johnson election, it was small compared to the Janklow special election. Thompson says Republican workers shunned cultural understanding outreach, and had an extensive pamphlet of what to say at polls and were very aggressive about it. In one tactic, every time a voter

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would come up with no ID, poll monitors would repeat "You can't vote" over and over again, causing many voters to leave. This same tactic appeared across reservations, and eventually they looked to the Secretary of State to intervene.

In another example, the head of poll watchers drove from poll to poll and told voters without IDs to go home, to the point where the chief of police was going to evict him from the reservation. In Minnesota, on the Red Lake reservation, police actually did evict an aggressive poll watcher—the fact that the same strategies are employed several hundred miles apart points to standardized instructions.

None of these incidents ever went to court. Thompson argues this is due to few avenues for legal recourse. In addition, it is inherently difficult to settle these things, as they are he said-she said incidents and take place amidst the confusion of Election Day. Furthermore, poll watchers know what the outline of the law is, and they are careful to work within those parameters, leaving little room for legal action.

Other seeming instances of intimidation may be purely inadvertent, such as when, in 2002, the U.S. Attorney chose Election Day to give out subpoenas, and native voters stayed in their homes. In all fairness, she believes this was a misunderstanding.

The effect of intimidation on small communities is especially strong and is impossible to ultimately measure, as the ripple effect of rumors in insular communities can't be traced. In some communities, they try to combat this by using the Native radio to encourage people to vote and dispel myths.

She has suggestions for people who can describe incidents at a greater level of detail if interested.

Vote Buying and Fraud

They haven't found a great deal of evidence on vote-buying and fraud. When cash is offered to register voters, individuals may abuse this, although Thompson believes this is not necessarily unique to the Native community, but a reflection of high rates of poverty. This doesn't amount to a concerted effort at conspiracy, but instead represents isolated incidents of people not observing the rules. While Thompson believes looking into such incidents is a completely fair inquiry, she also believes it has been exploited for political purposes and to intimidate. For example, large law enforcement contingents were sent to investigate these incidents. As Native voters tend not to draw distinctions between law enforcement and other officials, this made them unlikely to help with elections.

Remedies

- As far as voter suppression is concerned, Native Vote has been asking the Department of Justice to look into what might be done, and to place more emphasis on law enforcement and combating intimidation. They have been urging the Department to focus on this at least much as it is focusing on enforcement of Section 203. Native groups have complained to DOJ repeatedly and DOJ has the entire log of handwritten incident reports they have collected. Therefore, Thompson recommends more DOJ enforcement of voting rights laws with respect to intimidation. People who would seek to abuse the process need to believe a penalty will be paid for doing so. Right now, there is no recourse and DOJ does not care, so both parties do it because they can.
- Certain states should rescind bars on nonpartisan poll watchers on Election Day; Thompson believes this is contrary to the nonpartisan, pro-Indian presence which would best facilitate voting in Native communities.
- As discussed above, Thompson believes ID requirements are a huge impediment to native voters. At a minimum, Thompson believes all states should be explicit about accepting tribal ID on Election Day.
- Liberalized absentee ballot rules would also be helpful to Native communities. As many Indian voters are disabled and elderly, live far away from their precinct, and don't have transportation, tribes encourage members to vote by absentee ballot. Yet obstacles remain. Some voters are denied a chance to vote if they have requested a ballot and then show up at the polls. Thompson believes South Dakota's practice of tossing absentee ballots if a voter shows up at the ED would serve as an effective built-in protection. In addition, she believes there should be greater scrutiny of GOTV groups requesting absentee ballots without permission. Precinct location is a longstanding issue, but Thompson recognizes that states have limited resources. In the

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**absence of those resources, better absentee ballot procedures are needed.**

- **Basic voter registration issues and access are also important in native communities and need to be addressed.**
- **Thompson is mixed on what restrictions should be placed on poll watcher behavior, as she believes open elections and third party helpers are both important. However, she would be willing to explore some sort of stronger recourse and set of rules concerning poll watchers' behavior. Currently, the parties are aware that no recourse exists, and try to get away with what they will. This is not unique to a single party—both try to stay within law while shaking people up. The existing VRA provision is 'fluffy'—unless you have a consent decree, you have very little power. Thompson thinks a general voter intimidation law that is left a bit broad but that nonetheless makes people aware of some sort of kickback could be helpful.**

**Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights**

Regarding the August 2005 Report

**ACVR has not followed up on any of the cases it cited in the 2005 report to see if the allegations had been resolved in some manner. Mr. Torchinsky stated that there are problems with allegations of fraud in the report and prosecution—just because there was no prosecution, does not mean there was no vote fraud. He believes that it is very hard to come up with a measure of voter fraud short of prosecution. Mr. Torchinsky does not have a good answer to resolve this problem.**

P. 35 of the Report indicates that there were coordinated efforts by groups to coordinate fraudulent voter registrations. P. 12 of the Ohio Report references a RICO suit filed against organizations regarding fraudulent voter registrations. Mr. Torchinsky does not know what happened in that case. He stated that there was a drive to increase voter registration numbers regardless of whether there was an actual person to register. He stated that when you have an organization like ACORN involved all over the place, there is reason to believe it is national in scope. When it is the same groups in multiple states, this leads to the belief that it is a concerted effort.

Voting Problems

**Mr. Torchinsky stated there were incidents of double voting—ex. a double voter in Kansas City, MO. If the statewide voter registration database requirement of HAVA is properly implemented, he believes it will stop multiple voting in the same state. He supports the HAVA requirement, if implemented correctly. Since Washington State implemented its statewide database, the Secretary of State has initiated investigations into felons who voted. In Philadelphia the major problem is permitting polling places in private homes and bars – even the homes of party chairs.**

Mr. Torchinsky believes that voter ID would help, especially in cities in places like Ohio and Philadelphia, PA. The ACVR legislative fund supports the Real ID requirements suggested by the Carter-Baker Commission. Since federal real ID requirements will be in place in 2010, any objection to a voter ID requirement should be moot.

Mr. Torchinsky stated that there are two major poll and absentee voting problems—(1) fraudulent votes—ex. dead people voting in St. Louis and (2) people voting who are not legally eligible—ex. felons in most places. He also believes that problems could arise in places that still transport paper ballots from the voting location to a counting room. However, he does not believe this is as widespread a problem now as it once was.

Suggestions

**Implement the Carter-Baker Commission recommendations because they represent a reasonable compromise between the political parties.**

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Robin DeJarnette, Executive Director, American Center for Voting Rights

[NO SUMMARY FOUND]

Joseph Rich, former Director of the Voting Section, Civil Rights Division, U.S. Department of Justice

Data Collection and Monitoring

- The (Voting) section developed a new database before the 2004 election to log complaint calls and what was done to follow up on them. They opened many investigations as a result of these complaints, including one on the long lines in Ohio (see DOJ letter on website, as well as critical commentary on the DOJ letter's analysis). DOJ found no Section 2 violation in Ohio. John Tanner should be able to give us this data. However, the database does not include complaints that were received by monitors and observers in the field.
- All attorney observers in the field are required to submit reports after Election Day to the Department. These reports would give us a very good sense of the scope and type of problems that arose on that day and whether they were resolved on the spot or required further action.
- The monitoring in 2004 was the biggest operation ever. Prior to 2000, only certain jurisdictions could be observed – a VRA covered jurisdiction that was certified or a jurisdiction that had been certified by a court, e.g. through a consent decree. Since that time, and especially in 2004, the Department has engaged in more informal "monitoring." In those cases, monitors assigned to certain jurisdictions, as opposed to observers, can only watch in the polling place with permission from the jurisdiction. The Department picked locations based on whether they had been monitored in the past, there had been problems before, or there had been allegations in the past. Many problems that arose were resolved by monitors on the spot.

Processes for Cases not Resolved at the Polling Site

- If the monitor or observer believes that a criminal act has taken place, he refers it to the Public Integrity Section (PIN). If it is an instance of racial intimidation, it is referred to the Civil Rights Criminal Division. However, very few such cases are prosecuted because they are very hard to prove. The statutes covering such crimes require actual violence or the threat of violence in order to make a case. As a result, most matters are referred to PIN because they operate under statutes that make these cases easier to prove. In general, there are not a high number of prosecutions for intimidation and suppression.
- If the act is not criminal, it may be brought as a civil matter, but only if it violated the Voting Rights Act – in other words, only if there is a racial aspect to the case. Otherwise the only recourse is to refer it to PIN.
- However, PIN tends not to focus on intimidation and suppression cases, but rather cases such as alleged noncitizen voting, etc. Public Integrity used to only go after systematic efforts to corrupt the system. Now they focus on scattered individuals, which is a questionable resource choice. Criminal prosecutors over the past 5 years have been given more resources and more leeway because of a shift in focus and policy toward noncitizens and double voting, etc.
- There have been very few cases brought involving African American voters. There have been 7 Section 2 cases brought since 2001 – only one was brought on behalf of African American voters. That case was initiated under the Clinton administration. The others have included Latinos and discrimination against whites.

Types of Fraud and Intimidation Occurring

- There is no evidence that polling place fraud is a problem. There is also no evidence that the NVRA has increased the opportunity for fraud. Moreover, regardless of NVRA's provisions, an election official can always look into a voter's registration if he or she believes that person should no longer be on the list. The Department is now suing Missouri because of its poor registration list.

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- The biggest problem is with absentee ballots. The photo ID movement is a vote suppression strategy. This type of suppression is a bigger problem than intimidation. There has been an increase in vote suppression over the last five years, but it has been indirect, often in the way that laws are interpreted and implemented. Unequal implementation of ID requirements at the polls based on race would be a VRA violation.
- The most common type of intimidation occurring is open hostility by poll workers toward minorities. It is a judgment call whether this is a crime or not – Craig Donsanto of PIN decides if it rises to a criminal matter.
- Election Day challenges at the polls could be a VRA violation but such a case has never been formally pursued. Such cases are often resolved on the spot. Development of a pre-election challenge list targeted at minorities would be a VRA violation but this also has never been pursued. These are choices of current enforcement policy.
- Long lines due to unequal distribution of voting machines based on race, list purges based on race and refusal to offer a provisional ballot on the basis of race would also be VRA violations.

Recommendations

- Congress should pass a new law that allows the Department to bring civil actions for suppression that is NOT race based, for example, deceptive practices or wholesale challenges to voters in jurisdictions that tend to vote heavily for one party.
- Given the additional resources and latitude given to the enforcement of acts such as double voting and noncitizen voting, there should be an equal commitment to enforcement of acts of intimidation and suppression cases.
- There should also be increased resources dedicated to expanded monitoring efforts. This might be the best use of resources since monitors and observers act as a deterrent to fraud and intimidation.

Joseph Sandler, Counsel to the Democratic National Committee

2004-Administrative Incompetence v. Fraud

Sandler believes the 2004 election was a combination of administrative incompetence and fraud. Sandler stated there was a deliberate effort by the Republicans to disenfranchise voters across the country. This was accomplished by mailing out cards to registered voters and then moving to purge from the voters list those whose cards were returned. Sandler indicated that in New Mexico there was a deliberate attempt by Republicans to purge people registered by third parties. He stated that there were intentional efforts to disenfranchise voters by election officials like Ken Blackwell in Ohio.

The problems with machine distribution in 2004 were not deliberate. However, Sandler believes that a large problem exists in the states because there are no laws that spell out a formula to allocate so many voting machines per voter.

Sandler was asked how often names were intentionally purged from the voter lists. He responded that there will be a lot of names purged as a result of the creation of the voter lists under HAVA. However, Sandler stated most wrongful purging results from incompetence.

Sandler also said there was not much intimidation at the polls because most such efforts are deterred and that the last systematic effort was in Philadelphia in 2003 where Republicans had official looking cars and people with badges and uniforms, etc.

Sandler stated that deliberate dissemination of misinformation was more incidental, with individuals misinforming and not a political party. Disinformation did occur in small Spanish speaking communities.

Republicans point to instances of voter registration fraud but Sandler believes it did not occur, except for once in a blue moon. Sandler did not believe non-citizen voting was a problem. He also does not believe that there is voter impersonation at the polls and that Republicans allege this as a way of disenfranchising voters through restrictive voter identification rules.

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Fraud and Intimidation Trends

- Sandler stated that over the years there has been a shift from organized efforts to intimidate minority voters through voter identification requirements, improper purging, failure to properly register voters, not allocating enough voting machines, failure to properly use the provisional ballot, etc., by voter officials as well as systematic efforts by Republicans to deregister voters.
- At the federal level, Sandler said, the voting division has become so politicized that it is basically useless now on intimidation claims. At the local level, Sandler does not believe politics prevents or hinders prosecution for vote fraud.

Sandler's Recommendations:

- Moving the voter lists to the state level is a good idea where carefully done
- Provisional ballots rules should follow the law and not be over-used
- No voter ID
- Partisanship should be taken out of election administration, perhaps by giving that responsibility by someone other than the Secretary of State. There should at least be conflict of interest rules
- Enact laws that allow private citizens to bring suit under state law

All suggestions from the DNC Ohio Report:

1. The Democratic Party must continue its efforts to monitor election law reform in all fifty states, the District of Columbia and territories.
2. States should be encouraged to codify into law all required election practices, including requirements for the adequate training of official poll workers.
3. States should adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts, to ensure adequate and nondiscriminatory access. These standards should be based on set ratios of numbers of machines and pollworkers per number of voters expected to turn out, and should be made available for public comment before being adopting.
4. States should adopt legislation to make clear and uniform the rules on voter registration.
5. The Democratic Party should monitor the processing of voter registrations by local election authorities on an ongoing basis to ensure the timely processing of registrations and changes, including both newly registered voters and voters who move within a jurisdiction or the state, and the Party should ask state Attorneys General to take action where necessary to force the timely updating of voter lists.
6. States should be urged to implement statewide voter lists in accordance with the Help America Vote Act ("HAVA"), the election reform law enacted by Congress in 2002 following the Florida debacle.
7. State and local jurisdictions should adopt clear and uniform rules on the use of, and the counting of, provisional ballots, and distribute them for public comment well in advance of each election day.
8. The Democratic Party should monitor the purging and updating of registered voter lists by local officials, and the Party should challenge, and ask state Attorneys General to challenge, unlawful purges and other improper list maintenance practices.
9. States should not adopt requirements that voters show identification at the polls, beyond those already required by federal law (requiring that identification be shown only by first time voters who did not show identification when registering.)
10. State Attorneys General and local authorities should vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.
11. Jurisdictions should be encouraged to use precinct-tabulated optical scan systems with a computer assisted device at each precinct, in preference to touchscreen ("direct recording equipment" or "DRE") machines.

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12. Touchscreen (DRE) machines should not be used until a reliable voter verifiable audit feature can be uniformly incorporated into these systems. In the event of a recount, the paper or other auditable record should be considered the official record.
13. Remaining punchcard systems should be discontinued.
14. **States should ask state Attorneys General to challenge unfair or discriminatory distribution of equipment and resources where necessary, and the Democratic Party should bring litigation as necessary.**
15. Voting equipment vendors should be required to disclose their source code so that it can be examined by third parties. No voting machine should have wireless connections or be able to connect to the Internet.
16. Any equipment used by voters to vote or by officials to tabulate the votes should be used exclusively for that purpose. That is particularly important for tabulating/aggregating computers.
17. States should adopt "no excuse required" standards for absentee voting.

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18. States should make it easier for college students to vote in the jurisdiction in which their school is located.
19. States should develop procedures to ensure that voting is facilitated, without compromising security or privacy, for all eligible voters living overseas.
20. **States should make voter suppression a criminal offense at the state level, in all states.**
21. **States should improve the training of pollworkers.**
22. **States should expend significantly more resources in educating voters on where, when and how to vote.**
23. **Partisan officials who volunteer to work for a candidate should not oversee or administer any elections.**

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John Ravitz, Executive Director, New York City Board of Elections

Process

If there is an allegation of fraud or intimidation, the commissioners can rule to act on it. For example, in 2004 there were allegations in Queens that people had registered to vote using the addresses of warehouses and stores. The Board sent out teams of investigators to look into this. The Board then developed a challenge list that was to be used at the polls if any of the suspect voters showed up to vote.

If the allegation rises to a criminal level, the Board will refer it to the county district attorney. If a poll worker or election official is involved, the Board may conduct an internal investigation. That individual would be interviewed, and if there is validity to the claim, the Board would take action.

Incidences of Fraud and Intimidation

Mr. Ravitz says there have been **no complaints about voter intimidation since he has been at the Board**. There have been instances of over-aggressive poll workers, but nothing threatening. Voter fraud has also generally not been a problem.

**In 2004, the problem was monitors from the Department of Justice intimidating voters. They were not properly trained, and were doing things like going into the booth with voters.** The Board had to contact their Department supervisors to put a stop to it.

**Charges regarding "ballot security teams" have generally just been political posturing.**

**The problem of people entering false information on voter registration forms is a problem. However, sometimes a name people allege is false actually turns out to be the voter's real name. Moreover, these types of acts do not involve anyone actually casting a fraudulent ballot.**

**With respect to the issue of voters being registered in both New York and Florida, the Board now compares its list with that of Florida and other places to address the problem. This will be less of an issue with the use of statewide voter registration databases, as information becomes easier to share.** Despite the number of people who were on the voter registration lists of both jurisdictions, there was no one from those lists who voted twice.

**Most of the problems at the polls have to do with poll workers not doing what they are supposed to do, not any sort of malfeasance.** This indicates that **improved training is the most important measure we can take.**

**There have been instances in which poll workers ask voters for identification when they shouldn't. However, the poll workers seem to do it when they cannot understand the name when the voter tells it to them.** The Board has tried to train them that no matter what, the poll worker cannot ask for identification in order to get the person's name.

**Absentee ballot fraud has also not been a problem in New York City.** This is likely because **absentee ballots are counted last – eight days after election day.** This is so that they can be checked thoroughly and verified. This is a practice other jurisdictions might consider.

**New York City has not had a problem with ex-felons voting or with ex-felons not knowing their voting rights.** The City has not had any problems in recent years with deceptive practices, such as flyers providing misinformation about voting procedures.

Recommendations

**Better poll worker training**

John Tanner, Director, Voting Section, Civil Rights Division, U.S. Department of Justice

Mr. Tanner would not give us any information about or data from the section's election complaint in-take phone logs; data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws; and would give us only a selected few samples of attorney-observer reports,

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reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. He would not discuss in any manner any current investigations or cases the section is involved in. He also did not believe it was his position to offer us recommendations as to how his office, elections, or the voting process might be improved.

Authority and Process

The Voting Section, in contrast to the Public Integrity section as Craig Donsanto described it, typically looks only at systemic problems, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Federal voting laws only apply to state action, so the section only sues local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, systematic changes forced upon those jurisdictions have made it so now the section does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14<sup>th</sup> and 15<sup>th</sup> Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter of individuals or systemic. When deciding what to do with the complaint, the section errs on the side of referring it criminally because they do not want civil litigation to complicate a possible criminal case.

When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

Voter Intimidation

Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been an investigation into the abusive use of challengers.

Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

However, Mr. Tanner said the Department was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the voting section to become involved.

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Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands of the states will be helpful because at this higher level of government you find a higher level of professionalism.

It is hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. However, the enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared, as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

The section is not filing as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore. Mr. Tanner said that race based problems are rare now.

NVRA has been effective in opening up the registration process. In terms of enforcement, Mr. Tanner said they do what they can when they have credible allegations. There is a big gap between complaints and what can be substantiated. Mr. Tanner stated that given the high quality of the attorneys now in the section, if they do not investigate it or bring action, that act complained of did not happen.

Recommendations

Mr. Tanner did not feel it was appropriate to make recommendations

Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin

Complaints of fraud and intimidation do not usually come to Kennedy's office. Kennedy says that complainants usually take their allegations to the media first because they are trying to make a political point.

Election Incidents of Fraud

The investigations into the 2004 election uncovered some cases of double voting and voting by felons who did not know they were not eligible to vote, but found no concerted effort to commit fraud. There have been a couple of guilty pleas as a result, although not a number in the double digits. The task force and news reports initially referred to 100 cases of double voting and 200 cases of felon voting, but there were not nearly that many prosecutions. Further investigation since the task force investigation uncovered that in some instances there were mis-marks by poll workers, fathers and sons mistaken for the same voter, and even a husband and wife marked as the same voter. The double votes that are believed to have occurred were a mixture of absentee and polling place votes. It is unclear how many of these cases were instances of voting in two different locations.

In discussing the case from 2000 in which a student claimed – falsely – that he had voted several times, Kennedy said that double voting can be done. The deterrent is that it's a felony, and that one person voting twice is not an effective way to influence an election. One would need to get a lot of people involved for it to work.

The task force set up to investigate the 2004 election found a small number of illegal votes but given the 7,000 alleged, it was a relatively small number. There was no pattern of fraud.

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The one case Kennedy could recall of an organized effort to commit fraud was in the spring of 2003 or 2004. A community service agency had voters request that absentee ballots be sent to the agency instead of to the voters and some of those ballots were signed without the voters' knowledge. One person was convicted, the leader of the enterprise.

In Milwaukee, the main contention was that there were more ballots than voters. However, it was found that the 7,000 vote disparity was tied to poll worker error. The task force found that there was no concerted effort involved. Kennedy explained that there are many ways a ballot can get into a machine without a voter getting a number. These include a poll worker forgetting to give the voter one; someone does Election Day registration and fills out a registration form but does not get a number because the transaction all takes place at one table; and in Milwaukee, 20,000 voters who registered were not put on the list in time and as a short term solution the department sent the original registration forms to the polling places to be used instead of the list to provide proof of registration. This added another element of confusion that might have led to someone not getting a voter number.

The Republican Party used this original list and contracted with a private vendor to do a comparison with the U.S. postal list. They found initially that there were 5,000 bad addresses, and then later said there were 35,000 illegitimate addresses. When the party filed a complaint, the department told them they could force the voters on their list to cast a challenge ballot. On Election Day, the party used the list but found no one actually voting from those addresses. Kennedy suspects that the private vendor made significant errors when doing the comparison.

In terms of noncitizen voting, Kennedy said that there is a Russian community in Milwaukee that the Republican Party singles out every year but it doesn't go very far. Kennedy has not seen much in the way of allegations of noncitizen voting.

However, when applying for a drivers license, a noncitizen could register to vote. There is no process for checking citizenship at this point, and the statewide registration database will not address this. Kennedy is not aware of any cases of noncitizen voting as a result, but it might have happened.

Kennedy said that the biggest concern seemed to be suspicions raised when groups of people are brought into the polling site from group homes, usually homes for the disabled. There are allegations that these voters are being told how to vote.

Incidents of Voter Intimidation

In 2004, there was a lot of hype about challenges, but in Wisconsin, a challenger must articulate a basis under oath. This acts as a deterrent, but at the same time it creates the potential that someone might challenge everyone and create long lines, keeping people from voting. In 2004, the Republican Party could use its list of suspect addresses as a legitimate basis for challenges, so there is the potential for abuse. It is also hard to train poll workers on that process. In 2004, there were isolated cases of problems with challengers.

In 2002, a flyer was circulated only in Milwaukee claiming that you had vote by noon. This was taken as an intimidation tactic by the Democrats.

Reforms

Wisconsin has had difficulty with its database because 1) they have had a hard time getting a good product out of the vendor and 2) until now there was no registration record for one-quarter of the voters. Any jurisdiction with fewer than 5000 voters was not required to have a registration list.

In any case, once these performance issues are worked out, Kennedy does believe the statewide voter registration database will be very valuable. In particular, it will mean that people who move will not be on more than one list anymore. It should also address the double voting issue by identifying who is doing it, catching people who do it, and identifying where it could occur.

Recommendations

- Better trained poll workers
- Ensure good security procedures for the tabulation process and more transparency in the vote counting process

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- **Conduct post-election audits**

Evelyn Stratton, Justice, Supreme Court of Ohio

The 2004 Election

Justice Stratton stated that usually in the period right before an election, filings die down due to the Ohio expedited procedures for electoral challenges. However, the 2004 election was unusual because there were motions and cases decided up to the day of the election. Justice Stratton believed that most of the allegations were knee-jerk reactions without any substance. For example, without any factual claims, suit was brought alleging that all voter challengers posed a threat to voters. Thematically, allegations were either everyday voting problems or "conspiracies" depending on where the complaint came from. The major election cases in 2004 revolved around Secretary of State Blackwell.

Justice Stratton made a point that the Ohio Supreme Court bent over backwards in the 2004 election to be fair to both sides. There was never any discussion about a ruling helping one political party more than the other.

Justice Stratton cited two cases that summarize and refute the 2004 complaints--819 NE 2d 1125 (Ohio 2004) and 105 Ohio St. 3d 458 (2004).

General Election Fraud Issues

Justice Stratton has seen very few fraud cases in Ohio. Most challenges are for technical statutory reasons. She remembered one instance where a man who assisted handicapped voters marked the ballot differently than the voter wanted. Criminal charges were brought against this man and the question that the Ohio Supreme Court had to decide was whether ballots could be opened and inspected to see how votes were cast.

Justice Stratton claimed she knew of isolated incidences of fictitious voter registration but these were not prosecuted. She has not seen any evidence of ballots being stuffed, dead people voting, etc.

Suggestions for Changes in Voting Procedures

- The Ohio Supreme Court is very strict about latches--if a person sits on their rights too long, they lose the right to file suit. The Ohio expedited procedures make election challenges run very smooth. Justice Stratton does not remember any suits brought on the day of the election.
- lower courts need to follow the rules for the expedited procedures. Even given the anomalies with lower courts permitting late election challenges in 2004, the Ohio Supreme Court does not want to make a new rule unless this pattern repeats itself in 2008.
- last minute challenges should not be permitted
- supports a non-partisan head of state elections.

Tony Sirvello, Executive Director, International Association of Clerks, Records, Election Officials and Treasurers

Incidents of Election Fraud

Sirvello stated that one problem with election crimes is that they are not high on the priority list of either district attorneys or grand juries. Therefore, complaints of election crime very rarely are prosecuted or are indicted by the grand jury. In 1996 in Harris County, 14 people voted twice but the grand jury refused to indict. One woman voted twice, once during early voting and once on Election Day. She said she thought there were two elections. The jury believed her. Sirvello believes none of the people intentionally voted more than once. He said that he believes double voting is not as big of an issue as people make it out to be.

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In 1986, it was found that there were 300 more ballots than voter signatures. It was clear that the elections officials stuffed the ballot boxes. The case was brought before a grand jury, but there was no indictment because all of the defendants were friends and relatives of each other and none would admit what had been done.

Sirvello stated that there have been isolated circumstances where a voter would show up at the poll and his name had already been signed and he had voted.

Finally, Sirvello indicated that some people who worked in Houston but did not live in Harris County were permitted to vote.

Specific Absentee Ballot/Vote By Mail Issues

Sirvello said that mail voting presents the largest problem. With mail voting there is too much opportunity to influence voters or to fraudulently request a ballot. If one applied for an absentee ballot, their name and address was made available to candidates and political consultants who would often send people to collect the ballot. Many did not want to give up the ballot but wanted to mail it personally. The result was to discourage voting.

In Texas, a person could only apply for an absentee ballot if over 65 years of age. Parties, candidates and consultants would get the list of voters over 65 and send them a professional mail piece telling them they could vote by mail and a ballot with everything filled out except the signature. Problems ensued -- for example, voters would print their names rather than sign them, and the ballot was rejected. In other cases, the elderly would give their absentee ballot to someone else.

If a person applied for an absentee ballot but then decided not to cast it but to vote in person, that person had to bring the non-voted absentee ballot to the poll and surrender it. If they did not they would not be permitted to vote at the polling place.

Incidents of Voter Intimidation

Sirvello only reported isolated cases of intimidation or suppression in Harris County. These mostly occurred in Presidential elections. Some people perceived intimidation when being told they were not eligible to vote under the law. Sirvello stated that the big issue in elections now is whether there should be a paper trail for touch screen voting.

Recommendations

- District attorneys need to put more emphasis on election crime so people will not believe that it goes unpunished.
- There should be either a national holiday for Election Day or a day should be given off of work without counting as a vacation day so that better poll workers are available and there can be more public education on election administration procedures.

Harry Van Sickle, Commissioner of Elections, and Deputy Chief Counsel to the Secretary of State Larry Boyle, Pennsylvania

Fraud and Intimidation

Neither Van Sickle nor Boyle was aware of any fraud of any kind in the state of Pennsylvania over the last five years. They are not aware of the commission of any deceptive practices, such as flyers that intentionally misinform as to voting procedures. They also have never heard of any incidents of voter intimidation. With respect to the mayoral election of 2003, the local commission would know about that.

Since the Berks County case of 2003, where the Department of Justice found poll workers who treated Latino voters with hostility among other voting rights violations, the Secretary's office has brought together Eastern Pennsylvania election administrators and voting advocates to discuss the problems. As a result, other counties have voluntarily chosen to follow the guidance of the Berks County federal court order.

Regarding the allegations of fraud that surrounded the voter identification debate, Mr. Boyle said was not aware of any instances of fraud involving identity. He believes this is because Pennsylvania has laws in place to prevent this. For example, in 2002 the state legislature passed an ID law that is stricter than HAVA's -- it requires all first time voters to present identification. In addition, the SURE System --

EAC SUMMARY OF EXPERT INTERVIEWS FOR  
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

the state's statewide voter registration database – is a great anti-fraud mechanism. The system will be in place statewide in the May 2006 election.

In addition, the state took many steps before the 2004 election to make sure it would be smooth. They had attorneys in the counties to consult on problems as well as staff at the central office to take calls regarding problems. In addition, in 2004 the state used provisional ballots for the first time. This resolved many of the problems that used to occur on Election Day.

Mr. Boyle is not aware of any voter registration fraud. This is because when someone registers to vote, the administrator does a duplicate check. In addition, under new laws a person registering to vote must provide their drivers license or Social Security number which are verified through the Department of Motor Vehicles and the Social Security Administration. Therefore, it would be unlikely that someone would be able to register to vote falsely.

Process

Most problems are dealt with at the local level and do not come within the review of the Secretary of State's office. For instance, if there is a complaint of intimidation, this is generally dealt with by the county courts which are specially designated solely to election cases on Election Day. The Secretary does not keep track of these cases. Since the passage of NVRA and HAVA counties will increasingly call the office when problems arise.

Recommendations

Mr. Boyle suggested we review the recommendations of the Pennsylvania Election Reform Task Force which is on the Secretary's website. Many of those recommendations have been introduced in the legislature.

Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice

Questions

*How are Prosecution Decisions Made?*

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an AUSA. Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario – a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings easily because such defendants are likely to provide information about others involved.

The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between

Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

Does it Matter if the Complaint Comes from a Member of a Racial Minority?

EAC SUMMARY OF EXPERT INTERVIEWS FOR  
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

No. But if the question involves racial animus, that has also always been an aggravating factor, making it more likely the Department will take it over

What Kinds of Complaints Would Routinely Override Principles of Federalism?

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office.

Are There Too Few Prosecutions?

**DOJ can't prosecute everything.**

What Should Be Done to Improve the System?

- The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons:
  - federal districts draw from a bigger and more diverse jury pool;
  - the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected;
  - DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them;
  - DOJ can use the grand jury process as a discovery technique and to test the strength of the case.
- In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to “fix” *McNally*, did not include voter fraud.
- As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s..

Other Information

The Department has held four symposia for DEOs and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public. (Peg will be sending us the complete training materials used at those sessions. These are confidential and are the subject of FOIA litigation).

There are two types of attorneys in the division:

- prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and
- braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

Cases:

Donsanto provided us with three case lists: Open cases (still being investigated) as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006 and cases closed for lack of evidence as of January 13, 2006

If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

**Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.**

**Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought when there was a pattern or scheme to corrupt the process. Charges were not brought against individuals – those**

EAC SUMMARY OF EXPERT INTERVIEWS FOR  
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

cases went un-prosecuted. This change in direction, focus, and level of aggression was by the decision of the Attorney General. The reason for the change was for deterrence purposes.

The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

- **Felon voters in Milwaukee.**
- **Alien voters in the Southern District of Florida.** FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.
- **Double voters in a variety of jurisdictions.**

The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

Sharon Priest, former Secretary of State, Arkansas

Process:

When there is an allegation of election fraud or intimidation, the county clerk refers it to the local district attorney. Most often, the DA does not pursue the claim. There is little that state administrators can do about this because in Arkansas, county clerks are partisanly elected and completely autonomous. Indeed, county clerks have total authority to determine who is an eligible voter.

Data:

There is very little data collected in Arkansas on fraud and intimidation cases. Any information there might be stays at the county level. This again is largely because the clerks have so much control and authority, and will not release information. Any statewide data that does exist might be gotten from Susie Storms from the State Board of Elections.

Most Common Problems

The perception of fraud is much greater than the actual incidence of fraud.

- The DMV does not implement NVRA in that it does not take the necessary steps when providing the voter registration forms and does not process them properly. This leads to both ineligible voters potentially getting on the voting rolls (e.g. noncitizens, who have come to get a drivers license, fill out a voter registration form having no intention of actually voting) and voter thinking they are registered to vote to find they are not on the list on Election Day. Also, some people think they are automatically registered if they have applied for a drivers license.
- Absentee ballot fraud is the most frequent form of election fraud.
- In Arkansas, it is suspected that politicians pay ministers to tell their congregations to vote for them
- In 2003, the State Board documented 400 complaints against the Pulaski County Clerk for engaging in what was at least borderline fraud, e.g. certain people not receiving their absentee ballots. The case went to a grand jury but no indictment was brought.
- Transportation of ballot boxes is often insecure making it very easy for insiders to tamper with the ballots or stuff the ballot boxes. Priest has not actually witnessed this happen, but believes it may have.
- Intimidation at the poll sites in court houses. Many voters are afraid of the county judges or county employees and therefore will not vote. They justifiably believe their ballots will be opened by these employees to see who they voted for, and if they voted against the county people, retribution might ensue.

EAC SUMMARY OF EXPERT INTERVIEWS FOR  
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

- **Undue challenges to minority language voters at the poll sites**
- **Paid registration collectors fill out phony names, but these individuals are caught before anyone is able to cast an ineligible ballot.**

Suggested Reforms for Improvement:

- **Nonpartisan election administration**
- **Increased prosecution of election crimes through greater resources to district attorneys. In addition, during election time, there should be an attorney in the DA's office who is designated to handle election prosecution.**
- **There should be greater centralization of the process, especially with respect to the statewide database. Arkansas has a "bottom up" system. This means the counties still control the list and there is insufficient information sharing. For example, if someone lives in one county but dies in another, the county in which the voter lived – and was registered to vote – will not be notified of the death.**

**Deliberative Process  
Privilege**

To: Members of the United States Election Assistance Commission  
Cc: Thomas Wilkey, Executive Director, and Julie Thompson Hodgkins, General Counsel, Election Assistance Commission  
From: Tova Andrea Wang  
Re: Project on Voter Fraud and Intimidation  
Date: December 7, 2006

As one of the consultants and authors of the report on voter fraud and intimidation released by the Election Assistance Commission today, I am writing to request that the EAC restore the information that has been altered and removed from the research report we submitted to the EAC in July, 2006.

Job Serebrov and I spent over a year and hundreds of hours working on the report on voter fraud and voter intimidation in a bipartisan and highly effective manner. The report we wrote was a reflection of the detailed and laborious research we did over these many months. Unfortunately, the report the EAC released today does not fully reflect our research and the report of our findings submitted to the EAC in July, 2006.

After being unable to get any action taken on the report for months, I learned very recently that the General Counsel of the EAC would be taking responsibility for "revising" the report. On November 15 of this year I requested that Job Serebrov and I be permitted to review any revisions or changes made by EAC staff to the draft we submitted. We both offered to work collaboratively and cooperatively with EAC staff to ensure that the document produced was the most informative and useful product possible. This request was denied. Again, on November 29, 2006, upon learning that the report was to become public at an upcoming EAC meeting, I requested in writing that Job Serebrov and I be at least allowed to see embargoed copies of the report to be released before that December 7, 2006 meeting. That request was denied. On December 4, 2006 I offered to sign a confidentiality agreement whereby I would agree not to discuss the report before its public release. That request was also denied.

It is my understanding that with other research reports for which the EAC has contracted consultants there has been a process of give and take between the consultants and the EAC staff and commissioners prior to public release of the report. The consultants in this instance were repeatedly denied that opportunity, leading to today's result.

The issues around voter fraud and intimidation are controversial, making it all the more necessary that the research around it be as free from politics as possible. That is why the EAC made this project a bipartisan effort, with a bipartisan team of consultants and a bipartisan working group to inform and advise us on our work.

The EAC has a statutory obligation to provide the Congress and the American public the best research, data and guidance it can. Knowledge about the extent and nature of voter fraud and intimidation is fundamental to ensuring the right of every eligible American to vote and that every legitimate vote is counted.

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I hope the EAC will reconsider its actions of today and release the report that was written by the consultants so that the Congress and the voters can engage in an informed and honest discussion about one of the most serious issues confronting our democracy today.

Please respond to this request by Monday, December 11. Thank you for your timely consideration.

007217



U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

October 19, 2006

The Honorable Rush Holt  
1019 Longworth Building  
Washington, DC 20515

**Via Facsimile Transmission ONLY**  
**202-225-6025**

RE: October 16, 2006 Letter

Dear Congressman Holt:

Your letter of October 16, 2006 requests the release of EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study -- finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud -- as it will serve as the basis of the EAC report on this study.

Thank you for your letter. You can be assured that as soon as a final report on the fraud and intimidation study is available, a copy will be made available to the public.

Sincerely,

  
Paul S. DeGregorio  
Chairman

Attorney-Client  
Privilege

Margaret Sims /EAC/GOV  
11/07/2006 11:29 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: VF and VI study

OK, I will get started on the interview summaries today.

DOJ (Donsanto and Tanner) raised objections to the consultants' description of their interviews, which state that DOJ officials agreed they were bringing fewer intimidation and suppression cases. An advocacy group is going after DOJ, accusing the agency of doing just that for political reasons, so this is something DOJ wants corrected.

Apart from the consultants pre-existing bias that "the feds aren't doing enough", a big part of the problem appears to have been a misunderstanding over terminology. When our consultants used the term "intimidation", they included all sorts of suppression activities. When Craig Donsanto used the term "intimidation", he was using the definition under federal criminal vote fraud statutes, which requires the action be accompanied by threat of physical or economic harm. (He told me he has had only one such case in 30 years.) His office is actively pursuing voter suppression activities under statutes other than federal voter intimidation laws (e.g.; the recent case in NH where a campaign operative conspired to block election day GOTV telephone lines of the opposing party). A copy of Tanner's comments on the interview summary in the status report for the Standards and Advisory Boards meetings is attached.

I had many long discussions with Tova and Job about this. I was able to get them to soften their description (see 4th bullet on page 7 of the draft report), but not entirely to my satisfaction. Also, at the Working Group meeting, it was agreed that the consultants would add a note to their definition to clarify that the working definition for purposes of the research includes activities that do not meet the federal definition of voter intimidation. The resulting note on page 5 of the draft report is too vague.

DOJ has not seen everything the consultants put in the draft final report, so they may have additional concerns. For example, the consultants' recommendations include the following:

**Attend the Department of Justice's Ballot Access and Voting Integrity Symposium** . The consultants also believe it would be useful for any further activity in this area to include attendance at the next Ballot Access and Voting Integrity Symposium. According to the Department, DEOs are required to attend annual training conferences centered on combating election fraud and voting rights abuses. These conferences sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, feature presentations by civil rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. According to the Department, DEOs are required to attend annual training conferences centered on combating election fraud and voting rights abuses. These conferences sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, feature presentations by civil rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices.

**Footnote:**

By attending the symposium researchers could learn more about the following:  
How DEOs are trained, e.g. what they are taught to focus their resources on; How they are instructed to respond to various types of complaints; How information about previous elections and voting issues is presented; and, How the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

DOJ has stated that this is an internal meeting, involving only DOJ officials, US Attorneys and FBI. EAC researchers cannot be admitted without opening the meeting to other outsiders. DOJ does not want to do this, probably for two reasons: (1) confidential information on current enforcement cases may be

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discussed; and (2) making enforcement strategies public could give unscrupulous individuals a virtual "how to" manual for circumventing such strategies when committing election crimes.

We may also have a hard time gaining access to the DOE reports and the Voting Section records of complaints, as they probably aren't considered public documents.

— Peggy



DOJ-TannerComments-TWInterviewSummary.doc

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

11/07/2006 09:47 AM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Re: VF and VI study 

that would be great. I am also interested in identifying the points of contention between DOJ and the consultants.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV

11/07/2006 09:45 AM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc

Subject Re: VF and VI study 

Yes (at T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Interviews\Interview Summaries). Do you want me to do the same with those as I did with the literature summaries? — Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

11/07/2006 09:33 AM

To Margaret Sims/EAC/GOV@EAC

cc

Subject VF and VI study

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Did Tova and Job provide us with summaries or notes of their interviews?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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Deliberative Process  
Privilege

FRAUD &  
INTIMIDATION  
REPORT  
FILE

Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity Section, U.S. Department of Justice  
January 13, 2006

The Department of Justice's (DOJ) Election Crimes Branch is responsible for supervising federal criminal investigations and prosecutions of election crimes.

Questions

*How are Prosecution Decisions Made?*

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an Assistant U.S. Attorney (AUSA). Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario - a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. ~~The department grants such hearings easily because such defendants are likely to provide information about others involved.~~

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*Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?*

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

*Does it Matter if the Complaint Comes from a Member of a Racial Minority?*

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No. But if the question involves racial animus, that has also always been an aggravating factor, making it more likely the Department will take it over

*What Kinds of Complaints Would Routinely Override Principles of Federalism?*

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office on the ballot.

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DOJ can't prosecute everything.

*What Should Be Done to Improve the System?*

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

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As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

*Other Information*

The Department has held four symposia for District Election Officers (DEOs) and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public. ~~(Peg will be sending us the complete training materials used at those sessions. These are confidential and are the subject of FOIA litigation).~~

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Cases:

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Do they care about this?

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The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot

Leave

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Interview with John Tanner, Director~~Chief~~, Voting Section, Civil Rights Division,  
U.S. Department of Justice

February 24, 2006

The Department of Justice's (DOJ) Voting Section is charged with the civil enforcement of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), and Title III of the Help America Vote Act (HAVA).

~~Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. Mr. Tanner would not give us any information about or data from the section's election complaint intake phone logs; data or even general information from the Interactive Case Management (ICM) system its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws; and would give us only a selected few samples of attorney observer reports, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. He would not discuss in any manner any current investigations or cases the section is involved in. He also did not believe it was his position to offer us recommendations as to how his office, elections, or the voting process might be improved.~~

Authority and Process

The Voting Section, in contrast to the Public Integrity Section as Craig Donsanto described it, typically focuses looks only onat systemic problems resulting from government action or inaction, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Federal voting laws enforced by the section only apply to state action, so the section only sues state and local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, with systematic changes forced upon those jurisdictions, ~~have made it so now~~ the section now does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14<sup>th</sup> and 15<sup>th</sup> Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter that involves individual offenders or a systemic problem. When deciding what to do

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with the complaint, the section errs on the side of referring it criminally to avoid having any because they do not want civil litigation to complicate a possible criminal case.

When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

#### Voter Intimidation

Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been a formal investigation into the abusive use of challengers.

Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

However, Mr. Tanner said the Department was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the voting-Voting Section to become involved.

Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never

formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands of the states will be helpful because at this higher level of government you find a higher level of professionalism.

It is hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. However, the enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared, as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

The section is not filing as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore. Mr. Tanner said that race based problems are rare now.

NVRA has been effective in opening up the registration process. In terms of enforcement, Mr. Tanner said they do what they can when they have credible allegations. There is a big gap between complaints and what can be substantiated. Mr. Tanner stated that given the high quality of the attorneys now in the section, if they do not investigate it or bring action, that act complained of did not happen.

#### Recommendations

Mr. Tanner did not feel it was appropriate to make recommendations.

Note: We contend that Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. We did not have access to any information about or data from the section's election complaint intake phone logs or data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws. Only a selected few samples of attorney-observer reports were provided, reports that every Voting Section

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attorney who is observing elections at poll sites on Election Day is required to submit.  
Mr. Tanner would not discuss any current investigations or cases the section is involved  
in.

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**Deliberative Process  
Privilege**

**Voting Fraud and Voter Intimidation**

**Report to the  
U.S. Election Assistance Commission  
on  
Preliminary Research & Recommendations**

**DRAFT**

**By**

**Job Serebrov and Tova Wang**

007230

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## Introduction

### **Charge Under HAVA**

Under the Help America Vote Act, Pub. L. No. 107-252, 116 Stat. 1666 (2002) (“HAVA”), the United States Election Assistance Commission is charged with developing national statistics on voter fraud and developing methods of deterring and investigating voter fraud. Also, the Commission is charged with developing methods of identifying, deterring, and investigating methods of voter intimidation.

### **Scope of Project**

The Commission employed a bipartisan team of legal consultants, Tova Wang and Job Serebrov to develop a preliminary overview work product to determine the quantity and quality of vote fraud and voter intimidation that is present on a national scale. The consultants’ work is neither comprehensive nor conclusive. This first phase of an envisioned two-phase project was constrained by both time and funding. The consultants’ conclusions and recommendations for phase II will be contained in this report.

The consultants, working without the aid of a support staff, divided most of the work. However, the final work product was mutually checked and approved. They agreed upon the steps that were taken needed and the method employed. For all of the documentary sources, the consultants limited the time period under review from January 1, 2001 to January 1, 2006. The research performed by the consultants included interviews, an extensive Nexis search, a review of existing literature, and case research.

**Interviews:** The consultants chose the interviewees by first coming up with a list of the categories of types of people they wanted to interview. Then the consultants separately, equally filled those categories with a certain number of people. Due to time and resource constraints, the consultants had to pare down this list substantially – for instance, they had to rule out interviewing prosecutors altogether – but still got a good range of people to talk to. The ultimate categories were academics, advocates, elections officials, lawyers and judges. Although the consultants were able to talk to most of the people they wanted to, some were unavailable and a few were not comfortable speaking to them, particularly judges. The consultants together conducted all of the interviews, either by phone or in person. Then the consultants split up drafting the summaries. All summaries were reviewed and mutually approved. Most of the interviews were extremely informative and the consultants found the interviewees to be extremely knowledgeable and insightful for the most part.

**Nexis:** Initially, the consultants developed an enormous list of possible Nexis search terms. It soon became obvious that it would be impossible to conduct the research that way. As a result, consultant Wang performed the Nexis search by finding search term combinations that would yield virtually every article on a particular subject from the last

five years. Consultant Serebrov approved the search terms. Then Wang created an excel spreadsheet in order to break down the articles in way in which they could be effectively analyzed for patterns. Each type of fraud is broken down in a separate chart according to where it took place, the date, the type of election it occurred in, what the allegation was, the publication it came from. Where there was a follow up article, any information that that suggested there had been some further action taken or some resolution to the allegation was also included. For four very complicated and long drawn out situations – Washington State, Wisconsin, South Dakota in 2004, and the vote buying cases in a couple of particular jurisdictions over the last several years –written summaries with news citations are provided.

**Existing Literature:** Part of the selections made by the consultants resulted from consultant Wang's long-term familiarity with the material while part was the result of a joint web search for articles and books on vote fraud and voter intimidation and suggestions from those interviewed by the consultants. The consultants reviewed a wide range of materials from government reports and investigations, to academic literature, to reports published by advocacy groups. The consultants believe that they covered the landscape of available sources.

**Cases:** In order to properly identify all applicable cases, the consultants first developed an extensive word search term list. A WestLaw search was performed and the first one hundred cases under each word search term were then gathered in individual files. This resulted in a total of approximately 44,000 cases. Most of these cases were federal as opposed to state and appellate as opposed to trial. Consultant Serebrov analyzed the cases in each file to determine if they were on point. If he found that the first twenty cases were inapplicable, Serebrov would sample forty to fifty other file cases at random to determine applicability. If the entire file did not yield any cases, the file would be discarded. All discarded word search terms were recorded in a separate file. Likewise, if the file only yielded a few applicable cases, it would also be discarded. However, if a small but significant number of cases were on point, the file was later charted. The results of the case search were stark because relatively few applicable cases were found.

## Working Definition of Fraud and Intimidation

*Note: The definition provided below is for the purposes of this EAC project. Most of the acts described come within the federal criminal definition of fraud, but some may not.*

*what does this mean?*  
Election fraud is any intentional action, or intentional failure to act when there is a duty to do so, that corrupts the election process in a manner that can impact on election outcomes. This includes interfering in the process by which persons register to vote; the way in which ballots are obtained, marked, or tabulated; and the process by which election results are canvassed and certified.

Examples include the following:

- falsifying voter registration information pertinent to eligibility to cast a vote, (e.g. residence, criminal status, etc).;
- altering completed voter registration applications by entering false information;
- knowingly destroying completed voter registration applications (other than spoiled applications) before they can be submitted to the proper election authority;
- knowingly removing eligible voters from voter registration lists, in violation of HAVA, NVRA, or state election laws;
- intentional destruction by election officials of voter registration records or balloting records, in violation of records retention laws, to remove evidence of election fraud;
- vote buying;
- voting in the name of another;
- voting more than once;
- coercing a voter's choice on an absentee ballot;
- using a false name and/or signature on an absentee ballot;
- destroying or misappropriating an absentee ballot;
- felons, or in some states ex-felons, who vote when they know they are ineligible to do so;
- misleading an ex-felon about his or her right to vote; *knowledge is not an*
- voting by non-citizens who know they are ineligible to do so; *element*
- intimidating practices aimed at vote suppression or deterrence, including the abuse of challenge laws;
- deceiving voters with false information (e.g.; deliberately directing voters to the wrong polling place or providing false information on polling hours and dates);
- knowingly failing to accept voter registration applications, to provide ballots, or to accept and count voted ballots in accordance with the Uniformed and Overseas Citizens Absentee Voting Act;
- intentional miscounting of ballots by election officials;
- intentional misrepresentation of vote tallies by election officials;
- acting in any other manner with the intention of suppressing voter registration or voting, or interfering with vote counting and the certification of the vote.

*who?*  
*who?*  
*don't know that there is a crime*

*malfeasance*  
*malfeasance*

Voting fraud does not include mistakes made in the course of voter registration, balloting, or tabulating ballots and certifying results. For purposes of the EAC study, it also does not include violations of campaign finance laws.

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## Summaries of Research Conducted

### Interviews

#### Common Themes

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, “dead” voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud, although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.
- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate – including representatives from DOJ -- that for various reasons, the Department of Justice is bringing fewer voter intimidation and suppression cases now and is focusing on matters such as noncitizen voting, double voting and felon voting. While the civil rights section continues to focus on systemic patterns of malfeasance, the public integrity section is focusing now on individuals, on isolated instances of fraud.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full

What does this mean?

Not fraud

DOJ dispute

## Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

### **Common Recommendations:**

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.
  - With respect to the civil rights section, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and the section has not pursued any such cases.
  - Craig Donsanto of the public integrity section says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases the department is investigating and the number of indictments the section is pursuing are both up dramatically. Since 2002, the department has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so it can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud. Of particular note, Sarah Ball Johnson, Executive Director of Elections for Kentucky, emphasized that having had an effective statewide voter registration database for more than thirty years has helped that state avoid most of the fraud problems that have been alleged elsewhere, such as double voting and felon voting.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment

*These are criminal matters*

- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected nonpartisanly they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas is a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.
- A few recommend returning to allowing use of absentee ballots "for cause" only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the scheme contemplated in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

#### **Nexis Research**

##### ***Absentee Ballot Fraud***

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

##### ***Voter Registration Fraud***

## Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people
- Fake names and other information on voter registration forms
- Illegitimate addresses used on voter registration forms
- Voters being tricked into registering for a particular party under false pretenses
- Destruction of voter registration forms depending on the party the voter registered with

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported on included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota and Wisconsin.

### ***Voter Intimidation and Suppression***

This is the area which had the most articles in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places.
- Improper demands for identification
- Poll watchers harassing voters
- Poll workers being hostile to or aggressively challenging voters
- Disproportionate police presence
- Poll watchers wearing clothes with messages that seemed intended to intimidate
- Insufficient voting machines and unmanageably long lines

Although the incidents reported on occurred everywhere, not surprisingly, many came from “battleground” states. There were several such reports out of Florida, Ohio and Pennsylvania.

### ***“Dead Voters and Multiple Voting”***

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking of voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person taking criminal advantage of that. In total, the San Francisco Chronicle found 5 such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### ***Vote Buying***

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations in three particular jurisdictions as detailed in the vote buying summary. There were more official investigations, indictments and convictions/pleas in this area. All of these cases are concentrated in the Midwest and South.

### ***Deceptive Practices***

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of voter registration forms. There were no reports of prosecutions or any other legal proceeding.

### ***Non-citizen Voting***

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case charges were filed against ten individuals. In one case a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this nexis search, remained just allegations of noncitizen voting.

### ***Felon Voting***

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem has been the large number of ineligible felons that remained on the voting list.

### ***Election Official Fraud***

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### ***Existing Research***

There are many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. There is little research that is truly systematic or scientific. The most systematic look at fraud is the report written by Lori Minnite. The most systematic look at voter intimidation is the report by Laughlin McDonald. Books

written about this subject seem to all have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists. It is hoped that this gap will be filled in the “second phase” of this EAC project.

Moreover, reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund’s frequently cited book. Again, this is something that it is hoped will be addressed in the “second phase” of this EAC project by doing follow up research on allegations made in reports, books and newspaper articles.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate, but some reports say it is a major problem, albeit hard to identify.
- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

## Cases

After reviewing over 40,000 cases, the majority of which came from appeals courts, I have found comparatively very few which are applicable to this study. Of those that are applicable, no apparent thematic pattern emerges. However, it seems that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility. But because so few cases provided a picture of these current problems, I suggest that case research for the second phase of this project concentrate on state trial-level decisions.

## Methodology

The following is a summary of interviews conducted with a number of political scientists and experts in the field as to how one might undertake a comprehensive examination of voter fraud and intimidation. A list of the individuals interviewed and their ideas are available, and all of the individuals welcome any further questions or explanations of their recommended procedures.

- In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources: the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that ask whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. (Stephen Ansolobhere, MIT)
- Several political scientists with expertise in these types of studies recommended a methodology that includes interviews, focus groups, and a limited survey. In determining who to interview and where the focus groups should be drawn from, they recommend the following procedure:
  - Pick a number of places that have historically had many reports of fraud and/or intimidation; from that pool pick 10 that are geographically and demographically diverse, and have had a diversity of problems
  - Pick a number of places that have not had many reports of fraud and/or intimidation; from that pool pick 10 places that match the geographic and demographic make-up of the previous ten above (and, if possible, have comparable elections practices)

## Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

- Assess the resulting overall reports and impressions resulting from these interviews and focus groups, and examine comparisons and differences among the states and what may give rise to them.

In conducting a survey of elections officials, district attorneys, district election officers, they recommend that:

- The survey sample be large in order to be able to get the necessary subsets
- The survey must include a random set of counties where there have and have not been a large number of allegations

(Allan Lichtman, American University; Thad Hall, University of Utah; Bernard Grofman, UC – Irvine)

- Another political scientist recommended employing a methodology that relies on qualitative data drawn from in-depth interviews with key critics and experts on all sides of the debate on fraud; quantitative data collected through a survey of state and local elections and law enforcement officials; and case studies. Case studies should focus on the five or ten states, regions or cities where there has been a history of election fraud to examine past and present problems. The survey should be mailed to each state's attorney general and secretary of state, each county district attorney's office and each county board of elections in the 50 states. (Lorraine Minnite, Barnard College)
- The research should be a two-step process. Using LexisNexis and other research tools, a search should be conducted of news media accounts over the past decade. Second, interviews with a systematic sample of election officials nationwide and in selected states should be conducted. (Chandler Davidson, Rice University)
- One expert in the field posits that we can never come up with a number that accurately represents either the incidence of fraud or the incidence of voter intimidation. Therefore, the better approach is to do an assessment of what is most likely to happen, what election violations are most likely to be committed – in other words, a risk analysis. This would include an analysis of what it would actually take to commit various acts, e.g. the cost/benefit of each kind of violation. From there we could rank the likely prevalence of each type of activity and examine what measures are or could be effective in combating them. (Wendy Weiser, Brennan Center of New York University)
- Replicate a study in the United States done abroad by Susan Hyde of the University of California- San Diego examining the impact of impartial poll site observers on the incidence of election fraud. Doing this retrospectively would require the following steps:
  - Find out where there were federal observers
  - Get precinct level voting information for those places

- Analyze whether there was any difference in election outcomes in those places with and without observers, and whether any of these results seem anomalous.

Despite the tremendous differences in the political landscapes of the countries examined by Hyde in previous studies and the U.S., Hyde believes this study could be effectively replicated in this country by sending observers to a random sample of precincts. Rather than compare the incumbent's vote share, such factors such as voter complaints, voter turnout, number of provisional ballots used, composition of the electorate, as well as any anomalous voting results could be compared between sites with and without monitors.

For example, if intimidation is occurring, and if reputable monitors make intimidation less likely or voters more confident, then turnout should be higher on average in monitored precincts than in unmonitored precincts. If polling station officials are intentionally refusing to issue provisional ballots, and the polling station officials are more likely to adhere to regulations while being monitored, the average number of provisional ballots should be higher in monitored precincts than in unmonitored precincts. If monitors cause polling station officials to adhere more closely to regulations, then there should be fewer complaints (in general) about monitored than unmonitored precincts (this could also be reversed if monitors made voters more likely to complain).

Again, random assignment controls for all of the other factors that otherwise influence these variables.

One of the downsides of this approach is it does not get at some forms of fraud, e.g. absentee ballot fraud; those would have to be analyzed separately.

- Another political scientist recommends conducting an analysis of vote fraud claims and purging of registration rolls by list matching. Allegations of illegal voting often are based on matching of names and birth dates. Alleged instances of double voting are based on matching the names and birth dates of persons found on voting records. Allegations of ineligible felon (depending on state law), deceased, and of non-citizen voting are based on matching lists of names, birth dates, and sometimes addresses of such people against a voting records. Anyone with basic relational database skills can perform such matching in a matter of minutes.

However, there are a number of pitfalls for the unwary that can lead to grossly over-estimating the number of fraudulent votes, such as missing or ignored middle names and suffixes or matching on missing birth dates. Furthermore, there is a surprising statistical fact that a group of about three hundred people with the same first and last name are almost assured to share the exact same birth date, including year. In a large state, it is not uncommon for hundreds of Robert Smiths (and other common names) to have voted. Thus, allegations of vote fraud

or purging of voter registration rolls by list matching almost assuredly will find a large proportion of false positives: people who voted legally or are registered to vote legally.

Statistics can be rigorously applied to determine how many names would be expected to be matched by chance. A simulation approach is best applied here: randomly assign a birth date to an arbitrary number of people and observe how many match within the list or across lists. The simulation is repeated many times to average out the variation due to chance. The results can then be matched back to actual voting records and purge lists, for example, in the hotly contested states of Ohio or Florida, or in states with Election Day registration where there are concerns that easy access to voting permits double voting. This analysis will rigorously identify the magnitude alleged voter fraud, and may very well find instances of alleged fraud that exceed what might have otherwise happened by chance.

This same political scientist also recommends another way to examine the problem: look at statistics on provisional voting: the number cast might provide indications of intimidation (people being challenged at the polls) and the number of those not counted would be indications of "vote fraud." One could look at those jurisdictions in the Election Day Survey with a disproportionate number of provisional ballots cast and cross-reference it with demographics and number of provisional ballots discarded. (Michael McDonald, George Mason University)

- Spencer Overton, in a forthcoming law review article entitled *Voter Identification*, suggests a methodology that employs three approaches—investigations of voter fraud, random surveys of voters who purported to vote, and an examination of death rolls provide a better understanding of the frequency of fraud. He says all three approaches have strengths and weaknesses, and thus the best studies would employ all three to assess the extent of voter fraud. An excerpt follows:

1. *Investigations and Prosecutions of Voter Fraud*

Policymakers should develop databases that record all investigations, allegations, charges, trials, convictions, acquittals, and plea bargains regarding voter fraud. Existing studies are incomplete but provide some insight. For example, a statewide survey of each of Ohio's 88 county boards of elections found only four instances of ineligible persons attempting to vote out of a total of 9,078,728 votes cast in the state's 2002 and 2004 general elections. This is a fraud rate of 0.00000045 percent. The Carter-Baker Commission's Report noted that since October 2002, federal officials had charged 89 individuals with casting multiple votes, providing false information about their felon status, buying votes, submitting false voter registration information, and voting improperly as a non-citizen. Examined in the context of the 196,139,871 ballots cast between October 2002 and

August 2005, this represents a fraud rate of 0.0000005 percent (note also that not all of the activities charged would have been prevented by a photo identification requirement).

A more comprehensive study should distinguish voter fraud that could be prevented by a photo identification requirement from other types of fraud — such as absentee voting and stuffing ballot boxes — and obtain statistics on the factors that led law enforcement to prosecute fraud. The study would demand significant resources because it would require that researchers interview and pour over the records of local district attorneys and election boards.

Hard data on investigations, allegations, charges, pleas, and prosecutions is important because it quantifies the amount of fraud officials detect. Even if prosecutors vigorously pursue voter fraud, however, the number of fraud cases charged probably does not capture the total amount of voter fraud. Information on official investigations, charges, and prosecutions should be supplemented by surveys of voters and a comparison of voting rolls to death rolls.

## 2. *Random Surveys of Voters*

Random surveys could give insight about the percentage of votes cast fraudulently. For example, political scientists could contact a statistically representative sampling of 1,000 people who purportedly voted at the polls in the last election, ask them if they actually voted, and confirm the percentage who are valid voters. Researchers should conduct the survey soon after an election to locate as many legitimate voters as possible with fresh memories.

Because many respondents would perceive voting as a social good, some who did not vote might claim that they did, which may underestimate the extent of fraud. A surveyor might mitigate this skew through the framing of the question (“I’ve got a record that you voted. Is that true?”).

Further, some voters will not be located by researchers and others will refuse to talk to researchers. Photo identification proponents might construe these non-respondents as improper registrations that were used to commit voter fraud.

Instead of surveying all voters to determine the amount of fraud, researchers might reduce the margin of error by focusing on a random sampling of voters who signed affidavits in the three states that request photo identification but also allow voters to establish their identity through affidavit—Florida, Louisiana, and South Dakota. In

South Dakota, for example, only two percent of voters signed affidavits to establish their identity. If the survey indicates that 95 percent of those who signed affidavits are legitimate voters (and the other 5 percent were shown to be either fraudulent or were non-responsive), this suggests that voter fraud accounts for, at the maximum, 0.1 percent of ballots cast.

The affidavit study, however, is limited to three states, and it is unclear whether this sample is representative of other states (the difficulty may be magnified in Louisiana in the aftermath of Hurricane Katrina's displacement of hundreds of thousands of voters). Further, the affidavit study reveals information about the amount of fraud in a photo identification state with an affidavit exception—more voter fraud may exist in a state that does not request photo identification.

### 3. *Examining Death Rolls*

A comparison of death rolls to voting rolls might also provide an estimate of fraud.

Imagine that one million people live in state A, which has no documentary identification requirement. Death records show that 20,000 people passed away in state A in 2003. A cross-referencing of this list to the voter rolls shows that 10,000 of those who died were registered voters, and these names remained on the voter rolls during the November 2004 election. Researchers would look at what percentage of the 10,000 dead-but-registered people who "voted" in the November 2004 election. A researcher should distinguish the votes cast in the name of the dead at the polls from those cast absentee (which a photo identification requirement would not prevent). This number would be extrapolated to the electorate as a whole.

This methodology also has its strengths and weaknesses. If fraudulent voters target the dead, the study might overestimate the fraud that exists among living voters (although a low incidence of fraud among deceased voters might suggest that fraud among all voters is low). The appearance of fraud also might be inflated by false positives produced by a computer match of different people with the same name. Photo identification advocates would likely assert that the rate of voter fraud could be higher among fictitious names registered, and that the death record survey would not capture that type of fraud because fictitious names registered would not show up in the death records. Nevertheless, this study, combined with the other two, would provide important insight into the magnitude of fraud likely to exist in the absence of a photo identification requirement.

**Recommendations for Further EAC Activity**  
**on Voting Fraud and Voter Intimidation**

**Consultants' Recommendations**

***Recommendation 1: Conduct More Interviews*** X

Time and resource constraints prevented the consultants from interviewing the full range of participants in the process. As a result, we recommend that any future activity in this area include conducting further interviews.

In particular, we recommend that more election officials from all levels of government, parts of the country, and parties be interviewed. These individuals have the most direct inside information on how the system works -- and at times does not work. They are often the first people voters go to when something goes wrong and are often responsible for fixing it. They are the ones who must carry out the measures that are designed to both prevent fraud and voter intimidation and suppression. They will most likely know what, therefore, is and is not working.

It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers ("DEOs") and local district attorneys, as well as civil and criminal defense attorneys.

The Public Integrity Section of the Criminal Division of the Department of Justice has all of the 93 U.S. Attorneys appoint Assistant U.S. Attorneys to serve as DEOs for two years. DEOs are required to

- screen and conduct preliminary investigations of complaints, in conjunction with the FBI and PIN, to determine whether they constitute potential election crimes and should become matters for investigation;
- oversee the investigation and prosecution of election fraud and other election crimes in their districts;
- coordinate their district's (investigative and prosecutorial) efforts with DOJ headquarters prosecutors;
- coordinate election matters with state and local election and law enforcement officials and make them aware of their availability to assist with election-related matters;
- issue press releases to the public announcing the names and telephone numbers of DOJ and FBI officials to contact on election day with complaints about voting or election irregularities and answer telephones on election day to receive these complaints; and
- supervise a team of Assistant U.S. Attorneys and FBI special agents who are appointed to handle election-related allegations while the polls are open on election day.<sup>1</sup>

Given the great responsibilities of the DEOs, and the breadth of issues they must deal with, they undoubtedly are great resources for information and insight as to what types of fraud and intimidation/suppression are occurring in their districts.

In many situations, however, it is the local district attorneys who will investigate election fraud and suppression tactics, especially in local elections. They will be able to provide information on what has gone on in their jurisdictions, as well as which matters get pursued and why.

Finally, those who defend people accused of election related crimes would also be useful to speak to. They may have a different perspective on how well the system is working to detect, prevent, and prosecute election fraud.

***Recommendation 2: Follow Up on Nexis Research*** X

The Nexis search conducted for this phase of the research was based on a list of search terms agreed upon by both consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. However, without being able to go beyond the agreed search terms, it could not be determined whether there was any later determination regarding the allegations, investigation or charges brought. This leaves a gaping hole: it is impossible to know if the article is just reporting on “talk” or what turns out to be a serious affront to the system.

As a result, we recommend that follow up Nexis research be conducted to determine what, if any, resolutions or further activity there was in each case. This would provide a much more accurate picture of what types of activities are actually taking place.

***Recommendation 3: Follow Up on Allegations Found in Literature Review*** X

Similarly, many allegations are made in the reports and books that we analyzed and summarized. Those allegations are often not substantiated in any way and are inherently time limited by the date of the writing. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation.

Therefore, we recommend follow up to the literature review: for those reports and books that make or cite specific instances of fraud or intimidation, a research effort should be made to follow up on those references to see if and how they were resolved.

***Recommendation 4: Review Complaints File With MyVote1 Project Voter Hotline*** X

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a 1-800 voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint.

In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.<sup>ii</sup> The researchers in charge of this project have done a great deal of work to parse and analyze the data collected through this process, including going through the audio messages and categorizing them by the nature of the complaint. These categories include registration, absentee ballot, poll access, ballot/screen, coercion/intimidation, identification, mechanical, provisional (ballot).

We recommend that further research include making full use of this data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints should provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

✓ CRIMINAL DIVISION

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation,<sup>iii</sup> the Section was extremely reluctant to provide the consultants with useful information. Further attempts should be made to obtain relevant data. This includes the telephone logs of complaints the Section keeps and information from the database – the Interactive Case Management (ICM) system – the Section maintains on complaints received and the corresponding action taken. We also recommend that further research include a review and analysis of the observer and monitor field reports from Election Day that must be filed with the Section.

***Recommendation 6: Review Reports Filed By District Election Officers***

Similarly, the consultants believe it would be useful for any further research to include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. As noted above, the DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

The consultants also believe it would be useful for any further activity in this area to include attendance at the next Ballot Access and Voting Integrity Symposium. According to the Department,<sup>iv</sup>

Prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices are required to attend annual training conferences on fighting election fraud and voting rights abuses... These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity

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Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. As a result of these conferences, there is a nationwide increase in Department expertise relating to the prosecution of election crimes and the enforcement of voting rights.

By attending the symposium researchers could learn more about the following:

- How District Election Officers are trained, e.g. what they are taught to focus their resources on, how they are instructed to respond to various types of complaints
- How information about previous election and voting issues is presented
- How the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants

***Recommendation 8: Employ Academic or Individual to Conduct Statistical Research*** ✓

Included in this report is a summary of various methodologies political scientists and others suggested to measure voter fraud and intimidation. While we note the skepticism of the Working Group in this regard, we nonetheless recommend that in order to further the mission of providing unbiased data, further activity in this area include an academic institution and/or individual that focuses on sound, statistical methods for political science research.

***Recommendation 9: Explore Improvements to Federal Law***

Finally, consultant Tova Wang recommends that future researchers review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

According to Craig Donsanto, long-time Director of the Election Crimes Branch, Public Integrity Section, Criminal Division of the U.S. Department of Justice:

As with other statutes addressing voter intimidation, in the absence of any jurisprudence to the contrary, it is the Criminal Division's position that section 1973gg-10(1) applies only to intimidation which is accomplished through the use of threats of physical or economic duress. Voter "intimidation" accomplished through less drastic means may present violations of the Voting Rights Act, 42 U.S.C. § 1973i(b), which are enforced by the Civil Rights Division through noncriminal remedies.<sup>v</sup>

Mr. Donsanto reiterated these points to us on several occasions, including at the working group meeting.

7. MAYBE BUT TOO SOON TO TELL

As a result, researchers should examine if there is some way in which current law might be revised or new laws passed that would reach voter intimidation that does not threaten the voter physically or financially, but rather threatens the voter's right to vote as a tangible value in itself. Such an amendment or law would reach all forms of voter intimidation, no matter if it is motivated by race, party, ethnicity or any other criteria. The law would then *potentially* cover, for example, letters and postcards with language meant to deter voters from voting and both pre-election and Election Day challengers that are clearly mounting challenges solely on illegitimate bases.

In the alternative to finding a way to criminalize such behavior, researchers might examine ways to invigorate measures to deter and punish voter intimidation under the civil law. For example, there might be a private right of action created for voters or groups who have been subjected to intimidation tactics in the voting process. Such an action could be brought against individual offenders; any state or local actor where there is a pattern of repeated abuse in the jurisdiction that such officials did not take sufficient action against; and organizations that intentionally engage in intimidating practices. As a penalty upon finding liability, civil damages could be available plus perhaps attorney's fees.

Another, more modest measure would be, as has been suggested by Ana Henderson and Christopher Edley,<sup>vi</sup> to bring parity to fines for violations under the Voting Rights Act. Currently the penalty for fraud is \$10,000 while the penalty for acts to deprive the right to vote is \$5,000.

### Working Group Recommendations

#### *Recommendation 1: Employ Observers To Collect Data in the 2006 and/or 2008 Elections* X

At the working group meeting, there was much discussion about using observers to collect data regarding fraud and intimidation at the polls in the upcoming elections. Mr. Ginsberg recommended using representatives of both parties for the task. Mr. Bauer and others objected to this, believing that using partisans as observers would be unworkable and would not be credible to the public.

There was even greater concern about the difficulties in getting access to poll sites for the purposes of observation. Most states strictly limit who can be in the polling place. In addition, there are already so many groups doing observation and monitoring at the polls, administrators might object. There was further concern that observers would introduce a variable into the process that would impact the outcome. The very fact that observers were present would influence behavior and skew the results.

Moreover, it was pointed out, many of the problems we see now with respect to fraud and intimidation does not take place at the polling place, e.g. absentee ballot fraud and deceptive practices. Poll site monitoring would not capture this activity. Moreover, with

increased use of early voting, poll site monitoring might have to go on for weeks to be effective, which would require tremendous resources.

Mr. Weinberg suggested using observers in the way they are utilized in international elections. Such observers come into a jurisdiction prior to the election, and use standardized forms at the polling sites to collect data.

**Recommendation 2: Do a Study on Absentee Ballot Fraud**

X ALL OR NOTHING

The working group agreed that since absentee ballot fraud is the main form of fraud occurring, and is a practice that is great expanding throughout the country, it would make sense to do a stand-alone study of absentee ballot fraud. Such a study would be facilitated by the fact that there already is a great deal of information on how, when, where and why such practices are carried out based on cases successfully prosecuted. Researchers could look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

**Recommendation 3: Use Risk Analysis Methodology to Study Fraud<sup>1</sup>**

? PROBABLY NOT WOULD NOT SERVE OUR PURPOSES

Working group members were supportive of one of the methodologies recommended for studying this issue, risk analysis. As Mr. Bauer put it, based on the assumption that people act rationally, do an examination of what types of fraud people are most likely to commit, given the relative costs and benefits. In that way researchers can rank the types of fraud that are the easiest to commit at the least cost with the greatest effect, from most to least likely to occur. This might prove a more practical way of measuring the problems than trying to actually get a number of acts of fraud and/or intimidation occurring. Mr. Greenbaum added that one would want to examine what conditions surrounding an election would be most likely to lead to an increase in fraud. Mr. Rokita objected based on his belief that the passions of partisanship lead people to not act rationally in an election.

**Recommendation 4: Conduct Research Using Database Comparisons**

NOT OUR PLACE

Picking up on a suggestion made by Spencer Overton and explained in the suggested methodology section, Mr. Hearne recommended studying the issue using statistical database matching. Researchers should compare the voter roll and the list of people who actually voted to see if there are “dead” and felon voters. Because of the inconsistent quality of the databases, however, a political scientist would need to work in an appropriate margin of error when using such a methodology.

**Recommendation 5: Conduct a Study of Deceptive Practices**

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of

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<sup>1</sup> See Appendix C, and section on methodology

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groups, including the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices, which may be available for review and analysis. This is also an area in which there is often tangible evidence, such as copies of the flyers and postcards themselves. All of this information should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

**Recommendation 6: Study Use of HAVA Administrative Complaint Procedure As Vehicle for Measuring Fraud and Intimidation**

POSSIBLE,

The EAC should study the extent to which states are actually utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

**Recommendation 7: Examine the Use of Special Election Courts**

X NOT OUR PLACE AT THIS TIME  
① THING AT A TIME.

Given that many state and local judges are elected, it may be worth exploring whether special election courts that are running before, during and after election day would be an effective means of disposing with complaints and violations in an expeditious manner. Pennsylvania employs such a system, and the EAC should consider investigating how well it is working to deal with fraud and intimidation problems.

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## Key Working Group Observations and Concerns

### Working Group Observations

1. ***The main problems today are structural barriers to voting and administrative error.*** Mr. Perez observed that, in accordance with the research, the biggest issues today are structural barriers to voting, not stealing votes. Election administrators share this view. Election fraud is negligible, and to the extent it occurs, it needs to be prosecuted with stronger criminal laws. The biggest problem is properly preparing people, which is the responsibility of election administrators.
2. ***Most fraud and intimidation is happening outside of the polling place.*** Mr. Greenbaum observed that with respect to both voter fraud and voter suppression, such as deceptive practices and tearing up voter registration forms, most of that is taking place outside of the polling place.
3. ***This issue cannot be addressed through one study or one methodology alone.*** Mr. Weinberg observed that since there is such a variety in types of fraud and intimidation, one solution will not fit all. It will be impossible to obtain data or resolve any of these problems through a single method.
4. ***The preliminary research conducted for this project is extremely valuable.*** Several of the working group members complimented the quality of the research done and although it is only preliminary, thought it would be useful and informative in the immediate future.
5. ***The Department of Justice is exploring expanding its reach over voter suppression activities.*** In the context of the conversation about defining voter intimidation, Mr. Donsanto pointed out that while voter intimidation was strictly defined by the criminal law, his section is beginning to explore the slightly different concept of vote suppression, and how to pursue it. He mentioned the phone-jamming case in New Hampshire as an initial success in this effort. He noted that he believes that vote suppression in the form of deceptive practices ought to be a crime and the section is exploring ways to go after it within the existing statutory construct. Mr. Bauer raised the example of a party sending people dressed in paramilitary outfits to yell at people as they go to the polls, telling them they have to show identification. Mr. Donsanto said that under the laws he has to work with today, such activity is not considered corrupt. He said that his lawyers are trying to “bend” the current laws to address aggravated cases of vote suppression, and the phone-jamming case is an example of that. Mr. Donsanto said that within the Department, the term vote “suppression” and translating it into a crime is a “work in progress.”

6. **Registration fraud does not translate into vote fraud.** Ms. Rogers, Mr. Donsanto and others stated that although phony voter registration applications turned in by people being paid by the form was a problem, it has not been found in their experience to lead to fraudulent voters at the polls. Ms. Rogers said such people were motivated by money, not defrauding the election.
7. **Handling of voter fraud and intimidation complaints varies widely across states and localities.** Ms. Rogers and others observed that every state has its own process for intake and review of complaints of fraud and intimidation, and that procedures often vary within states. The amount of authority secretaries of state have to address such problems also is different in every state. Mr. Weinberg stated he believed that most secretaries of state did not have authority to do anything about these matters. Participants discussed whether secretaries ought to be given greater authority so as to centralize the process, as HAVA has mandated in other areas.

### Working Group Concerns

1. Mr. Rokita questioned whether the purpose of the present project ought to be on assessing the level of fraud and where it is, rather than on developing methods for making such measurements. He believed that methodology should be the focus, “rather than opinions of interviewees.” He was concerned that the EAC would be in a position of “adding to the universe of opinions.”
2. Mr. Rokita questioned whether the “opinions” accumulated in the research “is a fair sampling of what’s out there.” Ms. Wang responded that one of the purposes of the research was to explore whether there is a method available to actually quantify in some way how much fraud there is and where it is occurring in the electoral process. Mr. Rokita replied that “Maybe at the end of the day we stop spending taxpayer money or it’s going to be too much to spend to find that kind of data. Otherwise, we will stop it here and recognize there is a huge difference of opinion on that issue of fraud, when it occurs is obtainable, and that would possibly be a conclusion of the EAC.” Ms. Sims responded that she thought it would be possible to get better statistics on fraud and there might be a way of “identifying at this point certain parts in the election process that are more vulnerable, that we should be addressing.”
3. Mr. Rokita stated that, “We’re not sure that fraud at the polling place doesn’t exist. We can’t conclude that.”
4. Mr. Rokita expressed concern about working with a political scientist. He believes that the “EAC needs to be very careful in who they select, because all the time and effort and money that’s been spent up to date and would be spent in the future could be invalidated by a wrong selection in the eyes of some group.”

**NEXIS Charts**

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Case Charts

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**Appendix 1**  
**List of Individuals Interviewed**

Wade Henderson, Executive Director, Leadership Conference for Civil Rights

Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center

William Groth, attorney for the plaintiffs in the Indiana voter identification litigation

Lori Minnite, Barnard College, Columbia University

Neil Bradley, ACLU Voting Rights Project

Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

Pat Rogers, attorney, New Mexico

Rebecca Vigil-Giron, Secretary of State, New Mexico

Sarah Ball Johnson, Executive Director of the State Board of Elections, Kentucky

Stephen Ansolobhere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Tracey Campbell, author, *Deliver the Vote*

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights

Robin DeJarnette, Executive Director, American Center for Voting Rights

Joseph Rich, former Director of the Voting Section, Civil Rights Division, U.S. Department of Justice

Joseph Sandler, Counsel to the Democratic National Committee

John Ravitz, Executive Director, New York City Board of Elections

John Tanner, Director, Voting Section, Civil Rights Division, U.S. Department of Justice

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Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin  
Evelyn Stratton, Justice, Supreme Court of Ohio

Tony Sirvello, Executive Director, International Association of  
Clerks, Recorders, Election Officials and Treasurers

Harry Van Sickle, Commissioner of Elections, Pennsylvania

Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice

Sharon Priest, former Secretary of State, Arkansas

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**Appendix 2**  
**List of Literature Reviewed**

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#### **Books**

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Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.

David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.

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Mark Crispin Miller, *Foiled Again*, Basic Books, 2005.

**Legal**

*Indiana Democratic Party vs. Rokita*, U.S. District Court Southern District of Indiana (Indianapolis) 1:05-cv-00634, U.S. Court of Appeals, 7<sup>th</sup> Circuit 06-2218

*Common Cause of Georgia vs. Billups*, U.S. District Court, Northern District of Georgia (Rome) 4:05-cv-00201-HLM U.S. Court of Appeals, 11<sup>th</sup> Circuit 05-15784

U.S. Department of Justice Section 5 Recommendation Memorandum (regarding HB 244), August 25, 2005 at <http://www.votingrights.org/news/downloads/Section%205%20Recommendation%20Memorandum.pdf>

DRAFT

### Appendix 3

## Excerpt from “Machinery of Democracy,” a Brennan Center Report

### APPENDIX C

#### BRENNAN CENTER TASK FORCE ON VOTING SYSTEM SECURITY, LAWRENCE NORDEN, CHAIR

Excerpted from pp. 8-19

#### METHODOLOGY

The Task Force concluded, and the peer review team at NIST agreed, that the best approach for comprehensively evaluating voting system threats was to: (1) identify and categorize the potential threats against voting systems, (2) prioritize these threats based upon an agreed upon metric (which would tell us how difficult each threat is to accomplish from the attacker's point of view), and (3) determine, utilizing the same metric employed to prioritize threats, how much more difficult each of the catalogued attacks would become after various sets of countermeasures are implemented.

This model allows us to identify the attacks we should be most concerned about (*i.e.*, the most practical and least difficult attacks). Furthermore, it allows us to quantify the potential effectiveness of various sets of countermeasures (*i.e.*, how difficult the least difficult attack is after the countermeasure has been implemented). Other potential models considered, but ultimately rejected by the Task Force, are detailed in Appendix B.

#### IDENTIFICATION OF THREATS

The first step in creating a threat model for voting systems was to identify as many potential attacks as possible. To that end, the Task Force, together with the participating election officials, spent several months identifying voting system vulnerabilities. Following this work, NIST held a Voting Systems Threat Analysis Workshop on October 7, 2005. Members of the public were invited to write up and post additional potential attacks. Taken together, this work produced over 120 potential attacks on the three voting systems. They are detailed in the catalogs annexed. Many of the attacks are described in more detail at <http://vote.nist.gov/threats/papers.htm>.

The types of threats detailed in the catalogs can be broken down into nine categories:

- (1) the insertion of corrupt software into machines prior to Election Day;
- (2) wireless and other remote control attacks on voting machines on Election Day;
- (3) attacks on tally servers; (4) miscalibration of voting machines; (5) shut off of voting machine features intended to assist voters; (6) denial of service attacks; (7) actions by corrupt poll workers or others at the polling place to affect votes cast;
- (8) vote buying schemes; (9) attacks on ballots or VVPT. Often, the actual attacks

involve some combination of these categories. We provide a discussion of each type of attack in “Categories of Attacks,” *infra* at pp. 24–27.

**PRIORITIZING THREATS:  
NUMBER OF INFORMED PARTICIPANTS AS METRIC**

Without some form of prioritization, a compilation of the threats is of limited value. Only by prioritizing these various threats could we help election officials identify which attacks they should be most concerned about, and what steps could be taken to make such attacks as difficult as possible. As discussed below, we have determined the level of difficulty for each attack where the attacker is attempting to affect the outcome of a close statewide election.

There is no perfect way to determine which attacks are the least difficult, because each attack requires a different mix of resources – well-placed insiders, money, programming skills, security expertise, *etc.* Different attackers would find certain resources easier to acquire than others. For example, election fraud committed by local election officials would always involve well-placed insiders and a thorough understanding of election procedures; at the same time, there is no reason to expect such officials to have highly skilled hackers or first-rate programmers working with them. By contrast, election fraud carried out by a foreign government would likely start with plenty of money and technically skilled attackers, but probably without many conveniently placed insiders or detailed knowledge of election procedures.

Ultimately, we decided to use the “number of informed participants” as the metric for determining attack difficulty. An attack which uses fewer participants is deemed the easier attack.

We have defined “informed participant” as someone whose participation is needed to make the attack work, and who knows enough about the attack to foil or expose it. This is to be distinguished from a participant who unknowingly assists the attack by performing a task that is integral to the attack’s successful execution without understanding that the task is part of an attack on voting systems.

The reason for using the security metric “number of informed participants” is relatively straightforward: the larger a conspiracy is, the more difficult it would be to keep it secret. Where an attacker can carry out an attack by herself, she need only trust herself. On the other hand, a conspiracy that requires thousands of people to take part (like a vote-buying scheme) also requires thousands of people to keep quiet. The larger the number of people involved, the greater the likelihood that one of them (or one who was approached, but declined to take part) would either inform the public or authorities about the attack, or commit some kind of error that causes the attack to fail or become known.

Moreover, recruiting a large number of people who are willing to undermine the integrity of a statewide election is also presumably difficult. It is not hard to imagine two or three people agreeing to work to change the outcome of an election. It seems far less likely that an attacker could identify and employ hundreds or thousands of similarly corrupt people without being discovered.

We can get an idea of how this metric works by looking at one of the threats listed in our catalogs: the vote-buying threat, where an attacker or attackers pay individuals to vote for a particular candidate. This is Attack Number 26 in the PCOS Attack Catalog<sup>22</sup> (though this attack would not be substantially different against DREs or DREs w/ VVPT).<sup>23</sup> In order to work under our current types of voting systems, this attack requires (1) at least one person to purchase votes, (2) many people to agree to sell their votes, and (3) some way for the purchaser to confirm that the voters she pays actually voted for the candidate she supported. Ultimately, we determined that, while practical in smaller contests, a vote-buying attack would be an exceptionally difficult way to affect the outcome of a statewide election. This is because, even in a typically close statewide election, an attacker would need to involve thousands of voters to ensure that she could affect the outcome of a statewide race.<sup>24</sup>

For a discussion of other metrics we considered, but ultimately rejected, see Appendix C.

## **DETERMINING NUMBER OF INFORMED PARTICIPANTS**

### **DETERMINING THE STEPS AND VALUES FOR EACH ATTACK**

The Task Force members broke down each of the catalogued attacks into its necessary steps. For instance, Attack 12 in the PCOS Attack Catalog is “Stuffing Ballot Box with Additional Marked Ballots.”<sup>25</sup> We determined that, at a minimum, there were three component parts to this attack: (1) stealing or creating the ballots and then marking them, (2) scanning marked ballots through the PCOS scanners, probably before the polls opened, and (3) modifying the poll books in each location to ensure that the total number of votes in the ballot boxes was not greater than the number of voters who signed in at the polling place.

Task Force members then assigned a value representing the minimum number of persons they believed would be necessary to accomplish each goal. For PCOS Attack 12, the following values were assigned:<sup>26</sup>

**Minimum number required to steal or create ballots: 5 persons total.<sup>27</sup>**

**Minimum number required to scan marked ballots: 1 per polling place attacked.**

**Minimum number required to modify poll books: 1 per polling place attacked.<sup>28</sup>**

After these values were assigned, the Brennan Center interviewed several election officials to see whether they agreed with the steps and values assigned to each attack.<sup>29</sup> When necessary, the values and steps were modified. The new catalogs, including attack steps and values, were then reviewed by Task Force members. The purpose of this review was to ensure, among other things, that the steps and values were sound.

These steps and values tell us how difficult it would be to accomplish a *single attack in a single polling place*. They do not tell us how many people it would take to change the outcome of an election successfully – that depends, of course, on specific facts about the jurisdiction: how many votes are generally recorded in each polling

place, how many polling places are there in the jurisdiction, and how close is the race? For this reason, we determined that it was necessary to construct a hypothetical jurisdiction, to which we now turn.

#### NUMBER OF INFORMED PARTICIPANTS NEEDED TO CHANGE STATEWIDE ELECTION

We have decided to examine the difficulty of each attack in the context of changing the outcome of a reasonably close statewide election. While we are concerned by potential attacks on voting systems in any type of election, we are most troubled by attacks that have the potential to affect large numbers of votes. These are the attacks that could actually change the outcome of a statewide election with just a handful of attack participants.

We are less troubled by attacks on voting systems that can only affect a small number of votes (and might therefore be more useful in local elections). This is because there are many non-system attacks that can also affect a small number of votes (*i.e.*, sending out misleading information about polling places, physically intimidating voters, submitting multiple absentee ballots, *etc.*). Given the fact that these non-system attacks are likely to be less difficult in terms of number of participants, financial cost, risk of detection, and time commitment, we are uncertain that an attacker would target *voting machines* to alter a small number of votes.

In order to evaluate how difficult it would be for an attacker to change the outcome of a statewide election, we created a composite jurisdiction. The composite jurisdiction was created to be representative of a relatively close statewide election. We did not want to examine a statewide election where results were so skewed toward one candidate (for instance, the re-election of Senator Edward M. Kennedy in 2000, where he won 73% of the vote<sup>30</sup>), that reversing the election results would be impossible without causing extreme public suspicion. Nor did we want to look at races where changing only a relative handful of votes (for instance, the Governor's race in Washington State in 2004, which was decided by a mere 129 votes<sup>31</sup>) could affect the outcome of an election; under this scenario, many of the potential attacks would involve few people, and therefore look equally difficult.

We have named our composite jurisdiction "the State of Pennasota." The State of Pennasota is a composite of ten states: Colorado, Florida, Iowa, Ohio, New Mexico, Pennsylvania, Michigan, Nevada, Wisconsin and Minnesota. These states were chosen because they were the ten "battleground" states that Zogby International consistently polled in the spring, summer, and fall 2004.<sup>32</sup> These are statewide elections that an attacker would have expected, ahead of time, to be fairly close.

We have also created a composite election, which we label the "Governor's Race" in Pennasota. The results of this election are a composite of the actual results in the same ten states in the 2004 Presidential Election.

We have used these composites as the framework by which to evaluate the difficulty of the various catalogued attacks.<sup>33</sup> For instance, we know a ballot-box stuffing attack would require roughly five people to create and mark fake ballots, as

well as one person per polling place to stuff the boxes, and one person per polling place to modify the poll books. But, in order to determine how many informed participants would be needed to affect a statewide race, we need to know how many polling places would need to be attacked.

The composite jurisdiction and composite election provide us with information needed to answer these questions: *i.e.*, how many extra votes our attackers would need to add to their favored candidate's total for him to win, how many ballots our attackers can stuff into a particular polling place's ballot box without arousing suspicion (and related to this, how many votes are generally cast in the average polling place), how many polling places are there in the state, *etc.* We provide details about both the composite jurisdiction and election in the section entitled "Governor's Race, State of Pennasota, 2007," *infra* at pp 26-27.

#### LIMITS OF INFORMED PARTICIPANTS AS METRIC

Of the possible metrics we considered, we believe that measuring the number of people who know they are involved in an attack (and thus could provide evidence of the attack to the authorities and/or the media), is the best single measure of attack difficulty; as already discussed, we have concluded that the more people an attacker is forced to involve in his attack, the more likely it is that one of the participants would reveal the attack's existence and foil the attack, perhaps sending attackers to jail. However, we are aware of a number of places where the methodology could provide us with questionable results.

By deciding to concentrate on size of attack team, we mostly ignore the need for other resources when planning an attack. Thus, a software attack on DREs which makes use of steganography to hide attack instruction files (*see* "DRE w/ VVPT Attack No. 1a", discussed in greater detail, *infra* at pp. 62-65) is considered easier than an attack program delivered over a wireless network at the polling place (*see* discussion of wireless networks, *infra* at pp. 85-91). However, the former attack probably requires a much more technologically sophisticated attacker.

Another imperfection with this metric is that we do not have an easy way to represent how much choice the attacker has in finding members of his attack team. Thus, with PCOS voting, we conclude that the cost of subverting a routine audit of ballots is roughly equal to the cost of intercepting ballot boxes in transit and substituting altered ballots (*see* discussion of PCOS attacks, *infra* at pp. 77-83). However, subverting the audit team requires getting a specific set of trusted people to cooperate with the attacker. By contrast, the attacker may be able to decide which precincts to tamper with based on which people he has already recruited for his attack.

In an attempt to address this concern, we considered looking at the number of "insiders" necessary to take part in each attack. Under this theory, getting five people to take part in a conspiracy to attack a voting system might not be particularly difficult. But getting five well-placed county election officials to take part in the attack would be (and should be labeled) the more difficult of the two attacks. Because, for the most part, the low-cost attacks we have identified do not necessarily involve well placed insiders (but could, for instance, involve one of many people with access to commercial off the shelf software ("COTS") during development.

or at the vendor), we do not believe that using this metric would have substantially changed our analysis.<sup>35</sup>

Finally, these attack team sizes do not always capture the logistical complexity of an attack. For example, an attack on VVPT machines involving tampering with the voting machine software and also replacing the paper records in transit requires the attacker to determine what votes were falsely produced by the voting machine and print replacement records in time to substitute them. While this is clearly possible, it raises a lot of operational difficulties – a single failed substitution leaves the possibility that the attack would be detected during the audit of ballots.

We have tried to keep these imperfections in mind when analyzing and discussing our least difficult attacks.

We suspect that much of the disagreement between voting officials and computer security experts in the last several years stems from a difference of opinion in prioritizing the difficulty of attacks. Election officials, with extensive experience in the logistics of handling tons of paper ballots, have little faith in paper and understand the kind of breakdowns in procedures that lead to traditional attacks like ballot box stuffing; in contrast, sophisticated attacks on computer voting systems appear very difficult to many of them. Computer security experts understand sophisticated attacks on computer systems, and recognize the availability of tools and expertise that makes these attacks practical to launch, but have no clear idea how they would manage the logistics of attacking a paper-based system. Looking at attack team size is one way to bridge this difference in perspective.

## EFFECTS OF IMPLEMENTING COUNTERMEASURE SETS

The final step of our threat analysis is to measure the effect of certain countermeasures against the catalogued attacks. How much more difficult would the attacks become once the countermeasures are put into effect? How many more informed participants (if any) would be needed to counter or defeat these countermeasures?

Our process for examining the effectiveness of a countermeasure mirrors the process for determining the difficulty of an attack: we first asked whether the countermeasure would allow us to detect an attack with near certainty. If we agreed that the countermeasure would expose the attack, we identified the steps that would be necessary to circumvent or defeat the countermeasure. For each step to defeat the countermeasure, we determined the number of additional informed participants (if any) that an attacker would need to add to his team. As with the process for determining attack difficulty, the Brennan Center interviewed numerous election officials to see whether they agreed with the steps and values assigned. When necessary, the values and steps for defeating the countermeasures were altered to reflect the input of election officials.

## COUNTERMEASURES EXAMINED

### BASIC SET OF COUNTERMEASURES

The first set of countermeasures we looked at is the “Basic Set” of countermeasures. This Basic Set was derived from security survey responses<sup>36</sup> we received

from county election officials around the country, as well as additional interviews with more than a dozen current and former election officials. Within the Basic Set of countermeasures are the following procedures:

### **Inspection**

The jurisdiction is not knowingly using any uncertified software that is subject to inspection by the Independent Testing Authority (often referred to as the "ITA").<sup>37</sup>

### **Physical Security for Machines**

- Ballot boxes (to the extent they exist) are examined (to ensure they are empty) and locked by poll workers immediately before the polls are opened.
- Before and after being brought to the polls for Election Day, voting systems for each county are locked in a single room in a county warehouse.
- The warehouse has perimeter alarms, secure locks, video surveillance and regular visits by security guards.
- Access to the warehouse is controlled by sign-in, possibly with card keys or similar automatic logging of entry and exit for regular staff.
- Some form of "tamper evident" seals are placed on machines before and after each election.
- The machines are transported to polling locations five to fifteen days before Election Day.

### **Chain of Custody/Physical Security of Election Day Records**

- At close of the polls, vote tallies for each machine are totaled and compared with number of persons that have signed the poll books.
- A copy of totals for each machine is posted at each polling place on Election Night and taken home by poll workers to check against what is posted publicly at election headquarters, on the web, in the papers, or elsewhere.<sup>38</sup>
- All audit information (*i.e.*, Event Logs, VVPT records, paper ballots, machine printouts of totals) that is not electronically transmitted as part of the unofficial upload to the central election office, is delivered in official, sealed and hand-delivered information packets or boxes. All seals are numbered and tamper-evident.
- Transportation of information packets is completed by two election officials representing opposing parties who have been instructed to remain in joint custody of the information packets or boxes from the moment it leaves the precinct to the moment it arrives at the county election center.

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- Each polling place sends its information packets or boxes to the county election center separately, rather than having one truck or person pick up this data from multiple polling locations.
- Once the sealed information packets or boxes have reached the county election center, they are logged. Numbers on the seals are checked to ensure that they have not been replaced. Any broken or replaced seals are logged. Intact seals are left intact.
- After the packets and/or boxes have been logged, they are provided with physical security precautions at least as great as those listed for voting machines, above. Specifically, for Pennasota, we have assumed the room in which the packets are stored have perimeter alarms, secure locks, video surveillance and regular visits by security guards and county police officers; and access to the room is controlled by sign-in, possibly with card keys or similar automatic logging of entry and exit for regular staff.

### **Testing<sup>39</sup>**

- An Independent Testing Authority has certified the model of voting machine used in the polling place.
- Acceptance Testing<sup>40</sup> is performed on machines at time, or soon after they are received by County.
- Pre-election Logic and Accuracy<sup>41</sup> testing is performed by the relevant election official.
- Prior to opening the polls, every voting machine and vote tabulation system is checked to see that it is still configured for the correct election, including the correct precinct, ballot style, and other applicable details.

### **REGIMEN FOR AUTOMATIC ROUTINE AUDIT PLUS BASIC SET OF COUNTERMEASURES.**

The second set of countermeasures is the Regimen for an Automatic Routine Audit Plus Basic Set of Countermeasures.

Some form of routine auditing of voter-verified paper records occurs in 12 states, to test the accuracy of electronic voting machines. They generally require between 1 and 10% of all precinct voting machines to be audited after each election. <sup>42</sup>

Jurisdictions can implement this set of countermeasures only if their voting systems produce some sort of voter-verified paper record of each vote. This could be in the form of a paper ballot, in the case of PCOS, or a voter-verified paper trail (“VVPT”), in the case of DREs.

We have assumed that jurisdictions take the following steps when conducting an Automatic Routine Audit (when referring to this set of assumptions “Regimen for an Automatic Routine Audit”):

### The Audit

- Leaders of the major parties in each county are responsible for selecting a sufficient number of audit-team members to be used in that county.<sup>43</sup>
- Using a highly transparent random selection mechanism (*see* point ii, below), the voter-verified paper records for between a small percentage of all voting machines in the State are selected for auditing.
- Using a transparent random selection method, auditors are assigned to the selected machines (two or three people, with representatives of each major political party, would comprise each audit team).
- The selection of voting machines, and the assignment of auditors to machines, occurs immediately before the audits take place. The audits take place as soon after polls close as possible – for example, at 9 a.m. the morning after polls close.
- Using a transparent random selection method, county police officers, security personnel and the video monitor assigned to guard the voter-verified records are chosen from a large pool of on-duty officers and employees on election night.
- The auditors are provided the machine tallies and are able to see that the county tally reflects the sums of the machine tallies before the start of the inspection of the paper.
- The audit would include a tally of spoiled ballots (in the case of VVPT, the number of cancellations recorded), overvotes, and undervotes.

### Transparent Random Selection Process

In this report, we have assumed that random auditing procedures are in place for both the Regimen for an Automatic Routine Audit and Regimen for Parallel Testing. We have further assumed procedures to prevent a single, corrupt person from being able to fix the results. This implies a kind of transparent and public random procedure.

For the Regimen for an Automatic Routine Audit there are at least two places where transparent, random selection processes are important: in the selection of precincts to audit, and in the assignment of auditors to the precincts they will be auditing.

Good election security can employ Transparent Random Selection in other places with good effect:

- the selection of parallel testers from a pool of qualified individuals.
- the assignment of police and other security professionals from on-duty lists, to monitor key materials, for example, the VVPT records between the time that they arrive at election central and the time of the completion of the ARA.

If a selection process for auditing is to be trustworthy and trusted, ideally:

- The whole process will be publicly observable or videotaped;<sup>44</sup>
- The random selection will be publicly verifiable, *i.e.*, anyone observing will be able to verify that the sample was chosen randomly (or at least that the number selected is not under the control of any small number of people); and
- The process will be simple and practical within the context of current election practice so as to avoid imposing unnecessary burdens on election officials.

There are a number of ways that election officials can ensure some kind of transparent randomness. One way would be to use a state lottery machine to select precincts or polling places for auditing. We have included two potential examples of transparent random selection processes in Appendix F. These apply to the Regimen for Parallel Testing as well.

#### **REGIMEN FOR PARALLEL TESTING PLUS BASIC SET OF COUNTERMEASURES**

The final set of countermeasures we have examined is “Parallel Testing” plus the Basic Set of countermeasures. Parallel Testing, also known as election-day testing, involves selecting voting machines at random and testing them as realistically as possible during the period that votes are being cast.

#### **Parallel Testing**

In developing our set of assumptions for Parallel Testing, we relied heavily upon interviews with Jocelyn Whitney, Project Manager for Parallel Testing in the State of California, and conclusions drawn from this Report.<sup>45</sup> In our analysis, we assume that the following procedures would be included in the Parallel Testing regimen (when referring to this regimen “Regimen for Parallel Testing”) that we evaluate:

- At least two of each DRE model (meaning both vendor and model) would be selected for Parallel Testing;
- At least two DREs from each of the three largest counties would be parallel tested;
- Counties to be parallel tested would be chosen by the Secretary of State in a transparent and random manner.
- Counties would be notified as late as possible that machines from one of their precincts would be selected for Parallel Testing;<sup>46</sup>
- Precincts would be selected through a transparent random mechanism;
- A video camera would record testing;
- For each test, there would be one tester and one observer;

- Parallel Testing would occur at the polling place;
- The script for Parallel Testing would be generated in a way that mimics voter behavior and voting patterns for the polling place;
- At the end of the Parallel Testing, the tester and observer would reconcile vote totals in the script with vote totals reported on the machine.

#### **Transparent Random Selection Process**

We further assume that the same type of transparent random selection process that would be used for the Regimen for Automatic Routine Audit would also be employed for the Regimen for Parallel Testing to determine which machines would be subjected to testing on Election Day.

### **APPENDIX C**

#### **ALTERNATIVE SECURITY METRICS CONSIDERED**

##### **Dollars Spent**

The decision to use the number of informed participants as the metric for attack level difficulty came after considering several other potential metrics. One of the first metrics we considered was the dollar cost of attacks. This metric makes sense when looking at attacks that seek financial gain – for instance, misappropriating corporate funds. It is not rational to spend \$100,000 on the misappropriation of corporate funds if the total value of those funds is \$90,000. Ultimately, we rejected this metric as the basis for our analysis because the dollar cost of the attacks we considered were dwarfed by both (1) current federal and state budgets, and (2) the amounts currently spent legally in state and federal political campaigns.

##### **Time of Attack**

The relative security of safes and other safety measures are often rated in terms of “time to defeat.” This was rejected as metric of difficulty because it did not seem relevant to voting systems. Attackers breaking into a house are concerned with the amount of time it might take to complete their robbery because the homeowners or police might show up. With regard to election fraud, many attackers may be willing to start months or years before an election if they believe they can control the outcome. As discussed *supra* at pp. 35–48, attackers may be confident that they can circumvent the independent testing authorities and other measures meant to identify attacks, so that the amount of time an attack takes becomes less relevant.

**Appendix 4**  
**Voting Fraud-Voter Intimidation Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, Texas

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia

National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, Missouri

National Counsel to the American Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice

<sup>i</sup> Department of Justice's Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R

<sup>ii</sup> The MyVote1 Project Final Report, Fels Institute of Government, University of Pennsylvania, November 1, 2005, Pg. 12

<sup>iii</sup> Department of Justice's Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R, p. 4. This same report criticizes some of the procedures the Section used for these systems and urged the Department to improve upon them in time for the 2004 presidential election. No follow-up report has been done since that time to the best of our knowledge.

<sup>iv</sup> "Department Of Justice To Hold Ballot Access and Voting Integrity Symposium," U.S. Department of Justice press release, August 2, 2005

<sup>v</sup> Craig C. Donsanto, Prosecution of Electoral Fraud Under United States Federal Law," IFES Political Finance White Paper Series, 2006, p. 29

<sup>vi</sup> Ana Henderson and Christopher Edley, Jr., Voting Rights Act Reauthorization: Research-Based Recommendations to Improve Voting Access, Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, University of California at Berkeley, School of Law, 2006, p. 29

DRAFT

EAC REPORT ON VOTER FRAUD AND VOTER INTIMIDATION STUDY

Comment (M1) HAVA §241(b)(6) refers to voting (rather than voter) fraud and 241(b)(7) refers to voter intimidation. Do we want to do a global change from voter fraud to voting fraud, or leave it as is?

**INTRODUCTION**

Voter fraud and intimidation is a phrase familiar to many voting-aged Americans. However, it means different things to different people. Voter fraud and intimidation is a phrase used to refer to crimes, civil rights violations, and at times even the correct application of state or federal laws to the voting process. Past study of this topic has been as varied as its perceived meaning. In an effort to help understand the realities of voter fraud and voter intimidation in our elections, EAC has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the true existence and enforcement of election crimes in this country.

*Page 99's  
comments*

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the U.S. Election Assistance Commission (EAC) to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voter fraud and voter intimidation, listed in §§241(b)(6) and (7), were topics ~~was a topic~~ that EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voter fraud and intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voter fraud and voter intimidation actions, laws, or prosecutions. That type of research is well beyond the basic understanding that had to be established regarding what is commonly referred to as voter fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voter fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Tova Wang and Job Serebrov, who along with EAC staff and interns conducted the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and ~~In addition, consultants were chosen to assure a bipartisan representation in this study.~~ The consultants and EAC staff were charged ~~to:~~ (1) ~~to~~ research the current state of information on the topics of voter fraud and voter intimidation; (2) ~~to~~ develop a uniform definition of voter fraud and voter intimidation; and (3) ~~to~~ propose recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voter fraud and intimidation. In addition, EAC consultants conducted interviews with selected experts in the field. Last, EAC consultants and staff presented their study to a working group that provided feed back. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
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Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of existing laws, relevant cases, studies and reports on voter fraud and intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voter fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited to produce this final report.

**Comment [M2]:** The consultants did not really summarize existing law.

## EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

To begin our study of voter fraud and voter intimidation, EAC consultants reviewed the current body of information on voter fraud and intimidation. What the world knows about these issues comes largely from a very limited body of reports, articles and books.

There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voter fraud and voter intimidation.

### Reports and Studies of Voter Fraud and Intimidation

Over the years, there have been a number of studies and reports published conducted about ~~the concepts of~~ voter fraud and voter intimidation. EAC consultants reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voter fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “\_”:

#### Articles and Reports

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?” A Report to the Center for Voting Rights & Protection, September, 2004.

- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.
- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.

- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

**Books**

- John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Foiled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voter fraud and voter intimidation. None of the studies or reports was based on a comprehensive nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voter fraud or voter intimidation in the U.S. Most reports focused on a limited number of case studies or instances of alleged voter fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voter fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District

Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate. Generally, speaking there is little agreement on what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation and even legal practices that they allege suppress the vote.

One point of agreement is that absentee voting and voter registration by ~~third-party~~ nongovernmental groups has created opportunities for fraud. A number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with voters of a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

**Comment [M3]:** The term "third-party" is often used for minor political parties. As most of the voter registration drive problems have involved major party operatives and advocacy groups, "nongovernmental" seems a better choice.

### Interviews with Experts

In addition to reviewing prior studies and reports on voter fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voter fraud and voter intimidation. Persons interviewed included

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Pat Rogers**  
Attorney, New Mexico

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Lori Minnite**  
Barnard College, Columbia University

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Neil Bradley**  
ACLU Voting Rights Project

**Chandler Davidson**  
Rice University

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Tracey Campbell**  
Author, *Deliver the Vote*

**Douglas Webber**  
Assistant Attorney General, Indiana

**Heather Dawn Thompson**

Director of Government Relations,  
National Congress of American Indians

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Joseph Sandler**  
Counsel  
Democratic National Committee

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**John Ravitz**  
Executive Director  
New York City Board of Elections

**John Tanner**  
Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Sharon Priest**  
Former Secretary of State, Arkansas

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by ~~third party~~ nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud, citing as reasons that it was the most likely type of fraud to be discovered, and that there are stiff penalties associated with this type of fraud, and that it was an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, the location of polling places, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voter fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state’s attorney general. Regardless, voter fraud and voter intimidation are difficult to prove and require resources and time that local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction. They can only prosecute election crimes related to elections with a federal candidate on the ballot and those committed by a public official under color of law involving federal candidates. Those interviewed differed on the effectiveness of the current system of enforcement. Some including those that allege that prosecutions are not sufficiently aggressive. Others and those that feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “ \_\_\_ ”.

#### Case Law and Statutes

Consultants reviewed over 40,000 cases that were identified using a series of search terms related to voter fraud and voter intimidation. The majority of these cases came from appeal courts. This is not a surprising situation, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “ \_\_\_ ”.

#### Media Reports

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voter fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and

- fraud by election officials.

While these reports showed that there were a large number of allegations of voter fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voter fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charge and prosecutions of voter fraud and intimidation throughout the country.

### DEFINITION OF ELECTION CRIMES

From our study of available information on voter fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding of what is and what is not “voter fraud” and “voter intimidation.” Some think of voter fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. In order to come up with a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

#### New Terminology

The phrase “voter fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud, n. 1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Comment [M4]: Sic? Or is this a typo?

Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voter fraud,” it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing “voter fraud.” Similarly, a person

who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter.

The phrase "voter fraud" does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, "voter fraud" does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly refuses to register to vote an otherwise legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

To further complicate matters, the phrases "voter fraud" and "voter intimidation" are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the civil division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as "voter fraud" and "voter intimidation" that would serve as the basis ~~of~~ for a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use legal election processes are well beyond the resources available to EAC. As such, EAC has defined "election crimes," a phrase that captures all crimes related to the voter registration and voting processes.

**What is an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process, eligible persons to be excluded from the election process, ineligible votes to be cast in an election, eligible votes not to be cast or counted, or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception; acts of coercion; acts of damage or destruction; and failures or refusals to act.

Generally speaking, election crimes can be committed by voters, candidates, election officials, or any other members of the public that desire to criminally impact the result of an election. However, crimes that are based upon knowing or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

**Comment [M5]:** So this means that we will not look at civil actions involving Voting Rights Act violations, right?

The victim of an election crime can be a voter, a group of voters, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states ~~and~~or the federal government consider criminal activity related to elections.

*Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, regarding the date and time of the election or regarding a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate at one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once at the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

*Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other valuable thing to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his vote in any election, or who requires or demands an examination or inspection by himself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for registering to vote.

***Acts of Damage or Destruction***

- Destroying completed voter registration applications that are necessary for the applicants to exercise their right to vote;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments for the purpose of enabling the voter to vote his or her ballot;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as he intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

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***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;

- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

**What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal or civil violations related to campaign finance contribution limitations and prohibitions, as well as reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. The federal agency responsible for administering federal campaign finance law and monitoring the status of state campaign finance law is the Federal Election Commission (FEC).

**Comment [M6]:** Do we want to restrict our study to election crimes that affect federal elections only? HAVA §241(b)(6) specifically refers to “Nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office” [Emphasis added]. That would mean we would also stay away from election crimes affecting ballot issues and elections with no federal candidate on the ballot.

Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes.” Last, actions that do not rise to the level of criminal activity, that is a misdemeanor, relative felony or felony, are not “election crimes.”

**RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can study the existence of election crimes. EAC consultants developed recommendations. In addition, the working group and some of the persons interviewed as a part of this study provided recommendations.

***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a 1-800 voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints may provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety ~~in~~of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and monitor field reports from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voter fraud

and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants

***Recommendation 8: Conduct Statistical Research***

EAC should measure voter fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have historically been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets. The sample must include a random set of counties where there have and have not been a large number of allegations

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls in on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and

concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers can use that risk analysis to rank the types of fraud based on the ease of commission and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether deceased voters or felons are noted as having actually voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are actually utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

### Accepted Recommendations

There has never been a comprehensive national study that gathered data regarding all claims, charges and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine what volume and type of election crimes are being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

#### *Survey Chief Election Officers Regarding Administrative Complaints*

Likely sources of complaints concerning voting crimes are the administrative complaint processes that states were required to establish to as a part of complying with HAVA §402. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official and these complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have

identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

### CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and political pundits. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC through its clearinghouse role will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention and prosecution of election crimes.

been filed, investigated and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses can be collected.

*Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred*

**Comment [M7]:** Need to include survey of laws and procedures used to ID and prosecute election crime.

Several chief state election officials have developed investigation units focused on receiving, investigating and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. This data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

*Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes*

**Comment [M8]:** Need to include survey of laws and procedures used to ID and prosecute election crime.

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

*Analyze Survey Data in Light of State Laws and Procedures*

**Comment [M9]:** Would this include the verification of information about current federal and state laws and procedures that may be used to pursue violations? We would need this information in order to better understand the data we collect.

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter

*Mat's committee*

EAC REPORT ON VOTER FRAUD AND VOTER INTIMIDATION STUDY

**INTRODUCTION**

Voter fraud and intimidation is a phrase familiar to many voting-aged Americans. However, it means different things to different people. Voter fraud and intimidation is a phrase used to refer to crimes, civil rights violations, and at times even the correct application of state or federal laws to the voting process. Past study of this topic has been as varied as its perceived meaning. In an effort to help understand the realities of voter fraud and voter intimidation in our elections, EAC has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the true existence and enforcement of election crimes in this country.

*IS IT A PHRASE OR SEPARATE CONCEPTS?*

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the U.S. Election Assistance Commission (EAC) to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voter fraud and voter intimidation was a topic that EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voter fraud and intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voter fraud and voter intimidation actions, laws, or prosecutions. That type of research is well beyond the basic understanding that had to be established regarding what is commonly referred to as voter fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voter fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

*Good! Clear structure!*

To accomplish these tasks, EAC employed two consultants, who along with EAC staff and interns conducted the research that forms the basis of this report. Consultants were chosen based upon their experience with the topic. In addition, consultants were chosen to assure a bipartisan representation in this study. The consultants and EAC staff were charged (1) to research the current state of information on the topics of voter fraud and voter intimidation, (2) to develop a uniform definition of voter fraud and voter intimidation, and (3) to propose recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voter fraud and intimidation. In addition, EAC consultants conducted interviews with selected

experts in the field. Last, EAC consultants and staff presented their study to a working group that provided feed back. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to national Republican  
campaign committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*  
**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of existing laws, cases, studies and reports on voter fraud and intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voter fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited to produce this final report.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voter fraud and voter intimidation, EAC consultants reviewed the current body of information on voter fraud and intimidation. What the world knows about these issues comes largely from a very limited body of reports, articles and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation.

Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voter fraud and voter intimidation.

### **Reports and Studies of Voter Fraud and Intimidation**

Over the years, there have been a number of studies conducted about the concepts of voter fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voter fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “ \_\_\_”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?” A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, “A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law,” The Sentencing Project, November 2005.

- American Center for Voting Rights “Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election,” August 2, 2005.
- The Advancement Project, “America’s Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy” November 7, 2001
- The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, “Democracy at Risk: The November 2004 Election in Ohio,” DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.
- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.

- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

#### Books

- John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voter fraud and voter intimidation. None of the studies or reports was based on a comprehensive study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voter fraud or voter intimidation. Most reports focused on a limited number of case studies or instances of alleged voter fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voter fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate. Generally speaking there is little agreement on what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation even legal practices that they allege suppress the vote.

One point of agreement is that absentee voting and voter registration by third-party groups create opportunities for fraud. A number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of voters of a certain party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### **Interviews with Experts**

In addition to reviewing prior studies and reports on voter fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voter fraud and voter intimidation. Persons interviewed included

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Pat Rogers**  
Attorney, New Mexico

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**  
Author, *Deliver the Vote*

**Douglas Webber**  
Assistant Attorney General, Indiana

**Heather Dawn Thompson**  
Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**  
Counsel  
Democratic National Committee

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**John Ravitz**  
Executive Director  
New York City Board of Elections

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**Sharon Priest**  
Former Secretary of State, Arkansas

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin

**John Tanner**  
Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by third-party groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud, citing as reasons that it was the most likely type of fraud to be discovered and that there are stiff penalties associated with this type of fraud.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, the location of polling places, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voter fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voter fraud and voter intimidation are difficult to prove and require resources and time that local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies

have more time and resources but have limited jurisdiction. They can only prosecute crimes related to elections involving federal candidates. Those interviewed differed on the effectiveness of the current system of enforcement, including those that allege that prosecutions are not sufficiently aggressive and those that feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “ \_\_\_ ”.

### **Case Law and Statutes**

Consultants reviewed over 40,000 cases that were identified using a series of search terms related to voter fraud and voter intimidation. The majority of these cases came from ~~appeal courts~~ <sup>Courts of Appeal</sup>. This is not a surprising situation, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “ \_\_\_ ”.

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voter fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voter fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation

throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voter fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charge and prosecutions of voter fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voter fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding of what is and what is not “voter fraud” and “voter intimidation.” Some think of voter fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. In order to come up with a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

### New Terminology

The phrase “voter fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud, n. 1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voter fraud,” it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing “voter fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voter fraud” does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, “voter fraud” does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly

refuses to register to vote an otherwise legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

→ DOESN'T IT INVOLVE A VOTER?

To further complicate matters, the phrases “voter fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the civil division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as “voter fraud” and “voter intimidation” that would serve as the basis of a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use legal election processes are well beyond the resources available to EAC. As such, EAC has defined “election crimes,” a phrase that captures all crimes related to the voter registration and voting processes.

#### **What is an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process, eligible persons to be excluded from the election process, ineligible votes to be cast in an election, eligible votes not to be cast or counted, or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Generally speaking, election crimes can be committed by voters, candidates, election officials, or any other members of the public that desire to criminally impact the result of an election. However, crimes that are based upon knowing or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

*Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, regarding the date and time of the election or regarding a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate at one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once at the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

*Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other valuable thing to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his vote in any election, or who requires or demands an examination or inspection by himself or another of an employee's ballot;

DRAFT – DO NOT DISTRIBUTE

- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for registering to vote.

*Acts of Damage or Destruction*

- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments for the purpose of enabling the voter to vote his or her ballot;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as he intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

*Failure or Refusal to Act*

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

### **What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All crimes or civil violations related to campaign finance reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes.” Last, actions that do not rise to the level of criminal activity, that is a misdemeanor, relative felony or felony, are not “election crimes.”

### **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can study the existence of election crimes. EAC consultants ~~developed recommendations~~. In addition, the working group, and some of the persons interviewed as a part of this study provided recommendations.

#### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and parties should be interviewed. It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

#### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

#### ***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a 1-800 voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints may provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and monitor field reports from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys’ Offices. By attending the symposium researchers could learn more about the following how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the

National Voter Registration Act, and the Help America Vote Act are described and explained to participants

***Recommendation 8: Conduct Statistical Research***

EAC should measure voter fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have historically been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets. The sample must include a random set of counties where there have and have not been a large number of allegations

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls in on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers can use that risk analysis to rank the types of fraud based on the ease of commission and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether deceased voters or felons actually voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are actually utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

**Accepted Recommendations**

There has never been a comprehensive study that gathered data regarding all claims, charges and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine what volume and type of election crimes are being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning voting crimes are the administrative complaint processes that states were required to establish as a part of complying with HAVA. Those complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints under those procedures with the state's chief election official and those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses can be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. This data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

*Analyze Survey Data in Light of State Laws and Procedures*

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

**CONCLUSION**

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and political pundits. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC through its clearinghouse role will collect and analyze data on election crimes throughout the country. ~~The~~ These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention and prosecution of election crimes.

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**EAC REPORT ON VOTER FRAUD AND VOTER INTIMIDATION STUDY**

**INTRODUCTION**

Voter fraud and intimidation is a phrase familiar to many voting-aged Americans. However, it means different things to different people. Voter fraud and intimidation is a phrase used to refer to crimes, civil rights violations, and at times even the correct application of state or federal laws to the voting process. Past study of this topic <sup>have</sup> ~~has~~ been as varied as its perceived meaning. In an effort to help understand the realities of voter fraud and voter intimidation in our elections, EAC has begun this phase one of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the true existence and enforcement of election crimes in this country.

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the U.S. Election Assistance Commission (EAC) to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voter fraud and voter intimidation was a topic that EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voter fraud and intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voter fraud and voter intimidation actions, laws, or prosecutions. That type of research is well beyond the basic understanding that had to be established regarding what is commonly referred to as voter fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine, and in some cases limit, the scope of what reasonably can be researched and studied as evidence of voter fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, who along with EAC staff and interns conducted the research that forms the basis of this report. Consultants were chosen based upon their experience with the topic. In addition, consultants were chosen to assure a bipartisan representation in this study. The consultants and EAC staff were charged (1) to research the current state of information on the topics of voter fraud and voter intimidation, (2) to develop a uniform definition of voter fraud and voter intimidation, and (3) to propose recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voter fraud and intimidation. In addition, EAC consultants conducted interviews with selected

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experts in the field. Last, EAC consultants and staff presented their study to a working group that provided feed back. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to national Republican  
campaign committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*  
**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope, and product of this research.

The consultants drafted a report for EAC that included their summaries of existing laws, cases, studies and reports on voter fraud and intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voter fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was ~~vetted and~~ edited to produce this final report.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voter fraud and voter intimidation, EAC consultants reviewed the current body of information on voter fraud and intimidation. What the world knows about these issues comes largely from a very limited body of reports, articles and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation.

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Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voter fraud and voter intimidation.

### **Reports and Studies of Voter Fraud and Intimidation**

Over the years, there have been a number of studies conducted about the concepts of voter fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voter fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “\_\_”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?” A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, “A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law,” The Sentencing Project, November 2005.

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- American Center for Voting Rights “Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election,” August 2, 2005.
- The Advancement Project, “America’s Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy” November 7, 2001
- The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, “Democracy at Risk: The November 2004 Election in Ohio,” DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.
- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.

- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

#### Books

- John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voter fraud and voter intimidation. None of the studies or reports was based on a comprehensive study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voter fraud or voter intimidation. Most reports focused on a limited number of case studies or instances of alleged voter fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voter fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate. Generally speaking, there is little agreement on what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, <sup>and</sup> even legal practices that they allege suppress the vote.

One point of agreement is that absentee voting and voter registration by third-party groups create opportunities for fraud. A number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of voters of a certain party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

Is there anything we can say about absentee fraud? details focus only on VR and give no detail on absentee

**Interviews with Experts**

In addition to reviewing prior studies and reports on voter fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voter fraud and voter intimidation. Persons interviewed included

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Lori Minnite**  
Barnard College, Columbia University

**Chandler Davidson**  
Rice University

**Neil Bradley**  
ACLU Voting Rights Project

**Tracey Campbell**  
Author, *Deliver the Vote*

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Douglas Webber**  
Assistant Attorney General, Indiana

**Pat Rogers**  
Attorney, New Mexico

**Heather Dawn Thompson**  
Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**  
Counsel  
Democratic National Committee

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**John Ravitz**  
Executive Director  
New York City Board of Elections

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**Sharon Priest**  
Former Secretary of State, Arkansas

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin

**John Tanner**  
Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by third-party groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud, citing as reasons that it was the most likely type of fraud to be discovered and that there are stiff penalties associated with this type of fraud.

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Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, the location of polling places, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voter fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voter fraud and voter intimidation are difficult to prove and require resources and time that local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies

have more time and resources but have limited jurisdiction. They can only prosecute crimes related to elections involving federal candidates. Those interviewed differed on the effectiveness of the current system of enforcement, including those that allege that prosecutions are not sufficiently aggressive and those that feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “\_\_\_”.

### **Case Law and Statutes**

Consultants reviewed over 40,000 cases that were identified using a series of search terms related to voter fraud and voter intimidation. The majority of these cases came from appeal courts. This is not a surprising situation, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “\_\_\_”.

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voter fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voter fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation

throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voter fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges, and prosecutions of voter fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voter fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding of what is and what is not “voter fraud” and “voter intimidation.” Some think of voter fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. In order to come up with a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

### New Terminology

The phrase “voter fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud, n. 1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

*indent* → Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voter fraud,” it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing “voter fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voter fraud” does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, “voter fraud” does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly

refuses to register to vote an otherwise legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

To further complicate matters, the phrases “voter fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as “voter fraud” and “voter intimidation” that would serve as the basis of a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined “election crimes,” a phrase that captures all crimes related to the voter registration and voting processes.

#### **What is an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception; acts of coercion; acts of damage or destruction; and failures or refusals to act.

~~Generally speaking,~~ Election crimes can be committed by voters, candidates, election officials, or any other members of the public that desire to criminally impact the result of an election. However, crimes that are based upon knowing or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

*Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, regarding the date and time of the election or regarding a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance<sup>to</sup> possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate ~~at~~<sup>in</sup> one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter<sup>;</sup>;
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once at the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

~~Acts of Coercion~~

*Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage, harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other valuable thing to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or ~~to~~ delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his vote in any election, or who requires or demands an examination or inspection by himself or another of an employee's ballot;

DRAFT – DO NOT DISTRIBUTE

- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for registering to vote.

***Acts of Damage or Destruction***

- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments for the purpose of enabling the voter to vote his or her ballot;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as he intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

### **What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All crimes or civil violations related to campaign finance reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes.” Last, actions that do no rise to the level of criminal activity, that is a misdemeanor, relative felony or felony, are not “election crimes.”

### **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can study the existence of election crimes. EAC consultants developed recommendations. In addition, the working group and some of the persons interviewed as a part of this study provided recommendations.

#### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and parties should be interviewed. It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

#### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

#### ***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a ~~1-800~~<sup>1-800 free</sup> voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints may provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

} not scientific at all!  
definite bias

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety ~~of~~<sup>of</sup> ways it tracks complaints of voter intimidation, attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and monitor field reports from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

→ election crimes?

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues ~~is~~<sup>are</sup> presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the

National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

not statistical research  
^

EAC should measure voter fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have historically been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets. The sample must include a random set of counties where there have and have not been a large number of allegations *what data would be collected?*

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls ~~in~~ on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation.

*Fed Gov already has observers*

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers can use that risk analysis to rank the types of fraud based on the ease of commission and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether deceased voters or felons actually voted.

HAVA  
Issues

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedures as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are actually utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

**Accepted Recommendations**

There has never been a comprehensive study that gathered data regarding all claims, charges and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine what volume and type of election crimes are being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning <sup>election</sup> ~~voting~~ crimes are the administrative complaint ~~processes~~ <sup>procedures</sup> that states were required to establish as a part of complying with HAVA. Those complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints under those procedures with the state's chief election official and those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses can be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. This data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

#### *Analyze Survey Data in Light of State Laws and Procedures*

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

### CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and political pundits. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. ~~These data not only will tell us what types of election crimes are committed and where fraud exists,~~ <sup>These</sup> but also inform us of what factors impact the existence, prevention and prosecution of election crimes.

*GAVIN'S  
COMMENTS*

EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY

**INTRODUCTION**

Voting fraud and intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the ~~correct~~ application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed ~~a~~ definition of election crimes and adopted ~~some~~ research methodology on how to assess the existence and enforcement of election crimes in this country.

*Confidential*

*walking*

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC, as well as its advisory boards, felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

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To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,<sup>1</sup> who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and to assure a bipartisan representation in this study. The consultants and EAC staff were charged to (1) research the current state of information on the topic of voting

*under the supervision of*

<sup>1</sup> Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".

fraud and voter intimidation; (2) develop a uniform definition of voting fraud and voter intimidation; and (3) propose recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. ~~EAC consultants and staff~~ then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to national Republican  
campaign committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*  
**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

at who point do we stop harp on who... is. lots to stop too to + then speak of "EAC" action!

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

### **Reports and Studies of Voting fraud and Intimidation**

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix "2":

#### **Articles and Reports**

- People for the American Way and the NAACP, "The Long Shadow of Jim Crow," December 6, 2004.
- Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, "An Evaluation: Voter Registration Elections Board" Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, United States Attorney's Office "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," May 10, 2005.
- National Commission on Federal Election Reform, "Building Confidence in U.S. Elections," Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law "Response to the Report of the 2005 Commission on Federal Election Reform," September 19, 2005.

- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

### Books

- John Fund, *Stealing Elections: How Voting fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Foiled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as

“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the “Preliminary findings of Joint Task Force Investigating Possible Election Fraud,” produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement on what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, even legal practices, that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. A number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

#### **Interviews with Experts**

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**

Author, *Deliver the Vote*

**Douglas Webber**

Assistant Attorney General, Indiana

**Heather Dawn Thompson**

Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**

Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**

Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**

Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**

Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**

Counsel  
Democratic National Committee

**John Ravitz**

Executive Director  
New York City Board of Elections

**Sharon Priest**

Former Secretary of State, Arkansas

**Kevin Kennedy**

Executive Director  
State Board of Elections, Wisconsin

**Evelyn Stratton**

Justice  
Supreme Court of Ohio

**Joseph Rich**

Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Craig Donsanto**

Director, Public Integrity Section  
U.S. Department of Justice

**John Tanner**

Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it was the most likely type of fraud to be discovered, the stiff penalties associated with this type of fraud, and that it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,

voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state’s attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “3”.

**Case Law and Statutes**

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. <sup>Very few</sup> ~~Very few cases that are decided~~ <sup>at the district court level</sup> are reported for public review. *decisions*

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

*Ask Job?*  
*That's Steady Lots?*

*Want detail*

A listing of the cases reviewed in this study is attached as Appendix “4”.

**Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters, *on thresholds?*
- multiple voting,
- felons voting, —

- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

### DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. ~~Upon further inspection, however,~~ It is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and ~~appropriate~~ activities. ~~To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.~~

*Handwritten note:* Avoid word budget?

#### New Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud**, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime. *Handwritten note:* willful

Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter

*Handwritten signature:* AS Hood  
*Handwritten signature:* Lettrott 5/13

registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing "voting fraud." Similarly, a person who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter.

*if given it plan wrong,*  
The phrase "voting fraud" does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, "voting fraud" does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

To further complicate matters, the phrases "voting fraud" and "voter intimidation" are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as "voting fraud" and "voter intimidation" that would serve as the basis for a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined "election crimes," a phrase that captures all crimes related to the voter registration and voting processes.

*decided to use the term*  
*to use the term*

*for the purpose of this study*

**The Definition of an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

*need transition to the crimes and determine use of explanatory of why civil is being chosen*

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting (either early, absentee, or election day), vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

#### *Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

#### *Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

***Acts of Damage or Destruction***

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;

- o Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- o Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- o Distributing or attempting to distribute election material knowing it to be fraudulent;
- o Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- o Knowingly removing the eligibility status of a voter who is eligible to vote; and
- o Knowingly refusing to allow an eligible voter to cast his/her ballot.

### What is not an Election Crime for Purposes of this Study

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of "election crimes." All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not "election crimes" for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not "election crimes," even when those offenses occur in a polling place, voter registration office, or a candidate's office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate's office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not "election crimes," and actions that do not rise to the level of criminal activity, such as a misdemeanor, relative felony or felony, are not "election crimes."

Oh...

and

?

I thought this was about gov.

### RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

#### **Recommendation 1: Conduct More Interviews**

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers ("DEOs") and local district attorneys, as well as civil and criminal defense attorneys.

#### **Recommendation 2: Follow Up on Media Research**

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such

activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

### **Accepted Recommendations**

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

#### ***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition

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of election crimes provided above in this report in its survey so that data regarding a  
uniform set of offenses will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

***Analyze Survey Data in Light of State Laws and Procedures***

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from

areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

## CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.

EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY

**INTRODUCTION**

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the correct application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the existence and enforcement of election crimes in the United States.

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. <sup>initial</sup> This study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,<sup>1</sup> who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic of voting fraud and voter intimidation; (2) developing a uniform definition of voting

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<sup>1</sup> Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".

fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to National Republican  
Campaign Committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

## EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

### Reports and Studies of Voting fraud and Intimidation

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

#### Articles and Reports

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.

- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

### Books

- John Fund, *Stealing Elections: How Voting fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as

“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### **Interviews with Experts**

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**  
Author, *Deliver the Vote*

**Douglas Webber**  
Assistant Attorney General, Indiana

**Heather Dawn Thompson**  
Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**  
Counsel  
Democratic National Committee

**John Ravitz**  
Executive Director  
New York City Board of Elections

**Sharon Priest**  
Former Secretary of State, Arkansas

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin

**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**John Tanner**  
Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,

voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix "3".

#### **Case Law and Statutes**

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix "4".

#### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,

- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

### New Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud**, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting. Thus, a voter who intentionally impersonates another registered voter and attempts to

vote for that person would be committing “voting fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voting fraud” does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, “voting fraud” does not capture actions or willful inaction in the voter registration process. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases “voting fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as “voting fraud” and “voter intimidation” that would serve as the basis for a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined “election crimes,” a phrase that captures all crimes related to the voter registration and voting processes.

### **The Definition of an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

*Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a materially false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

*Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

***Acts of Damage or Destruction***

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;

- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

### **What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes,” and actions that do not rise to the level of criminal activity, such as a misdemeanor, relative felony or felony, are not “election crimes.”

## **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such

activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

### **Accepted Recommendations**

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

#### ***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition

of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

***Analyze Survey Data in Light of State Laws and Procedures***

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from

areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

## CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.

## EAC Statement on Future Study of Voter Identification Requirements

### Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the contractor was to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

**Comment [GH1]:** We should state the same entity precisely as it is named in the contract. We could then name which institutions performed the work, were subcontractors, etc.

The contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data-- aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau-- the contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.

**Comment [GH2]:** In respect to the last sentence in paragraph one above, it is my opinion that it would have been reasonable for Eagleton to have considered the statistical analysis they conducted as being covered by that task. Therefore, I recommend striking the word "also" from this sentence.

The contractor presented testimony summarizing its findings from this statistical and data analysis at a February 8, 2007 public meeting of the U.S. Election Assistance Commission. The contractor's testimony and its summary of voter identification requirements by State, summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and a summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website: [www.EAC.gov](http://www.EAC.gov).

### EAC Recommendations for further study and next steps

EAC finds the contractor's summary of States' voter identification requirements and summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be an important first step in the Commission's consideration of voter identification requirements.

However, EAC has concerns regarding the research and statistical methodology the contractor chose to employ in order to analyze voter identification requirements. Therefore, EAC will engage in a longer-term, more systematic review of voter identification requirements and the potential variation in turnout rates based on the types of voter identification requirements. EAC is not adopting the contractor's full report that was submitted and is not releasing this report. EAC's additional study on the topic will include more than one Federal election cycle, examine additional environmental and political factors that effect voter participation, and consider the numerous changes in state

laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities on an ongoing basis.

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- A state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Using some of the information collected by Eagleton and assembling data from states, EAC will establish a baseline of information on voter participation that will include what factors may affect or influence Citizen Voting Age Population (CVAP) voter participation, various voter identification requirements, the competitiveness of a race and other environmental or political factors.
- Analysis of this and other data to begin to determine what, if any impact, voter identification requirements have voter turnout, registration, and fraud.

Comment [GH3]: I cannot craft the word

Other activities to enhance EAC research on the correlation between identification requirements and various aspects of voter participation will include:

- Convening a working group by mid-2007 of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include specific issues to be covered in the study, research and statistical methodologies to be employed and timelines for completing an EAC study on voter identification.
- A study of how certain voter identification provisions that have been in place for two or more Federal elections have had an impact on voter turnout, voter registration figures, and fraud. Included in this study would be an examination of the relationship between voter turnout and race and gender;
- Publication of a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating pollworkers and voters about various voter identification requirements. Included in the case studies would be detail on the policies and practices used to educate and inform pollworkers and voters;
- A state-by-state tracking of early voting, absentee voting, and vote-by-mail policies and procedures. The data collected through this tracking would then be compared to the various state voter identification policies and procedures described above.

DRAFT

**Deliberative Process  
Privilege**



**U.S. ELECTION ASSISTANCE COMMISSION**

**Status Report on the  
Voting Fraud-Voter Intimidation Research  
Project**

**May 17, 2006**

007371

## INTRODUCTION

Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

## FOCUS OF CURRENT RESEARCH

In September 2005, the Commission hired two consultants with expertise in this subject matter, Job Serebrov and Tova Wang, to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

As of the date of this report, the consultants have drafted a definition of election fraud, reviewed relevant literature and reports, interviewed persons from government and private sectors with subject matter expertise, analyzed news reports of alleged election fraud, reviewed case law, and established a project working group.

## DEFINITION OF ELECTION FRAUD

The consultants drafted a definition of election fraud that includes numerous aspects of voting fraud (including voter intimidation, which is considered a subset of voting fraud) and voter registration fraud, but excludes campaign finance violations and election administration mistakes. This draft will be discussed and probably refined by the project working group, which is scheduled to convene on May 18, 2006.

## LITERATURE REVIEW

The consultants found many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. They found little research that is truly systematic or scientific. The most systematic look at fraud appears to be the report written by Lori Minnite, entitled "Securing the Vote: An Analysis of Election Fraud". The most systematic look at voter intimidation appears to be the report by Laughlin McDonald, entitled "The New Poll Tax". The consultants found that books written about this subject all seem to have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Moreover, the consultants found that reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book, "Stealing Elections".

Consultants found that researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate; but some reports say it is a major problem, albeit hard to identify.

- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

### **Recommendations**

The consultants recommend that subsequent EAC research include a follow up study of allegations made in reports, books and newspaper articles. They also suggest that the research should focus on filling the gap between the lack of reports based on methodical studies by social or political scientists and the numerous, but less scientific, reports published by advocacy groups.

### **INTERVIEWS**

The consultants jointly selected experts from the public and private sector for interviews. The consultants' analysis of their discussions with these members of the legal, election official, advocacy, and academic communities follows.

### **Common Themes**

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, "dead" voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud,

although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.

- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate that, for various reasons, DOJ is bringing fewer voter intimidation and suppression cases now, and has increased its focus on matters such as noncitizen voting, double voting, and felon voting. Interviews with DOJ personnel indicate that the Voting Section, Civil Rights Division, focuses on systemic patterns of malfeasance in this area. While the Election Crimes Branch, Public Integrity Section, continues to maintain an aggressive pursuit of systematic schemes to corrupt the electoral process (including voter suppression), it also has increased prosecutions of individual instances of felon, alien, and double voting.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

#### **Common Recommendations:**

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed.
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.

- With respect to DOJ's Voting Section, Civil Rights Division, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and his office has not pursued any such cases.
- Craig Donsanto of DOJ's Election Crimes Branch, Public Integrity Section, says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases DOJ is investigating and the number of indictments his office is pursuing are both up dramatically. Since 2002, in addition to pursuing systematic election corruption schemes, DOJ has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so that his agency can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment.
- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill.
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected as non partisan officials, they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas are a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.

- A few recommend returning to allowing use of absentee ballots “for cause” only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the proposal in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

## NEWS ARTICLES

Consultants conducted a Nexis search of related news articles published between January 1, 2001 and January 1, 2006. A systematic, numerical analysis of the data collected during this review is currently being prepared. What follows is an overview of these articles provided by the consultants.

### Absentee Ballots

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters.
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased.
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times.

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

## **Voter Registration Fraud**

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people;
- Fake names and other information on voter registration forms;
- Illegitimate addresses used on voter registration forms;
- Voters being tricked into registering for a particular party under false pretenses; and
- Destruction of voter registration forms depending on the party the voter registered with.

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota, and Wisconsin.

## **Voter Intimidation and Suppression**

This is the area which had the most articles, in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places;
- Improper demands for identification;

- Poll watchers harassing voters;
- Poll workers being hostile to or aggressively challenging voters;
- Disproportionate police presence;
- Poll watchers wearing clothes with messages that seemed intended to intimidate; and
- Insufficient voting machines and unmanageably long lines.

Although the incidents reported on occurred everywhere, not surprisingly, many came from “battleground” states. There were several such reports out of Florida, Ohio, and Pennsylvania.

### **“Dead Voters and Multiple Voting”**

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials, and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person took criminal advantage of that. In total, the San Francisco Chronicle found five such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### **Vote Buying**

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations concentrated in three states (Illinois, Kentucky, and West Virginia). There were more official investigations, indictments and convictions/pleas in this area.

### **Deceptive Practices**

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of completed voter registration applications. There were no reports of prosecutions or any other legal proceeding.

### **Non-citizen Voting**

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case, charges were filed against ten individuals. In another case, a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this Nexis search, remained just allegations of noncitizen voting.

### **Felon Voting**

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem was the large number of ineligible felons that remained on the voting list.

### **Election Official Fraud**

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one

instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### **Recommendation**

The consultants recommend that subsequent EAC research should include a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

## **CASE LAW RESEARCH**

After reviewing over 40,000 cases from 2000 to the present, the majority of which came from appeals courts, the consultants found comparatively few applicable to this study. Of those that were applicable, the consultants found that no apparent thematic pattern emerges. However, it appears to them that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

### **Recommendation**

Because so few cases provided a picture of these current problems, consultants suggest that subsequent EAC research include a review of state trial-level decisions.

## **PROJECT WORKING GROUP**

Consultants and EAC worked together to select members for the Voting Fraud-Voter Intimidation Working Group that included election officials and representatives of advocacy groups and the legal community who have an interest and expertise in the subject matter. (See Attachment A for a list of members.) The working group is scheduled to convene at EAC offices on May 18, 2006 to consider the results of the preliminary research and to offer ideas for future EAC activities concerning this subject.

## **FINAL REPORT**

After convening the project working group, the consultants will draft a final report summarizing the results of their research and the working group deliberations. This report will include recommendations for future EAC research related to this subject matter. The draft report will be reviewed by EAC and, after obtaining any clarifications or corrections deemed necessary, will be made available to the EAC Standards Board and EAC Board of Advisors for review and comment. Following this, a final report will be prepared.

**Attachment A**

**Voting Fraud-Voter Intimidation Project Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, TX

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

*(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)*

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, DC

National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, MO

National Counsel to the American Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S.

Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice



Gracia Hillman /EAC/GOV  
07/11/2006 01:56 PM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Ethics Form (278)

Yes, both stocks lost value.

I don't remember what Schedule D is but thanks for the correction.

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Sent from my BlackBerry Wireless Handheld  
Gavin S. Gilmour

**From:** Gavin S. Gilmour  
**Sent:** 07/11/2006 12:51 PM  
**To:** Gracia Hillman  
**Subject:** Ethics Form (278)

Commissioner,

I have completed a review of your OGE 278 Form. Its looks good, but I need some simple clarifications.

- 1) Two of your investments have decreased in value. (A) UAL: Schedule A, Pg3, line 7 and (B) Pharmaceutical Holders Trust: Schedule A, pg 8 line 3. No transaction (sale) is noted on schedule B. I assume that this is because the change in value reflects a change in the market. Please confirm this.
- 2) On Schedule D, Part II, I will remove the check mark on the none box as this section does not apply to you. (checking none suggests a responsive, negative reply).

Thanks

Gavin

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

THIS MESSAGE IS FOR ITS INTENDED RECIPIENT ONLY. IT IS A PRIVILEGED DOCUMENT AND SHALL NOT BE RELEASED TO A THIRD PARTY WITHOUT THE CONSENT OF THE SENDER.

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Deliberative Process  
Privilege



"Job Serebrov"

05/16/2006 09:25 AM

To psims@eac.gov,

cc

Subject Re: Date Ranges for Research

Cases were from 2000 to the present.

--- psims@eac.gov wrote:

> Would you please refresh my memory about the date  
> ranges used for the  
> Nexis article research and the case law research?  
> I'm drawing a blank and  
> I don't see it in the summaries. I need it for this  
> mornings Commissioner  
> briefing. Thanks! --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---



"Job Serebrov"

05/15/2006 09:56 AM

To psims@eac.gov

cc

Subject Re: Question

Did you find out whether I can use the Chairman's  
parking spot?

--- psims@eac.gov wrote:

> You will need to submit hotel and parking receipts.  
> You don't need to submit meal receipts. You don't  
> need to submit gas receipts because use of a  
> personally owned vehicle (POV) is reimbursed based  
> on mileage. I think I emailed the mileage rate to  
> you. If you need it again, I'll look it up when I am  
> at the office (this afternoon).

> Peg

>

> -----

> Sent from my BlackBerry Wireless Handheld

>

>

>

> ----- Original Message -----

> From: "Job Serebrov"

> Sent: 05/12/2006 09:05 PM

> To: psims@eac.gov

> Subject: Question

>

007387

> Peg:  
>  
> Since I am driving to DC, besides hotel receipts, do  
> you want me to keep my gas receipts or how will my  
> car  
> use be compensated? Also, I assume I don't have to  
> retain food receipts.  
>  
> Job  
>  
>  
>

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----

Margaret Sims/EAC/GOV

05/24/2006 04:57 PM

To "Tova Wang" [REDACTED]@GSAEXTERNAL

cc

Subject RE: presentation [REDACTED]

The Standards Board has the reputation of being crankier than the Board of Advisors. They beat up on the Commissioners last year.

"Tova Wang" <wang@tcf.org>



"Tova Wang"

[REDACTED]  
05/24/2006 04:50 PM

To psims@eac.gov

cc

Subject RE: presentation

Is such a roasting usual? I mean, do they think we did a bad job???

-----Original Message-----

**From:** psims@eac.gov [mailto:psims@eac.gov]

**Sent:** Wednesday, May 24, 2006 3:43 PM

**To:** wang@tcf.org

**Subject:** RE: presentation

You have most of the pieces of the report now. We absolutely need to put the statutory authority for the research up front. We need to add the definition. We also need to add a short piece addressing the approach for this preliminary research (including short statements on the pros and cons of information sources --- you began to address this in the literature review summary). I expect that the biggest project will be fleshing out the possible avenues for subsequent research in this area. It would be great if we could come up with cost estimates. If we can't, we need to at least identify what info we hope to get, what we are likely to miss, and any pitfalls.

Given today's roast, I will take another look at what we have now to highlight remarks that might

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needlessly tick board members off. We can discuss whether or not editing or removing the remark would be detrimental to or have no real effect on the final report. (An example of such a remark is the reference to the number of articles out of Florida. A local official from that State objected on the grounds that the number of articles does not reliably indicate the number of problems.) I know we can expect a challenge from Board of Advisors member Craig Donsanto regarding the focus of the Election Crimes Branch prosecutions.

Yes, we can discuss the organization and "look" of the report after Job returns. Yes, the Commissioners will want to review it and submit their changes before the report goes to the boards.

It is too early to tell what EAC efforts may be mounted in FY 2007. I doubt that fire from the Standards Board will prevent Commissioners from doing what they think is needed. But, given that it is an election year, appropriations legislation may not be signed until December or later -- so we won't know how much money we have for awhile. --- Peggy

"Tova Wang" 

05/24/2006 03:27 PM

To psims@eac.gov  
cc  
Subject RE: presentation

Yikes. It sounds like a lot of work after all. Should we talk over what the report should look like again, I guess when Job gets back? Will you help us write it in a way you think will satisfy? I guess it goes to the commissioners first anyway. Does this portend anything for phase 2?

Thanks Peg. Tova

-----Original Message-----

**From:** psims@eac.gov [mailto:psims@eac.gov]

**Sent:** Wednesday, May 24, 2006 2:16 PM

**To:** wang@tcf.org

**Subject:** Re: presentation

I'm glad it is over --- for now. One audience was a lot tougher than the other. The Standards Board was much more critical of the research than the Board of Advisors.

Of course, the Board of Advisors is the body that wanted EAC to place a high priority on the research. Its members were interested in sharing personal experiences (including problems with getting anyone to prosecute) and observations (that we need to expand the research to give Congress and political parties a better picture of how rare or prevalent are voting fraud and intimidation, that the HAVA-mandated statewide voter registration lists should help to prevent fraud, etc.). They also asked if EAC will look at specific opportunities for fraud (using cell phones

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in vote buying schemes to photograph the ballot being cast at the poll) and how the agency will research voter intimidation/suppression involving voters with disabilities (advocates want to pass on complaints received).

The members of the Standards Board focused much more on the scope of the research and the completeness and accuracy of the information gleaned. Some wanted to include campaign finance crimes in the mix; others understood why we did not. Several did not like the use of newspaper articles, or were defensive about references to the large number of articles about their State. They made the point that, given the vagaries of the press, EAC should not use the number of articles about a specific State or particular vote fraud/intimidation activity as a basis for determining the likelihood that problems will occur in a given State or the frequency with which certain activities occur. (I never said that we did, but some members thought it was at least implied.) Some members want more research on the topic (into prosecutions and/or unsuccessful referrals made by election officials to law enforcement agencies); others want us to "quit throwing away tax dollars" and to stop the research altogether. Although my first slide noted our statutory authority to conduct this study, several members challenged EAC's right to do so --- saying that DOJ, not EAC, should conduct such research.

The dueling approaches of these boards may give us heartburn when the time comes for them to review and comment on the draft. We will have to make a strong statement at the beginning, perhaps repeated at the end, that this is preliminary research. We also may need to thoroughly explain how choices were made regarding what to look at, who to interview, etc. We may need to clearly acknowledge both the strengths and weaknesses of the various sources of information used in the preliminary research. Finally, when reviewing ideas for subsequent research, we may need to discuss the pros and cons of each approach, what additional information we expect to retrieve, and, perhaps, the estimated cost.

By the way, I did clarify the polling place fraud bullet. --- Peg

"Tova Wang" 

05/24/2006 09:14 AM

To psims@eac.gov  
cc  
Subject presentation

How did it go? Were you able to verbally correct that discrepancy we talked about the other day?  
Thanks. Tova

Tova Andrea Wang  
Democracy Fellow  
**The Century Foundation**

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## **EAC ELECTION CRIMES STUDY: NEXT STEPS**

### **Background: Phase I**

Section 241 of the Help America Vote Act of 2002 (HAVA) requires the Election Assistance Commission (EAC) to conduct research on election administration issues including nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [Section 241(b)(6)]; and ways of identifying, deterring, and investigating methods of voter intimidation [Section 241(b)(7)].

The EAC initiated its study of election crimes in 2005, issuing its first report, "Election Crimes: An Initial Review and Recommendations for Future Study" in December 2006. The EAC adopted all or part of six of the 16 recommendations made by EAC consultants and the working group in the 2006 Report. These recommendations include:

- Surveying state chief election officers regarding administrative complaint processes mandated by Section 402 of HAVA,
- Surveying state election crime investigation units regarding complaints filed and referred to local or state law enforcement,
- Surveying state law enforcement and prosecutorial agencies regarding complaints and charges of voting crimes, and
- Analyzing survey data in light of state laws and procedures.

### **Next Steps: Phase II**

As we look to initiate Phase II of this study and explore next steps for conducting a comprehensive survey of election crimes, the main aims of this phase should be:

- Identifying the methods by which states are capturing/identifying and investigating/prosecuting potential election crimes,
- Comparing the rates of election fraud in the context of these state laws/procedures, and
- Assessing the general scale of election crimes under various election systems and election crime enforcement methods.

### **Suggested Research Methodology:**

In order to identify and assess the magnitude and quality of the election crime enforcement methods currently utilized by the states, we would survey a sample of geographically and demographically diverse jurisdictions, juxtaposing states with substantial election crime allegations against those with limited election crime allegations. We would survey state election officials; state crime investigation units; and the local, state, and federal law enforcement and prosecutorial agencies. A project working group would be formed to review the research methodology and proposed survey contents. Researchers will collect data regarding state election crimes laws and election administration procedures in order to analyze the survey results in light of the

state election practices. After the research is conducted, the working group would reconvene to review the research results and provide input on the content and format of the resulting report.

Using the uniform definition of election crimes generated during Phase I, the surveys would be designed to capture specific data regarding the existence and enforcement of election crimes. The surveys will not only determine the magnitude and type of election crimes occurring amongst the states, but also explore best practices in an effort to find successful prevention and enforcement methods.

Three types of surveys would be conducted:

- A survey designed for the **state's chief election officials** would focus on election crime complaint procedures—assessing the volume and type of election crimes reported. Additionally, the survey would address the administrative complaint procedures required by Section 402 of HAVA in order to analyze the complaints that have been filed, investigated, and resolved via these procedures since January 1, 2004.
- A survey designed for **state crime investigation units** would focus on the state agencies/offices responsible for prosecuting election crimes — analyzing the number and type of complaints, charges or indictments, and pleas or convictions handled at the state level, or referred to the federal or local level.
- A survey of **local, state, and federal law enforcement and prosecutorial agencies** (e.g. district attorneys, state attorney generals, officials associated with the Department of Justice's Election Crimes Branch and Voting Section) to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted. Researchers would also review reports filed to the Public Integrity Section of the Criminal Division of the Department of Justice.

#### **Criteria for States to be Sampled:**

In order to get a broad assessment of the current election crime enforcement landscape, our sample should include the following:

- States with multiple reports of **voter registration fraud** (e.g. California, Colorado, Florida, Ohio, South Dakota, Wisconsin, and Nevada),
- States with multiple reports of **voter intimidation and suppression**, (e.g. Florida, Ohio, South Carolina, and Pennsylvania),

- States with multiple reports of deceptive practices (e.g. Florida, Ohio, Pennsylvania, and Virginia),
- States with multiple reports of felons voting (e.g. Tennessee, Washington and Wisconsin),
- States with multiple reports of dead/multiple voters (e.g. Florida, Illinois, Tennessee, and Wisconsin),
- States with multiple reports of election official fraud (e.g. Washington and Texas), and
- States with multiple reports of absentee ballot fraud (e.g. Indiana, New Jersey, Kentucky, South Dakota, Virginia, Tennessee, and Texas).

In order to balance these locations, we would also sample from states which do not have multiple reports of these election crimes (e.g. Oregon which has few reported election crimes despite the entire system being conducted by mail).

Additionally, the sample should include states which have the following election system characteristics:

- States with longstanding statewide voter registration databases (e.g. Alaska, Kentucky, Michigan, South Carolina, and Virginia).
- States with longstanding election day registration experience (e.g. Minnesota and Wisconsin).
- States with election crime investigation units (e.g. California, New York, Louisiana and Florida), and
- States with special election courts (e.g. Pennsylvania).

#### **Suggested States:**

Based on these factors, the survey would include the following 10 states with substantial election crime allegations: California, Florida, Ohio, South Dakota, Wisconsin, Pennsylvania, Washington, South Carolina, Tennessee, and Texas. The survey would also include states with limited election crime allegations such as Oregon, Kentucky, and Minnesota.

#### **Timelines and General Workplan:**

Below is a suggested timeframe in which we should accomplish Phase II of our election crimes research:

- Statement of Work developed by April 30, 2007
- Contractor to perform research identified by May 30, 2007
- Preliminary research findings delivered by August 15, 2007
- EAC report on initial findings on October 30, 2007

**Voting Fraud and Voter Intimidation**  
**Report to the**  
**U.S. Election Assistance Commission**  
**on**  
**Preliminary Research & Recommendations**

**By**

**Job Serebrov and Tova Wang**

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## Introduction

### **Charge Under HAVA**

Under the Help America Vote Act, Pub. L. No. 107-252, 116 Stat. 1666 (2002) (“HAVA”), the United States Election Assistance Commission is charged with developing national statistics on voter fraud and developing methods of deterring and investigating voter fraud. Also, the Commission is charged with developing methods of identifying, deterring, and investigating methods of voter intimidation.

### **Scope of Project**

The Commission employed a bipartisan team of legal consultants, Tova Wang and Job Serebrov to develop a preliminary overview work product to determine the quantity and quality of vote fraud and voter intimidation that is present on a national scale. The consultants’ work is neither comprehensive nor conclusive. This first phase of an envisioned two-phase project was constrained by both time and funding. The consultants’ conclusions and recommendations for phase II will be contained in this report.

The consultants, working without the aid of a support staff, divided most of the work. However, the final work product was mutually checked and approved. They agreed upon the steps that were taken needed and the method employed. For all of the documentary sources, the consultants limited the time period under review from January 1, 2001 to January 1, 2006. The research performed by the consultants included interviews, an extensive Nexis search, a review of existing literature, and case research.

**Interviews:** The consultants chose the interviewees by first coming up with a list of the categories of types of people they wanted to interview. Then the consultants separately, equally filled those categories with a certain number of people. Due to time and resource constraints, the consultants had to pare down this list substantially – for instance, they had to rule out interviewing prosecutors altogether – but still got a good range of people to talk to. The ultimate categories were academics, advocates, elections officials, lawyers and judges. Although the consultants were able to talk to most of the people they wanted to, some were unavailable and a few were not comfortable speaking to them, particularly judges. The consultants together conducted all of the interviews, either by phone or in person. Then the consultants split up drafting the summaries. All summaries were reviewed and mutually approved. Most of the interviews were extremely informative and the consultants found the interviewees to be extremely knowledgeable and insightful for the most part.

**Nexis:** Initially, the consultants developed an enormous list of possible Nexis search terms. It soon became obvious that it would be impossible to conduct the research that way. As a result, consultant Wang performed the Nexis search by finding search term combinations that would yield virtually every article on a particular subject from the last

five years. Consultant Serebrov approved the search terms. Then Wang created an excel spreadsheet in order to break down the articles in way in which they could be effectively analyzed for patterns. Each type of fraud is broken down in a separate chart according to where it took place, the date, the type of election it occurred in, what the allegation was, the publication it came from. Where there was a follow up article, any information that that suggested there had been some further action taken or some resolution to the allegation was also included. For four very complicated and long drawn out situations – Washington State, Wisconsin, South Dakota in 2004, and the vote buying cases in a couple of particular jurisdictions over the last several years –written summaries with news citations are provided.

***Existing Literature:*** Part of the selections made by the consultants resulted from consultant Wang's long-term familiarity with the material while part was the result of a joint web search for articles and books on vote fraud and voter intimidation and suggestions from those interviewed by the consultants. The consultants reviewed a wide range of materials from government reports and investigations, to academic literature, to reports published by advocacy groups. The consultants believe that they covered the landscape of available sources.

***Cases:*** In order to properly identify all applicable cases, the consultants first developed an extensive word search term list. A WestLaw search was performed and the first one hundred cases under each word search term were then gathered in individual files. This resulted in a total of approximately 44,000 cases. Most of these cases were federal as opposed to state and appellate as opposed to trial. Consultant Serebrov analyzed the cases in each file to determine if they were on point. If he found that the first twenty cases were inapplicable, Serebrov would sample forty to fifty other file cases at random to determine applicability. If the entire file did not yield any cases, the file would be discarded. All discarded word search terms were recorded in a separate file. Likewise, if the file only yielded a few applicable cases, it would also be discarded. However, if a small but significant number of cases were on point, the file was later charted. The results of the case search were stark because relatively few applicable cases were found.

## Working Definition of Fraud and Intimidation

*Note: The definition provided below is for the purposes of this EAC project. Most of the acts described come within the federal criminal definition of fraud, but some may not.*

Election fraud is any intentional action, or intentional failure to act when there is a duty to do so, that corrupts the election process in a manner that can impact on election outcomes. This includes interfering in the process by which persons register to vote; the way in which ballots are obtained, marked, or tabulated; and the process by which election results are canvassed and certified.

Examples include the following:

- falsifying voter registration information pertinent to eligibility to cast a vote, (e.g. residence, criminal status, etc.);
- altering completed voter registration applications by entering false information;
- knowingly destroying completed voter registration applications (other than spoiled applications) before they can be submitted to the proper election authority;
- knowingly removing eligible voters from voter registration lists, in violation of HAVA, NVRA, or state election laws;
- intentional destruction by election officials of voter registration records or balloting records, in violation of records retention laws, to remove evidence of election fraud;
- vote buying;
- voting in the name of another;
- voting more than once;
- coercing a voter's choice on an absentee ballot;
- using a false name and/or signature on an absentee ballot;
- destroying or misappropriating an absentee ballot;
- felons, or in some states ex-felons, who vote when they know they are ineligible to do so;
- misleading an ex-felon about his or her right to vote;
- voting by non-citizens who know they are ineligible to do so;
- intimidating practices aimed at vote suppression or deterrence, including the abuse of challenge laws;
- deceiving voters with false information (e.g.; deliberately directing voters to the wrong polling place or providing false information on polling hours and dates);
- knowingly failing to accept voter registration applications, to provide ballots, or to accept and count voted ballots in accordance with the Uniformed and Overseas Citizens Absentee Voting Act;
- intentional miscounting of ballots by election officials;
- intentional misrepresentation of vote tallies by election officials;
- acting in any other manner with the intention of suppressing voter registration or voting, or interfering with vote counting and the certification of the vote.

Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

Voting fraud does not include mistakes made in the course of voter registration, balloting, or tabulating ballots and certifying results. For purposes of the EAC study, it also does not include violations of campaign finance laws.

DRAFT

## Summaries of Research Conducted

### Interviews

#### *Common Themes*

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, “dead” voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud, although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.
- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate – including representatives from DOJ -- that for various reasons, the Department of Justice is bringing fewer voter intimidation and suppression cases now and is focusing on matters such as noncitizen voting, double voting and felon voting. While the civil rights section continues to focus on systemic patterns of malfeasance, the public integrity section is focusing now on individuals, on isolated instances of fraud.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full

## Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

### *Common Recommendations:*

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.
  - With respect to the civil rights section, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and the section has not pursued any such cases.
  - Craig Donsanto of the public integrity section says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases the department is investigating and the number of indictments the section is pursuing are both up dramatically. Since 2002, the department has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so it can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud. Of particular note, Sarah Ball Johnson, Executive Director of Elections for Kentucky, emphasized that having had an effective statewide voter registration database for more than thirty years has helped that state avoid most of the fraud problems that have been alleged elsewhere, such as double voting and felon voting.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment

## Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected nonpartisanly they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas is a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.
- A few recommend returning to allowing use of absentee ballots "for cause" only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the scheme contemplated in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

### **Nexis Research**

#### ***Absentee Ballot Fraud***

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

#### ***Voter Registration Fraud***

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people
- Fake names and other information on voter registration forms
- Illegitimate addresses used on voter registration forms
- Voters being tricked into registering for a particular party under false pretenses
- Destruction of voter registration forms depending on the party the voter registered with

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported on included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota and Wisconsin.

### *Voter Intimidation and Suppression*

This is the area which had the most articles in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places.
- Improper demands for identification
- Poll watchers harassing voters
- Poll workers being hostile to or aggressively challenging voters
- Disproportionate police presence
- Poll watchers wearing clothes with messages that seemed intended to intimidate
- Insufficient voting machines and unmanageably long lines

Although the incidents reported on occurred everywhere, not surprisingly, many came from “battleground” states. There were several such reports out of Florida, Ohio and Pennsylvania.

### *“Dead Voters and Multiple Voting”*

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking of voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person taking criminal advantage of that. In total, the San Francisco Chronicle found 5 such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### *Vote Buying*

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations in three particular jurisdictions as detailed in the vote buying summary. There were more official investigations, indictments and convictions/pleas in this area. All of these cases are concentrated in the Midwest and South.

### *Deceptive Practices*

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of voter registration forms. There were no reports of prosecutions or any other legal proceeding.

### ***Non-citizen Voting***

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case charges were filed against ten individuals. In one case a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this nexis search, remained just allegations of noncitizen voting.

### ***Felon Voting***

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem has been the large number of ineligible felons that remained on the voting list.

### ***Election Official Fraud***

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### **Existing Research**

There are many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. There is little research that is truly systematic or scientific. The most systematic look at fraud is the report written by Lori Minnite. The most systematic look at voter intimidation is the report by Laughlin McDonald. Books

written about this subject seem to all have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists. It is hoped that this gap will be filled in the “second phase” of this EAC project.

Moreover, reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund’s frequently cited book. Again, this is something that it is hoped will be addressed in the “second phase” of this EAC project by doing follow up research on allegations made in reports, books and newspaper articles.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate, but some reports say it is a major problem, albeit hard to identify.
- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

## Cases

After reviewing over 40,000 cases, the majority of which came from appeals courts, I have found comparatively very few which are applicable to this study. Of those that are applicable, no apparent thematic pattern emerges. However, it seems that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility. But because so few cases provided a picture of these current problems, I suggest that case research for the second phase of this project concentrate on state trial-level decisions.

## Methodology

The following is a summary of interviews conducted with a number of political scientists and experts in the field as to how one might undertake a comprehensive examination of voter fraud and intimidation. A list of the individuals interviewed and their ideas are available, and all of the individuals welcome any further questions or explanations of their recommended procedures.

- In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources: the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that ask whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. (Stephen Ansolobhere, MIT)
- Several political scientists with expertise in these types of studies recommended a methodology that includes interviews, focus groups, and a limited survey. In determining who to interview and where the focus groups should be drawn from, they recommend the following procedure:
  - Pick a number of places that have historically had many reports of fraud and/or intimidation; from that pool pick 10 that are geographically and demographically diverse, and have had a diversity of problems
  - Pick a number of places that have not had many reports of fraud and/or intimidation; from that pool pick 10 places that match the geographic and demographic make-up of the previous ten above (and, if possible, have comparable elections practices)

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- Assess the resulting overall reports and impressions resulting from these interviews and focus groups, and examine comparisons and differences among the states and what may give rise to them.

In conducting a survey of elections officials, district attorneys, district election officers, they recommend that:

- The survey sample be large in order to be able to get the necessary subsets
- The survey must include a random set of counties where there have and have not been a large number of allegations

(Allan Lichtman, American University; Thad Hall, University of Utah; Bernard Grofman, UC – Irvine)

- Another political scientist recommended employing a methodology that relies on qualitative data drawn from in-depth interviews with key critics and experts on all sides of the debate on fraud; quantitative data collected through a survey of state and local elections and law enforcement officials; and case studies. Case studies should focus on the five or ten states, regions or cities where there has been a history of election fraud to examine past and present problems. The survey should be mailed to each state's attorney general and secretary of state, each county district attorney's office and each county board of elections in the 50 states. (Lorraine Minnite, Barnard College)
- The research should be a two-step process. Using LexisNexis and other research tools, a search should be conducted of news media accounts over the past decade. Second, interviews with a systematic sample of election officials nationwide and in selected states should be conducted. (Chandler Davidson, Rice University)
- One expert in the field posits that we can never come up with a number that accurately represents either the incidence of fraud or the incidence of voter intimidation. Therefore, the better approach is to do an assessment of what is most likely to happen, what election violations are most likely to be committed – in other words, a risk analysis. This would include an analysis of what it would actually take to commit various acts, e.g. the cost/benefit of each kind of violation. From there we could rank the likely prevalence of each type of activity and examine what measures are or could be effective in combating them. (Wendy Weiser, Brennan Center of New York University)
- Replicate a study in the United States done abroad by Susan Hyde of the University of California- San Diego examining the impact of impartial poll site observers on the incidence of election fraud. Doing this retrospectively would require the following steps:
  - Find out where there were federal observers
  - Get precinct level voting information for those places

- Analyze whether there was any difference in election outcomes in those places with and without observers, and whether any of these results seem anomalous.

Despite the tremendous differences in the political landscapes of the countries examined by Hyde in previous studies and the U.S., Hyde believes this study could be effectively replicated in this country by sending observers to a random sample of precincts. Rather than compare the incumbent's vote share, such factors such as voter complaints, voter turnout, number of provisional ballots used, composition of the electorate, as well as any anomalous voting results could be compared between sites with and without monitors.

For example, if intimidation is occurring, and if reputable monitors make intimidation less likely or voters more confident, then turnout should be higher on average in monitored precincts than in unmonitored precincts. If polling station officials are intentionally refusing to issue provisional ballots, and the polling station officials are more likely to adhere to regulations while being monitored, the average number of provisional ballots should be higher in monitored precincts than in unmonitored precincts. If monitors cause polling station officials to adhere more closely to regulations, then there should be fewer complaints (in general) about monitored than unmonitored precincts (this could also be reversed if monitors made voters more likely to complain).

Again, random assignment controls for all of the other factors that otherwise influence these variables.

One of the downsides of this approach is it does not get at some forms of fraud, e.g. absentee ballot fraud; those would have to be analyzed separately.

- Another political scientist recommends conducting an analysis of vote fraud claims and purging of registration rolls by list matching. Allegations of illegal voting often are based on matching of names and birth dates. Alleged instances of double voting are based on matching the names and birth dates of persons found on voting records. Allegations of ineligible felon (depending on state law), deceased, and of non-citizen voting are based on matching lists of names, birth dates, and sometimes addresses of such people against a voting records. Anyone with basic relational database skills can perform such matching in a matter of minutes.

However, there are a number of pitfalls for the unwary that can lead to grossly over-estimating the number of fraudulent votes, such as missing or ignored middle names and suffixes or matching on missing birth dates. Furthermore, there is a surprising statistical fact that a group of about three hundred people with the same first and last name are almost assured to share the exact same birth date, including year. In a large state, it is not uncommon for hundreds of Robert Smiths (and other common names) to have voted. Thus, allegations of vote fraud

or purging of voter registration rolls by list matching almost assuredly will find a large proportion of false positives: people who voted legally or are registered to vote legally.

Statistics can be rigorously applied to determine how many names would be expected to be matched by chance. A simulation approach is best applied here: randomly assign a birth date to an arbitrary number of people and observe how many match within the list or across lists. The simulation is repeated many times to average out the variation due to chance. The results can then be matched back to actual voting records and purge lists, for example, in the hotly contested states of Ohio or Florida, or in states with Election Day registration where there are concerns that easy access to voting permits double voting. This analysis will rigorously identify the magnitude alleged voter fraud, and may very well find instances of alleged fraud that exceed what might have otherwise happened by chance.

This same political scientist also recommends another way to examine the problem: look at statistics on provisional voting: the number cast might provide indications of intimidation (people being challenged at the polls) and the number of those not counted would be indications of "vote fraud." One could look at those jurisdictions in the Election Day Survey with a disproportionate number of provisional ballots cast and cross reference it with demographics and number of provisional ballots discarded. (Michael McDonald, George Mason University)

- Spencer Overton, in a forthcoming law review article entitled *Voter Identification*, suggests a methodology that employs three approaches—investigations of voter fraud, random surveys of voters who purported to vote, and an examination of death rolls provide a better understanding of the frequency of fraud. He says all three approaches have strengths and weaknesses, and thus the best studies would employ all three to assess the extent of voter fraud. An excerpt follows:

1. *Investigations and Prosecutions of Voter Fraud*

Policymakers should develop databases that record all investigations, allegations, charges, trials, convictions, acquittals, and plea bargains regarding voter fraud. Existing studies are incomplete but provide some insight. For example, a statewide survey of each of Ohio's 88 county boards of elections found only four instances of ineligible persons attempting to vote out of a total of 9,078,728 votes cast in the state's 2002 and 2004 general elections. This is a fraud rate of 0.00000045 percent. The Carter-Baker Commission's Report noted that since October 2002, federal officials had charged 89 individuals with casting multiple votes, providing false information about their felon status, buying votes, submitting false voter registration information, and voting improperly as a non-citizen. Examined in the context of the 196,139,871 ballots cast between October 2002 and

August 2005, this represents a fraud rate of 0.0000005 percent (note also that not all of the activities charged would have been prevented by a photo identification requirement).

A more comprehensive study should distinguish voter fraud that could be prevented by a photo identification requirement from other types of fraud — such as absentee voting and stuffing ballot boxes — and obtain statistics on the factors that led law enforcement to prosecute fraud. The study would demand significant resources because it would require that researchers interview and pour over the records of local district attorneys and election boards.

Hard data on investigations, allegations, charges, pleas, and prosecutions is important because it quantifies the amount of fraud officials detect. Even if prosecutors vigorously pursue voter fraud, however, the number of fraud cases charged probably does not capture the total amount of voter fraud. Information on official investigations, charges, and prosecutions should be supplemented by surveys of voters and a comparison of voting rolls to death rolls.

## *2. Random Surveys of Voters*

Random surveys could give insight about the percentage of votes cast fraudulently. For example, political scientists could contact a statistically representative sampling of 1,000 people who purportedly voted at the polls in the last election, ask them if they actually voted, and confirm the percentage who are valid voters. Researchers should conduct the survey soon after an election to locate as many legitimate voters as possible with fresh memories.

Because many respondents would perceive voting as a social good, some who did not vote might claim that they did, which may underestimate the extent of fraud. A surveyor might mitigate this skew through the framing of the question (“I’ve got a record that you voted. Is that true?”).

Further, some voters will not be located by researchers and others will refuse to talk to researchers. Photo identification proponents might construe these non-respondents as improper registrations that were used to commit voter fraud.

Instead of surveying all voters to determine the amount of fraud, researchers might reduce the margin of error by focusing on a random sampling of voters who signed affidavits in the three states that request photo identification but also allow voters to establish their identity through affidavit—Florida, Louisiana, and South Dakota. In

South Dakota, for example, only two percent of voters signed affidavits to establish their identity. If the survey indicates that 95 percent of those who signed affidavits are legitimate voters (and the other 5 percent were shown to be either fraudulent or were non-responsive), this suggests that voter fraud accounts for, at the maximum, 0.1 percent of ballots cast.

The affidavit study, however, is limited to three states, and it is unclear whether this sample is representative of other states (the difficulty may be magnified in Louisiana in the aftermath of Hurricane Katrina's displacement of hundreds of thousands of voters). Further, the affidavit study reveals information about the amount of fraud in a photo identification state with an affidavit exception—more voter fraud may exist in a state that does not request photo identification.

### 3. *Examining Death Rolls*

A comparison of death rolls to voting rolls might also provide an estimate of fraud.

Imagine that one million people live in state A, which has no documentary identification requirement. Death records show that 20,000 people passed away in state A in 2003. A cross-referencing of this list to the voter rolls shows that 10,000 of those who died were registered voters, and these names remained on the voter rolls during the November 2004 election. Researchers would look at what percentage of the 10,000 dead-but-registered people who "voted" in the November 2004 election. A researcher should distinguish the votes cast in the name of the dead at the polls from those cast absentee (which a photo identification requirement would not prevent). This number would be extrapolated to the electorate as a whole.

This methodology also has its strengths and weaknesses. If fraudulent voters target the dead, the study might overestimate the fraud that exists among living voters (although a low incidence of fraud among deceased voters might suggest that fraud among all voters is low). The appearance of fraud also might be inflated by false positives produced by a computer match of different people with the same name. Photo identification advocates would likely assert that the rate of voter fraud could be higher among fictitious names registered, and that the death record survey would not capture that type of fraud because fictitious names registered would not show up in the death records. Nevertheless, this study, combined with the other two, would provide important insight into the magnitude of fraud likely to exist in the absence of a photo identification requirement.

**Recommendations for Further EAC Activity  
on Voting Fraud and Voter Intimidation**

**Consultants' Recommendations**

***Recommendation 1: Conduct More Interviews***

Time and resource constraints prevented the consultants from interviewing the full range of participants in the process. As a result, we recommend that any future activity in this area include conducting further interviews.

In particular, we recommend that more election officials from all levels of government, parts of the country, and parties be interviewed. These individuals have the most direct inside information on how the system works -- and at times does not work. They are often the first people voters go to when something goes wrong and are often responsible for fixing it. They are the ones who must carry out the measures that are designed to both prevent fraud and voter intimidation and suppression. They will most likely know what, therefore, is and is not working.

It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers ("DEOs") and local district attorneys, as well as civil and criminal defense attorneys.

The Public Integrity Section of the Criminal Division of the Department of Justice has all of the 93 U.S. Attorneys appoint Assistant U.S. Attorneys to serve as DEOs for two years. DEOs are required to

- screen and conduct preliminary investigations of complaints, in conjunction with the FBI and PIN, to determine whether they constitute potential election crimes and should become matters for investigation;
- oversee the investigation and prosecution of election fraud and other election crimes in their districts;
- coordinate their district's (investigative and prosecutorial) efforts with DOJ headquarters prosecutors;
- coordinate election matters with state and local election and law enforcement officials and make them aware of their availability to assist with election-related matters;
- issue press releases to the public announcing the names and telephone numbers of DOJ and FBI officials to contact on election day with complaints about voting or election irregularities and answer telephones on election day to receive these complaints; and
- supervise a team of Assistant U.S. Attorneys and FBI special agents who are appointed to handle election-related allegations while the polls are open on election day.<sup>1</sup>

Given the great responsibilities of the DEOs, and the breadth of issues they must deal with, they undoubtedly are great resources for information and insight as to what types of fraud and intimidation/suppression are occurring in their districts.

In many situations, however, it is the local district attorneys who will investigate election fraud and suppression tactics, especially in local elections. They will be able to provide information on what has gone on in their jurisdictions, as well as which matters get pursued and why.

Finally, those who defend people accused of election related crimes would also be useful to speak to. They may have a different perspective on how well the system is working to detect, prevent, and prosecute election fraud.

***Recommendation 2: Follow Up on Nexis Research***

The Nexis search conducted for this phase of the research was based on a list of search terms agreed upon by both consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. However, without being able to go beyond the agreed search terms, it could not be determined whether there was any later determination regarding the allegations, investigation or charges brought. This leaves a gaping hole: it is impossible to know if the article is just reporting on “talk” or what turns out to be a serious affront to the system.

As a result, we recommend that follow up Nexis research be conducted to determine what, if any, resolutions or further activity there was in each case. This would provide a much more accurate picture of what types of activities are actually taking place.

***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Similarly, many allegations are made in the reports and books that we analyzed and summarized. Those allegations are often not substantiated in any way and are inherently time limited by the date of the writing. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation.

Therefore, we recommend follow up to the literature review: for those reports and books that make or cite specific instances of fraud or intimidation, a research effort should be made to follow up on those references to see if and how they were resolved.

***Recommendation 4: Review Complaints File With MyVote1 Project Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a 1-800 voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint.

In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.<sup>ii</sup> The researchers in charge of this project have done a great deal of work to parse and analyze the data collected through this process, including going through the audio messages and categorizing them by the nature of the complaint. These categories include registration, absentee ballot, poll access, ballot/screen, coercion/intimidation, identification, mechanical, provisional (ballot).

We recommend that further research include making full use of this data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints should provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation,<sup>iii</sup> the Section was extremely reluctant to provide the consultants with useful information. Further attempts should be made to obtain relevant data. This includes the telephone logs of complaints the Section keeps and information from the database – the Interactive Case Management (ICM) system – the Section maintains on complaints received and the corresponding action taken. We also recommend that further research include a review and analysis of the observer and monitor field reports from Election Day that must be filed with the Section.

***Recommendation 6: Review Reports Filed By District Election Officers***

Similarly, the consultants believe it would be useful for any further research to include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. As noted above, the DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

The consultants also believe it would be useful for any further activity in this area to include attendance at the next Ballot Access and Voting Integrity Symposium. According to the Department,<sup>iv</sup>

Prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices are required to attend annual training conferences on fighting election fraud and voting rights abuses... These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity

## Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. As a result of these conferences, there is a nationwide increase in Department expertise relating to the prosecution of election crimes and the enforcement of voting rights.

By attending the symposium researchers could learn more about the following:

- How District Election Officers are trained, e.g. what they are taught to focus their resources on, how they are instructed to respond to various types of complaints
- How information about previous election and voting issues is presented
- How the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants

### ***Recommendation 8: Employ Academic or Individual to Conduct Statistical Research***

Included in this report is a summary of various methodologies political scientists and others suggested to measure voter fraud and intimidation. While we note the skepticism of the Working Group in this regard, we nonetheless recommend that in order to further the mission of providing unbiased data, further activity in this area include an academic institution and/or individual that focuses on sound, statistical methods for political science research.

### ***Recommendation 9: Explore Improvements to Federal Law***

Finally, consultant Tova Wang recommends that future researchers review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

According to Craig Donsanto, long-time Director of the Election Crimes Branch, Public Integrity Section, Criminal Division of the U.S. Department of Justice:

As with other statutes addressing voter intimidation, in the absence of any jurisprudence to the contrary, it is the Criminal Division's position that section 1973gg-10(1) applies only to intimidation which is accomplished through the use of threats of physical or economic duress. Voter "intimidation" accomplished through less drastic means may present violations of the Voting Rights Act, 42 U.S.C. § 1973i(b), which are enforced by the Civil Rights Division through noncriminal remedies.'

Mr. Donsanto reiterated these points to us on several occasions, including at the working group meeting.

As a result, researchers should examine if there is some way in which current law might be revised or new laws passed that would reach voter intimidation that does not threaten the voter physically or financially, but rather threatens the voter's right to vote as a tangible value in itself. Such an amendment or law would reach all forms of voter intimidation, no matter if it is motivated by race, party, ethnicity or any other criteria. The law would then *potentially* cover, for example, letters and postcards with language meant to deter voters from voting and both pre-election and Election Day challengers that are clearly mounting challenges solely on illegitimate bases.

In the alternative to finding a way to criminalize such behavior, researchers might examine ways to invigorate measures to deter and punish voter intimidation under the civil law. For example, there might be a private right of action created for voters or groups who have been subjected to intimidation tactics in the voting process. Such an action could be brought against individual offenders; any state or local actor where there is a pattern of repeated abuse in the jurisdiction that such officials did not take sufficient action against; and organizations that intentionally engage in intimidating practices. As a penalty upon finding liability, civil damages could be available plus perhaps attorney's fees.

Another, more modest measure would be, as has been suggested by Ana Henderson and Christopher Edley,<sup>vi</sup> to bring parity to fines for violations under the Voting Rights Act. Currently the penalty for fraud is \$10,000 while the penalty for acts to deprive the right to vote is \$5,000.

### **Working Group Recommendations**

#### ***Recommendation 1: Employ Observers To Collect Data in the 2006 and/or 2008 Elections***

At the working group meeting, there was much discussion about using observers to collect data regarding fraud and intimidation at the polls in the upcoming elections. Mr. Ginsberg recommended using representatives of both parties for the task. Mr. Bauer and others objected to this, believing that using partisans as observers would be unworkable and would not be credible to the public.

There was even greater concern about the difficulties in getting access to poll sites for the purposes of observation. Most states strictly limit who can be in the polling place. In addition, there are already so many groups doing observation and monitoring at the polls, administrators might object. There was further concern that observers would introduce a variable into the process that would impact the outcome. The very fact that observers were present would influence behavior and skew the results.

Moreover, it was pointed out, many of the problems we see now with respect to fraud and intimidation does not take place at the polling place, e.g. absentee ballot fraud and deceptive practices. Poll site monitoring would not capture this activity. Moreover, with

increased use of early voting, poll site monitoring might have to go on for weeks to be effective, which would require tremendous resources.

Mr. Weinberg suggested using observers in the way they are utilized in international elections. Such observers come into a jurisdiction prior to the election, and use standardized forms at the polling sites to collect data.

***Recommendation 2: Do a Study on Absentee Ballot Fraud***

The working group agreed that since absentee ballot fraud is the main form of fraud occurring, and is a practice that is great expanding throughout the country, it would make sense to do a stand-alone study of absentee ballot fraud. Such a study would be facilitated by the fact that there already is a great deal of information on how, when, where and why such practices are carried out based on cases successfully prosecuted. Researchers could look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

***Recommendation 3: Use Risk Analysis Methodology to Study Fraud<sup>1</sup>***

Working group members were supportive of one of the methodologies recommended for studying this issue, risk analysis. As Mr. Bauer put it, based on the assumption that people act rationally, do an examination of what types of fraud people are most likely to commit, given the relative costs and benefits. In that way, researchers can rank the types of fraud that are the easiest to commit at the least cost with the greatest effect, from most to least likely to occur. This might prove a more practical way of measuring the problems than trying to actually get a number of acts of fraud and/or intimidation occurring. Mr. Greenbaum added that one would want to examine what conditions surrounding an election would be most likely to lead to an increase in fraud. Mr. Rokita objected based on his belief that the passions of partisanship lead people to not act rationally in an election.

***Recommendation 4: Conduct Research Using Database Comparisons***

Picking up on a suggestion made by Spencer Overton and explained in the suggested methodology section, Mr. Hearne recommended studying the issue using statistical database matching. Researchers should compare the voter roll and the list of people who actually voted to see if there are “dead” and felon voters. Because of the inconsistent quality of the databases, however, a political scientist would need to work in an appropriate margin of error when using such a methodology.

***Recommendation 5: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of

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<sup>1</sup> See Appendix C, and section on methodology

groups, including the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices, which may be available for review and analysis. This is also an area in which there is often tangible evidence, such as copies of the flyers and postcards themselves. All of this information should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

***Recommendation 6: Study Use of HAVA Administrative Complaint Procedure As Vehicle for Measuring Fraud and Intimidation***

The EAC should study the extent to which states are actually utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 7: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts that are running before, during and after election day would be an effective means of disposing with complaints and violations in an expeditious manner. Pennsylvania employs such a system, and the EAC should consider investigating how well it is working to deal with fraud and intimidation problems.

## Key Working Group Observations and Concerns

### Working Group Observations

1. ***The main problems today are structural barriers to voting and administrative error.*** Mr. Perez observed that, in accordance with the research, the biggest issues today are structural barriers to voting, not stealing votes. Election administrators share this view. Election fraud is negligible, and to the extent it occurs, it needs to be prosecuted with stronger criminal laws. The biggest problem is properly preparing people, which is the responsibility of election administrators.
2. ***Most fraud and intimidation is happening outside of the polling place.*** Mr. Greenbaum observed that with respect to both voter fraud and voter suppression, such as deceptive practices and tearing up voter registration forms, most of that is taking place outside of the polling place.
3. ***This issue cannot be addressed through one study or one methodology alone.*** Mr. Weinberg observed that since there is such a variety in types of fraud and intimidation, one solution will not fit all. It will be impossible to obtain data or resolve any of these problems through a single method.
4. ***The preliminary research conducted for this project is extremely valuable.*** Several of the working group members complimented the quality of the research done and although it is only preliminary, thought it would be useful and informative in the immediate future.
5. ***The Department of Justice is exploring expanding its reach over voter suppression activities.*** In the context of the conversation about defining voter intimidation, Mr. Donsanto pointed out that while voter intimidation was strictly defined by the criminal law, his section is beginning to explore the slightly different concept of vote suppression, and how to pursue it. He mentioned the phone-jamming case in New Hampshire as an initial success in this effort. He noted that he believes that vote suppression in the form of deceptive practices ought to be a crime and the section is exploring ways to go after it within the existing statutory construct. Mr. Bauer raised the example of a party sending people dressed in paramilitary outfits to yell at people as they go to the polls, telling them they have to show identification. Mr. Donsanto said that under the laws he has to work with today, such activity is not considered corrupt. He said that his lawyers are trying to “bend” the current laws to address aggravated cases of vote suppression, and the phone-jamming case is an example of that. Mr. Donsanto said that within the Department, the term vote “suppression” and translating it into a crime is a “work in progress.”

6. **Registration fraud does not translate into vote fraud.** Ms. Rogers, Mr. Donsanto and others stated that although phony voter registration applications turned in by people being paid by the form was a problem, it has not been found in their experience to lead to fraudulent voters at the polls. Ms. Rogers said such people were motivated by money, not defrauding the election.
7. **Handling of voter fraud and intimidation complaints varies widely across states and localities.** Ms. Rogers and others observed that every state has its own process for intake and review of complaints of fraud and intimidation, and that procedures often vary within states. The amount of authority secretaries of state have to address such problems also is different in every state. Mr. Weinberg stated he believed that most secretaries of state did not have authority to do anything about these matters. Participants discussed whether secretaries ought to be given greater authority so as to centralize the process, as HAVA has mandated in other areas.

### Working Group Concerns

1. Mr. Rokita questioned whether the purpose of the present project ought to be on assessing the level of fraud and where it is, rather than on developing methods for making such measurements. He believed that methodology should be the focus, “rather than opinions of interviewees.” He was concerned that the EAC would be in a position of “adding to the universe of opinions.”
2. Mr. Rokita questioned whether the “opinions” accumulated in the research “is a fair sampling of what’s out there.” Ms. Wang responded that one of the purposes of the research was to explore whether there is a method available to actually quantify in some way how much fraud there is and where it is occurring in the electoral process. Mr. Rokita replied that “Maybe at the end of the day we stop spending taxpayer money or it’s going to be too much to spend to find that kind of data. Otherwise, we will stop it here and recognize there is a huge difference of opinion on that issue of fraud, when it occurs is obtainable, and that would possibly be a conclusion of the EAC.” Ms. Sims responded that she thought it would be possible to get better statistics on fraud and there might be a way of “identifying at this point certain parts in the election process that are more vulnerable, that we should be addressing.”
3. Mr. Rokita stated that, “We’re not sure that fraud at the polling place doesn’t exist. We can’t conclude that.”
4. Mr. Rokita expressed concern about working with a political scientist. He believes that the “EAC needs to be very careful in who they select, because all the time and effort and money that’s been spent up to date and would be spent in the future could be invalidated by a wrong selection in the eyes of some group.”

**NEXIS Charts**

DRAFT

**Case Charts**

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**Appendix 1**  
**List of Individuals Interviewed**

Wade Henderson, Executive Director, Leadership Conference for Civil Rights

Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center

William Groth, attorney for the plaintiffs in the Indiana voter identification litigation

Lori Minnite, Barnard College, Columbia University

Neil Bradley, ACLU Voting Rights Project

Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

Pat Rogers, attorney, New Mexico

Rebecca Vigil-Giron, Secretary of State, New Mexico

Sarah Ball Johnson, Executive Director of the State Board of Elections, Kentucky

Stephen Ansolobhere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Tracey Campbell, author, *Deliver the Vote*

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights

Robin DeJarnette, Executive Director, American Center for Voting Rights

Joseph Rich, former Director of the Voting Section, Civil Rights Division, U.S. Department of Justice

Joseph Sandler, Counsel to the Democratic National Committee

John Ravitz, Executive Director, New York City Board of Elections

John Tanner, Director, Voting Section, Civil Rights Division, U.S. Department of Justice

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Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin  
Evelyn Stratton, Justice, Supreme Court of Ohio

Tony Sirvello, Executive Director, International Association of  
Clerks, Recorders, Election Officials and Treasurers

Harry Van Sickle, Commissioner of Elections, Pennsylvania

Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice

Sharon Priest, former Secretary of State, Arkansas

**Appendix 2**  
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Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.

David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.

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### Appendix 3

## Excerpt from “Machinery of Democracy,” a Brennan Center Report

### APPENDIX C

#### BRENNAN CENTER TASK FORCE ON VOTING SYSTEM SECURITY, LAWRENCE NORDEN, CHAIR

Excerpted from pp. 8-19

#### METHODOLOGY

The Task Force concluded, and the peer review team at NIST agreed, that the best approach for comprehensively evaluating voting system threats was to: (1) identify and categorize the potential threats against voting systems, (2) prioritize these threats based upon an agreed upon metric (which would tell us how difficult each threat is to accomplish from the attacker’s point of view), and (3) determine, utilizing the same metric employed to prioritize threats, how much more difficult each of the catalogued attacks would become after various sets of countermeasures are implemented.

This model allows us to identify the attacks we should be most concerned about (*i.e.*, the most practical and least difficult attacks). Furthermore, it allows us to quantify the potential effectiveness of various sets of countermeasures (*i.e.*, how difficult the least difficult attack is after the countermeasure has been implemented). Other potential models considered, but ultimately rejected by the Task Force, are detailed in Appendix B.

#### IDENTIFICATION OF THREATS

The first step in creating a threat model for voting systems was to identify as many potential attacks as possible. To that end, the Task Force, together with the participating election officials, spent several months identifying voting system vulnerabilities. Following this work, NIST held a Voting Systems Threat Analysis Workshop on October 7, 2005. Members of the public were invited to write up and post additional potential attacks. Taken together, this work produced over 120 potential attacks on the three voting systems. They are detailed in the catalogs annexed. Many of the attacks are described in more detail at <http://vote.nist.gov/threats/papers.htm>.

The types of threats detailed in the catalogs can be broken down into nine categories: (1) the insertion of corrupt software into machines prior to Election Day; (2) wireless and other remote control attacks on voting machines on Election Day; (3) attacks on tally servers; (4) miscalibration of voting machines; (5) shut off of voting machine features intended to assist voters; (6) denial of service attacks; (7) actions by corrupt poll workers or others at the polling place to affect votes cast; (8) vote buying schemes; (9) attacks on ballots or VVPT. Often, the actual attacks

involve some combination of these categories. We provide a discussion of each type of attack in “Categories of Attacks,” *infra* at pp. 24–27.

### **PRIORITIZING THREATS: NUMBER OF INFORMED PARTICIPANTS AS METRIC**

Without some form of prioritization, a compilation of the threats is of limited value. Only by prioritizing these various threats could we help election officials identify which attacks they should be most concerned about, and what steps could be taken to make such attacks as difficult as possible. As discussed below, we have determined the level of difficulty for each attack where the attacker is attempting to affect the outcome of a close statewide election.<sup>21</sup>

There is no perfect way to determine which attacks are the least difficult, because each attack requires a different mix of resources – well-placed insiders, money, programming skills, security expertise, *etc.* Different attackers would find certain resources easier to acquire than others. For example, election fraud committed by local election officials would always involve well-placed insiders and a thorough understanding of election procedures; at the same time, there is no reason to expect such officials to have highly skilled hackers or first-rate programmers working with them. By contrast, election fraud carried out by a foreign government would likely start with plenty of money and technically skilled attackers, but probably without many conveniently placed insiders or detailed knowledge of election procedures.

Ultimately, we decided to use the “number of informed participants” as the metric for determining attack difficulty. An attack which uses fewer participants is deemed the easier attack.

We have defined “informed participant” as someone whose participation is needed to make the attack work, and who knows enough about the attack to foil or expose it. This is to be distinguished from a participant who unknowingly assists the attack by performing a task that is integral to the attack’s successful execution without understanding that the task is part of an attack on voting systems.

The reason for using the security metric “number of informed participants” is relatively straightforward: the larger a conspiracy is, the more difficult it would be to keep it secret. Where an attacker can carry out an attack by herself, she need only trust herself. On the other hand, a conspiracy that requires thousands of people to take part (like a vote-buying scheme) also requires thousands of people to keep quiet. The larger the number of people involved, the greater the likelihood that one of them (or one who was approached, but declined to take part) would either inform the public or authorities about the attack, or commit some kind of error that causes the attack to fail or become known.

Moreover, recruiting a large number of people who are willing to undermine the integrity of a statewide election is also presumably difficult. It is not hard to imagine two or three people agreeing to work to change the outcome of an election. It seems far less likely that an attacker could identify and employ hundreds or thousands of similarly corrupt people without being discovered.

We can get an idea of how this metric works by looking at one of the threats listed in our catalogs: the vote-buying threat, where an attacker or attackers pay individuals to vote for a particular candidate. This is Attack Number 26 in the PCOS Attack Catalog<sup>22</sup> (though this attack would not be substantially different against DREs or DREs w/ VVPT).<sup>23</sup> In order to work under our current types of voting systems, this attack requires (1) at least one person to purchase votes, (2) many people to agree to sell their votes, and (3) some way for the purchaser to confirm that the voters she pays actually voted for the candidate she supported. Ultimately, we determined that, while practical in smaller contests, a vote-buying attack would be an exceptionally difficult way to affect the outcome of a statewide election. This is because, even in a typically close statewide election, an attacker would need to involve thousands of voters to ensure that she could affect the outcome of a statewide race.<sup>24</sup>

For a discussion of other metrics we considered, but ultimately rejected, see Appendix C.

## **DETERMINING NUMBER OF INFORMED PARTICIPANTS**

### **DETERMINING THE STEPS AND VALUES FOR EACH ATTACK**

The Task Force members broke down each of the catalogued attacks into its necessary steps. For instance, Attack 12 in the PCOS Attack Catalog is “Stuffing Ballot Box with Additional Marked Ballots.”<sup>25</sup> We determined that, at a minimum, there were three component parts to this attack: (1) stealing or creating the ballots and then marking them, (2) scanning marked ballots through the PCOS scanners, probably before the polls opened, and (3) modifying the poll books in each location to ensure that the total number of votes in the ballot boxes was not greater than the number of voters who signed in at the polling place.

Task Force members then assigned a value representing the minimum number of persons they believed would be necessary to accomplish each goal. For PCOS Attack 12, the following values were assigned:<sup>26</sup>

**Minimum number required to steal or create ballots: 5 persons total.**<sup>27</sup>

**Minimum number required to scan marked ballots: 1 per polling place attacked.**

**Minimum number required to modify poll books: 1 per polling place attacked.**<sup>28</sup>

After these values were assigned, the Brennan Center interviewed several election officials to see whether they agreed with the steps and values assigned to each attack.<sup>29</sup> When necessary, the values and steps were modified. The new catalogs, including attack steps and values, were then reviewed by Task Force members. The purpose of this review was to ensure, among other things, that the steps and values were sound.

These steps and values tell us how difficult it would be to accomplish a *single attack in a single polling place*. They do not tell us how many people it would take to change the outcome of an election successfully – that depends, of course, on specific facts about the jurisdiction: how many votes are generally recorded in each polling

place, how many polling places are there in the jurisdiction, and how close is the race? For this reason, we determined that it was necessary to construct a hypothetical jurisdiction, to which we now turn.

**NUMBER OF INFORMED PARTICIPANTS NEEDED TO CHANGE STATEWIDE ELECTION**

We have decided to examine the difficulty of each attack in the context of changing the outcome of a reasonably close statewide election. While we are concerned by potential attacks on voting systems in any type of election, we are most troubled by attacks that have the potential to affect large numbers of votes. These are the attacks that could actually change the outcome of a statewide election with just a handful of attack participants.

We are less troubled by attacks on voting systems that can only affect a small number of votes (and might therefore be more useful in local elections). This is because there are many non-system attacks that can also affect a small number of votes (*i.e.*, sending out misleading information about polling places, physically intimidating voters, submitting multiple absentee ballots, *etc.*). Given the fact that these non-system attacks are likely to be less difficult in terms of number of participants, financial cost, risk of detection, and time commitment, we are uncertain that an attacker would target *voting machines* to alter a small number of votes.

In order to evaluate how difficult it would be for an attacker to change the outcome of a statewide election, we created a composite jurisdiction. The composite jurisdiction was created to be representative of a relatively close statewide election. We did not want to examine a statewide election where results were so skewed toward one candidate (for instance, the re-election of Senator Edward M. Kennedy in 2000, where he won 73% of the vote<sup>30</sup>), that reversing the election results would be impossible without causing extreme public suspicion. Nor did we want to look at races where changing only a relative handful of votes (for instance, the Governor's race in Washington State in 2004, which was decided by a mere 129 votes<sup>31</sup>) could affect the outcome of an election; under this scenario, many of the potential attacks would involve few people, and therefore look equally difficult.

We have named our composite jurisdiction "the State of Pennasota." The State of Pennasota is a composite of ten states: Colorado, Florida, Iowa, Ohio, New Mexico, Pennsylvania, Michigan, Nevada, Wisconsin and Minnesota. These states were chosen because they were the ten "battleground" states that Zogby International consistently polled in the spring, summer, and fall 2004.<sup>32</sup> These are statewide elections that an attacker would have expected, ahead of time, to be fairly close.

We have also created a composite election, which we label the "Governor's Race" in Pennasota. The results of this election are a composite of the actual results in the same ten states in the 2004 Presidential Election.

We have used these composites as the framework by which to evaluate the difficulty of the various catalogued attacks.<sup>33</sup> For instance, we know a ballot-box stuffing attack would require roughly five people to create and mark fake ballots, as

well as one person per polling place to stuff the boxes, and one person per polling place to modify the poll books. But, in order to determine how many informed participants would be needed to affect a statewide race, we need to know how many polling places would need to be attacked.

The composite jurisdiction and composite election provide us with information needed to answer these questions: *i.e.*, how many extra votes our attackers would need to add to their favored candidate's total for him to win, how many ballots our attackers can stuff into a particular polling place's ballot box without arousing suspicion (and related to this, how many votes are generally cast in the average polling place), how many polling places are there in the state, *etc.* We provide details about both the composite jurisdiction and election in the section entitled "Governor's Race, State of Pennasota, 2007," *infra* at pp 20–27.

#### LIMITS OF INFORMED PARTICIPANTS AS METRIC

Of the possible metrics we considered, we believe that measuring the number of people who know they are involved in an attack (and thus could provide evidence of the attack to the authorities and/or the media), is the best single measure of attack difficulty; as already discussed, we have concluded that the more people an attacker is forced to involve in his attack, the more likely it is that one of the participants would reveal the attack's existence and foil the attack, perhaps sending attackers to jail. However, we are aware of a number of places where the methodology could provide us with questionable results.

By deciding to concentrate on size of attack team, we mostly ignore the need for other resources when planning an attack. Thus, a software attack on DREs which makes use of steganography<sup>34</sup> to hide attack instruction files (*see* "DRE w/ VVPT Attack No.1a", discussed in greater detail, *infra* at pp. 62–65) is considered easier than an attack program delivered over a wireless network at the polling place (*see* discussion of wireless networks, *infra* at pp. 85–91). However, the former attack probably requires a much more technologically sophisticated attacker.

Another imperfection with this metric is that we do not have an easy way to represent how much choice the attacker has in finding members of his attack team. Thus, with PCOS voting, we conclude that the cost of subverting a routine audit of ballots is roughly equal to the cost of intercepting ballot boxes in transit and substituting altered ballots (*see* discussion of PCOS attacks, *infra* at pp. 77–83). However, subverting the audit team requires getting a specific set of trusted people to cooperate with the attacker. By contrast, the attacker may be able to decide which precincts to tamper with based on which people he has already recruited for his attack.

In an attempt to address this concern, we considered looking at the number of "insiders" necessary to take part in each attack. Under this theory, getting five people to take part in a conspiracy to attack a voting system might not be particularly difficult. But getting five well-placed county election officials to take part in the attack would be (and should be labeled) the more difficult of the two attacks. Because, for the most part, the low-cost attacks we have identified do not necessarily involve well placed insiders (but could, for instance, involve one of many people with access to commercial off the shelf software ("COTS") during development

or at the vendor), we do not believe that using this metric would have substantially changed our analysis.<sup>35</sup>

Finally, these attack team sizes do not always capture the logistical complexity of an attack. For example, an attack on VVPT machines involving tampering with the voting machine software and also replacing the paper records in transit requires the attacker to determine what votes were falsely produced by the voting machine and print replacement records in time to substitute them. While this is clearly possible, it raises a lot of operational difficulties – a single failed substitution leaves the possibility that the attack would be detected during the audit of ballots.

We have tried to keep these imperfections in mind when analyzing and discussing our least difficult attacks.

We suspect that much of the disagreement between voting officials and computer security experts in the last several years stems from a difference of opinion in prioritizing the difficulty of attacks. Election officials, with extensive experience in the logistics of handling tons of paper ballots, have little faith in paper and understand the kind of breakdowns in procedures that lead to traditional attacks like ballot box stuffing; in contrast, sophisticated attacks on computer voting systems appear very difficult to many of them. Computer security experts understand sophisticated attacks on computer systems, and recognize the availability of tools and expertise that makes these attacks practical to launch, but have no clear idea how they would manage the logistics of attacking a paper-based system. Looking at attack team size is one way to bridge this difference in perspective.

## **EFFECTS OF IMPLEMENTING COUNTERMEASURE SETS**

The final step of our threat analysis is to measure the effect of certain countermeasures against the catalogued attacks. How much more difficult would the attacks become once the countermeasures are put into effect? How many more informed participants (if any) would be needed to counter or defeat these countermeasures?

Our process for examining the effectiveness of a countermeasure mirrors the process for determining the difficulty of an attack: we first asked whether the countermeasure would allow us to detect an attack with near certainty. If we agreed that the countermeasure would expose the attack, we identified the steps that would be necessary to circumvent or defeat the countermeasure. For each step to defeat the countermeasure, we determined the number of additional informed participants (if any) that an attacker would need to add to his team. As with the process for determining attack difficulty, the Brennan Center interviewed numerous election officials to see whether they agreed with the steps and values assigned. When necessary, the values and steps for defeating the countermeasures were altered to reflect the input of election officials.

## **COUNTERMEASURES EXAMINED**

### **BASIC SET OF COUNTERMEASURES**

The first set of countermeasures we looked at is the “Basic Set” of countermeasures. This Basic Set was derived from security survey responses<sup>36</sup> we received

from county election officials around the country, as well as additional interviews with more than a dozen current and former election officials. Within the Basic Set of countermeasures are the following procedures:

### **Inspection**

The jurisdiction is not knowingly using any uncertified software that is subject to inspection by the Independent Testing Authority (often referred to as the "ITA").<sup>37</sup>

### **Physical Security for Machines**

- Ballot boxes (to the extent they exist) are examined (to ensure they are empty) and locked by poll workers immediately before the polls are opened.
- Before and after being brought to the polls for Election Day, voting systems for each county are locked in a single room, in a county warehouse.
- The warehouse has perimeter alarms, secure locks, video surveillance and regular visits by security guards.
- Access to the warehouse is controlled by sign-in, possibly with card keys or similar automatic logging of entry and exit for regular staff.
- Some form of "tamper evident" seals are placed on machines before and after each election.
- The machines are transported to polling locations five to fifteen days before Election Day.

### **Chain of Custody/Physical Security of Election Day Records**

- At close of the polls, vote tallies for each machine are totaled and compared with number of persons that have signed the poll books.
- A copy of totals for each machine is posted at each polling place on Election Night and taken home by poll workers to check against what is posted publicly at election headquarters, on the web, in the papers, or elsewhere.<sup>38</sup>
- All audit information (*i.e.*, Event Logs, VVPT records, paper ballots, machine printouts of totals) that is not electronically transmitted as part of the unofficial upload to the central election office, is delivered in official, sealed and hand-delivered information packets or boxes. All seals are numbered and tamper-evident.
- Transportation of information packets is completed by two election officials representing opposing parties who have been instructed to remain in joint custody of the information packets or boxes from the moment it leaves the precinct to the moment it arrives at the county election center.

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- Each polling place sends its information packets or boxes to the county election center separately, rather than having one truck or person pick up this data from multiple polling locations.
- Once the sealed information packets or boxes have reached the county election center, they are logged. Numbers on the seals are checked to ensure that they have not been replaced. Any broken or replaced seals are logged. Intact seals are left intact.
- After the packets and/or boxes have been logged, they are provided with physical security precautions at least as great as those listed for voting machines, above. Specifically, for Pennasota, we have assumed the room in which the packets are stored have perimeter alarms, secure locks, video surveillance and regular visits by security guards and county police officers; and access to the room is controlled by sign-in, possibly with card keys or similar automatic logging of entry and exit for regular staff.

### **Testing<sup>39</sup>**

- An Independent Testing Authority has certified the model of voting machine used in the polling place.
- Acceptance Testing<sup>40</sup> is performed on machines at time, or soon after they are received by County.
- Pre-election Logic and Accuracy<sup>41</sup> testing is performed by the relevant election official.
- Prior to opening the polls, every voting machine and vote tabulation system is checked to see that it is still configured for the correct election, including the correct precinct, ballot style, and other applicable details.

### **REGIMEN FOR AUTOMATIC ROUTINE AUDIT PLUS BASIC SET OF COUNTERMEASURES.**

The second set of countermeasures is the Regimen for an Automatic Routine Audit Plus Basic Set of Countermeasures.

Some form of routine auditing of voter-verified paper records occurs in 12 states, to test the accuracy of electronic voting machines. They generally require between 1 and 10% of all precinct voting machines to be audited after each election. <sup>42</sup>

Jurisdictions can implement this set of countermeasures only if their voting systems produce some sort of voter-verified paper record of each vote. This could be in the form of a paper ballot, in the case of PCOS, or a voter-verified paper trail (“VVPT”), in the case of DREs.

We have assumed that jurisdictions take the following steps when conducting an Automatic Routine Audit (when referring to this set of assumptions “Regimen for an Automatic Routine Audit”):

### The Audit

- Leaders of the major parties in each county are responsible for selecting a sufficient number of audit-team members to be used in that county.<sup>43</sup>
- Using a highly transparent random selection mechanism (*see* point ii, below), the voter-verified paper records for between a small percentage of all voting machines in the State are selected for auditing.
- Using a transparent random selection method, auditors are assigned to the selected machines (two or three people, with representatives of each major political party, would comprise each audit team).
- The selection of voting machines, and the assignment of auditors to machines, occurs immediately before the audits take place. The audits take place as soon after polls close as possible – for example, at 9 a.m. the morning after polls close.
- Using a transparent random selection method, county police officers, security personnel and the video monitor assigned to guard the voter-verified records are chosen from a large pool of on-duty officers and employees on election night.
- The auditors are provided the machine tallies and are able to see that the county tally reflects the sums of the machine tallies before the start of the inspection of the paper.
- The audit would include a tally of spoiled ballots (in the case of VVPT, the number of cancellations recorded), overvotes, and undervotes.

### Transparent Random Selection Process

In this report, we have assumed that random auditing procedures are in place for both the Regimen for an Automatic Routine Audit and Regimen for Parallel Testing. We have further assumed procedures to prevent a single, corrupt person from being able to fix the results. This implies a kind of transparent and public random procedure.

For the Regimen for an Automatic Routine Audit there are at least two places where transparent, random selection processes are important: in the selection of precincts to audit, and in the assignment of auditors to the precincts they will be auditing.

Good election security can employ Transparent Random Selection in other places with good effect:

- the selection of parallel testers from a pool of qualified individuals.
- the assignment of police and other security professionals from on-duty lists, to monitor key materials, for example, the VVPT records between the time that they arrive at election central and the time of the completion of the ARA.

If a selection process for auditing is to be trustworthy and trusted, ideally:

- The whole process will be publicly observable or videotaped;<sup>44</sup>
- The random selection will be publicly verifiable, *i.e.*, anyone observing will be able to verify that the sample was chosen randomly (or at least that the number selected is not under the control of any small number of people); and
- The process will be simple and practical within the context of current election practice so as to avoid imposing unnecessary burdens on election officials.

There are a number of ways that election officials can ensure some kind of transparent randomness. One way would be to use a state lottery machine to select precincts or polling places for auditing. We have included two potential examples of transparent random selection processes in Appendix F. These apply to the Regimen for Parallel Testing as well.

#### **REGIMEN FOR PARALLEL TESTING PLUS BASIC SET OF COUNTERMEASURES**

The final set of countermeasures we have examined is “Parallel Testing” plus the Basic Set of countermeasures. Parallel Testing, also known as election-day testing, involves selecting voting machines at random and testing them as realistically as possible during the period that votes are being cast.

#### **Parallel Testing**

In developing our set of assumptions for Parallel Testing, we relied heavily upon interviews with Jocelyn Whitney, Project Manager for Parallel Testing in the State of California, and conclusions drawn from this Report.<sup>45</sup> In our analysis, we assume that the following procedures would be included in the Parallel Testing regimen (when referring to this regimen “Regimen for Parallel Testing”) that we evaluate:

- At least two of each DRE model (meaning both vendor and model) would be selected for Parallel Testing;
- At least two DREs from each of the three largest counties would be parallel tested;
- Counties to be parallel tested would be chosen by the Secretary of State in a transparent and random manner.
- Counties would be notified as late as possible that machines from one of their precincts would be selected for Parallel Testing;<sup>46</sup>
- Precincts would be selected through a transparent random mechanism;
- A video camera would record testing;
- For each test, there would be one tester and one observer;

- Parallel Testing would occur at the polling place;
- The script for Parallel Testing would be generated in a way that mimics voter behavior and voting patterns for the polling place;
- At the end of the Parallel Testing, the tester and observer would reconcile vote totals in the script with vote totals reported on the machine.

### **Transparent Random Selection Process**

We further assume that the same type of transparent random selection process that would be used for the Regimen for Automatic Routine Audit would also be employed for the Regimen for Parallel Testing to determine which machines would be subjected to testing on Election Day.

## **APPENDIX C**

### **ALTERNATIVE SECURITY METRICS CONSIDERED**

#### **Dollars Spent**

The decision to use the number of informed participants as the metric for attack level difficulty came after considering several other potential metrics. One of the first metrics we considered was the dollar cost of attacks. This metric makes sense when looking at attacks that seek financial gain – for instance, misappropriating corporate funds. It is not rational to spend \$100,000 on the misappropriation of corporate funds if the total value of those funds is \$90,000. Ultimately, we rejected this metric as the basis for our analysis because the dollar cost of the attacks we considered were dwarfed by both (1) current federal and state budgets, and (2) the amounts currently spent legally in state and federal political campaigns.

#### **Time of Attack**

The relative security of safes and other safety measures are often rated in terms of “time to defeat.” This was rejected as metric of difficulty because it did not seem relevant to voting systems. Attackers breaking into a house are concerned with the amount of time it might take to complete their robbery because the homeowners or police might show up. With regard to election fraud, many attackers may be willing to start months or years before an election if they believe they can control the outcome. As discussed *supra* at pp. 35–48, attackers may be confident that they can circumvent the independent testing authorities and other measures meant to identify attacks, so that the amount of time an attack takes becomes less relevant.

**Appendix 4**  
**Voting Fraud-Voter Intimidation Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, Texas

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia

National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, Missouri

National Counsel to the American Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice

## Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

<sup>i</sup> Department of Justice's Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R

<sup>ii</sup> The MyVote1 Project Final Report, Fels Institute of Government, University of Pennsylvania, November 1, 2005, Pg. 12

<sup>iii</sup> Department of Justice's Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R, p. 4. This same report criticizes some of the procedures the Section used for these systems and urged the Department to improve upon them in time for the 2004 presidential election. No follow-up report has been done since that time to the best of our knowledge.

<sup>iv</sup> "Department Of Justice To Hold Ballot Access and Voting Integrity Symposium," U.S. Department of Justice press release, August 2, 2005

<sup>v</sup> Craig C. Donsanto, Prosecution of Electoral Fraud Under United States Federal Law," IFES Political Finance White Paper Series, 2006, p. 29

<sup>vi</sup> Ana Henderson and Christopher Edley, Jr., Voting Rights Act Reauthorization: Research-Based Recommendations to Improve Voting Access, Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, University of California at Berkeley, School of Law, 2006, p. 29

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**Voting Fraud and Voter Intimidation**  
**Report to the**  
**U.S. Election Assistance Commission**  
**on**  
**Preliminary Research & Recommendations**

**By**

**Job Serebrov and Tova Wang**

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## Introduction

### **Charge Under HAVA**

Under the Help America Vote Act, Pub. L. No. 107-252, 116 Stat. 1666 (2002) (“HAVA”), the United States Election Assistance Commission is charged with developing national statistics on voter fraud and developing methods of deterring and investigating voter fraud. Also, the Commission is charged with developing methods of identifying, deterring, and investigating methods of voter intimidation.

### **Scope of Project**

The Commission employed a bipartisan team of legal consultants, Tova Wang and Job Serebrov to develop a preliminary overview work product to determine the quantity and quality of vote fraud and voter intimidation that is present on a national scale. The consultants’ work is neither comprehensive nor conclusive. This first phase of an envisioned two-phase project was constrained by both time and funding. The consultants’ conclusions and recommendations for phase II will be contained in this report.

The consultants, working without the aid of a support staff, divided most of the work. However, the final work product was mutually checked and approved. They agreed upon the steps that were taken needed and the method employed. For all of the documentary sources, the consultants limited the time period under review from January 1, 2001 to January 1, 2006. The research performed by the consultants included interviews, an extensive Nexis search, a review of existing literature, and case research.

**Interviews:** The consultants chose the interviewees by first coming up with a list of the categories of types of people they wanted to interview. Then the consultants separately, equally filled those categories with a certain number of people. Due to time and resource constraints, the consultants had to pare down this list substantially – for instance, they had to rule out interviewing prosecutors altogether – but still got a good range of people to talk to. The ultimate categories were academics, advocates, elections officials, lawyers and judges. Although the consultants were able to talk to most of the people they wanted to, some were unavailable and a few were not comfortable speaking to them, particularly judges. The consultants together conducted all of the interviews, either by phone or in person. Then the consultants split up drafting the summaries. All summaries were reviewed and mutually approved. Most of the interviews were extremely informative and the consultants found the interviewees to be extremely knowledgeable and insightful for the most part.

**Nexis:** Initially, the consultants developed an enormous list of possible Nexis search terms. It soon became obvious that it would be impossible to conduct the research that way. As a result, consultant Wang performed the Nexis search by finding search term combinations that would yield virtually every article on a particular subject from the last

five years. Consultant Serebrov approved the search terms. Then Wang created an excel spreadsheet in order to break down the articles in way in which they could be effectively analyzed for patterns. Each type of fraud is broken down in a separate chart according to where it took place, the date, the type of election it occurred in, what the allegation was, the publication it came from. Where there was a follow up article, any information that that suggested there had been some further action taken or some resolution to the allegation was also included. For four very complicated and long drawn out situations – Washington State, Wisconsin, South Dakota in 2004, and the vote buying cases in a couple of particular jurisdictions over the last several years –written summaries with news citations are provided.

***Existing Literature:*** Part of the selections made by the consultants resulted from consultant Wang's long-term familiarity with the material while part was the result of a joint web search for articles and books on vote fraud and voter intimidation and suggestions from those interviewed by the consultants. The consultants reviewed a wide range of materials from government reports and investigations, to academic literature, to reports published by advocacy groups. The consultants believe that they covered the landscape of available sources.

***Cases:*** In order to properly identify all applicable cases, the consultants first developed an extensive word search term list. A WestLaw search was performed and the first one hundred cases under each word search term were then gathered in individual files. This resulted in a total of approximately 44,000 cases. Most of these cases were federal as opposed to state and appellate as opposed to trial. Consultant Serebrov analyzed the cases in each file to determine if they were on point. If he found that the first twenty cases were inapplicable, Serebrov would sample forty to fifty other file cases at random to determine applicability. If the entire file did not yield any cases, the file would be discarded. All discarded word search terms were recorded in a separate file. Likewise, if the file only yielded a few applicable cases, it would also be discarded. However, if a small but significant number of cases were on point, the file was later charted. The results of the case search were stark because relatively few applicable cases were found.

**Working Definition of Fraud and Intimidation**

*Implication  
NOT definition*

*Note: The definition provided below is for the purposes of this EAC project. Most of the acts described come within the federal criminal definition of fraud, but some may not.*

Election fraud is any intentional action, or intentional failure to act when there is a duty to do so, that corrupts the election process in a manner that can impact on election outcomes. This includes interfering in the process by which persons register to vote; the way in which ballots are obtained, marked, or tabulated; and the process by which election results are canvassed and certified.

Examples include the following:

- falsifying voter registration information pertinent to eligibility to cast a vote, (e.g. residence, criminal status, etc).;
- altering completed voter registration applications by entering false information;
- knowingly destroying completed voter registration applications (other than spoiled applications) before they can be submitted to the proper election authority;
- knowingly removing eligible voters from voter registration lists, in violation of HAVA, NVRA, or state election laws;
- intentional destruction by election officials of voter registration records or balloting records, in violation of records retention laws, to remove evidence of election fraud;
- vote buying;
- voting in the name of another;
- voting more than once;
- coercing a voter's choice on an absentee ballot;
- using a false name and/or signature on an absentee ballot;
- destroying or misappropriating an absentee ballot;
- felons, or in some states ex-felons, who vote when they know they are ineligible to do so;
- misleading an ex-felon about his or her right to vote;
- voting by non-citizens who know they are ineligible to do so;
- intimidating practices aimed at vote suppression or deterrence, including the abuse of challenge laws;
- deceiving voters with false information (e.g.; deliberately directing voters to the wrong polling place or providing false information on polling hours and dates);
- knowingly failing to accept voter registration applications, to provide ballots, or to accept and count voted ballots in accordance with the Uniformed and Overseas Citizens Absentee Voting Act;
- intentional miscounting of ballots by election officials;
- intentional misrepresentation of vote tallies by election officials;
- acting in any other manner with the intention of suppressing voter registration or voting, or interfering with vote counting and the certification of the vote.

Voting fraud does not include mistakes made in the course of voter registration, balloting, or tabulating ballots and certifying results. For purposes of the EAC study, it also does not include violations of campaign finance laws.

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## Summaries of Research Conducted

### Interviews

#### *Common Themes*

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, “dead” voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud, although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.
- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate – including representatives from DOJ -- that for various reasons, the Department of Justice is bringing fewer voter intimidation and suppression cases now and is focusing on matters such as noncitizen voting, double voting and felon voting. While the civil rights section continues to focus on systemic patterns of malfeasance, the public integrity section is focusing now on individuals, on isolated instances of fraud.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full

implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

**Common Recommendations:**

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.
  - With respect to the civil rights section, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and the section has not pursued any such cases.
  - Craig Donsanto of the public integrity section says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases the department is investigating and the number of indictments the section is pursuing are both up dramatically. Since 2002, the department has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so it can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud. Of particular note, Sarah Ball Johnson, Executive Director of Elections for Kentucky, emphasized that having had an effective statewide voter registration database for more than thirty years has helped that state avoid most of the fraud problems that have been alleged elsewhere, such as double voting and felon voting.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment

*Inconsistent w/ interviewees despite*

- Several people advocate passage of Senator Barak Obama’s “deceptive practices” bill
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected nonpartisanly they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas is a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states’ office; increasing transparency in the process; and enacting conflict of interest rules.
- A few recommend returning to allowing use of absentee ballots “for cause” only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the scheme contemplated in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

## **Nexis Research**

### ***Absentee Ballot Fraud***

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

### ***Voter Registration Fraud***

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people
- Fake names and other information on voter registration forms
- Illegitimate addresses used on voter registration forms
- Voters being tricked into registering for a particular party under false pretenses
- Destruction of voter registration forms depending on the party the voter registered with

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported on included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota and Wisconsin.

### *Voter Intimidation and Suppression*

This is the area which had the most articles in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places.
- Improper demands for identification
- Poll watchers harassing voters
- Poll workers being hostile to or aggressively challenging voters
- Disproportionate police presence
- Poll watchers wearing clothes with messages that seemed intended to intimidate
- Insufficient voting machines and unmanageably long lines

Although the incidents reported on occurred everywhere, not surprisingly, many came from “battleground” states. There were several such reports out of Florida, Ohio and Pennsylvania.

### ***“Dead Voters and Multiple Voting”***

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking of voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person taking criminal advantage of that. In total, the San Francisco Chronicle found 5 such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### ***Vote Buying***

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations in three particular jurisdictions as detailed in the vote buying summary. There were more official investigations, indictments and convictions/pleas in this area. All of these cases are concentrated in the Midwest and South.

### ***Deceptive Practices***

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of voter registration forms. There were no reports of prosecutions or any other legal proceeding.

### ***Non-citizen Voting***

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case charges were filed against ten individuals. In one case a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this nexis search, remained just allegations of noncitizen voting.

### ***Felon Voting***

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem has been the large number of ineligible felons that remained on the voting list.

### ***Election Official Fraud***

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### **Existing Research**

There are many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. There is little research that is truly systematic or scientific. The most systematic look at fraud is the report written by Lori Minnite. The most systematic look at voter intimidation is the report by Laughlin McDonald. Books

written about this subject seem to all have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists. It is hoped that this gap will be filled in the “second phase” of this EAC project.

Moreover, reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund’s frequently cited book. Again, this is something that it is hoped will be addressed in the “second phase” of this EAC project by doing follow up research on allegations made in reports, books and newspaper articles.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate, but some reports say it is a major problem, albeit hard to identify.
- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

## Cases

After reviewing over 40,000 cases, the majority of which came from appeals courts, I have found comparatively very few which are applicable to this study. Of those that are applicable, no apparent thematic pattern emerges. However, it seems that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility. But because so few cases provided a picture of these current problems, I suggest that case research for the second phase of this project concentrate on state trial-level decisions.

## Methodology

The following is a summary of interviews conducted with a number of political scientists and experts in the field as to how one might undertake a comprehensive examination of voter fraud and intimidation. A list of the individuals interviewed and their ideas are available, and all of the individuals welcome any further questions or explanations of their recommended procedures.

- In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources: the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that ask whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. (Stephen Ansolobhere, MIT)
- Several political scientists with expertise in these types of studies recommended a methodology that includes interviews, focus groups, and a limited survey. In determining who to interview and where the focus groups should be drawn from, they recommend the following procedure:
  - Pick a number of places that have historically had many reports of fraud and/or intimidation; from that pool pick 10 that are geographically and demographically diverse, and have had a diversity of problems
  - Pick a number of places that have not had many reports of fraud and/or intimidation; from that pool pick 10 places that match the geographic and demographic make-up of the previous ten above (and, if possible, have comparable elections practices)

- Assess the resulting overall reports and impressions resulting from these interviews and focus groups, and examine comparisons and differences among the states and what may give rise to them.

In conducting a survey of elections officials, district attorneys, district election officers, they recommend that:

- The survey sample be large in order to be able to get the necessary subsets
- The survey must include a random set of counties where there have and have not been a large number of allegations

(Allan Lichtman, American University; Thad Hall, University of Utah; Bernard Grofman, UC – Irvine)

- Another political scientist recommended employing a methodology that relies on qualitative data drawn from in-depth interviews with key critics and experts on all sides of the debate on fraud; quantitative data collected through a survey of state and local elections and law enforcement officials; and case studies. Case studies should focus on the five or ten states, regions or cities where there has been a history of election fraud to examine past and present problems. The survey should be mailed to each state's attorney general and secretary of state, each county district attorney's office and each county board of elections in the 50 states. (Lorraine Minnite, Barnard College)
- The research should be a two-step process. Using LexisNexis and other research tools, a search should be conducted of news media accounts over the past decade. Second, interviews with a systematic sample of election officials nationwide and in selected states should be conducted. (Chandler Davidson, Rice University)
- One expert in the field posits that we can never come up with a number that accurately represents either the incidence of fraud or the incidence of voter intimidation. Therefore, the better approach is to do an assessment of what is most likely to happen, what election violations are most likely to be committed – in other words, a risk analysis. This would include an analysis of what it would actually take to commit various acts, e.g. the cost/benefit of each kind of violation. From there we could rank the likely prevalence of each type of activity and examine what measures are or could be effective in combating them. (Wendy Weiser, Brennan Center of New York University)
- Replicate a study in the United States done abroad by Susan Hyde of the University of California- San Diego examining the impact of impartial poll site observers on the incidence of election fraud. Doing this retrospectively would require the following steps:
  - Find out where there were federal observers
  - Get precinct level voting information for those places

- Analyze whether there was any difference in election outcomes in those places with and without observers, and whether any of these results seem anomalous.

Despite the tremendous differences in the political landscapes of the countries examined by Hyde in previous studies and the U.S., Hyde believes this study could be effectively replicated in this country by sending observers to a random sample of precincts. Rather than compare the incumbent's vote share, such factors such as voter complaints, voter turnout, number of provisional ballots used, composition of the electorate, as well as any anomalous voting results could be compared between sites with and without monitors.

For example, if intimidation is occurring, and if reputable monitors make intimidation less likely or voters more confident, then turnout should be higher on average in monitored precincts than in unmonitored precincts. If polling station officials are intentionally refusing to issue provisional ballots, and the polling station officials are more likely to adhere to regulations while being monitored, the average number of provisional ballots should be higher in monitored precincts than in unmonitored precincts. If monitors cause polling station officials to adhere more closely to regulations, then there should be fewer complaints (in general) about monitored than unmonitored precincts (this could also be reversed if monitors made voters more likely to complain).

Again, random assignment controls for all of the other factors that otherwise influence these variables.

One of the downsides of this approach is it does not get at some forms of fraud, e.g. absentee ballot fraud; those would have to be analyzed separately.

- Another political scientist recommends conducting an analysis of vote fraud claims and purging of registration rolls by list matching. Allegations of illegal voting often are based on matching of names and birth dates. Alleged instances of double voting are based on matching the names and birth dates of persons found on voting records. Allegations of ineligible felon (depending on state law), deceased, and of non-citizen voting are based on matching lists of names, birth dates, and sometimes addresses of such people against a voting records. Anyone with basic relational database skills can perform such matching in a matter of minutes.

However, there are a number of pitfalls for the unwary that can lead to grossly over-estimating the number of fraudulent votes, such as missing or ignored middle names and suffixes or matching on missing birth dates. Furthermore, there is a surprising statistical fact that a group of about three hundred people with the same first and last name are almost assured to share the exact same birth date, including year. In a large state, it is not uncommon for hundreds of Robert Smiths (and other common names) to have voted. Thus, allegations of vote fraud

or purging of voter registration rolls by list matching almost assuredly will find a large proportion of false positives: people who voted legally or are registered to vote legally.

Statistics can be rigorously applied to determine how many names would be expected to be matched by chance. A simulation approach is best applied here: randomly assign a birth date to an arbitrary number of people and observe how many match within the list or across lists. The simulation is repeated many times to average out the variation due to chance. The results can then be matched back to actual voting records and purge lists, for example, in the hotly contested states of Ohio or Florida, or in states with Election Day registration where there are concerns that easy access to voting permits double voting. This analysis will rigorously identify the magnitude alleged voter fraud, and may very well find instances of alleged fraud that exceed what might have otherwise happened by chance.

This same political scientist also recommends another way to examine the problem: look at statistics on provisional voting: the number cast might provide indications of intimidation (people being challenged at the polls) and the number of those not counted would be indications of "vote fraud." One could look at those jurisdictions in the Election Day Survey with a disproportionate number of provisional ballots cast and cross reference it with demographics and number of provisional ballots discarded. (Michael McDonald, George Mason University)

- Spencer Overton, in a forthcoming law review article entitled *Voter Identification*, suggests a methodology that employs three approaches—investigations of voter fraud, random surveys of voters who purported to vote, and an examination of death rolls provide a better understanding of the frequency of fraud. He says all three approaches have strengths and weaknesses, and thus the best studies would employ all three to assess the extent of voter fraud. An excerpt follows:

*1. Investigations and Prosecutions of Voter Fraud*

Policymakers should develop databases that record all investigations, allegations, charges, trials, convictions, acquittals, and plea bargains regarding voter fraud. Existing studies are incomplete but provide some insight. For example, a statewide survey of each of Ohio's 88 county boards of elections found only four instances of ineligible persons attempting to vote out of a total of 9,078,728 votes cast in the state's 2002 and 2004 general elections. This is a fraud rate of 0.0000045 percent. The Carter-Baker Commission's Report noted that since October 2002, federal officials had charged 89 individuals with casting multiple votes, providing false information about their felon status, buying votes, submitting false voter registration information, and voting improperly as a non-citizen. Examined in the context of the 196,139,871 ballots cast between October 2002 and

August 2005, this represents a fraud rate of 0.0000005 percent (note also that not all of the activities charged would have been prevented by a photo identification requirement).

A more comprehensive study should distinguish voter fraud that could be prevented by a photo identification requirement from other types of fraud — such as absentee voting and stuffing ballot boxes — and obtain statistics on the factors that led law enforcement to prosecute fraud. The study would demand significant resources because it would require that researchers interview and pour over the records of local district attorneys and election boards.

Hard data on investigations, allegations, charges, pleas, and prosecutions is important because it quantifies the amount of fraud officials detect. Even if prosecutors vigorously pursue voter fraud, however, the number of fraud cases charged probably does not capture the total amount of voter fraud. Information on official investigations, charges, and prosecutions should be supplemented by surveys of voters and a comparison of voting rolls to death rolls.

## *2. Random Surveys of Voters*

Random surveys could give insight about the percentage of votes cast fraudulently. For example, political scientists could contact a statistically representative sampling of 1,000 people who purportedly voted at the polls in the last election, ask them if they actually voted, and confirm the percentage who are valid voters. Researchers should conduct the survey soon after an election to locate as many legitimate voters as possible with fresh memories.

Because many respondents would perceive voting as a social good, some who did not vote might claim that they did, which may underestimate the extent of fraud. A surveyor might mitigate this skew through the framing of the question (“I’ve got a record that you voted. Is that true?”).

Further, some voters will not be located by researchers and others will refuse to talk to researchers. Photo identification proponents might construe these non-respondents as improper registrations that were used to commit voter fraud.

Instead of surveying all voters to determine the amount of fraud, researchers might reduce the margin of error by focusing on a random sampling of voters who signed affidavits in the three states that request photo identification but also allow voters to establish their identity through affidavit—Florida, Louisiana, and South Dakota. In

South Dakota, for example, only two percent of voters signed affidavits to establish their identity. If the survey indicates that 95 percent of those who signed affidavits are legitimate voters (and the other 5 percent were shown to be either fraudulent or were non-responsive), this suggests that voter fraud accounts for, at the maximum, 0.1 percent of ballots cast.

The affidavit study, however, is limited to three states, and it is unclear whether this sample is representative of other states (the difficulty may be magnified in Louisiana in the aftermath of Hurricane Katrina's displacement of hundreds of thousands of voters). Further, the affidavit study reveals information about the amount of fraud in a photo identification state with an affidavit exception—more voter fraud may exist in a state that does not request photo identification.

### 3. *Examining Death Rolls*

A comparison of death rolls to voting rolls might also provide an estimate of fraud.

Imagine that one million people live in state A, which has no documentary identification requirement. Death records show that 20,000 people passed away in state A in 2003. A cross-referencing of this list to the voter rolls shows that 10,000 of those who died were registered voters, and these names remained on the voter rolls during the November 2004 election. Researchers would look at what percentage of the 10,000 dead-but-registered people who "voted" in the November 2004 election. A researcher should distinguish the votes cast in the name of the dead at the polls from those cast absentee (which a photo identification requirement would not prevent). This number would be extrapolated to the electorate as a whole.

This methodology also has its strengths and weaknesses. If fraudulent voters target the dead, the study might overestimate the fraud that exists among living voters (although a low incidence of fraud among deceased voters might suggest that fraud among all voters is low). The appearance of fraud also might be inflated by false positives produced by a computer match of different people with the same name. Photo identification advocates would likely assert that the rate of voter fraud could be higher among fictitious names registered, and that the death record survey would not capture that type of fraud because fictitious names registered would not show up in the death records. Nevertheless, this study, combined with the other two, would provide important insight into the magnitude of fraud likely to exist in the absence of a photo identification requirement.

**Recommendations for Further EAC Activity  
on Voting Fraud and Voter Intimidation**

**Consultants' Recommendations**

***Recommendation 1: Conduct More Interviews***

Time and resource constraints prevented the consultants from interviewing the full range of participants in the process. As a result, we recommend that any future activity in this area include conducting further interviews.

In particular, we recommend that more election officials from all levels of government, parts of the country, and parties be interviewed. These individuals have the most direct inside information on how the system works -- and at times does not work. They are often the first people voters go to when something goes wrong and are often responsible for fixing it. They are the ones who must carry out the measures that are designed to both prevent fraud and voter intimidation and suppression. They will most likely know what, therefore, is and is not working.

It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers ("DEOs") and local district attorneys, as well as civil and criminal defense attorneys.

The Public Integrity Section of the Criminal Division of the Department of Justice has all of the 93 U.S. Attorneys appoint Assistant U.S. Attorneys to serve as DEOs for two years. DEOs are required to

- screen and conduct preliminary investigations of complaints, in conjunction with the FBI and PIN, to determine whether they constitute potential election crimes and should become matters for investigation;
- oversee the investigation and prosecution of election fraud and other election crimes in their districts;
- coordinate their district's (investigative and prosecutorial) efforts with DOJ headquarters prosecutors;
- coordinate election matters with state and local election and law enforcement officials and make them aware of their availability to assist with election-related matters;
- issue press releases to the public announcing the names and telephone numbers of DOJ and FBI officials to contact on election day with complaints about voting or election irregularities and answer telephones on election day to receive these complaints; and
- supervise a team of Assistant U.S. Attorneys and FBI special agents who are appointed to handle election-related allegations while the polls are open on election day.<sup>1</sup>

Given the great responsibilities of the DEOs, and the breadth of issues they must deal with, they undoubtedly are great resources for information and insight as to what types of fraud and intimidation/suppression are occurring in their districts.

In many situations, however, it is the local district attorneys who will investigate election fraud and suppression tactics, especially in local elections. They will be able to provide information on what has gone on in their jurisdictions, as well as which matters get pursued and why.

Finally, those who defend people accused of election related crimes would also be useful to speak to. They may have a different perspective on how well the system is working to detect, prevent, and prosecute election fraud.

***Recommendation 2: Follow Up on Nexis Research***

The Nexis search conducted for this phase of the research was based on a list of search terms agreed upon by both consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. However, without being able to go beyond the agreed search terms, it could not be determined whether there was any later determination regarding the allegations, investigation or charges brought. This leaves a gaping hole: it is impossible to know if the article is just reporting on “talk” or what turns out to be a serious affront to the system.

As a result, we recommend that follow up Nexis research be conducted to determine what, if any, resolutions or further activity there was in each case. This would provide a much more accurate picture of what types of activities are actually taking place.

***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Similarly, many allegations are made in the reports and books that we analyzed and summarized. Those allegations are often not substantiated in any way and are inherently time limited by the date of the writing. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation.

Therefore, we recommend follow up to the literature review: for those reports and books that make or cite specific instances of fraud or intimidation, a research effort should be made to follow up on those references to see if and how they were resolved.

***Recommendation 4: Review Complaints File With MyVote1 Project Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a 1-800 voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint.

In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.<sup>ii</sup> The researchers in charge of this project have done a great deal of work to parse and analyze the data collected through this process, including going through the audio messages and categorizing them by the nature of the complaint. These categories include registration, absentee ballot, poll access, ballot/screen, coercion/intimidation, identification, mechanical, provisional (ballot).

We recommend that further research include making full use of this data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints should provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation,<sup>iii</sup> the Section was extremely reluctant to provide the consultants with useful information. Further attempts should be made to obtain relevant data. This includes the telephone logs of complaints the Section keeps and information from the database – the Interactive Case Management (ICM) system – the Section maintains on complaints received and the corresponding action taken. We also recommend that further research include a review and analysis of the observer and monitor field reports from Election Day that must be filed with the Section.

***Recommendation 6: Review Reports Filed By District Election Officers***

Similarly, the consultants believe it would be useful for any further research to include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. As noted above, the DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

The consultants also believe it would be useful for any further activity in this area to include attendance at the next Ballot Access and Voting Integrity Symposium. According to the Department,<sup>iv</sup>

Prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices are required to attend annual training conferences on fighting election fraud and voting rights abuses... These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity

Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. As a result of these conferences, there is a nationwide increase in Department expertise relating to the prosecution of election crimes and the enforcement of voting rights.

By attending the symposium researchers could learn more about the following:

- How District Election Officers are trained, e.g. what they are taught to focus their resources on, how they are instructed to respond to various types of complaints
- How information about previous election and voting issues is presented
- How the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants

***Recommendation 8: Employ Academic or Individual to Conduct Statistical Research***

Included in this report is a summary of various methodologies political scientists and others suggested to measure voter fraud and intimidation. While we note the skepticism of the Working Group in this regard, we nonetheless recommend that in order to further the mission of providing unbiased data, further activity in this area include an academic institution and/or individual that focuses on sound, statistical methods for political science research.

***Recommendation 9: Explore Improvements to Federal Law***

Finally, consultant Tova Wang recommends that future researchers review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

According to Craig Donsanto, long-time Director of the Election Crimes Branch, Public Integrity Section, Criminal Division of the U.S. Department of Justice:

As with other statutes addressing voter intimidation, in the absence of any jurisprudence to the contrary, it is the Criminal Division's position that section 1973gg-10(1) applies only to intimidation which is accomplished through the use of threats of physical or economic duress. Voter "intimidation" accomplished through less drastic means may present violations of the Voting Rights Act, 42 U.S.C. § 1973i(b), which are enforced by the Civil Rights Division through noncriminal remedies.<sup>v</sup>

Mr. Donsanto reiterated these points to us on several occasions, including at the working group meeting.

As a result, researchers should examine if there is some way in which current law might be revised or new laws passed that would reach voter intimidation that does not threaten the voter physically or financially, but rather threatens the voter's right to vote as a tangible value in itself. Such an amendment or law would reach all forms of voter intimidation, no matter if it is motivated by race, party, ethnicity or any other criteria. The law would then *potentially* cover, for example, letters and postcards with language meant to deter voters from voting and both pre-election and Election Day challengers that are clearly mounting challenges solely on illegitimate bases.

In the alternative to finding a way to criminalize such behavior, researchers might examine ways to invigorate measures to deter and punish voter intimidation under the civil law. For example, there might be a private right of action created for voters or groups who have been subjected to intimidation tactics in the voting process. Such an action could be brought against individual offenders; any state or local actor where there is a pattern of repeated abuse in the jurisdiction that such officials did not take sufficient action against; and organizations that intentionally engage in intimidating practices. As a penalty upon finding liability, civil damages could be available plus perhaps attorney's fees.

Another, more modest measure would be, as has been suggested by Ana Henderson and Christopher Edley,<sup>vi</sup> to bring parity to fines for violations under the Voting Rights Act. Currently the penalty for fraud is \$10,000 while the penalty for acts to deprive the right to vote is \$5,000.

### **Working Group Recommendations**

#### ***Recommendation 1: Employ Observers To Collect Data in the 2006 and/or 2008 Elections***

At the working group meeting, there was much discussion about using observers to collect data regarding fraud and intimidation at the polls in the upcoming elections. Mr. Ginsberg recommended using representatives of both parties for the task. Mr. Bauer and others objected to this, believing that using partisans as observers would be unworkable and would not be credible to the public.

There was even greater concern about the difficulties in getting access to poll sites for the purposes of observation. Most states strictly limit who can be in the polling place. In addition, there are already so many groups doing observation and monitoring at the polls, administrators might object. There was further concern that observers would introduce a variable into the process that would impact the outcome. The very fact that observers were present would influence behavior and skew the results.

Moreover, it was pointed out, many of the problems we see now with respect to fraud and intimidation does not take place at the polling place, e.g. absentee ballot fraud and deceptive practices. Poll site monitoring would not capture this activity. Moreover, with

increased use of early voting, poll site monitoring might have to go on for weeks to be effective, which would require tremendous resources.

Mr. Weinberg suggested using observers in the way they are utilized in international elections. Such observers come into a jurisdiction prior to the election, and use standardized forms at the polling sites to collect data.

***Recommendation 2: Do a Study on Absentee Ballot Fraud***

The working group agreed that since absentee ballot fraud is the main form of fraud occurring, and is a practice that is great expanding throughout the country, it would make sense to do a stand-alone study of absentee ballot fraud. Such a study would be facilitated by the fact that there already is a great deal of information on how, when, where and why such practices are carried out based on cases successfully prosecuted. Researchers could look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

***Recommendation 3: Use Risk Analysis Methodology to Study Fraud<sup>1</sup>***

Working group members were supportive of one of the methodologies recommended for studying this issue, risk analysis. As Mr. Bauer put it, based on the assumption that people act rationally, do an examination of what types of fraud people are most likely to commit, given the relative costs and benefits. In that way, researchers can rank the types of fraud that are the easiest to commit at the least cost with the greatest effect, from most to least likely to occur. This might prove a more practical way of measuring the problems than trying to actually get a number of acts of fraud and/or intimidation occurring. Mr. Greenbaum added that one would want to examine what conditions surrounding an election would be most likely to lead to an increase in fraud. Mr. Rokita objected based on his belief that the passions of partisanship lead people to not act rationally in an election.

***Recommendation 4: Conduct Research Using Database Comparisons***

Picking up on a suggestion made by Spencer Overton and explained in the suggested methodology section, Mr. Hearne recommended studying the issue using statistical database matching. Researchers should compare the voter roll and the list of people who actually voted to see if there are “dead” and felon voters. Because of the inconsistent quality of the databases, however, a political scientist would need to work in an appropriate margin of error when using such a methodology.

***Recommendation 5: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of

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<sup>1</sup> See Appendix C, and section on methodology

groups, including the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices, which may be available for review and analysis. This is also an area in which there is often tangible evidence, such as copies of the flyers and postcards themselves. All of this information should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

***Recommendation 6: Study Use of HAVA Administrative Complaint Procedure As Vehicle for Measuring Fraud and Intimidation***

The EAC should study the extent to which states are actually utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 7: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts that are running before, during and after election day would be an effective means of disposing with complaints and violations in an expeditious manner. Pennsylvania employs such a system, and the EAC should consider investigating how well it is working to deal with fraud and intimidation problems.

## Key Working Group Observations and Concerns

### Working Group Observations

1. ***The main problems today are structural barriers to voting and administrative error.*** Mr. Perez observed that, in accordance with the research, the biggest issues today are structural barriers to voting, not stealing votes. Election administrators share this view. Election fraud is negligible, and to the extent it occurs, it needs to be prosecuted with stronger criminal laws. The biggest problem is properly preparing people, which is the responsibility of election administrators.
2. ***Most fraud and intimidation is happening outside of the polling place.*** Mr. Greenbaum observed that with respect to both voter fraud and voter suppression, such as deceptive practices and tearing up voter registration forms, most of that is taking place outside of the polling place.
3. ***This issue cannot be addressed through one study or one methodology alone.*** Mr. Weinberg observed that since there is such a variety in types of fraud and intimidation, one solution will not fit all. It will be impossible to obtain data or resolve any of these problems through a single method.
4. ***The preliminary research conducted for this project is extremely valuable.*** Several of the working group members complimented the quality of the research done and although it is only preliminary, thought it would be useful and informative in the immediate future.
5. ***The Department of Justice is exploring expanding its reach over voter suppression activities.*** In the context of the conversation about defining voter intimidation, Mr. Donsanto pointed out that while voter intimidation was strictly defined by the criminal law, his section is beginning to explore the slightly different concept of vote suppression, and how to pursue it. He mentioned the phone-jamming case in New Hampshire as an initial success in this effort. He noted that he believes that vote suppression in the form of deceptive practices ought to be a crime and the section is exploring ways to go after it within the existing statutory construct. Mr. Bauer raised the example of a party sending people dressed in paramilitary outfits to yell at people as they go to the polls, telling them they have to show identification. Mr. Donsanto said that under the laws he has to work with today, such activity is not considered corrupt. He said that his lawyers are trying to “bend” the current laws to address aggravated cases of vote suppression, and the phone-jamming case is an example of that. Mr. Donsanto said that within the Department, the term vote “suppression” and translating it into a crime is a “work in progress.”

6. **Registration fraud does not translate into vote fraud.** Ms. Rogers, Mr. Donsanto and others stated that although phony voter registration applications turned in by people being paid by the form was a problem, it has not been found in their experience to lead to fraudulent voters at the polls. Ms. Rogers said such people were motivated by money, not defrauding the election.
7. **Handling of voter fraud and intimidation complaints varies widely across states and localities.** Ms. Rogers and others observed that every state has its own process for intake and review of complaints of fraud and intimidation, and that procedures often vary within states. The amount of authority secretaries of state have to address such problems also is different in every state. Mr. Weinberg stated he believed that most secretaries of state did not have authority to do anything about these matters. Participants discussed whether secretaries ought to be given greater authority so as to centralize the process, as HAVA has mandated in other areas.

### Working Group Concerns

1. Mr. Rokita questioned whether the purpose of the present project ought to be on assessing the level of fraud and where it is, rather than on developing methods for making such measurements. He believed that methodology should be the focus, “rather than opinions of interviewees.” He was concerned that the EAC would be in a position of “adding to the universe of opinions.”
2. Mr. Rokita questioned whether the “opinions” accumulated in the research “is a fair sampling of what’s out there.” Ms. Wang responded that one of the purposes of the research was to explore whether there is a method available to actually quantify in some way how much fraud there is and where it is occurring in the electoral process. Mr. Rokita replied that “Maybe at the end of the day we stop spending taxpayer money or it’s going to be too much to spend to find that kind of data. Otherwise, we will stop it here and recognize there is a huge difference of opinion on that issue of fraud, when it occurs is obtainable, and that would possibly be a conclusion of the EAC.” Ms. Sims responded that she thought it would be possible to get better statistics on fraud and there might be a way of “identifying at this point certain parts in the election process that are more vulnerable, that we should be addressing.”
3. Mr. Rokita stated that, “We’re not sure that fraud at the polling place doesn’t exist. We can’t conclude that.”
4. Mr. Rokita expressed concern about working with a political scientist. He believes that the “EAC needs to be very careful in who they select, because all the time and effort and money that’s been spent up to date and would be spent in the future could be invalidated by a wrong selection in the eyes of some group.”

**NEXIS Charts**

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**Case Charts**

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**Appendix 1**  
**List of Individuals Interviewed**

Wade Henderson, Executive Director, Leadership Conference for Civil Rights

Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center

William Groth, attorney for the plaintiffs in the Indiana voter identification litigation

Lori Minnite, Barnard College, Columbia University

Neil Bradley, ACLU Voting Rights Project

Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

Pat Rogers, attorney, New Mexico

Rebecca Vigil-Giron, Secretary of State, New Mexico

Sarah Ball Johnson, Executive Director of the State Board of Elections, Kentucky

Stephen Ansolobehere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Tracey Campbell, author, *Deliver the Vote*

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights

Robin DeJarnette, Executive Director, American Center for Voting Rights

Joseph Rich, former Director of the Voting Section, Civil Rights Division, U.S. Department of Justice

Joseph Sandler, Counsel to the Democratic National Committee

John Ravitz, Executive Director, New York City Board of Elections

John Tanner, Director, Voting Section, Civil Rights Division, U.S. Department of Justice

Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin  
Evelyn Stratton, Justice, Supreme Court of Ohio

Tony Sirvello, Executive Director, International Association of  
Clerks, Recorders, Election Officials and Treasurers

Harry Van Sickle, Commissioner of Elections, Pennsylvania

Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice

Sharon Priest, former Secretary of State, Arkansas

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**Appendix 2**  
**List of Literature Reviewed**

**Reports**

People for the American Way and the NAACP, "The Long Shadow of Jim Crow," December 6, 2004.

Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.

Wisconsin Legislative Audit Bureau, "An Evaluation: Voter Registration Elections Board" Report 05-12, September, 2005.

Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, United States Attorney's Office "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," May 10, 2005.

National Commission on Federal Election Reform, "Building Confidence in U.S. Elections," Center for Democracy and Election Management, American University, September 2005.

The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law "Response to the Report of the 2005 Commission on Federal Election Reform," September 19, 2005.

Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.

Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.

American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.

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The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.

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<http://www.votingrights.org/news/downloads/Section%205%20Recommendation%20Memorandum.pdf>

DRAFT

### **Appendix 3**

## **Excerpt from “Machinery of Democracy,” a Brennan Center Report**

### **APPENDIX C**

#### **BRENNAN CENTER TASK FORCE ON VOTING SYSTEM SECURITY, LAWRENCE NORDEN, CHAIR**

**Excerpted from pp. 8-19**

### **METHODOLOGY**

The Task Force concluded, and the peer review team at NIST agreed, that the best approach for comprehensively evaluating voting system threats was to: (1) identify and categorize the potential threats against voting systems, (2) prioritize these threats based upon an agreed upon metric (which would tell us how difficult each threat is to accomplish from the attacker's point of view), and (3) determine, utilizing the same metric employed to prioritize threats, how much more difficult each of the catalogued attacks would become after various sets of countermeasures are implemented.

This model allows us to identify the attacks we should be most concerned about (*i.e.*, the most practical and least difficult attacks). Furthermore, it allows us to quantify the potential effectiveness of various sets of countermeasures (*i.e.*, how difficult the least difficult attack is after the countermeasure has been implemented). Other potential models considered, but ultimately rejected by the Task Force, are detailed in Appendix B.

### **IDENTIFICATION OF THREATS**

The first step in creating a threat model for voting systems was to identify as many potential attacks as possible. To that end, the Task Force, together with the participating election officials, spent several months identifying voting system vulnerabilities. Following this work, NIST held a Voting Systems Threat Analysis Workshop on October 7, 2005. Members of the public were invited to write up and post additional potential attacks. Taken together, this work produced over 120 potential attacks on the three voting systems. They are detailed in the catalogs annexed.<sup>20</sup> Many of the attacks are described in more detail at <http://vote.nist.gov/threats/papers.htm>.

The types of threats detailed in the catalogs can be broken down into nine categories: (1) the insertion of corrupt software into machines prior to Election Day; (2) wireless and other remote control attacks on voting machines on Election Day; (3) attacks on tally servers; (4) miscalibration of voting machines; (5) shut off of voting machine features intended to assist voters; (6) denial of service attacks; (7) actions by corrupt poll workers or others at the polling place to affect votes cast; (8) vote buying schemes; (9) attacks on ballots or VVPT. Often, the actual attacks

involve some combination of these categories. We provide a discussion of each type of attack in “Categories of Attacks,” *infra* at pp. 24–27.

### **PRIORITIZING THREATS: NUMBER OF INFORMED PARTICIPANTS AS METRIC**

Without some form of prioritization, a compilation of the threats is of limited value. Only by prioritizing these various threats could we help election officials identify which attacks they should be most concerned about, and what steps could be taken to make such attacks as difficult as possible. As discussed below, we have determined the level of difficulty for each attack where the attacker is attempting to affect the outcome of a close statewide election.<sup>21</sup>

There is no perfect way to determine which attacks are the least difficult, because each attack requires a different mix of resources – well-placed insiders, money, programming skills, security expertise, *etc.* Different attackers would find certain resources easier to acquire than others. For example, election fraud committed by local election officials would always involve well-placed insiders and a thorough understanding of election procedures; at the same time, there is no reason to expect such officials to have highly skilled hackers or first-rate programmers working with them. By contrast, election fraud carried out by a foreign government would likely start with plenty of money and technically skilled attackers, but probably without many conveniently placed insiders or detailed knowledge of election procedures.

Ultimately, we decided to use the “number of informed participants” as the metric for determining attack difficulty. An attack which uses fewer participants is deemed the easier attack.

We have defined “informed participant” as someone whose participation is needed to make the attack work, and who knows enough about the attack to foil or expose it. This is to be distinguished from a participant who unknowingly assists the attack by performing a task that is integral to the attack’s successful execution without understanding that the task is part of an attack on voting systems.

The reason for using the security metric “number of informed participants” is relatively straightforward: the larger a conspiracy is, the more difficult it would be to keep it secret. Where an attacker can carry out an attack by herself, she need only trust herself. On the other hand, a conspiracy that requires thousands of people to take part (like a vote-buying scheme) also requires thousands of people to keep quiet. The larger the number of people involved, the greater the likelihood that one of them (or one who was approached, but declined to take part) would either inform the public or authorities about the attack, or commit some kind of error that causes the attack to fail or become known.

Moreover, recruiting a large number of people who are willing to undermine the integrity of a statewide election is also presumably difficult. It is not hard to imagine two or three people agreeing to work to change the outcome of an election. It seems far less likely that an attacker could identify and employ hundreds or thousands of similarly corrupt people without being discovered.

We can get an idea of how this metric works by looking at one of the threats listed in our catalogs: the vote-buying threat, where an attacker or attackers pay individuals to vote for a particular candidate. This is Attack Number 26 in the PCOS Attack Catalog<sup>22</sup> (though this attack would not be substantially different against DREs or DREs w/ VVPT).<sup>23</sup> In order to work under our current types of voting systems, this attack requires (1) at least one person to purchase votes, (2) many people to agree to sell their votes, and (3) some way for the purchaser to confirm that the voters she pays actually voted for the candidate she supported. Ultimately, we determined that, while practical in smaller contests, a vote-buying attack would be an exceptionally difficult way to affect the outcome of a statewide election. This is because, even in a typically close statewide election, an attacker would need to involve thousands of voters to ensure that she could affect the outcome of a statewide race.<sup>24</sup>

For a discussion of other metrics we considered, but ultimately rejected, see Appendix C.

## **DETERMINING NUMBER OF INFORMED PARTICIPANTS**

### **DETERMINING THE STEPS AND VALUES FOR EACH ATTACK**

The Task Force members broke down each of the catalogued attacks into its necessary steps. For instance, Attack 12 in the PCOS Attack Catalog is “Stuffing Ballot Box with Additional Marked Ballots.”<sup>25</sup> We determined that, at a minimum, there were three component parts to this attack: (1) stealing or creating the ballots and then marking them, (2) scanning marked ballots through the PCOS scanners, probably before the polls opened, and (3) modifying the poll books in each location to ensure that the total number of votes in the ballot boxes was not greater than the number of voters who signed in at the polling place.

Task Force members then assigned a value representing the minimum number of persons they believed would be necessary to accomplish each goal. For PCOS Attack 12, the following values were assigned:<sup>26</sup>

**Minimum number required to steal or create ballots: 5 persons total.<sup>27</sup>**

**Minimum number required to scan marked ballots: 1 per polling place attacked.**

**Minimum number required to modify poll books: 1 per polling place attacked.<sup>28</sup>**

After these values were assigned, the Brennan Center interviewed several election officials to see whether they agreed with the steps and values assigned to each attack.<sup>29</sup> When necessary, the values and steps were modified. The new catalogs, including attack steps and values, were then reviewed by Task Force members. The purpose of this review was to ensure, among other things, that the steps and values were sound.

These steps and values tell us how difficult it would be to accomplish a *single attack in a single polling place*. They do not tell us how many people it would take to change the outcome of an election successfully – that depends, of course, on specific facts about the jurisdiction: how many votes are generally recorded in each polling

place, how many polling places are there in the jurisdiction, and how close is the race? For this reason, we determined that it was necessary to construct a hypothetical jurisdiction, to which we now turn.

**NUMBER OF INFORMED PARTICIPANTS NEEDED TO CHANGE STATEWIDE ELECTION**

We have decided to examine the difficulty of each attack in the context of changing the outcome of a reasonably close statewide election. While we are concerned by potential attacks on voting systems in any type of election, we are most troubled by attacks that have the potential to affect large numbers of votes. These are the attacks that could actually change the outcome of a statewide election with just a handful of attack participants.

We are less troubled by attacks on voting systems that can only affect a small number of votes (and might therefore be more useful in local elections). This is because there are many non-system attacks that can also affect a small number of votes (*i.e.*, sending out misleading information about polling places, physically intimidating voters, submitting multiple absentee ballots, *etc.*). Given the fact that these non-system attacks are likely to be less difficult in terms of number of participants, financial cost, risk of detection, and time commitment, we are uncertain that an attacker would target *voting machines* to alter a small number of votes.

In order to evaluate how difficult it would be for an attacker to change the outcome of a statewide election, we created a composite jurisdiction. The composite jurisdiction was created to be representative of a relatively close statewide election. We did not want to examine a statewide election where results were so skewed toward one candidate (for instance, the re-election of Senator Edward M. Kennedy in 2000, where he won 73% of the vote<sup>30</sup>), that reversing the election results would be impossible without causing extreme public suspicion. Nor did we want to look at races where changing only a relative handful of votes (for instance, the Governor's race in Washington State in 2004, which was decided by a mere 129 votes<sup>31</sup>) could affect the outcome of an election; under this scenario, many of the potential attacks would involve few people, and therefore look equally difficult.

We have named our composite jurisdiction "the State of Pennasota." The State of Pennasota is a composite of ten states: Colorado, Florida, Iowa, Ohio, New Mexico, Pennsylvania, Michigan, Nevada, Wisconsin and Minnesota. These states were chosen because they were the ten "battleground" states that Zogby International consistently polled in the spring, summer, and fall 2004.<sup>32</sup> These are statewide elections that an attacker would have expected, ahead of time, to be fairly close.

We have also created a composite election, which we label the "Governor's Race" in Pennasota. The results of this election are a composite of the actual results in the same ten states in the 2004 Presidential Election.

We have used these composites as the framework by which to evaluate the difficulty of the various catalogued attacks.<sup>33</sup> For instance, we know a ballot-box stuffing attack would require roughly five people to create and mark fake ballots, as

well as one person per polling place to stuff the boxes, and one person per polling place to modify the poll books. But, in order to determine how many informed participants would be needed to affect a statewide race, we need to know how many polling places would need to be attacked.

The composite jurisdiction and composite election provide us with information needed to answer these questions: *i.e.*, how many extra votes our attackers would need to add to their favored candidate's total for him to win, how many ballots our attackers can stuff into a particular polling place's ballot box without arousing suspicion (and related to this, how many votes are generally cast in the average polling place), how many polling places are there in the state, *etc.* We provide details about both the composite jurisdiction and election in the section entitled "Governor's Race, State of Pennasota, 2007," *infra* at pp 20–27.

#### LIMITS OF INFORMED PARTICIPANTS AS METRIC

Of the possible metrics we considered, we believe that measuring the number of people who know they are involved in an attack (and thus could provide evidence of the attack to the authorities and/or the media), is the best single measure of attack difficulty; as already discussed, we have concluded that the more people an attacker is forced to involve in his attack, the more likely it is that one of the participants would reveal the attack's existence and foil the attack, perhaps sending attackers to jail. However, we are aware of a number of places where the methodology could provide us with questionable results.

By deciding to concentrate on size of attack team, we mostly ignore the need for other resources when planning an attack. Thus, a software attack on DREs which makes use of steganography<sup>34</sup> to hide attack instruction files (*see* "DRE w/ VVPT Attack No. 1a", discussed in greater detail, *infra* at pp. 62–65) is considered easier than an attack program delivered over a wireless network at the polling place (*see* discussion of wireless networks, *infra* at pp. 85–91). However, the former attack probably requires a much more technologically sophisticated attacker.

Another imperfection with this metric is that we do not have an easy way to represent how much choice the attacker has in finding members of his attack team. Thus, with PCOS voting, we conclude that the cost of subverting a routine audit of ballots is roughly equal to the cost of intercepting ballot boxes in transit and substituting altered ballots (*see* discussion of PCOS attacks, *infra* at pp. 77–83). However, subverting the audit team requires getting a specific set of trusted people to cooperate with the attacker. By contrast, the attacker may be able to decide which precincts to tamper with based on which people he has already recruited for his attack.

In an attempt to address this concern, we considered looking at the number of "insiders" necessary to take part in each attack. Under this theory, getting five people to take part in a conspiracy to attack a voting system might not be particularly difficult. But getting five well-placed county election officials to take part in the attack would be (and should be labeled) the more difficult of the two attacks. Because, for the most part, the low-cost attacks we have identified do not necessarily involve well placed insiders (but could, for instance, involve one of many people with access to commercial off the shelf software ("COTS") during development

or at the vendor), we do not believe that using this metric would have substantially changed our analysis.<sup>35</sup>

Finally, these attack team sizes do not always capture the logistical complexity of an attack. For example, an attack on VVPT machines involving tampering with the voting machine software and also replacing the paper records in transit requires the attacker to determine what votes were falsely produced by the voting machine and print replacement records in time to substitute them. While this is clearly possible, it raises a lot of operational difficulties – a single failed substitution leaves the possibility that the attack would be detected during the audit of ballots.

We have tried to keep these imperfections in mind when analyzing and discussing our least difficult attacks.

We suspect that much of the disagreement between voting officials and computer security experts in the last several years stems from a difference of opinion in prioritizing the difficulty of attacks. Election officials, with extensive experience in the logistics of handling tons of paper ballots, have little faith in paper and understand the kind of breakdowns in procedures that lead to traditional attacks like ballot box stuffing; in contrast, sophisticated attacks on computer voting systems appear very difficult to many of them. Computer security experts understand sophisticated attacks on computer systems, and recognize the availability of tools and expertise that makes these attacks practical to launch, but have no clear idea how they would manage the logistics of attacking a paper-based system. Looking at attack team size is one way to bridge this difference in perspective.

## **EFFECTS OF IMPLEMENTING COUNTERMEASURE SETS**

The final step of our threat analysis is to measure the effect of certain countermeasures against the catalogued attacks. How much more difficult would the attacks become once the countermeasures are put into effect? How many more informed participants (if any) would be needed to counter or defeat these countermeasures?

Our process for examining the effectiveness of a countermeasure mirrors the process for determining the difficulty of an attack: we first asked whether the countermeasure would allow us to detect an attack with near certainty. If we agreed that the countermeasure would expose the attack, we identified the steps that would be necessary to circumvent or defeat the countermeasure. For each step to defeat the countermeasure, we determined the number of additional informed participants (if any) that an attacker would need to add to his team. As with the process for determining attack difficulty, the Brennan Center interviewed numerous election officials to see whether they agreed with the steps and values assigned. When necessary, the values and steps for defeating the countermeasures were altered to reflect the input of election officials.

## **COUNTERMEASURES EXAMINED**

### **BASIC SET OF COUNTERMEASURES**

The first set of countermeasures we looked at is the “Basic Set” of countermeasures. This Basic Set was derived from security survey responses<sup>36</sup> we received

from county election officials around the country, as well as additional interviews with more than a dozen current and former election officials. Within the Basic Set of countermeasures are the following procedures:

### **Inspection**

The jurisdiction is not knowingly using any uncertified software that is subject to inspection by the Independent Testing Authority (often referred to as the “TTA”).<sup>37</sup>

### **Physical Security for Machines**

- Ballot boxes (to the extent they exist) are examined (to ensure they are empty) and locked by poll workers immediately before the polls are opened.
- Before and after being brought to the polls for Election Day, voting systems for each county are locked in a single room, in a county warehouse.
- The warehouse has perimeter alarms, secure locks, video surveillance and regular visits by security guards.
- Access to the warehouse is controlled by sign-in, possibly with card keys or similar automatic logging of entry and exit for regular staff.
- Some form of “tamper evident” seals are placed on machines before and after each election.
- The machines are transported to polling locations five to fifteen days before Election Day.

### **Chain of Custody/Physical Security of Election Day Records**

- At close of the polls, vote tallies for each machine are totaled and compared with number of persons that have signed the poll books.
- A copy of totals for each machine is posted at each polling place on Election Night and taken home by poll workers to check against what is posted publicly at election headquarters, on the web, in the papers, or elsewhere.<sup>38</sup>
- All audit information (*i.e.*, Event Logs, VVPT records, paper ballots, machine printouts of totals) that is not electronically transmitted as part of the unofficial upload to the central election office, is delivered in official, sealed and hand-delivered information packets or boxes. All seals are numbered and tamper-evident.
- Transportation of information packets is completed by two election officials representing opposing parties who have been instructed to remain in joint custody of the information packets or boxes from the moment it leaves the precinct to the moment it arrives at the county election center.

- Each polling place sends its information packets or boxes to the county election center separately, rather than having one truck or person pick up this data from multiple polling locations.
- Once the sealed information packets or boxes have reached the county election center, they are logged. Numbers on the seals are checked to ensure that they have not been replaced. Any broken or replaced seals are logged. Intact seals are left intact.
- After the packets and/or boxes have been logged, they are provided with physical security precautions at least as great as those listed for voting machines, above. Specifically, for Pennasota, we have assumed the room in which the packets are stored have perimeter alarms, secure locks, video surveillance and regular visits by security guards and county police officers; and access to the room is controlled by sign-in, possibly with card keys or similar automatic logging of entry and exit for regular staff.

#### Testing<sup>39</sup>

- An Independent Testing Authority has certified the model of voting machine used in the polling place.
- Acceptance Testing<sup>40</sup> is performed on machines at time, or soon after they are received by County.
- Pre-election Logic and Accuracy<sup>41</sup> testing is performed by the relevant election official.
- Prior to opening the polls, every voting machine and vote tabulation system is checked to see that it is still configured for the correct election, including the correct precinct, ballot style, and other applicable details.

#### REGIMEN FOR AUTOMATIC ROUTINE AUDIT PLUS BASIC SET OF COUNTERMEASURES.

The second set of countermeasures is the Regimen for an Automatic Routine Audit Plus Basic Set of Countermeasures.

Some form of routine auditing of voter-verified paper records occurs in 12 states, to test the accuracy of electronic voting machines. They generally require between 1 and 10% of all precinct voting machines to be audited after each election. <sup>42</sup>

Jurisdictions can implement this set of countermeasures only if their voting systems produce some sort of voter-verified paper record of each vote. This could be in the form of a paper ballot, in the case of PCOS, or a voter-verified paper trail (“VVPT”), in the case of DREs.

We have assumed that jurisdictions take the following steps when conducting an Automatic Routine Audit (when referring to this set of assumptions “Regimen for an Automatic Routine Audit”):

Deliberative Process  
Privilege

Rodriguez

Draft comments submitted by Rodriguez, April 14, 2007; 1:45 pm

April 13, 2007

EAC Board of Advisors  
EAC Standards Board

RE: EAC Election Crimes Study

Dear Members of the EAC Standards Board and EAC Board of Advisors:

The U.S. Election Assistance Commission has recently come under fire for not releasing a draft report from EAC's Voting Fraud and Voter Intimidation project, which ~~that~~ was submitted by two contracted ~~research consultants~~ ~~employees~~, Tova Wang and Job Serebrov. That draft report, which is attached to this letter, is a compilation of summaries from of the work that they conducted. We thought it was important to explain the circumstances surrounding this project.

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Comment [R1]: What does the contract say, are they employees or research consultants????

In 2005, the EAC Board of Advisors helped EAC prioritize its research efforts. As a result, EAC developed a research agenda that included studying voting fraud and voter intimidation. In the fall of 2005, EAC hired the two contract employees to conduct an initial review of the information available about voting fraud and voter intimidation. The employees were asked to provide two things: (1) a definition of voting fraud and voter intimidation that could be used in a future and comprehensive study of these topics; and (2) a series of recommendations on how such a future, comprehensive study could be conducted.

In May 2006, a status report regarding this study was presented at the both public meetings of the EAC Standards Board and EAC Board of Advisors. Each group board provided feedback on the progress of the study and the direction that it should take.

Following those meetings, the project's the employees convened a working group convened and that likewise provided feedback on the study. In July 2006, EAC received a body of research including summaries of the articles, books, interviews, and media reports that were compiled and reviewed by the contract employees. In addition, they provided a draft report of the summaries of the interviews for EAC's review and consideration.

EAC staff reviewed the material, briefed the commissioners, including at our October public meeting and presented for commissioner consideration a report, adopted a final report on voting fraud and voter intimidation, Election Crimes: An Initial Review and Recommendations for Future Study, which was adopted at our in-December 2006 public meeting.

After the release of EAC's final report there was some debate about whether EAC should release the draft version provided by our contracted employees. A member of the Board of Advisors, Ms. Barbara Arnwine, went so far as to propose a resolution recommending that the EAC release the original "Voter Fraud and Intimidation Report" to the public, or, alternatively, to the Board of Advisors. The Board of Advisors rejected the considered, but did not pass, a resolution, persuaded by argument that the EAC should have complete control of the use of its commissioned research. This is an issue that the EAC, in light of

recent events, must necessarily resolve with input from its Congressional Committees of Reference, and the Board of Advisors.

On March 1, 2007, urging the release of that document. Recently, EAC testified before a Congressional committee that requested the draft report. A copy was provided to the committee, which and the committee released the draft report this week. The release of the draft report by members of Congress has made it widely available. Thus we attach it to this letter. We value your service on the Board of Advisors and believe that you should receive the draft directly from the EAC, and not a secondary source.

Recently, there has been much discussion surrounding EAC's review process of the material provided by the contract employees, and how much was included in our election crimes the final report. After receiving the information from the consultants, EAC conducted due diligence to make sure the information was accurate, as both boards encouraged us to do regarding this project as well as all research we receive from third parties. During our review, we closely examined any claims regarding existing voter fraud and intimidation or the lack thereof. Due to the small scope of the project, we wanted to be very sure any claims could be fully supported by data.

Comment [R2]: Consistent with RFP?

Comment [R3]: ?

The consultants interviewed 24 people with experience in these issues. As you will see in the consultants' draft, they reached conclusions in their summaries that were based almost entirely solely on the se-interviews they conducted with 24 people, not on the entire body of work they collected. EAC found the iWhile individual accounts were are

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~~certainly informative useful, and they helped define instruct us on what issues we should to examine in moving forward, we did not feel these interviews provided the kind of extensive data upon which to draw these conclusions.~~

Comment [R4]: I would delete this entire paragraph

We understand that the topics of voter fraud and voter intimidation are hotly debated and ~~often sometimes divisive, even among members of the EAC.~~ We assure you that we ~~believe the process we took to review all of the materials and adopt a final report was not motivated by partisan politics, but by a responsibility, especially as a federal agency, and desire to issue data and findings only when they are supported by data that can enable that EAC to could stand firmly behind and defend its conclusions.~~

To avoid even the appearance of partisan influence in future research endeavors, EAC

has established a bipartisan ~~commission panel~~ <sup>subcommittee</sup> to oversee all research. We ~~are currently~~ <sup>have</sup>

~~will also review our contracting policy and internal procedures to make certain that~~ <sup>requested that the IG</sup> ~~obtains the best product and most accurate products from~~ <sup>assure</sup>

~~EAC and its consultants are clear on the products to be delivered, sure consultants~~ <sup>Research consultants and contractors.</sup>

~~provide data that can be fully supported and substantiated. We will will also take a hard look at our internal review process to determine if we can make further improvements as well as identify ways to expedite the process in which we complete these projects.~~

Comment [R5]: Is this the subcommittee?

We ~~will continue to take~~ <sup>have always taken</sup> input from our advisory boards, Congress, and the public very seriously, and we pledge to you that we will ~~continue to~~ provide you with accurate, complete, and supported research, whether that research is conducted by consultants or by EAC staff.

Comment [R6]: I have too little information to endorse this statement.

Thank you for your service, and for your continued commitment to the election process and your support of EAC. We know that you in the election community rely on us to supply you with reliable information and we will strive to provide you with the very best information available on election administration issues.

~~Also we have attached is a copy of EAC's statement on this issue, as well as a statement issued by Congressmen Maurice Hinchey and José Serrano. If you have any questions regarding this study or on any other matter, please don't hesitate to contact us.~~

Sincerely,

Donetta Davidson, Chair

Gracia Hillman, Commissioner

Caroline Hunter, Commissioner

Rosemary Rodriguez, Commissioner

cc: Project Working Group

→ EAC Commissioners have not agreed to release the draft report at this time. However, the document is available on the House Approps, Sub. website along w/ Congressman Hinchey and Serrano's statement on this issue.

because the doc was deemed pre-decisional, releasing it would require a vote by the Commission.

Hunter

April 13, 2007

EAC Board of Advisors  
EAC Standards Board

RE: EAC Election Crimes Study

Dear Members of the EAC Standards Board and EAC Board of Advisors;

which

The U.S. Election Assistance Commission has recently come under fire for not releasing a draft report from EAC's Voting Fraud and Voter Intimidation project that was submitted by two contracted employees, Tova Wang and Job Serebrov. That draft report, which is attached to this letter, is a compilation of summaries of the work that they conducted. We thought it was important to explain the circumstances surrounding this project.

from

In 2005, the EAC Board of Advisors helped EAC prioritize its research efforts. As a result, EAC developed a research agenda that included studying voting fraud and voter intimidation. In the fall of 2005, EAC hired the two contract employees to conduct an initial review of the information available about voting fraud and voter intimidation. The employees were asked to provide two things: (1) a definition of voting fraud and voter intimidation that could be used in a future and comprehensive study of these topics; and (2) a series of recommendations on how such a future, comprehensive study could be conducted.

board

the

In May 2006, a status report regarding this study was presented at both public meetings of the Standards Board and Board of Advisors. Each group provided feedback on the progress of the study and the direction that it should take. Following those meetings, the employees convened a working group that likewise provided feedback on the study. Did the contractors amend the report to incorporate the report - I think they added a narrative section to reflect the comments of the Advisory Bd and the working group, if so we should note that here In July 2006, EAC received a body of research information including summaries of the articles, books, interviews, and media reports that were reviewed by the contract employees. In addition, they provided a draft report for EAC's review and consideration. EAC adopted a final report on voting fraud and voter intimidation, *Election Crimes: An Initial Review and Recommendations for Future Study*, in December 2006. The final report was [I think we should characterize the report here - something like the report was amended to ensure conclusions could be supported, x number of recommendations were adopted, etc]

project

convened and

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Serg  
Gardner

After the release of EAC's final report there was some debate about whether EAC should release the draft version provided by our contracted employees. The Board of Advisors considered, but did not pass, a resolution urging the release of that document. Recently, EAC testified before a Congressional committee that requested the draft report. A copy was provided to the committee, and the committee released the draft report this week.

Last

On Mar 7, 2007

proposed by one of its members, Barbara Aronowicz,

There has been much discussion surrounding EAC's review process of the material provided by the contract employees, and how much was included in the final report. After receiving the information from the consultants, EAC conducted due diligence to ensure its accuracy and to verify that conclusions were supported by the underlying research. make sure the information was accurate, as both boards encouraged us to do regarding this project as well as all research we receive from third parties. During our review we closely examined any claims regarding existing voter fraud and intimidation of the lack thereof. Due to the small scope of the project, we wanted to be very sure any claims could be fully supported by data.

yes

The consultants interviewed 24 people with experience in these issues. ~~As you will see in the consultants' draft,~~ they reached conclusions in their summaries that were based solely on these interviews, not on the entire body of work information they collected. While individual accounts are certainly useful and instruct us on what issues to examine in moving forward, ~~we did not feel these interviews do not~~ provided the kind of extensive data upon which to ~~draw these conclusions~~ conclusions can be drawn.

often

We understand that the topics of voter fraud and voter intimidation are hotly debated and ~~sometimes~~ divisive. We assure you that the process we took to review all of the materials and adopt a final report was not motivated by partisan politics, but by a responsibility and desire to issue data and findings that EAC could stand firmly behind and defend.

see RR's edrts

bipartisan subcommittee

To avoid even the appearance of partisan influence in future research endeavors, EAC has established a bipartisan ~~commission panel~~ to oversee all research. We will also review our contracting policy and internal procedures to make sure consultants provide data that can be fully supported and substantiated. ~~We will also take a hard look at our internal review process to determine if we can make further improvements as well as identify ways to expedite the process in which we complete these projects.~~

have requested that the IG see RR

We take input from our advisory boards, Congress, and the public very seriously, and we pledge to you that we will continue to provide you with accurate, complete, and supported research, whether that research is conducted by consultants or by EAC staff.

to make sure EAC receives the best & most accurate products from its research

We have attached a copy of EAC's statement on this issue, as well as a statement issued by Congressmen Maurice Hinchey and José Serrano.

Thank you for your service and for your continued commitment to the election process. We know that you in the election community rely on us to supply you with reliable information and we will strive to provide you with the very best information available on election administration issues.

We have attached a copy of EAC's statement on this issue, as well as a statement issued by Congressmen Maurice Hinchey and José Serrano. If you have any questions regarding this study or on any other matter, please do n't hesitate to contact us.

consultants & contractors

Sincerely,

and your support of EAC.



Deliberative Process  
Privilege

*Rodriguez*  
*Rodriguez*

Draft comments submitted by Rodriguez, April 14, 2007; 1:45 pm

April 13, 2007

EAC Board of Advisors  
EAC Standards Board

RE: EAC Election Crimes Study

Dear Members of the EAC Standards Board and EAC Board of Advisors:

The U.S. Election Assistance Commission has recently come under fire for not releasing a draft report from EAC's Voting Fraud and Voter Intimidation project, which ~~that~~ was submitted by two contracted ~~research consultant~~ employees, Tova Wang and Job Serebrov. That draft report, which is attached to this letter, is a compilation of summaries ~~from~~ of the work that they conducted. We thought it was important to explain the circumstances surrounding this project.

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Comment [R1]: What does the contract say, are they employees or research consultants????

In 2005, the EAC Board of Advisors helped EAC prioritize its research efforts. As a result, EAC developed a research agenda that included studying voting fraud and voter intimidation. In the fall of 2005, EAC hired the two contract employees to conduct an initial review of the information available about voting fraud and voter intimidation. The employees were asked to provide two things: (1) a definition of voting fraud and voter intimidation that could be used in a future and comprehensive study of these topics; and (2) a series of recommendations on how such a future, comprehensive study could be conducted.

In May 2006, a status report regarding this study was presented at the both public meetings of the EAC Standards Board and EAC Board of Advisors. Each group board provided feedback on the progress of the study and the direction that it should take.

Following those meetings, the project's the employees convened a working group convened and that likewise provided feedback on the study. In July 2006, EAC received a body of research including summaries of the articles, books, interviews, and media reports that were compiled and reviewed by the contract employees. In addition, they provided a draft report of the summaries of the interviews for EAC's review and consideration.

EAC staff reviewed the material, briefed the commissioners, including at our October public meeting and presented for commissioner consideration a report, adopted a final report on voting fraud and voter intimidation, Election Crimes: An Initial Review and Recommendations for Future Study, which was adopted at our in-December 2006 public meeting.

After the release of EAC's final report there was some debate about whether EAC should release the draft version provided by our contracted employees. A member of the Board of Advisors, Ms. Barbara Arnwine, went so far as to propose a resolution recommending that the EAC release the original "Voter Fraud and Intimidation Report" to the public, or, alternatively, to the Board of Advisors. The Board of Advisors rejected the considered, but did not pass, a resolution, persuaded by argument that the EAC should have complete control of the use of its commissioned research. This is an issue that the EAC, in light of

recent events, must necessarily resolve with input from its Congressional Committees of Reference, and the Board of Advisors.

On March 1, 2007, urging the release of that document. Recently, EAC testified before a Congressional committee that requested the draft report. A copy was provided to the committee, which and the committee released the draft report this week. The release of the draft report by members of Congress has made it widely available. Thus we attach it to this letter. We value your service on the Board of Advisors and believe that you should receive the draft directly from the EAC, and not a secondary source.

Recently, there has been much discussion surrounding EAC's review process of the material provided by the contract employees, and how much was included in our election crimes the final report. After receiving the information from the consultants, EAC conducted due diligence, to make sure the information was accurate, as both boards encouraged us to do regarding this project as well as all research we receive from third parties. During our review, we closely examined any claims regarding existing voter fraud and intimidation or the lack thereof. Due to the small scope of the project, we wanted to be very sure any claims could be fully supported by data.

Comment [R2]: Consistent with RFP?

Comment [R3]: ?

The consultants interviewed 24 people with experience in these issues. As you will see in the consultants' draft, they reached conclusions in their summaries that were based almost entirely solely on the se-interviews they conducted with 24 people, not on the entire body of work they collected. EAC found the iWhile individual accounts were are

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~~certainly informative useful and they helped define instruct us on what issues we should to examine in moving forward, we did not feel these interviews provided the kind of extensive data upon which to draw these conclusions.~~

Comment [R4]: I would delete this entire paragraph

We understand that the topics of voter fraud and voter intimidation are hotly debated and ~~often sometimes divisive, even among members of the EAC.~~ We assure you that we ~~believe~~ the process we took to review all of the materials and adopt a final report was not motivated by partisan politics, but by a responsibility, especially as a federal agency, and ~~desire to issue data and findings only when they are supported by data that can enable that EAC to could stand firmly behind and defend its conclusions.~~

To avoid even the appearance of partisan influence in future research endeavors, EAC has established a bipartisan commission panel to oversee all research. We are currently ~~will also reviewing~~ our contracting policy and internal procedures to make certain that ~~EAC and its consultants are clear on the products to be delivered. sure consultants provide data that can be fully supported and substantiated.~~ We ~~will~~ will also take a hard look at our internal review process to determine if we can make further improvements as well as identify ways to expedite the process in which we complete these projects.

Comment [R5]: Is this the subcommittee?

We ~~will continue to take have always taken~~ input from our advisory boards, Congress, and the public very seriously, and we ~~pledge to you that we will continue~~ to provide you with accurate, complete, and supported research, whether that research is conducted by consultants or by EAC staff.

Comment [R6]: I have too little information to endorse this statement.

Thank you for your service, and for your continued commitment to the election process and your support of EAC. We know that you in the election community rely on us to supply you with reliable information and we will strive to provide you with the very best information available on election administration issues.

Also We have attached is a copy of EAC's statement on this issue, as well as a statement issued by Congressmen Maurice Hinchey and José Serrano. If you have any questions regarding this study or on any other matter, please don't hesitate to contact us.

Sincerely,

Donetta Davidson, Chair

Gracia Hillman, Commissioner

Caroline Hunter, Commissioner

Rosemary Rodriguez, Commissioner

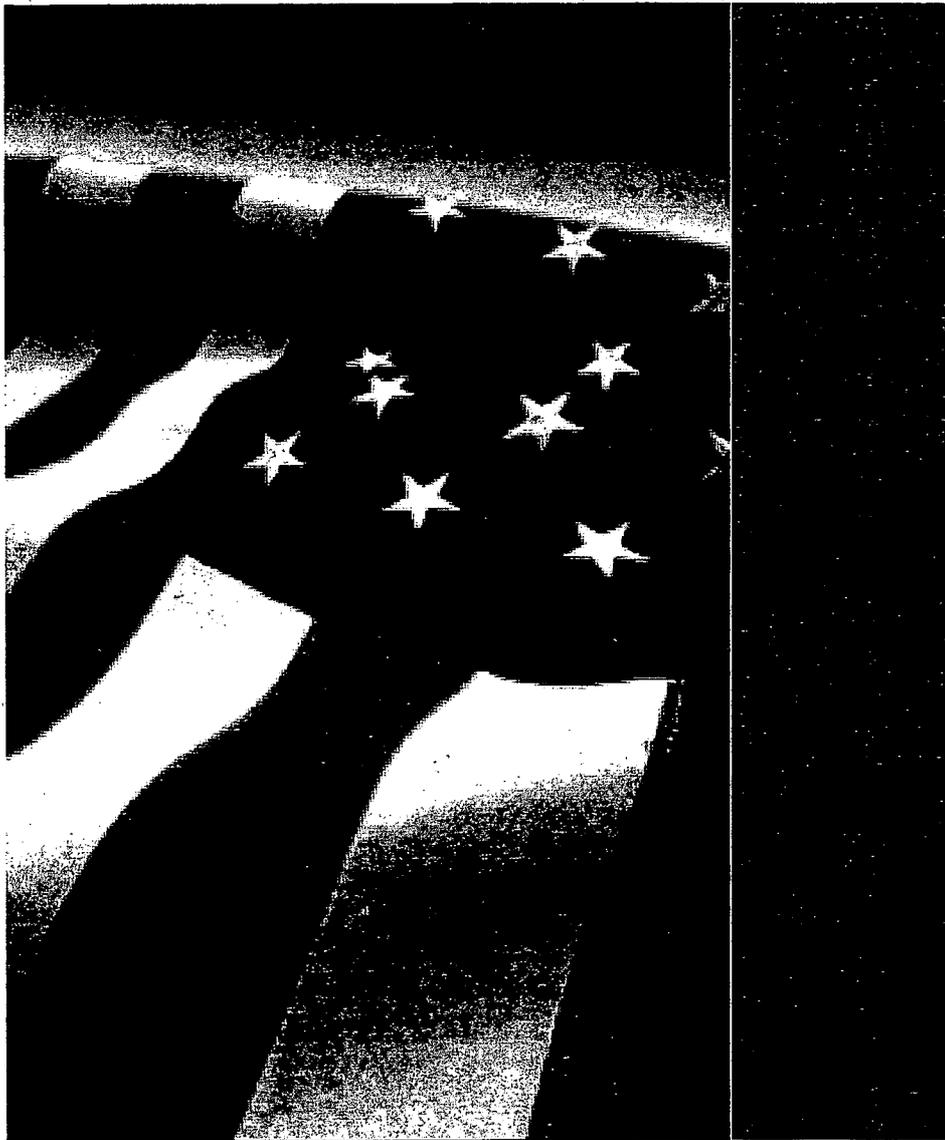
cc: Project Working Group

**U.S. ELECTION ASSISTANCE COMMISSION**



**Election Crimes: An Initial Review and  
Recommendations for Future Study**

December 2006



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Deliberative Process  
Privilege

**EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY****INTRODUCTION**

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the lawful application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a working definition of election crimes and adopted research methodology on how to assess the existence and enforcement of election crimes in the United States.

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. The initial study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,<sup>1</sup> who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic of voting fraud and voter intimidation; (2) developing a uniform definition of voting

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<sup>1</sup> Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".

fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to National Republican  
Campaign Committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

007500

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

### **Reports and Studies of Voting fraud and Intimidation**

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.

- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

### Books

- John Fund, *Stealing Elections: How Voting fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as

“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### **Interviews with Experts**

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**

Author, *Deliver the Vote*

**Douglas Webber**

Assistant Attorney General, Indiana

**Heather Dawn Thompson**

Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**

Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**

Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**

Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**

Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**

Counsel  
Democratic National Committee

**John Ravitz**

Executive Director  
New York City Board of Elections

**Sharon Priest**

Former Secretary of State, Arkansas

**Kevin Kennedy**

Executive Director  
State Board of Elections, Wisconsin

**Evelyn Stratton**

Justice  
Supreme Court of Ohio

**Joseph Rich**

Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Craig Donsanto**

Director, Public Integrity Section  
U.S. Department of Justice

**John Tanner**

Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,

voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix "3".

### **Case Law and Statutes**

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix "4".

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters on voter registration list and/or voting,
- multiple voting,
- felons voting,

- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future. As a result, EAC has adopted the use of the term “election crimes” for its future study.

### Current Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud, n. 1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu[ally] a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting.

Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing “voting fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voting fraud” does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, “voting fraud” does not capture actions or willful inaction in the voter registration process. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases “voting fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

### **New Terminology**

The goal of this study was to develop a common definition of what is generically referred to as “voting fraud” and “voter intimidation” that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, “voting fraud” and “voter intimidation” can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

Thus, EAC has adopted the use of the phrase “election crimes” to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, we recognize that the resources, both financial and human capital, needed to study all “voting fraud” and “voter intimidation,” including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to

case. A more complete discussion of the concept of “election crimes” follows along with a list of excluded actions.

### **The Definition of an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

#### ***Acts of Deception***

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter’s precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;

- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a materially false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

*Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

*Acts of Damage or Destruction*

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;

- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

**What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Last, violations of ethical provisions and the Hatch Act are not “election crimes.” Similarly, civil or other wrongs that do not rise to the level of criminal activity (i.e., a misdemeanor, relative felony or felony) are not “election crimes.”

## **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

### ***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

### ***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys’ Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such

practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

**Accepted Recommendations**

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator

being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

*Analyze Survey Data in Light of State Laws and Procedures*

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

**CONCLUSION**

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.

**EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY****EXECUTIVE SUMMARY**

The Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including “voting fraud” and “voter intimidation.” In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of “voting fraud” and “voter intimidation” and to identify research methodology to conduct a comprehensive, nationwide study of these topics.

EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

In order to facilitate future study of these topics, EAC developed a working definition of “election crimes.” “Election crimes” are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

From EAC’s review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at “election crimes.” Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical provisions. EAC will study these concepts by surveying the states’ chief election officials about complaints they received through their administrative complaint processes, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received and charges filed.

## INTRODUCTION

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the lawful application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a working definition of election crimes and adopted research methodology on how to assess the existence and enforcement of election crimes in the United States.

## PURPOSE AND METHODOLOGY OF THE EAC STUDY

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. The initial study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,<sup>1</sup> who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic of voting fraud and voter intimidation; (2) developing a uniform definition of voting fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

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<sup>1</sup> Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to National Republican  
Campaign Committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

### **Reports and Studies of Voting fraud and Intimidation**

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.

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- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

### Books

- John Fund, *Stealing Elections: How Voting fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation: None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as

“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

#### **Interviews with Experts**

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**

Author, *Deliver the Vote*

**Douglas Webber**

Assistant Attorney General, Indiana

**Heather Dawn Thompson**

Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**

Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**

Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**

Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**

Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**

Counsel  
Democratic National Committee

**John Ravitz**

Executive Director  
New York City Board of Elections

**Sharon Priest**

Former Secretary of State, Arkansas

**Kevin Kennedy**

Executive Director  
State Board of Elections, Wisconsin

**Evelyn Stratton**

Justice  
Supreme Court of Ohio

**Joseph Rich**

Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Craig Donsanto**

Director, Public Integrity Section  
U.S. Department of Justice

**John Tanner**

Chief  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,

voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix "3".

### **Case Law and Statutes**

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix "4".

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters on voter registration list and/or voting,
- multiple voting,
- felons voting,

- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future. As a result, EAC has adopted the use of the term “election crimes” for its future study.

### Current Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud, n. 1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu[ally] a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting.

Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing “voting fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voting fraud” does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, “voting fraud” does not capture actions or willful inaction in the voter registration process. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases “voting fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

### **New Terminology**

The goal of this study was to develop a common definition of what is generically referred to as “voting fraud” and “voter intimidation” that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, “voting fraud” and “voter intimidation” can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

Thus, EAC has adopted the use of the phrase “election crimes” to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, we recognize that the resources, both financial and human capital, needed to study all “voting fraud” and “voter intimidation,” including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to

case. A more complete discussion of the concept of “election crimes” follows along with a list of excluded actions.

### **The Definition of an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

#### ***Acts of Deception***

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter’s precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;

- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a materially false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

*Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

*Acts of Damage or Destruction*

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;

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- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

**What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Last, violations of ethical provisions and the Hatch Act are not “election crimes.” Similarly, civil or other wrongs that do not rise to the level of criminal activity (i.e., a misdemeanor, relative felony or felony) are not “election crimes.”

## **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

### ***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

### ***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys’ Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such

practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

**Accepted Recommendations**

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator

being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

*Analyze Survey Data in Light of State Laws and Procedures*

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

**CONCLUSION**

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.

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**APPENDIX 1 – BIOGRAPHIES OF JOB SEREBROV AND TOVA WANG**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 2 – SUMMARIES OF BOOKS, REPORTS AND ARTICLES**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 3 – SUMMARIES OF INTERVIEWS**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 4 – SUMMARIES OF CASES REVIEWED**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY**

**EXECUTIVE SUMMARY**

The Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including “voting fraud” and “voter intimidation.” In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of “voting fraud” and “voter intimidation” and to identify research methodology to conduct a comprehensive, nationwide study of these topics.

EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

In order to facilitate future study of these topics, EAC developed a working definition of “election crimes.” “Election crimes” are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

From EAC’s review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at “election crimes.” Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical provisions. EAC will study these concepts by surveying the states’ chief election officials about complaints they received through their administrative complaint processes, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received and charges filed.

## INTRODUCTION

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the lawful application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a working definition of election crimes and adopted research methodology on how to assess the existence and enforcement of election crimes in the United States.

## PURPOSE AND METHODOLOGY OF THE EAC STUDY

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. The initial study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,<sup>1</sup> who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic of voting fraud and voter intimidation; (2) developing a uniform definition of voting fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

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<sup>1</sup> Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to National Republican  
Campaign Committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

### **Reports and Studies of Voting fraud and Intimidation**

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.

- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

#### Books

- John Fund, *Stealing Elections: How Voting fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Foiled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as

“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### **Interviews with Experts**

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**  
Author, *Deliver the Vote*

**Douglas Webber**  
Assistant Attorney General, Indiana

**Heather Dawn Thompson**  
Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**  
Counsel  
Democratic National Committee

**John Ravitz**  
Executive Director  
New York City Board of Elections

**Sharon Priest**  
Former Secretary of State, Arkansas

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin

**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**John Tanner**  
Chief  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,

voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix "3".

### **Case Law and Statutes**

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix "4".

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters on voter registration list and/or voting,
- multiple voting,
- felons voting,

- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future. As a result, EAC has adopted the use of the term “election crimes” for its future study.

### Current Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud**, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu[ally] a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting.

Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing “voting fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voting fraud” does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, “voting fraud” does not capture actions or willful inaction in the voter registration process. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases “voting fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

### **New Terminology**

The goal of this study was to develop a common definition of what is generically referred to as “voting fraud” and “voter intimidation” that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, “voting fraud” and “voter intimidation” can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

Thus, EAC has adopted the use of the phrase “election crimes” to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, we recognize that the resources, both financial and human capital, needed to study all “voting fraud” and “voter intimidation,” including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to

case. A more complete discussion of the concept of “election crimes” follows along with a list of excluded actions.

### **The Definition of an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

#### ***Acts of Deception***

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter’s precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;

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- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a materially false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

*Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

*Acts of Damage or Destruction*

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;

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- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

**What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Last, violations of ethical provisions and the Hatch Act are not “election crimes.” Similarly, civil or other wrongs that do not rise to the level of criminal activity (i.e., a misdemeanor, relative felony or felony) are not “election crimes.”

## **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

### ***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

### ***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys’ Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such

practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

**Accepted Recommendations**

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator

being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

*Analyze Survey Data in Light of State Laws and Procedures*

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

**CONCLUSION**

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.

DRAFT – DO NOT DISTRIBUTE

**APPENDIX 1 – BIOGRAPHIES OF JOB SEREBROV AND TOVA WANG**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 2 – SUMMARIES OF BOOKS, REPORTS AND ARTICLES**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 3 – SUMMARIES OF INTERVIEWS**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 4 – SUMMARIES OF CASES REVIEWED**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).



## **EXECUTIVE SUMMARY**

The Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including “voting fraud” and “voter intimidation.” In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of “voting fraud” and “voter intimidation” and to identify research methodology to conduct a comprehensive, nationwide study of these topics.

EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

In order to facilitate future study of these topics, EAC developed a working definition of “election crimes.” “Election crimes” are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

From EAC’s review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at “election crimes.” Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical laws and regulations. EAC will study these concepts by surveying the states’ chief election officials about complaints they received, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received, charges filed, and final disposition of each complaint.



## **INTRODUCTION**

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the lawful application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a working definition of election crimes and adopted research methodology on how to assess the existence and enforcement of election crimes in the United States.

### **PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. The initial study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,<sup>1</sup> who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic

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<sup>1</sup> Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".



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of voting fraud and voter intimidation; (2) developing a uniform definition of voting fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to National Republican  
Campaign Committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants



or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

### **Reports and Studies of Voting fraud and Intimidation**

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix "2":

#### **Articles and Reports**

- People for the American Way and the NAACP, "The Long Shadow of Jim Crow," December 6, 2004.
- Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, "An Evaluation: Voter Registration Elections Board" Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, United States Attorney's Office "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," May 10, 2005.
- National Commission on Federal Election Reform, "Building Confidence in U.S. Elections," Center for Democracy and Election Management, American University, September 2005.



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- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law "Response to the Report of the 2005 Commission on Federal Election Reform," September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting Fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."



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- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.
- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

### **Books**

- John Fund, *Stealing Elections: How Voting Fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.



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During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### **Interviews with Experts**

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:



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**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**  
Author, *Deliver the Vote*

**Douglas Webber**  
Assistant Attorney General, Indiana

**Heather Dawn Thompson**  
Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**  
Counsel  
Democratic National Committee

**John Ravitz**  
Executive Director  
New York City Board of Elections

**Sharon Priest**  
Former Secretary of State, Arkansas

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin



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**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**John Tanner**  
Chief  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix "3".

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## **Case Law and Statutes**

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix "4".

## **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters on voter registration list and/or voting,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening regarding the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a "battleground" or "swing" state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these



reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From this study of available information on voting fraud and voter intimidation, EAC has learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes "voting fraud" and "voter intimidation." Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future. As a result, EAC has adopted the use of the term "election crimes" for its future study.

### Current Terminology

The phrase "voting fraud" is really a misnomer for a concept that is much broader. "Fraud" is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud**, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu[ally] a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black's Law Dictionary, Eighth Edition, p. 685.

"Voting" is the act of casting votes to decide an issue or contest. Black's Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of "voting fraud," it means fraudulent or deceptive acts committed to influence the act of voting. Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing "voting fraud." Similarly, a person who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter.

The phrase "voting fraud" does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, "voting fraud" does not capture actions or willful inaction in the voter registration process. When an election official willfully and knowingly refuses



to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases “voting fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

### **New Terminology**

The goal of this study was to develop a common definition of what is generically referred to as “voting fraud” and “voter intimidation” that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, “voting fraud” and “voter intimidation” can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

Thus, EAC has adopted the use of the phrase “election crimes” to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, EAC recognizes that the resources, both financial and human capital, needed to study all “voting fraud” and “voter intimidation,” including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to case. A more complete discussion of the concept of “election crimes” follows along with a list of excluded actions.



## **The Definition of an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

### ***Acts of Deception***

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;



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- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a materially false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

### *Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.



***Acts of Damage or Destruction***

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

**What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that EAC does not include in its definition of "election crimes." All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not "election crimes" for purposes of this study and any



future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Last, violations of ethical laws and regulations and the Hatch Act are not “election crimes.” Similarly, civil or other wrongs that do not rise to the level of criminal activity (i.e., a misdemeanor, relative felony or felony) are not “election crimes.”

## **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

### ***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations identified in the literature review.



***Recommendation 4: Review Complaints Filed With "MyVote1" Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the Department of Justice/Office of Personnel Management observer and "monitor field reports" from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer (DEO) to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and



feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

***Recommendation 9: Explore Improvements to Federal Law***

Future research should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual



cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

***Recommendation 15: Study the Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system that could be investigated to determine how well that system is working.



## Accepted Recommendations

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and EAC should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after EAC determines the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

### *Survey Chief Election Officers Regarding Administrative Complaints*

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.



In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. In addition, we will seek information about any complaints of fraud or intimidation filed with the election official outside of the administrative complaint procedure. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help EAC understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.



*Analyze Survey Data in Light of State Laws and Procedures*

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available for the effort.

**CONCLUSION**

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.



**APPENDIX 1 – BIOGRAPHIES OF JOB SEREBROV AND TOVA WANG**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 2 – SUMMARIES OF BOOKS, REPORTS AND ARTICLES**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 3 – SUMMARIES OF INTERVIEWS**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 4 – SUMMARIES OF CASES REVIEWED**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).



## EXECUTIVE SUMMARY

The Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including “voting fraud” and “voter intimidation.” In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of “voting fraud” and “voter intimidation” and to identify research methodology to conduct a comprehensive, nationwide study of these topics.

EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

In order to facilitate future study of these topics, EAC developed a working definition of “election crimes.” “Election crimes” are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

From EAC’s review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at “election crimes.” Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical laws and regulations. EAC will study these concepts by surveying the states’ chief election officials about complaints they received, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received, charges filed, and final disposition of each complaint.



## **INTRODUCTION**

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the lawful application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a working definition of election crimes and adopted research methodology on how to assess the existence and enforcement of election crimes in the United States.

### **PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. The initial study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,<sup>1</sup> who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic

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<sup>1</sup> Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".



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of voting fraud and voter intimidation; (2) developing a uniform definition of voting fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to National Republican  
Campaign Committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants



or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

### **Reports and Studies of Voting fraud and Intimidation**

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix "2":

#### **Articles and Reports**

- People for the American Way and the NAACP, "The Long Shadow of Jim Crow," December 6, 2004.
- Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, "An Evaluation: Voter Registration Elections Board" Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, United States Attorney's Office "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," May 10, 2005.
- National Commission on Federal Election Reform, "Building Confidence in U.S. Elections," Center for Democracy and Election Management, American University, September 2005.



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- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law "Response to the Report of the 2005 Commission on Federal Election Reform," September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting Fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."



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- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.
- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

**Books**

- John Fund, *Stealing Elections: How Voting Fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Foiled Again*, Basic Books, 2005.



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During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### **Interviews with Experts**

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:



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**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**  
Author, *Deliver the Vote*

**Douglas Webber**  
Assistant Attorney General, Indiana

**Heather Dawn Thompson**  
Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**  
Counsel  
Democratic National Committee

**John Ravitz**  
Executive Director  
New York City Board of Elections

**Sharon Priest**  
Former Secretary of State, Arkansas

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin



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**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**John Tanner**  
Chief  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix "3".

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## **Case Law and Statutes**

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix "4".

## **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters on voter registration list and/or voting,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening regarding the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a "battleground" or "swing" state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these



reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From this study of available information on voting fraud and voter intimidation, EAC has learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes "voting fraud" and "voter intimidation." Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future. As a result, EAC has adopted the use of the term "election crimes" for its future study.

### Current Terminology

The phrase "voting fraud" is really a misnomer for a concept that is much broader. "Fraud" is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud**, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu[ally] a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black's Law Dictionary, Eighth Edition, p. 685.

"Voting" is the act of casting votes to decide an issue or contest. Black's Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of "voting fraud," it means fraudulent or deceptive acts committed to influence the act of voting. Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing "voting fraud." Similarly, a person who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter.

The phrase "voting fraud" does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, "voting fraud" does not capture actions or willful inaction in the voter registration process. When an election official willfully and knowingly refuses



to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases "voting fraud" and "voter intimidation" are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

### **New Terminology**

The goal of this study was to develop a common definition of what is generically referred to as "voting fraud" and "voter intimidation" that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, "voting fraud" and "voter intimidation" can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

Thus, EAC has adopted the use of the phrase "election crimes" to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, EAC recognizes that the resources, both financial and human capital, needed to study all "voting fraud" and "voter intimidation," including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to case. A more complete discussion of the concept of "election crimes" follows along with a list of excluded actions.



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## The Definition of an Election Crime for Purposes of this Study

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

### *Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;



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- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a materially false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

*Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.



***Acts of Damage or Destruction***

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

**What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that EAC does not include in its definition of "election crimes." All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not "election crimes" for purposes of this study and any



future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Last, violations of ethical laws and regulations and the Hatch Act are not “election crimes.” Similarly, civil or other wrongs that do not rise to the level of criminal activity (i.e., a misdemeanor, relative felony or felony) are not “election crimes.”

## **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

### ***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations identified in the literature review.



***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the Department of Justice/Office of Personnel Management observer and “monitor field reports” from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer (DEO) to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and



feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

***Recommendation 9: Explore Improvements to Federal Law***

Future research should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual



cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

***Recommendation 15: Study the Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system that could be investigated to determine how well that system is working.



## **Accepted Recommendations**

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and EAC should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after EAC determines the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

### ***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.



In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. In addition, we will seek information about any complaints of fraud or intimidation filed with the election official outside of the administrative complaint procedure. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help EAC understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.



*Analyze Survey Data in Light of State Laws and Procedures*

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available for the effort.

**CONCLUSION**

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.



**APPENDIX 1 – BIOGRAPHIES OF JOB SEREBROV AND TOVA WANG**

**APPENDIX 2 – SUMMARIES OF BOOKS, REPORTS AND ARTICLES**

**APPENDIX 3 – SUMMARIES OF INTERVIEWS**

**APPENDIX 4 – SUMMARIES OF CASES REVIEWED**

**Appendix "1"**  
**Biographies of Job Serebrov and Tova Wang**

## **JOB SEREBROV**

2110 S. Spring  
Little Rock, AR 72206  
501.374.2176 (H)  
501.324.7330 (O)  
serebrov@sbcglobal.net

### **LEGAL**

#### **PRACTICE:**

Law Clerk to Judge Lavenski R. Smith, U.S. Court of Appeals for the Eighth Circuit, Little Rock, Arkansas (August 2004-August 2005)

Private practice of law (April 1991 - December 1998, May 1999 - July 2004)

Associate attorney, The Nixon Law Firm, 2340 Green Acres Road, Ste. 12, Fayetteville, Arkansas 72703 (December 1998-April 1999)

#### Areas of legal practice:

- Federal and state appeals and trials
- Election law (state and FEC)
- Legislative drafting and review
- Legal research and writing
- Federal and state Constitutional law

### **BAR**

#### **ADMISSIONS:**

#### FEDERAL

- U.S. Supreme Court
- U.S. Court of Appeals for the following circuits: First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, D.C., and Federal

#### STATE

- Supreme Court of Oklahoma (1991)
- Supreme Court of Nebraska (1992)
- Supreme Court of Arkansas (1994)

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## **EDUCATION:**

- Graduate Certificate, Election Governance, Griffith University, Queensland, Australia (2003)
- Master of Laws, University of Arkansas School of Law, Fayetteville, Arkansas (1993)
- Juris Doctorate, Washburn University School of Law, Topeka, Kansas (1984)
- Bachelor of Arts in History, Rutgers University, New Brunswick, New Jersey (1980)

## **ADMINISTRATIVE**

### **EXPERIENCE**

Chairman, Committee for the Revision of the Arkansas Constitution, State Political Party of Arkansas, Little Rock, Arkansas (1995-1996)

- Headed committee comprised of state legislators, attorneys, business people, and an appellate judge to review the proposed state Constitution and make recommendations

Member, Washington County Board of Election Commissioners, Fayetteville, Arkansas (1990-1996)

- Enforced election laws within the county
- Drafted administrative regulations for the commission
- Supervised the training of poll workers
- Evaluated various voting systems and purchased an optical scan system to be used countywide
- Prepared and defended annual budgets before the Washington County Quorum Court
- Sat as a member of an administrative tribunal when necessary
- Hired and supervised staff

## **OTHER**

### **EXPERIENCE:**

Senior consultant, AfricaGlobal, Inc., Washington, D.C.  
(March 2001-December 2003)

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- Advised on political and economic affairs

Director of International Development, Louisiana State University, 107 Hatcher Hall, Baton Rouge, Louisiana 70803  
(February 2000-August 2003)

- Developed, drafted, wrote grants for, and administered international research, training, education, and consulting projects, especially those dealing with democratization issues
- Drafted and negotiated international contractual agreements for research and faculty and student exchange with universities and research centers
- Hired and supervised staff
- Drafted office budget, project budgets, and strategic plans
- Reorganized and expanded the role of the Office of International Development
- Advised the Office of International Programs and individual units on improving public relations; consulted on PR strategies
- Interacted with other LSU departments and officials, U.S. and state government agencies, NGOs, and foreign governments and universities

Legislative Adviser for the Director of the Namibian Election Commission, Vice Chancellor of the University of Namibia, and the Speaker of the Namibian National Assembly  
(January 2000-June 2002)

- Reviewed national election code and suggested changes
- Drafted national legislation merging the independent agricultural college into the University of Namibia system
- Drafted national legislation guaranteeing voting rights to agricultural workers

Consultant to various members of the Arkansas General Assembly (1994-1999)

- Advised on constitutionality of proposed legislation
- Drafted legislation

Consultant to the Arkansas Attorney General on redistricting the Court of Appeals (1996-1998)

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- Drafted five redistricting bills and maps for the constitutionally required redistricting of the Court of Appeals

Member, Committee on Department of Corrections, Murphy Commission - Restructure of Arkansas Government, Little Rock, Arkansas (1996-1997)

- Reviewed the existing structure of the state Department of Corrections
- Advised on how to streamline the department

REFERENCES:

Judge Morris Arnold  
Finch  
Eighth Circuit Court of Appeals

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Little Rock, AR 72203-2060  
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72712

Judge Lavenski Smith  
Eighth Circuit Court of Appeals  
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Little Rock, AR 72201  
501.604.5130

Judge Herb Ashby  
Former judge, Second Appellate District, Division 5  
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Thousand Oaks, CA 91362  
805.493.8205

Judge Jay  
Nineteenth

Judicial  
Circuit West,  
203 East  
Bentonville, AR  
479.271.1020

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**Tova Andrea Wang**  
201 West 74<sup>th</sup> Street, Apt. 11F  
New York, NY 10023  
(212) 362-5223

**BAR ADMISSION:** New York

**EDUCATION**

**NEW YORK UNIVERSITY SCHOOL OF LAW, New York, N.Y.**  
J.D., May, 1996

**BARNARD COLLEGE, COLUMBIA UNIVERSITY, New York, N.Y.**  
B.A. in Political Science, *magna cum laude*, May, 1991; GPA: 3.8

**EXPERIENCE**

**THE CENTURY FOUNDATION, New York, N.Y.**

**Senior Program Officer and Democracy Fellow: March, 2001 – Present**

Research, write, and publish reports, provide commentary to national and state press, provide expertise to policymakers, give expert testimony and speak before groups around the country on election reform and voting rights, in addition to other civil liberties issues. Currently serve as the Executive Director of The Century Foundation's Post-2004 Election Reform Working Group, comprised of preeminent election law scholars from across the country. Served as staff person to the National Commission on Federal Election Reform, co-chaired by former Presidents Carter and Ford, of which The Century Foundation was a co-sponsor.

**THE KAMBER GROUP, New York, N.Y.**

**Deputy Director of Public Policy: August, 1998 – March, 2001**

Formulated and drafted public policy ideas, provided policy research and analysis, and provided general strategic political consulting services to non-governmental organizations, political campaigns, elected officials and grassroots organizations. Conducted lobbying and public advocacy campaigns.

**NEW YORK CITY PUBLIC ADVOCATE, Investigation Into Police Misconduct, New York, N.Y.**

**Deputy Director and Director of Policy: January, 1999 – July, 2000**

Conducted all policy analysis and research, including evaluating programs and policies of the NYPD and police departments across the world. Developed policy proposals, conducted briefings, and wrote reports. Helped manage collection of quantitative and qualitative data, expert interviews, hearings, budgeting and fundraising.

**INDEPENDENT POLICY/POLITICAL CONSULTANT: August, 1996 – August, 1998,**  
New York and Washington, D.C.

Advised on policy, politics, legislation, and public relations for Reverend Jesse Jackson, the Children's Defense Fund, and the Academy of Political Science.

**AMERICAN JOURNAL OF INTERNATIONAL LAW, New York, N.Y.**

**Assistant to the Editor-in-Chief, Theodor Meron: September, 1995 - May, 1996**

Researched, edited and assisted in writing articles and speeches on current issues in international human rights law.

**U.S. DEPARTMENT OF JUSTICE, Executive Office for Immigration Review, New York, N.Y.**

**Legal Intern: June - August, 1995**

Researched and wrote immigration court decisions in political asylum, deportation and exclusion cases.

**CLINTON FOR PRESIDENT CAMPAIGN, New York, N.Y.**

**Manhattan Field Director: February - July, 1992**

Coordinated all campaign field operations in Manhattan. Negotiated the support of elected officials and political

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leaders; conducted outreach to community organizations; mobilized and managed activities of 1000 volunteers.

**ACTIVITIES/ASSOCIATIONS**

Member, Election Law Committee, Association of the Bar of the City of New York

Member, State Affairs Committee, Citizens Union of New York

Member, Make Votes Count Committee, Citizens Union of New York

Founding member, American Constitution Society – New York

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**Appendix "2"  
Summaries of Articles, Reports and Books**

**A Funny Thing Happened on the Way to the White House by David E. Johnson & Jonny R. Johnson**

A Funny Thing Happened adds almost nothing to the present study. It contains no footnotes and no references to primary source material, save what may be able to be gleaned from the bibliography. The Johnsons take a historical look at United States Presidential elections from Andrew Jackson to George Bush by providing interesting stories and other historical information. Unfortunately, there are only three pages out of the entire book that touches on vote fraud in the first Bush election.

The authors assert that the exit polls in Florida were probably correct. The problem was the pollsters had no way of knowing that thousands of votes would be invalidated. But the authors do not believe that fraud was the cause of the tabulation inaccuracy. The major cause was undervotes and overvotes which, if all counted, would have altered the result, compounded by the use of the butterfly ballot in some strategic counties. Additionally, Ralph Nader's votes were primarily a bleed off of needed Gore votes. The authors accused Katherine Harris, then Florida Secretary of State and co-chair of the Bush campaign in Florida for prematurely certifying the state vote. The authors also ridiculed United States Secretary of State James A. Baker III, for using the courts to block attempts to hand count votes. Finally, the authors indicated that a mob of Republican partisans descended on the vote counters in Dade County and effectively stopped the count.

**Vote Fraud, Intimidation & Suppression In The 2004 Presidential Election**

**American Center for Voting Rights Report**

According to its website," the American Center For Voting Rights Legislative Fund was founded in February 2005 on the belief that public confidence in our electoral system is the cornerstone of our democracy... ACVR Legislative Fund supports election reform that protects the right of all citizens to participate in the election process free of intimidation, discrimination or harassment and which will make it easy to vote but tough to cheat.

Using court records, police reports and news articles, ACVR Legislative Fund presented this Report documenting hundreds of reported incidents and allegations from around the country. ACVR Legislative Fund found that thousands of Americans were disenfranchised by illegal votes cast on Election Day 2004. For every illegal vote cast and counted on Election Day, a legitimate voter is disenfranchised. This report alleges a coordinated effort by members of some organizations to rig the election system through voter registration fraud, the first step in any vote fraud scheme that corrupts the election process by burying local officials in fraudulent and suspicious registration forms. ACVR Legislative Fund further found that, despite their heated rhetoric, paid Democrat operatives were far more involved in voter intimidation and suppression activities than were their Republican counterparts during the 2004 presidential election.

In addition to recommended changes and a zero-tolerance commitment by the political parties, ACVR Legislative Fund has identified five cities as “hot spots” which require additional immediate attention. These cities were identified based on the findings of this report and the cities’ documented history of fraud and intimidation. These cities are: Philadelphia, PA, Milwaukee, WI, Seattle, WA, St. Louis/East St. Louis, MO/IL, and Cleveland, OH.

Without going into great detail in this review, this Report: refutes charges of voter intimidation and suppression made against Republican supporters, discusses similar charges against Democrats, details incidents vote fraud and illegal voting and finally discusses problems with vote fraud, voter registration fraud and election irregularities around the country. The majority of this Report is an attempt to redeem Republicans and vilify Democrats.

In terms of sheer numbers, the report most often alleges voter intimidation and voter registration fraud, and to a lesser degree absentee ballot fraud and vote buying.

The Report presented the following recommendations for future action:

- \* Both national political parties should formally adopt a zero-tolerance fraud and intimidation policy that commits the party to pursuing and fully prosecuting individuals and allied organizations who commit vote fraud or who seek to deter any eligible voter from participating in the election through fraud or intimidation. No amount of legislative reform can effectively deter those who commit acts of fraud if there is no punishment for the crime and these acts continue to be tolerated.
- \* States should adopt legislation requiring government-issued photo ID at the polls and for any voter seeking to vote by mail or by absentee ballot. Government-issued photo identification should be readily available to all citizens without cost and provisions made to assure availability of government-issued identification to disabled and low-income citizens.
- \* States should adopt legislation requiring that all polling places be fully accessible and accommodating to all voters regardless of race, disability or political persuasion and that polling locations are free of intimidation or harassment.
- \* States should create and maintain current and accurate statewide voter registration databases as mandated by the federal Help America Vote Act (“HAVA”) and establish procedures to assure that the statewide voter roll is current and accurate and that the names of eligible voters on the roll are consistent with the voter roll used by local election authorities in conducting the election.
- \* States should adopt legislation establishing a 30-day voter registration cutoff to assure that all voter rolls are accurate and that all registrants can cast a regular ballot on Election Day and the election officials have opportunity to establish a current and accurate voter

roll without duplicate or fictional names and assure that all eligible voters (including all recently registered voters) are included on the voter roll at their proper precinct.

\* States should adopt legislation requiring voter registration applications to be delivered to the elections office within one week of being completed so that they are processed in a timely manner and to assure the individuals registered by third party organizations are properly included on the voter roll.

\* States should adopt legislation and penalties for groups violating voter registration laws, and provide the list of violations and penalties to all registration solicitors. Legislation should require those organizations obtaining a voter's registration to deliver that registration to election officials in a timely manner and should impose appropriate penalties upon any individual or organization that obtains an eligible voter's registration and fails to deliver it to election authorities.

\* States should adopt legislation prohibiting "bounty" payment to voter registration solicitors based on the number of registration cards they collect.

### **America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy**

#### **Advancement Project**

The thesis of the Report, America's Modern Poll Tax, written after the 2000 election, is that structural disenfranchisement—the effect of breakdowns in the electoral system, is the new poll tax. Structural disenfranchisement includes “bureaucratic blunders, governmental indifference, and flagrant disregard for voting rights.” The blame for structural disenfranchisement is laid squarely at the feet of states and localities that “shirk their responsibilities or otherwise manipulate election systems,” resulting in voters “either turned away from the polls or their votes are thrown out.”

The interlocking practices and mechanics that comprise structural disenfranchisement are referred to a “ballot blockers” in the report. Most ballot blockers involve the structural elements of electoral administration: “ill-trained poll workers, failures to process registration cards on time or at all, inaccurate registration rolls, overbroad purges of voter rolls, unreasonably long lines, inaccurate ballot translations and a shortage of translators to assist voters who have limited English language skills.” The Report argues that a culture of indifference overlays these issues that both tolerates and excuses widespread disenfranchisement. This culture of indifference is exemplified by legislatures that do not properly fund election systems, officials that send antiquated equipment into poor and minority areas, poorly translated ballots and polling places that are not wheelchair accessible.

The data and conclusions in the Report are taken from eight sample case studies of states and cities across the country and a survey of state election directors that reinforces the

findings of the case studies. Examples of state and city problems were: New York City-in six polling places Chinese translations inverted the Democrats with the Republicans; Georgia-the state computer crashed two weeks before the election, dropping thousands of voters from the rolls; Virginia-registration problems kept an untold number from voting; Chicago-in inner-city precincts with predominately minority populations, almost four out of every ten votes cast for President (in 2000) were discarded; St. Louis-thousands of qualified voters were placed on inactive lists due to an overbroad purge; Florida-a voting list purge of voters whose name and birth date closely resembled those of people convicted of felonies; and, Texas-significant Jim Crow like barriers to minority voting.

The survey of state election directors found: election directors lack the resources to effectively do their jobs and some lack the “ability or will to force local election officials to fix serious problems”; election officials are highly under funded and legislatures refuse to grant their requests for more money; due to a lack of funds, election officials must use old and inferior equipment and can’t improve training or meet structural needs; election officials are generally unaware of racial disparities in voting; only three of the 50 state election administrators are non-white.

The Report “concludes that affected communities and democracy advocates should mobilize to force change.” A number of recommendations are made to protect the electoral franchise including: Federal policies that set nationwide and uniform election policies; federal guarantee of access to provisional ballots; enforcement of voter disability laws; automatic restoration of voting rights to those convicted of a crime after they have completed their sentence; a centralized data base of voters administered by non-partisan individuals; federal standards limiting precinct discarded vote rates to .25 %; federal requirements that jurisdiction provide voter education, including how to protect their right to vote; and laws that strengthen the ability of individuals to bring actions to enforce voting rights and anti-discrimination laws.

### **Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – Or Both?**

**By Chandler Davidson**

As the author describes it, this Report focuses on vote suppression through “ballot security programs”:

These are programs that, in the name of protecting against vote fraud, almost exclusively target heavily black, Latino, or Indian voting precincts and have the intent or effect of discouraging or preventing voters in those precincts from casting a ballot. In some cases, these programs have been found by courts to be illegal. Still, they continue to exist in spite of strong criticism by leaders of minority communities, their allies, and voting rights lawyers.

There are several noteworthy characteristics of these programs. They focus on minority precincts almost exclusively. There is often only the flimsiest evidence that vote fraud is likely to be perpetrated in such precincts. In addition to encouraging the presence of sometimes intimidating Republican poll watchers or challengers who may slow down voting lines and embarrass potential voters by asking them humiliating questions, these programs have sometimes posted people in official-looking uniforms with badges and side arms who question voters about their citizenship or their registration. In addition, warning signs may be posted near the polls, or radio ads may be targeted to minority listeners containing dire threats of prison terms for people who are not properly registered—messages that seem designed to put minority voters on the defensive. Sometimes false information about voting qualifications is sent to minority voters through the mail.”

He further states that a most common theme of the programs over the last 50 years is that of sending white challengers to minority precincts. He says that the tactic of doing mailings, collecting returned materials, and using that as a basis for creating challenger lists and challenging voters at the polls, started in the 1950s and continues to today. The problem with this practice is that reasons for a mailing to be returned include a wrong address, out of date or inaccurate addresses, poor mail delivery in minority areas, and matching mistakes. Davidson also sets out to demonstrate through documentary evidence that the practices have been and are approved of or winked at by high ups in the party.

Davidson goes on to provide numerous examples from the last 50 years to demonstrate his thesis, going through the historical development of Republican ballot security programs from the 1950s through to the present. The author cites and quotes internal Republican letters and memoranda, primary sources and original documents, media reports, scholarly works, as well as the words of judges’ rulings in some of the cases that ended up in litigation to prove his argument.

In addition to describing how the schemes really were brought to the fore in the 1964 election, he describes more recent incidents such as 1981 in New Jersey, 1982 Dallas, Louisiana 1986, Houston 1986, Hidalgo 1988 Orange County 1988, North Carolina 1990, South Carolina 1980-1990, and South Dakota 2002. (Summaries of these examples are available)

Davidson concludes with an outline of some of the features of vote suppression efforts put forth by Republicans under the guise of ballot security programs, as described in the Report, from the 1950s to the present day:

1. An organized, often widely publicized effort to field poll watchers in what Republicans call “heavily Democratic,” but what are usually minority, precincts;

2. Stated concerns about vote fraud in these precincts, which are occasionally justified but often are not;
3. Misinformation and fear campaigns directed at these same precincts, spread by radio, posted signs in the neighborhoods, newspapers, fliers, and phone calls, which are often anonymously perpetrated;
4. Posting “official-looking” personnel at polling places, including but not limited to off-duty police—sometimes in uniform, sometimes armed;
5. Aggressive face-to-face challenging techniques at the polls that can confuse, humiliate, and intimidate—as well as slow the voting process—in these same minority precincts;
6. Challenging voters using inaccurate, unofficial lists of registrants derived from “do-not-forward” letters sent to low-income and minority neighborhoods;
7. Photographing, tape recording, or videotaping voters; and
8. Employing language and metaphors that trade on stereotypes of minority voters as venal and credulous.

The report ends with some observations on the state of research on the incidence of fraud, which the author finds lacking. He suggests that vote suppression of qualified minority voters by officials and partisan poll-watchers, challengers, and uniformed guards should also be considered as included in any definition of election fraud. Davidson also offers a few recommendations for reform, noting that Democrats should not protest all programs aimed at ballot integrity, but rather work with Republicans to find solutions to problems that confront both parties and the system as a whole.

### **Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General**

**By The Brennan Center for Justice at NYU School of Law and Dr. Michael McDonald of George Mason University**

#### **General**

A September 15, 2005 Report submitted to the New Jersey Attorney General included lists of purportedly illegitimate votes in New Jersey in the 2004 general election, including lists of 10,969 individuals who purportedly voted twice and lists of 4,756 voters who were purportedly dead or incarcerated in November 2004. For the present Analysis of the Report, the lists of voters submitted to the New Jersey Attorney General, as well as a copy of the New Jersey county voter registration files were obtained, and an initial investigation of the report’s claims was conducted. The analysis shows that the lists submitted are substantially flawed.

The Analysis is based on methodology only: its authors did not gain access to original documents related to registration or original pollbook records; only recently were copies of the counties’ original registration data files acquired and compiled, which contain

some notable gaps; and the lists submitted to the Attorney General contain significant errors and little documentation, which complicated the analysis. Nonetheless, the analysts say that information collected is sufficient for generally assessing the quality of evidence presented to support the September 15 report. Analysis of the suspect lists reveals that the evidence submitted does not show what it purports to show: cause for concern that there is serious risk of widespread fraud given the state of the New Jersey voter registration rolls.

These suspect lists were compiled by attempting to match the first name, last name, and birth date of persons on county voter registration files. Entries that supposedly “matched” other entries were apparently deemed to represent the same individual, voting twice. This methodology was similar to the method used in compiling the notoriously inaccurate Florida “purge lists” of suspected ineligible felons in 2000 and 2004. As Florida’s experience shows, matching names and birth dates in the voter registration context can easily lead to false conclusions – as was almost certainly the case here.

This Analysis reveals several serious problems with the methodology used to compile the suspect lists that compromise the lists’ practical value. For example, the data used in the Report from one county appears to be particularly suspect and anomalous, and may have substantially skewed the overall results. In addition, middle initials were ignored throughout all counties, so that “J \_\_\_\_\_ A. Smith” was presumed to be the same person as “J \_\_\_\_\_ G. Smith.” Suffixes were also ignored, so that fathers and sons – like “B \_\_\_\_\_ Johnson” and “B \_\_\_\_\_ Johnson, Jr.” – were said to be the same person.

Underlying many of the entries on these lists, and similar lists compiled in Florida and elsewhere, is a presumption that two records with the same name and date of birth must represent the same person. As *explained* in this analysis, this presumption is not consistent with basic statistical principles. Even when votes appear to have been cast in two different cities under the same name and birth date, statistics show that voter fraud is not necessarily to blame. With 3.6 million persons who voted in the 2004 election in New Jersey, the chance that some have the same name and birth date is not far-fetched.

#### Analysis of the Claim of Double Voting by 4,497 Individuals

Attempts to match data on one list to data on another list will often yield “false positives:” two records that at first appear to be a match but do not actually represent the same person. The natural incidence of “false positives” for a matching exercise of this scale – especially when, as here, conducted with relatively little attention to detail – readily explains the ostensible number of double votes.

1,803 of these 4,397 records of ostensibly illegal votes seem to be the product of a glitch in the compilation of the registration files. These records reflect two registration entries by the same person from the same address, with a notation next to each that the individual has voted. For example, 55-year-old W \_\_\_\_\_ A. Connors, living at 253 B \_\_\_\_\_ Ave. in a New York commuter suburb, is listed on the data files with an (erroneous) first registration date in 1901 and a second registration date in 1993; Mr.

Connors is thus represented twice on the data files submitted. Each of these entries also indicates that W \_\_\_\_ A. Connors at 253 B \_\_\_\_ Ave voted in 2004. There is no credible indication, however, that Mr. Connors actually voted twice; indeed, given the clearly erroneous registration date on the files, it is far more likely that data error is to blame for the doubly logged vote as well.

More plausibly, the bulk of these 1,803 records may be traced to irregularities in the data processing and compilation process for one single county: the Middlesex County registration file accounts for only 10% of registered voters in the state but 78% of these alleged double votes. The suspect lists themselves contain an acknowledgment that the problem in Middlesex is probably not fraud: 99% of these Middlesex voters are labeled on the lists submitted to the Attorney General with a notation that the record is “less likely” to indicate an illegal double vote.

Another 1,257 entries of the 4,397 records probably represent similar data errors – also largely driven by a likely glitch in the Middlesex County file, which is also vastly over represented in this category. These records show ever-so-slight variations in records listed with the same date of birth at the same address: for example, the same first and last names, but different middle initials or suffixes (e.g., J \_\_\_\_ T. Kearns, Sr., and J \_\_\_\_ T. Kearns, Jr., both born the same day and living at the same address; or J \_\_\_\_ E. Allen and J \_\_\_\_ P. Allen, born the same day and living at the same address).

Approximately 800 of the entries on the list likely represent different people, with different addresses and different middle initials or suffixes. For example, W \_\_\_\_ S. Smith, living in a northern New Jersey town, and W \_\_\_\_ C. Smith, living in another town two hours away, share the same date of birth but are not the same person. Nor are T \_\_\_\_ Brown, living in a New York commuter suburb, and T \_\_\_\_ H. Brown, Jr., living in a small town over an hour west, despite the fact that they also share the same birth date. About three-quarters of the entries in this category reveal data that affirmatively conflict – for example, a middle initial (“W \_\_\_\_ S.”) in one case, and a different middle initial (“W \_\_\_\_ C.”) in another, listed at different addresses. There is absolutely no good reason to conclude that these individuals are in fact the same, when the available evidence indicates the contrary.

For approximately 200 of the entries in this category, however, less information is available. These entries show a middle initial (“J \_\_\_\_ W. Davis”) in one case, and no middle initial (“J \_\_\_\_ Davis”) in another – again, at different addresses. The lack of the middle initial is ambiguous: it could mean that one of the J \_\_\_\_ Davis in question has no middle name, or it could mean that the middle initial was simply omitted in a particular registration entry. Although these entries involve less conclusive affirmative evidence of a false match than the entries noted above, there is still no good reason to believe that “J \_\_\_\_ W. Davis” and “J \_\_\_\_ Davis,” at different addresses, represent the same person.

Of the individuals remaining, there are serious concerns with the accuracy of the dates of birth. Seven voters were apparently born in January 1, 1880 – which is most likely a

system default for registrations lacking date-of-birth information. For 227 voters, only the month and year of birth are listed: this means only that two voters with the same name were born in the same month and year, an unsurprising coincidence in a state of several million people.

That leaves approximately 289 votes cast under the same name and birth date – like votes cast by “P\_\_\_\_\_ S. Rosen,” born in the middle of the baby boom – but from two different addresses. It may appear strange, but there may be two P\_\_\_\_\_ S. Rosens, born on the same date in 1948 – and such coincidences are surprisingly common. For any one person, the odds of someone else having the same name and birth date is small. But because there are so many voters in New Jersey, a sizable number will have the same name and birth date simply by chance. In a group of just 23 people, it is more likely than not that two will share the same birthday. For 40 people, the probability is 90%. Many, if not most, of the 289 alleged double votes of persons registered at different addresses most likely reflect two separate individuals sharing a first name, last name, middle initial, and birth date.

The September 15 Report makes much of the raw potential for foul play based on the unsurprising fact that there are voters who appear on the New Jersey registration rolls more than once. As noted above, many of the names identified reflect two different individuals and not simply duplicate entries. But there is no doubt that there are duplicate entries on New Jersey’s registration rolls. It is well known that voter registration rolls contain “deadwood” – registration entries for individuals no longer living at a given address or deceased. There is no evidence, however, that these extra registrations are used for widespread illegal voting. Moreover, the problem of deadwood will soon be largely resolved: both the National Voter Registration Act of 1993 and the Help America Vote Act of 2002 require states to implement several systems and procedures as of January 1, 2006, that will clean the voter rolls of duplicate or invalid entries while protecting eligible voters from unintended disfranchisement.

### **Response to the Report of the 2005 Commission on Federal Election Reform**

**By The Brennan Center for Justice at NYU School of Law and Spencer Overton,  
Commissioner and Law Professor at George Washington University School of Law**

#### **Introduction**

On September 19, 2005, the Commission on Federal Election Reform, co-chaired by former President Jimmy Carter and former Secretary of State James Baker III, issued a report with recommendations for reforming the administration of U.S. elections. This Response addresses the main substantive flaws in the Report, refuting in detail its recommendations that “Real ID” cards be used for voter identification, that Social Security numbers be spread through interstate databases and on ID cards, and that states restore voting rights to people convicted of felony convictions only in certain cases and only after they have completed all the terms of their sentence.

Voter Identification Recommendation

According to the Response, the Report's most troubling recommendation is that states require voters to present a Real ID card or a similar "template" ID as a condition of voting. This recommendation is more onerous than the photo ID proposal rejected by the Commission's predecessor in 2001 and is more restrictive than any ID requirement adopted in any state to date. It would impose substantial – and for some, insurmountable – burdens on the right to vote. This ID requirement is purportedly intended to prevent "voter fraud," and yet the Report itself concedes that "[t]here is no evidence of extensive fraud in U.S. elections or of multiple voting" before asserting, without any meaningful support, that "both occur." Not only does the Report fail to justify the creation of stringent identification requirements, but it also does not explain why the goals of improved election integrity will not be met through the existing provisions in the Help America Vote Act of 2002 (HAVA). Additionally, the Report fails to consider alternative measures to advance its goals that are less restrictive to voters.

The Commission's recommendation that eligible citizens be barred from voting unless they are able to present a souped-up "Real ID" card is a proposal guaranteed to disenfranchise a substantial number of eligible voters. Millions of Americans currently do not have driver's licenses or government-issued photo ID cards. As the 2001 National Commission on Federal Election Reform recognized, research shows that between six and ten percent of voting-age Americans do not have driver's licenses or state-issued non-driver's photo ID. That translates into as many as 20 million eligible voters. Millions more may never get the new Real ID card, which requires substantially more cost and effort. The percentage of Americans without the documentary proof of citizenship necessary to obtain Real IDs is likely to remain high because, as discussed below, the requisite documents are both expensive and burdensome to obtain. The Report's proposal to use Real ID as a condition of voting is so excessive that it would prevent eligible voters from proving their identity with even a valid U.S. passport or a U.S. military photo ID card. While Americans of all backgrounds would be excluded by the Report's ID proposal, the burden would fall disproportionately on the elderly, the disabled, students, the poor, and people of color.

According to the Georgia chapter of the AARP, 36 percent of Georgians over age 75 do not have a driver's license. In Wisconsin, approximately 23 percent of persons aged 65 and older do not have driver's licenses or photo ID, and fewer than 3 percent of students have driver's licenses listing their current address. Across the country, more than 3 million Americans with disabilities do not have a driver's license or other form of state-issued photo ID. Moreover, given the frequency with which Americans move residences, it is likely that a far greater percentage of citizens lack driver's licenses or photo IDs bearing their current addresses. Since voting generally depends on the voter's address, and since many states will not accept IDs that do not bear an individual's current voting address, an additional 41.5 million Americans each year will have ID that they may not be able to use to vote.

As the Report recognizes, government-issued photo identification costs money. Thus, if required as a precondition for voting, photo identification would operate as a de facto poll tax that could disenfranchise low-income voters. To alleviate this burden, the Report

appropriately recommends that the “Real ID” card itself be issued free of charge. This safeguard, however, does not address some of the most significant predicate costs in obtaining photo identification – costs incurred whether or not the card itself is free. First, each of the documents an individual is required to show in order to obtain a “Real ID” card or other government-issued photo ID card costs money or presumes a minimal level of economic resources. A certified copy of a birth certificate costs from \$10.00 to \$45.00, depending on the state; a passport costs \$85.00; and certified naturalization papers cost \$19.95. Unless the federal and all state governments waive the cost of each of these other forms of identification, the indirect costs of photo IDs will be even greater than their direct costs. In addition, since government-issued IDs may only be obtained at specified government offices, which may be far from voters’ residences and workplaces, individuals seeking such IDs will have to incur transportation costs and the costs of taking time off from work to visit those offices during often-abbreviated business hours. These are not insignificant burdens.

Strong empirical evidence also shows that photo ID requirements disproportionately burden people of color. The ID recommendations reduce the benefits of voter registration at disability and other social service agencies provided by the National Voter Registration Act of 1993. Individuals who seek to register at those offices—which generally do not issue IDs – will also have to make an additional visit to the motor vehicle department in order to obtain the documentation necessary to vote. Census data demonstrate that African Americans and Latinos are more than three times more likely than whites to register to vote at a public assistance agency, and that whites are more likely than African Americans and Latinos to register when seeking a driver’s license. Accordingly, the voter registration procedure far more likely to be used by minorities than by whites will no longer provide Americans with full eligibility to vote. Not only are minority voters less likely to possess the requisite ID, but they are also more likely than white voters to be asked to furnish ID at the polls. As the Task Force Report of the prior Commission found, identification requirements create the opportunity for selective enforcement – either innocuous or invidious – when poll workers request photo ID only from voters unknown to them. This discretion has often led to special scrutiny of minority voters at the polls.

Faced with overwhelming evidence that Real IDs are both costly and difficult to obtain, the Report suggests that Real ID cards be made “easily available and issued free of charge.” While this is a laudable goal, the evidence suggests that it will not be attained. First, no State currently issues photo IDs free of charge to all voters. And even if the card itself were free, the Real ID would not be “free of charge” unless all documents required to obtain the Real ID were also “free of charge.” In addition, no State makes photo IDs “easily available” to all its citizens.

The Report premises its burdensome identification proposals on the need to ensure ballot integrity and on the existence of or potential for widespread fraud. However, the Report admits that there is simply “no evidence” that the type of fraud that could be solved by stricter voter identification – individual voters who misrepresent their identity at the polls – is a widespread problem. Indeed, the evidence that does exist shows that this sort of

fraud occurs only at an extremely low rate. The Report's photo ID proposal guards against only one type of fraud: individuals arriving at the polls to vote using false information, such as the name of another registered voter, or a recent but not current address. Since the costs of this form of fraud are extremely high (federal law provides for up to five years' imprisonment), and the benefits to any individual voter are extremely low, it is highly unlikely that this will ever occur with any frequency. The limited types of fraud that could be prevented by a Real ID requirement are extremely rare and difficult. As the Report concedes, there is "no evidence of extensive fraud in U.S. elections" of the sort that can be cured by photo identification requirements. This admission – and not the hypothetical specter of fraud represented in the remainder of the Report – is amply borne out by independent research.

In the most comprehensive survey of alleged election fraud to date, Professor Loraine Minnite and David Callahan have shown that the incidence of individual voter fraud at the polls is negligible. A few prominent examples support their findings. In Ohio, a statewide survey found four instances of ineligible persons voting or attempting to vote in 2002 and 2004, out of 9,078,728 votes cast – a rate of 0.00004%. Earlier this year, Georgia Secretary of State Cathy Cox stated that she could not recall one documented case of voter fraud relating to the impersonation of a registered voter at the polls during her ten-year tenure as Secretary of State or Assistant Secretary of State. The Report attempts to support its burdensome identification requirements on four specific examples of purported fraud or potential fraud. **None of the Report's cited examples of fraud stand up under closer scrutiny.** This response report goes through each instance of fraud raised by the Commission report and demonstrates that in each case the allegation in fact turned out later not to be true or the fraud cited was not of the type that would be addressed by a photo identification requirement. \_

The Report fails to provide a good reason to create greater hurdles for voters who vote at the polls than for those who vote absentee. Despite the fact that absentee ballots are more susceptible to fraud than regular ballots, the Report exempts absentee voters from its proposed Real ID and proof of citizenship requirements.

To the extent that any limited fraud by individuals at the polls does trickle into the system, it can be addressed by far less restrictive alternatives. The first step is to recognize that only voters who appear on the registration list may vote a regular ballot. Proper cleaning of registration lists – and proper use of the lists at the poll – will therefore go a long way toward ensuring that every single ballot is cast by an eligible voter. Existing law has already accounted for this need – with proper safeguards for individual voters – and needs only adequate implementation. If inflated rolls create the specter of potential fraud, for example, the problem will be addressed by proper execution of the registration list related provisions of NVRA and HAVA, which are designed in part to remove ineligible voters from the rolls. In addition to the better registration lists that full implementation will provide, better record keeping and administration at the polls will reduce the limited potential for voting by ineligible persons. In the unlikely event that implementation of current law is not able to wipe out whatever potential for individual

fraud remains, there are several effective and less burdensome alternatives to the Report's Real ID recommendation that received wholly insufficient consideration.

Recommendation on Database Information Sharing Across States

It is unquestionably beneficial to account for voters who move across state lines. Nonetheless, the Report fails to consider the serious efficacy, privacy, and security concerns raised by a nationally distributed database of the magnitude it contemplates. These problems are exacerbated by the Report's recommendation that an individual's Social Security number be used as the broadly disseminated unique voting identifier. The Report's recommendation creates substantial privacy and security hazards. The Report recommends –without any discussion–that the information used as an individual's unique fingerprint to track a voter across state lines include not merely the date of birth, but also the person's "place of birth." As with the Social Security number, this information is often used as a key to private information wholly unrelated to voting, and as such, disclosure presents a substantial security hazard. Moreover, this information seems particularly susceptible to use in harassing legitimate voters, particularly naturalized citizens.

Recommendation on Voting Rights of Ex-Felons

The Report recommends that states restore voting rights only to certain people with criminal convictions, and only after they have "fully served their sentence." This overly restrictive standard places the Commission out of step with the states, the American public, and the laws of other nations. This recommendation would set a standard more generous than the policies of the most regressive thirteen states in the nation but more restrictive than the remaining thirty-seven. The trend in the states is toward extension of the franchise. Since 1997, twelve states have reformed their laws or policies to allow more people with convictions to vote. These reforms are driven by some startling numbers. Approximately 4.7 million Americans have lost the right to vote because of a criminal conviction. This number includes 1.4 million African-American men, whose 13% rate of disenfranchisement is seven times the national average. More than 670,000 of the disenfranchised are women; more than 580,000 are veterans; and 1.7 million have completed their sentences.

The American people also support more generous re-enfranchisement than the Commission Report recommends. In a 2002 telephone survey of 1,000 Americans nationwide, researchers found that substantial majorities (64% and 62% respectively) supported allowing probationers and parolees to vote. Fully 80% favored restoring the franchise to people who had completed felony sentences. Even when questions were asked about certain unpopular offenses, majorities supported voting rights. Two-thirds of respondents supported allowing violent ex-felons to vote; 63% supported allowing ex-felons convicted of illegal stock-trading to vote; and 52% supported restoring the franchise to ex-felons who had been convicted of a sex crime. International norms are even more favorable to voting rights. Moreover, the Report's recommendation is unworkable. The general rule – that reenfranchisement should follow the completion of a criminal sentence – is itself difficult to administer.

Building Confidence in U.S. Election, National Commission on Federal Election Reform  
("Carter/Baker Commission")

The impetus for the Carter-Baker Commission and its report was the sense of the members that not enough had been done to reform the system since the 2000 election and that Americans had lost confidence in elections. The report makes several observations about the current system and makes 87 recommendations. Several of those recommendations are meant to be implemented in conjunction with one another in order to be effective, so the report is really a push for a comprehensive overhaul of the system as it works today.

Among the observations made that are relevant to the EAC study of fraud and intimidation are the following:

- The November 2004 elections showed that irregularities and fraud still occur.
- Failure to provide voters with such basic information as their registration status and their polling site location raises a barrier to voting as significant as inconsistent procedures on provisional ballots or voter ID requirements.
- There is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election.
- The Commission is concerned that the different approaches to identification cards might prove to be a serious impediment to voting.
- Voter registration lists are often inflated by the inclusion of citizens who have moved out of state but remain on the lists. Moreover, under the National Voter Registration Act, names are often added to the list, but counties and municipalities often do not delete the names of those who moved. Inflated voter lists are also caused by phony registrations and efforts to register individuals who are ineligible. At the same time, inaccurate purges of voter lists have removed citizens who are eligible and are properly registered.
- Political party and nonpartisan voter registration drives generally contribute to the electoral process by generating interest in upcoming elections and expanding participation. However, they are occasionally abused. There were reports in 2004 that some party activists failed to deliver voter registration forms of citizens who expressed a preference for the opposing party.
- Vote by mail raises concerns about privacy, as citizens voting at home may come under pressure to vote for certain candidates, and it increases the risk of fraud.
- While election fraud is difficult to measure, it occurs. The U.S. Department of Justice has launched more than 180 investigations into election fraud since October 2002. These investigations have resulted in charges for multiple voting, providing false information on their felon status, and other offenses against 89 individuals and in convictions of 52 individuals. The convictions related to a variety of election fraud offenses, from vote buying to submitting false voter registration information and voting-related offenses by non-citizens. In addition to the federal investigations, state attorneys general and local prosecutors handle cases of election fraud. Other cases are never pursued because of the difficulty in

obtaining sufficient evidence for prosecution or because of the low priority given to election fraud cases.

- Absentee ballots remain the largest source of potential voter fraud
- Non-citizens have registered to vote in several recent elections
- The growth of "third-party" (unofficial) voter registration drives in recent elections has led to a rise in reports of voter registration fraud.
- Many states allow the representatives of candidates or political parties to challenge a person's eligibility to register or vote or to challenge an inaccurate name on a voter roll. This practice of challenges may contribute to ballot integrity, but it can have the effect of intimidating eligible voters, preventing them from casting their ballot, or otherwise disrupting the voting process.

Its pertinent recommendations for reform are as follows:

- Interoperable state voter databases are needed to facilitate updates in the registration of voters who move to another state and to eliminate duplicate registrations, which are a source of potential fraud.
- Voters should be informed of their right to cast a provisional ballot if their name does not appear on the voter roll, or if an election official asserts that the individual is not eligible to vote, but States should take additional and effective steps to inform voters as to the location of their precinct
- The Commission recommends that states use "REAL ID" cards for voting purposes.
- To verify the identity of voters who cast absentee ballots, the voter's signature on the absentee ballot can be matched with a digitized version of the signature that the election administrator maintains. While such signature matches are usually done, they should be done consistently in all cases, so that election officials can verify the identity of every new registrant who casts an absentee ballot.
- Each state needs to audit its voter registration files to determine the extent to which they are accurate (with correct and current information on individuals), complete (including all eligible voters), valid (excluding ineligible voters), and secure (with protections against unauthorized use). This can be done by matching voter files with records in other state agency databases in a regular and timely manner, contacting individuals when the matches are inconclusive, and conducting survey research to estimate the number of voters who believe they are registered but who are not in fact listed in the voter files.
- Each state should oversee political party and nonpartisan voter registration drives to ensure that they operate effectively, that registration forms are delivered promptly to election officials, that all completed registration forms are delivered to the election officials, and that none are "culled" and omitted according to the registrant's partisan affiliation. Measures should also be adopted to track and hold accountable those who are engaged in submitting fraudulent voter registrations. Such oversight might consist of training activists who conduct voter registration drives and tracking voter registration forms to make sure they are all accounted for. In addition, states should apply a criminal penalty to any activist who deliberately fails to deliver a completed voter registration form.

- Investigation and prosecution of election fraud should include those acts committed by individuals, including election officials, poll workers, volunteers, challengers or other nonvoters associated with the administration of elections, and not just fraud by voters.
- In July of even-numbered years, the U.S. Department of Justice should issue a public report on its investigations of election fraud. This report should specify the numbers of allegations made, matters investigated, cases prosecuted, and individuals convicted for various crimes. Each state's attorney general and each local prosecutor should issue a similar report.
- The U.S. Department of Justice's Office of Public Integrity should increase its staff to investigate and prosecute election-related fraud.
- In addition to the penalties set by the Voting Rights Act, it should be a federal felony for any individual, group of individuals, or organization to engage in any act of violence, property destruction (of more than \$500 value), or threatened act of violence that is intended to deny any individual his or her lawful right to vote or to participate in a federal election.
- To deter systemic efforts to deceive or intimidate voters, the Commission recommends federal legislation to prohibit any individual or group from deliberately providing the public with incorrect information about election procedures for the purpose of preventing voters from going to the polls.
- States should define clear procedures for challenges, which should mainly be raised and resolved before the deadline for voter registration. After that, challengers will need to defend their late actions. On Election Day, they should direct their concerns to poll workers, not to voters directly, and should in no way interfere with the smooth operation of the polling station.
- State and local jurisdictions should prohibit a person from handling absentee ballots other than the voter, an acknowledged family member, the U.S. Postal Service or other legitimate shipper, or election officials. The practice in some states of allowing candidates or party workers to pick up and deliver absentee ballots should be eliminated.
- All states should consider passing legislation that attempts to minimize the fraud that has resulted from "payment by the piece" to anyone in exchange for their efforts in voter registration, absentee ballot, or signature collection.
- Nonpartisan structures of election administration are very important, and election administrators should be neutral, professional, and impartial.
- No matter what institutions are responsible for conducting elections, conflict-of-interest standards should be introduced for all federal, state, and local election officials. Election officials should be prohibited by federal and/or state laws from serving on any political campaign committee, making any public comments in support of a candidate, taking a public position on any ballot measure, soliciting campaign funds, or otherwise campaigning for or against a candidate for public office. A decision by a secretary of state to serve as co-chair of his or her party's presidential election committee would clearly violate these standards.

**A 'Crazy-Quilt' of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law**

**By Alec Ewald**

"A Crazy-Quilt of Tiny Pieces" presents results from the first nationwide study to document the implementation of American felony disenfranchisement law. Data came from two main sources: a 33-state survey of state elections officials and telephone interviews with almost one hundred city, county, town, and parish officials drawn from 10 selected states. In the spring of 2004, a two-page survey consisting of questions regarding disqualification and restoration procedures was sent to the offices of the statewide elections director in each of the fifty states. Responses were collected through the summer and early fall of 2004. Thirty-three states responded. No state currently administers and enforces its criminal disqualification and restoration laws in an efficient, universally-understood and equitable way. Some do not appear to notify local elections officials of convictions, or do not do so in a clear and timely way; others risk "false positives" in disqualification, particularly with suspended sentences or offenses not subject to disenfranchisement; many ask local officials to handle disqualification and restoration with little or no guidance or supervision from the state; none have clear policies regarding new arrivals from other states with old convictions.

The report reaches seven major conclusions:

1. Broad variation and misunderstanding in interpretation and enforcement of voting laws:
  - More than one-third (37%) of local officials interviewed in ten states either described their state's fundamental eligibility law incorrectly, or stated that they did not know a central aspect of that law.
  - Local registrars differ in their knowledge of basic eligibility law, often within the same state. Differences also emerge in how they are notified of criminal convictions, what process they use to suspend, cancel, or "purge" voters from the rolls, whether particular documents are required to restore a voter to eligibility, and whether they have information about the criminal background of new arrivals to the state.
2. Misdemeanants disenfranchised in at least five states:
  - The commonly-used term "felon disenfranchisement" is not entirely accurate, since at least five states – Colorado, Illinois, Michigan, South Carolina, and Maryland -- also formally bar some or all people convicted of misdemeanors from voting.
  - It is likely that misdemeanants in other states who do retain the formal right to vote could have difficulty exercising that right, given ignorance of their eligibility and the lack of clear rules and procedures for absentee voting by people in jail who have not been convicted of a felony.
  - Maryland excludes persons convicted of many misdemeanors, such as "Unlawful operation of vending machines," "Misrepresentation of tobacco leaf weight," and "Racing horse under false name."
3. Significant ambiguities in voting laws:
  - Disenfranchisement in Tennessee is dependent on which of five different time periods a felony conviction occurred between 1973 and the present.
  - In Oregon, disenfranchisement is determined not by conviction or imprisonment for a felony, but for being placed under Department of Corrections supervision. Since 1997, some persons

convicted of a felony and sentenced to less than 12 months' custody have been sent to county jails and hence, are eligible to vote.

4. Disenfranchisement results in contradictory policies within states:

- The "crazy-quilt" pattern of disenfranchisement laws exists even within states. Alabama and Mississippi have both the most and least restrictive laws in the country, a result which is brought about by the fact that certain felonies result in the loss of voting rights for life, while others at least theoretically permit people in prison to vote.
- Most felonies in Alabama result in permanent disenfranchisement, but drug and DUI offenses have been determined to not involve the "moral turpitude" that triggers the loss of voting rights.
- In Mississippi, ten felonies result in disenfranchisement, but do not include such common offenses as burglary and drug crimes.

5. Confusing policies lead to the exclusion of legal voters and the inclusion of illegal voters:

- The complexity of state disenfranchisement policies results in frequent misidentification of voter eligibility, largely because officials differ in their knowledge and application of disqualification and restoration law and procedures.

6. Significant variation and uncertainty in how states respond to persons with a felony conviction from other states:

- No state has a systematic mechanism in place to address the immigration of persons with a felony conviction, and there is no consensus among indefinite-disenfranchisement states on whether the disqualification is properly confined to the state of conviction, or should be considered in the new state of residence.
- Interpretation and enforcement of this part of disenfranchisement law varies not only across state lines, but also from one county to another within states. Local officials have no way of knowing about convictions in other states, and many are unsure what they would do if a would-be voter acknowledged an old conviction. Because there is no prospect of a national voter roll, this situation will continue even after full HAVA implementation.

7. Disenfranchisement is a time-consuming, expensive practice:

- Enforcement requires elections officials to gather records from different agencies and bureaucracies, including state and federal courts, Departments of Corrections, Probation and Parole, the state Board of Elections, the state police, and other counties' elections offices.

#### Policy Implications

1. Policies disenfranchising people living in the community on probation or parole, or who have completed a sentence are particularly difficult to enforce:

- States which disenfranchise only persons who are currently incarcerated appear able to enforce their laws more consistently than those barring non-incarcerated citizens from voting.

2. Given large-scale misunderstanding of disenfranchisement law, many eligible persons incorrectly believe they cannot vote, or have been misinformed by election officials:

- More than one-third of election officials interviewed incorrectly described their state's law on voting eligibility.
- More than 85% of the officials who misidentified their state's law either did not know the eligibility standard or specified that the law was more restrictive than was actually the case.

3. Occasional violation of disenfranchisement law by non-incarcerated voters not surprising:

- Given the complexity of state laws and the number of state officials who lack an understanding of restoration and disqualification procedures, it should come as no surprise that many voters are ignorant of their voting status, a fact that is likely to have resulted in hundreds of persons with a felony conviction registering and voting illegally in recent years.

4. Taken together, these findings undermine the most prominent rationale for disenfranchisement: that the policy reflects a strong, clear consensus that persons with a felony conviction are unfit to vote and constitute a threat to the polity:

- First, when significant numbers of the people who administer elections do not know important aspects of disenfranchisement law, it is hard to conclude that the restriction is necessary to protect social order and the “purity” of the ballot box.
- Second, because they are all but invisible in the sentencing process, “collateral” sanctions like disenfranchisement simply cannot accomplish the denunciatory, expressive purposes their supporters claim. We now know that disenfranchisement is not entirely “visible” even to the people running American elections.
- Third, deep uncertainty regarding the voting rights of people with felony convictions who move from one state to another indicates that we do not even know what purpose disenfranchisement is supposed to serve – whether it is meant to be a punishment, or simply a non-penal regulation of the franchise.

#### Recommendations

##### 1. Clarify Policies Regarding Out-of-State Convictions:

- State officials should clarify their policies and incorporate into training programs the means by which a felony conviction in another state affects an applicant’s voting eligibility. For example, sentence-only disenfranchisement states should clarify that newcomers with old felony convictions from indefinite disenfranchisement states are eligible to vote. And those states which bar some people from voting even after their sentences are completed must clarify whether new arrivals with old felony convictions from sentence-only disenfranchisement states are automatically eligible, and must explain what procedures, if any, should be followed for restoration.

##### 2. Train Election Officials:

- Clarify disenfranchisement policies and procedures for all state and local election officials through development of materials and training programs in each state. At a minimum, this should include distribution of posters, brochures and FAQ sheets to local and state elections offices.

##### 3. Train Criminal Justice Officials:

- Provide training on disqualification and restoration policies for all correctional and criminal justice officials, particularly probation and parole staff. Correctional and criminal justice officials should also be actively engaged in describing these policies to persons under criminal justice supervision.

##### 4. Review Voting Restrictions on Non-Incarcerated People:

- Given the serious practical difficulty of enforcing laws disqualifying people who are not incarcerated from voting – problems which clearly include both excluding eligible people from voting and allowing those who should be ineligible to vote -- state policymakers should review such policies to determine if they serve a useful public purpose.

**Deliver the Vote: A History of Election Fraud, An American Political Tradition---  
1742-2004**

**by Tracy Campbell.**

In Deliver the Vote, Campbell traces the historical persistence of voter fraud from colonial times through the 2004 Bush-Kerry election. From the textual information, it quickly becomes obvious that voter fraud was not limited to certain types of people or to certain political parties. Major American political figures fail to emerge unscathed. For instance, before independence, George Washington plied potential voters with drink as payment for their vote. This type of early vote buying succeeded in electing Washington to the Virginia Assembly over a heavily favored candidate. Both the Democrat and Republican Parties also participated in vote fraud. Finally, there were several regions of the country known for fraudulent voting problems such as Chicago, St. Louis, Texas, and Kentucky, especially Louisville.

Germane to the voter fraud project, Campbell indicates that in the Bush-Gore election, both camps committed major errors. Campbell contends that the central problem in that election was the 175,000 invalidated votes. It is evident that Florida was procedurally unprepared to deal with the voluminous questions that arose in determining valid from invalid votes. Campbell glosses over the Bush-Kerry election but does note from one who opposed Kerry, that there was something amiss with the Ohio final vote tally. This book is well researched and provided numerous citations to source material.

**Democracy At Risk: The November 2004 Election in Ohio**  
Democratic National Committee

In December 2004, the DNC announced a comprehensive investigative study and analysis of election administration issues arising from the conduct of the 2004 general election in Ohio. The DNC decided to undertake this study because of the many reports, made to the Democratic Party, appearing in the press and made to advocacy groups, immediately after the election, of problems in the administration of the election in that state—problems that prevented many Ohio citizens who showed up at the polls to be able to vote and to have their vote counted. This study was intended to address the legitimate questions and concerns that have been raised and to develop factual information that would be important and useful in crafting further necessary election reforms.

**Most Pertinent Findings**

- Overall, 28 percent of Ohio voters reported problems with their voting experience, including ballot problems, locating their proper polling place and/or intimidation.
- Twice as many African American voters as white voters reported experiencing problems at the polls (52 percent vs. 25 percent).

- Scarcity of voting machines caused long lines that deterred many people from voting. Three percent of voters who went to the polls left their polling places and did not return due to the long lines.
- Statewide, African American voters reported waiting an average of 52 minutes before voting while white voters reported waiting an average of 18 minutes.
- Overall, 20 percent of white Ohio voters reported waiting more than twenty minutes, while 44 percent of African American voters reported doing so.
- Of provisional voters in Cuyahoga County, 35 percent were African American, compared to 25 percent of non-provisional voters, matched by geography. African American voters were 1.2 times more likely than white voters to be required to vote provisionally.
- Under Ohio law, the only voters who should have been asked for identification were those voting in their first Federal election who had registered by mail but did **not** provide identification in their registration application. Although only 7 percent of all Ohio voters were newly registered (and only a small percentage of those voters registered by mail and failed to provide identification in their registration application), more than one third (37 percent) reported being asked to provide identification.—meaning large numbers of voters were illegally required to produce identification.
- African American voters statewide were 47 percent more likely to be required to show identification than white voters. Indeed, 61 percent of African American men reported being asked to provide identification at the polls.
- 6 percent of all voters reported feelings of intimidation.
- Statewide, 16 percent of African Americans reported experiencing intimidation versus only 5 percent of white voters.

The report also includes a useful summary and description of the reports that came through Ohio Election Protection on Election Day, which included a wide variety of problems, including voter intimidation and discrimination.

#### **Most Pertinent Recommendations**

- States should be encouraged to codify into law all required election practices, including requirements for the adequate training of official poll workers.
- States should adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts, to ensure adequate and nondiscriminatory access. These standards should be based on set ratios of numbers of machines and pollworkers per number of voters expected to turn out, and should be made available for public comment before being adopting.
- States should adopt legislation to make clear and uniform the rules on voter registration.
- States should be urged to implement statewide voter lists in accordance with the Help America Vote Act (“HAVA”), the election reform law enacted by Congress in 2002 following the Florida debacle.

- State and local jurisdictions should adopt clear and uniform rules on the use of, and the counting of, provisional ballots, and distribute them for public comment well in advance of each election day.
- States should not adopt requirements that voters show identification at the polls, beyond those already required by federal law (requiring that identification be shown only by first time voters who did not show identification when registering.)
- State Attorneys General and local authorities should vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.
- States should make voter suppression a criminal offense at the state level, in all states.
- States should improve the training of pollworkers.
- States should expend significantly more resources in educating voters on where, when and how to vote.

Partisan officials who volunteer to work for a candidate should not oversee or administer any elections.

### **DOJ Public Integrity Reports 2002, 2003, and 2004**

#### **General Background**

The Public Integrity Reports are submitted to Congress pursuant to the Ethics in Government Act of 1978, which requires the Attorney General to report annually to Congress on the operations and activities of the Justice Department's Public Integrity Section. The Report describes the activities of the Public Integrity Section. It also provides statistics on the nationwide federal effort against public corruption. The Public Integrity Section was created in 1976 in order to consolidate in one unit of the Criminal Division the Department's oversight responsibilities for the prosecution of criminal abuses of the public trust by government officials. Section attorneys prosecute selected cases involving federal, state, or local officials, and also provide advice and assistance to prosecutors and agents in the field regarding the handling of public corruption cases. In addition, the Section serves as the Justice Department's center for handling various issues that arise regarding public corruption statutes and cases. An Election Crimes Branch was created within the Section in 1980 to supervise the Department's nationwide response to election crimes, such as ballot fraud and campaign financing offenses. The Branch reviews all major election crime investigations throughout the country and all proposed criminal charges relating to election crime.

One of the Section's law enforcement priorities is its supervision of the Justice Department's nationwide response to election crimes. The purpose of Headquarters' oversight of election crime matters is to ensure that the Department's nationwide response to election crime is uniform, impartial, and effective. An Election Crimes Branch, headed by a Director and staffed by Section attorneys on a case-by-case basis, was created within the Section in 1980 to handle this supervisory responsibility.

The Election Crimes Branch oversees the Department's handling of all election crime allegations other than those involving civil rights violations, which are supervised by the Voting Section of the Civil Rights Division. Specifically, the Branch supervises four types of corruption cases: crimes that involve the voting process, crimes involving the financing of federal election campaigns, crimes relating to political shakedowns and other patronage abuses, and illegal lobbying with appropriated funds. Vote frauds and campaign-financing offenses are the most significant and also the most common types of election crimes.

#### Divisions of the Election Crimes Branch

As affecting the present EAC study, the appropriate divisions of the Election Crimes Branch are:

Vote frauds-During 2002 the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. This assistance included providing expertise in the evaluation of allegations to determine whether investigation would produce prosecutable federal criminal cases, helping to structure investigations, providing legal assistance with respect to the formulation of charges, and assisting in establishing task force teams of federal and state law enforcement officials to investigate vote fraud matters.

During 2003 the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virgin Islands, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. This assistance included providing expertise in the evaluation of allegations to determine whether investigation would produce prosecutable federal criminal cases, helping to structure investigations, providing legal assistance with respect to the formulation of charges, and assisting in establishing task force teams of federal and state law enforcement officials to investigate vote fraud matters.

During 2004 the Branch assisted United States Attorneys' Offices in the following states in the handling of vote fraud matters that occurred in their respective districts: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Washington, and Wisconsin. This assistance included evaluating vote fraud allegations to determine whether investigation would produce a prosecutable federal criminal case, helping to structure investigations, providing legal advice concerning the formulation of charges,

and assisting in establishing several task force teams of federal and state law enforcement officials to investigate vote fraud matters.

**Litigation-**The Branch Director or Section attorneys also prosecute selected election crimes, either by assuming total operational responsibility for the case or by handling the case jointly with a United States Attorney's Office. The Section also may be asked to supervise the handling of a case in the event of a partial recusal of the local office. For example, in 2002 the Branch continued to supervise the prosecution of a sheriff and his election attorney for using data from the National Crime Information Center regarding voters' criminal histories to wage an election contest.

**District Election Officer Program-**The Branch also assists in implementing the Department's long-standing District Election Officer (DEO) Program. This Program is designed to ensure that each of the 93 United States Attorneys' Offices has a trained prosecutor available to oversee the handling of election crime matters within the district and to coordinate district responses with Headquarters regarding these matters. The DEO Program involves the appointment of an Assistant United States Attorney in each federal district to serve a two-year term as a District Election Officer; the training of these prosecutors in the investigation and prosecution of election crimes; and the coordination of election-related initiatives and other law enforcement activities between Headquarters and the field. In addition, the DEO Program is a crucial feature of the Department's nationwide Election Day Program, which occurs in connection with the federal general elections held in November of even-numbered years. The Election Day Program ensures that federal prosecutors and investigators are available both at the Department's Headquarters in Washington and in each district to receive and handle complaints of election irregularities from the public while the polls are open and that the public is aware of how these individuals can be contacted on election day. In 2002 the Department enhanced the DEO Program by establishing a Ballot Integrity Initiative.

**Ballot Integrity Initiative-**Beginning in September of 2002, the Public Integrity Section, acting at the request of the Attorney General, assisted in the implementation of a Ballot Integrity Initiative for the 2002 general election and subsequent elections. This initiative included increasing the law enforcement priority the Department gives to election crimes; holding a special day-long training event in Washington, DC for representatives of the 93 United States Attorneys' Offices; publicizing the identities and telephone numbers of the DEOs through press releases issued shortly before the November elections; and requiring the 93 U.S. Attorneys to communicate the enhanced federal prioritization of election crime matters to state and local election and law enforcement authorities. As part of Ballot Integrity Initiative, on October 8, 2002, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a Voting Integrity Symposium for District Election Officers representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Attorney General John Ashcroft delivered the keynote address on the importance of election crime and ballot integrity enforcement. Assistant Attorney General of the Civil Rights Division Ralph Boyd and Assistant Attorney General of the Criminal Division Michael Chertoff

also spoke to attendees on the protection of voting rights and the prosecution of election cases.

As part of Ballot Access and Voting Integrity Initiative, on September 23 and 24, 2003, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a two-day Symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Assistant Attorney General of the Civil Rights Division Alexander Acosta and Assistant Attorney General of the Criminal Division Christopher A. Wray delivered the keynote addresses on the importance of protecting voting rights and the prosecution of election cases.

On July 20 and 21, 2004, the Public Integrity Section and the Voting Section of the Department's Civil Rights Division co-sponsored a two-day symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes available to prosecute such cases, and the handling of civil rights matters involving voting. Attorney General John Ashcroft delivered the keynote address on the importance of protecting voting rights and the prosecution of election fraud. In addition, Assistant Attorney General Christopher A. Wray of the Criminal Division and Assistant Attorney General R. Alexander Acosta of the Civil Rights Division addressed conference attendees on voting rights and election fraud enforcement issues respectively.

### Federal Election Crimes

During 2002 the Public Integrity Section continued its nationwide oversight role regarding the handling of election crime allegations. As part of a general Department effort to increase its effectiveness in this important area, the Section assisted in the planning and execution of the Department's 2002 Ballot Integrity Initiative. The purpose of this ongoing Initiative is to increase the Department's ability to deter, detect, and prosecute election crimes and voting abuses by prioritizing election crime cases. As a result of the Initiative, during 2002 the number of election crime matters opened by federal prosecutors throughout the country increased significantly, as did the Section's active involvement in election crime matters stemming from the Initiative. At the end of 2002, the Section was supervising and providing advice on approximately 43 election crime matters nationwide. In addition, as of December 31, 2002, 11 matters involving possible election crimes were pending in the Section.

During 2002 the Section closed two election crime matters and continued its operational supervision of the following election crime case: *United States v. Woodward and Jordan*, Northern District of Alabama. Jimmy Woodward, the former Sheriff of Jefferson County, Alabama, and Albert Jordan, an attorney from Birmingham, were indicted in 2000 for conspiring to obtain criminal history records from the National Crime Information Center (NCIC) for use in an election contest, for converting NCIC records, and for accessing government computers without authority. The indictment charged that Woodward and

Jordan conspired to use Sheriff's office personnel to access NCIC computers to run criminal history checks on hundreds of voters in Jefferson County who had voted by absentee ballot in the 1998 general election, in the hopes they would find criminal histories they could use to challenge the qualifications of voters who cast votes for Woodward's opponent. The charges were dismissed in 2000 on procedural grounds. The Department appealed the dismissal of the charges. In 2001 the case was argued before the Eleventh Circuit Court of Appeals by the Appellate Section of the Criminal Division. The Court of Appeals subsequently reversed the trial court's dismissal of the charges and remanded the case for retrial. The former United States Attorney for the Northern District of Alabama was recused from the case. The case is being prosecuted by an Assistant United States Attorney under the supervision of the Public Integrity Section.

The following cases are the result of an extensive federal investigation into vote-buying in the May 1998 primary election in Knott County, Kentucky, an Appalachian county in the Eastern District of Kentucky. The primary was contested by two slates of candidates. The ballot included the race for the position of Knott County Judge Executive, which controls local government hiring, contracting, and services. The ballot also included a primary contest for the office of United States Senator, conferring federal jurisdiction over vote buying in the election even though the electoral corruption was directed at local races.

The following cases are being handled jointly by the Section and the United States Attorney's Office for the Eastern District of Kentucky:

*United States v. Calhoun.* On March 28, 2003, a federal grand jury indicted Jimmy Calhoun on two counts of vote-buying. On August 19, 2003, Calhoun pled guilty to two counts of vote-buying on behalf of a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive in the May 1998 Knott County, Kentucky primary election. Calhoun paid two persons to vote by absentee ballot. On April 7, 2004, Calhoun was sentenced to six months in prison and two years of supervised release. Calhoun pled guilty to two counts of vote-buying on behalf of a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive in the May 1998 Knott County, Kentucky primary election. Calhoun paid two persons to vote by absentee ballot.

*United States v. Conley.* On March 28, 2003, a federal grand jury indicted Jimmy Lee Conley on five counts of vote-buying and one count of making a false statement in a matter within federal jurisdiction. Conley was charged with paying five persons to vote by absentee ballot for a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive. During the investigation, Conley allegedly made false statements to an agent of the FBI. A jury acquitted Conley on June 19, 2003.

*United States v. Johnson.* On April 24, 2003, a federal grand jury indicted Newton Johnson on four counts of vote-buying, one count of making a false statement in a matter within federal jurisdiction, and two counts of obstructing justice. On June 2, 2003, Johnson pled guilty pursuant to a plea agreement to one count of vote-buying, and one

count of obstructing justice. Johnson paid four persons to vote by absentee ballot in the May 1998 Knott County, Kentucky primary election. Johnson paid the voters to vote for a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive. During the investigation of this vote-buying, Johnson made a false statement to an agent of the FBI, and pressured grand jury witnesses to falsely deny that he bought their votes. Pursuant to his plea agreement, Johnson pled guilty to paying one of the voters for her vote, and to endeavoring to obstruct the grand jury investigation by urging her to lie under oath. Johnson agreed to cooperate with the government. On October 6, 2003, Johnson was sentenced to three years of probation. Johnson had previously testified at the trial of Donnie Newsome to the nature and extent of the broader conspiracy to approach and pay numerous impoverished, handicapped, illiterate, or otherwise impaired persons to vote for the slate of candidates headed by Newsome. Newsome offered Johnson a road improvement and a county job in exchange for participation in the conspiracy. Johnson, who is impoverished, illiterate, and unable to leave his remote mountain hollow without the road improvement, agreed and purchased the votes of four persons. A jury convicted Newsome on all counts.

*United States v. Madden.* On March 28, 2003, a federal grand jury indicted Patrick Wayne Madden on three counts of vote-buying and one count of making a false statement in a matter within federal jurisdiction. On October 6, 2003, Madden pled guilty to one count of vote-buying. Madden paid three persons to vote by absentee ballot for a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive in the May 1998 Knott County, Kentucky primary election. During the investigation of this vote-buying, Madden made a false statement to an agent of the FBI. On February 2, 2004, Madden was sentenced to 20 months in prison and two years of supervised release. Madden pled guilty to one count of vote-buying. Madden paid three persons to vote by absentee ballot for a slate of candidates headed by Newsome.

*United States v. Newsome, Pigman, and Smith.* On April 24, 2003, a federal grand jury indicted sitting County Judge Executive Donnie Newsome and two of his supporters, Willard Smith and Keith Pigman, on one count of conspiracy to commit vote-buying. The grand jury further charged five substantive counts of vote-buying, one count charging Newsome, two counts charging Smith, one count charging Smith and Pigman, and one count charging all three defendants. Newsome, Pigman, and Smith, working together and with other conspirators, approached and paid numerous impoverished, handicapped, illiterate, or otherwise impaired persons to vote for Newsome by absentee ballot, resulting in a large increase in the rate of absentee voting, and long lines at the County Clerk's Office. Newsome won the election to remain the County Judge Executive.

On July 8, 2003, Pigman pled guilty pursuant to a plea agreement to conspiracy to commit vote-buying, and one count of vote-buying. Pigman cooperated with the government following his plea, and provided substantial assistance by testifying against Newsome and Smith. Pigman explained the nature and extent of the broader conspiracy to approach and pay numerous impoverished, handicapped, illiterate, or otherwise impaired persons to vote for the slate of candidates headed by Newsome. Pigman further

explained that such voters were purposefully chosen because they would present severe credibility problems for the government in any investigation and prosecution of their conspiracy. Newsome offered and ultimately gave Pigman a county job in exchange for Pigman's participation in the conspiracy. On October 30, 2003, Pigman was sentenced to four months of imprisonment, four months of community confinement, and two years of supervised release. On October 1, 2003, a jury convicted both Newsome and Smith on all counts. Newsome, while in office as a Kentucky State Representative, became a candidate for County Judge Executive. Newsome, Pigman, and Smith, working together and with other conspirators, approached and paid numerous persons to vote for Newsome and certain other candidates by absentee ballot, resulting in a large increase in the rate of absentee voting, and long lines at the County Clerk's Office. Newsome, who won the primary election and subsequent elections, was ordered detained pending sentencing, together with Smith, in light of threats to government witnesses during the trial.

On March 16, 2004, Newsome, the former County Judge Executive for Knott County, Kentucky, was sentenced to 26 months of in prison, a \$20,000 fine, and three years of supervised release. Smith was sentenced to 24 months in prison, a \$5,000 fine, and three years of supervised release. A jury previously convicted Newsome and Smith on all counts of an indictment that charged them with conspiracy to buy votes and five counts of vote-buying. Pigman, previously pled guilty to the conspiracy charge, and was sentenced to four months in prison, four months of community service, and two years of supervised release.

*United States v. Ronnie Slone and Brady Slone.* On March 28, 2003, a federal grand jury indicted Ronnie Neal Slone and Brady Warren Slone (who are brothers) on three counts of vote-buying, and on one count each of making a false statement in a matter within federal jurisdiction. The Slones allegedly paid three persons to vote by absentee ballot for a slate of candidates headed by Donnie Newsome. During the investigation of this vote-buying, each of the Slones allegedly made a false statement to an agent of the FBI. On August 15, 2003, a jury acquitted both defendants.

*United States v. Phillip Slone.* On March 28, 2003, a federal grand jury indicted Phillip Slone (who is not directly related to Ronnie and Brady Slone) on seven counts of vote-buying and one count of making a false statement in a matter within federal jurisdiction. On June 4, 2003, Slone pled guilty pursuant to a plea agreement to one count of vote-buying. Slone paid seven persons to vote for a slate of candidates headed by Homer Sawyer, the unsuccessful incumbent candidate for County Judge Executive in the May 1998 Knott County, Kentucky primary election. During the investigation of this vote-buying, Slone made a false statement to an agent of the FBI. On October 15, 2003, Slone was sentenced to ten months in prison and two years supervised release. Slone appealed his sentence and the district court's jurisdiction, and that appeal is pending.

## **Election Protection 2004**

### **By the Election Protection Coalition**

#### **Election Protection – the Program**

Election Protection 2004 was the nation's most far-reaching effort to protect voter rights before and on Election Day. The historic nonpartisan program included:

- A toll-free number, 1-866-OUR-VOTE, with free, immediate and multi-lingual assistance to help voters with questions about registration and voting, and assist voters who encounter barriers to the ballot box.
- Distribution of more than five million "Voters' Bills of Rights" with state-specific information
- 25,000 volunteers, including 6,000 lawyers and law students, who watched for problems and assisted voters on the spot at more than 3,500 predominantly African-American and Latino precincts with a history of disenfranchisement in at least 17 states.
- Civil rights lawyers and advocates represented voters in lawsuits, preserved access to the polls, exposed and prevented voter intimidation, worked with election officials to identify and solve problems with new voting machines, technology and ballot forms, and protected voter rights in advance and on Election Day.

#### **Voter Intimidation and Suppression Stories (Abridged)**

- An Associated Press story noted Election Protection's exposure of reported voter suppression tactics in Colorado: Officials with the Election Protection Coalition, a voter-rights group, also said some voters in a predominantly black neighborhood north of Denver found papers on their doorsteps giving them the wrong address for their precinct
- Election Protection received a report from Florissant County, Missouri from a voter who lives in predominantly white neighborhood. While waiting in line to vote, a Republican challenger challenged the black voters by requesting more proof of identification, residence, and signature match, while asking nothing from white voters. Also, the same voter reportedly asked a few questions about voting but an election officials refused to provide any meaningful answer, insisting that "it's very simple", but provided white voters with information when requested. There was one other black voter in line who was also singled out for same treatment while white voters were not.
- Election Protection received a report from Boulder County, Colorado that a poll worker made racist comments to Asian American voter and then told her she was not on the list and turned her away. The voter saw others filling out provisional ballots and asked for one but was denied. Another Asian American woman behind

her in line was also given trouble by the same poll worker (he questioned her nationality and also turned her away).

- The Election Protection hotline received reports from Pinellas County, Florida that individuals purporting to be from the Kerry campaign are going door-to-door handing out absentee ballots, and asking voters to fill them out, and then taking the ballots from them, saying "Vote here for Kerry. Don't bother going to the polls."
- The Election Protection Coalition received a report from a woman whose sister lives in Milwaukee and is on government assistance. Her sister was reportedly told by her "case manager" that if she voted for Kerry, she would stop receiving her checks.
- An illiterate, older and disabled voter in Miami-Dade asked for assistance reading the ballot and reported that a poll worker yelled at him and refused to assist him and also refused to allow him to bring a friend into the booth in order to read the ballot to him.
- The Election Protection Coalition have gathered reports that flyers are circulating in a black community in Lexington, South Carolina claiming they those who are behind on child support payments will be arrested as the polls.
- Minority voters from Palm Beach County, Florida reported to the hotline that they received middle-of-the-night, live harassing phone calls warning them away from the polls.
- A volunteer for Rock the Vote reported that two illiterate voters in Michigan requested assistance with their ballots but were refused and reportedly mocked by poll workers.
- The hotline received a call from a radio DJ in Hillsborough County, Florida, who stated that he has received many calls (most of which were from African-Americans) claiming that poll workers were turning voters away and not "letting" them vote.
- The hotline received a call from Pima County, Arizona, indicating that Democratic voters received calls throughout Monday evening, providing incorrect information about the precinct location. Voters have had to be transported en masse in order to correct the problem.
- A caller from Alabama claims that he was told at his polling place that he could vote there for everything but the President and that he would have to go elsewhere in order to vote for a presidential candidate.

- Poll monitors in Philadelphia reports groups of lawyers, traveling in threes, who pull voters out of line and challenge them to provide ID, but when challenged themselves, they hop into waiting cars or vans and leave. Similar activity by Republican lawyers in Philadelphia was reported in the 2002 election.
- In Cuyahoga, Ohio, a caller reported that all black voters are being asked to show ID, while white voters are not. Caller report that he is black and had to show ID while his girlfriend is white and did not have to show ID.
- Two months ago, suspicious phone calls to newly registered Democrats —telling them they weren't, in fact, registered to vote — were traced to the Republican headquarters in the Eastern Panhandle. On Monday, Democrats there said the calls have started again, even after the Berkeley County Clerk — a Republican — sent the party a cease-and-desist letter. The Berkeley prosecutor, who also is county Democratic chairman, has called on the U.S. attorney to investigate.
- In Tuscon, Arizona a misleading call informing voters that they should vote on November 3 has been traced back to the state GOP headquarters. The FBI is investigating.
- A man driving around in a big van covered in American flags and a big picture of a policeman was reportedly parked in front of a polling place; he then got out and moved within the 75 ft limit, until he was asked to leave; he then was found inside the polling place and was again asked to leave. Election Protection volunteers contacted officials and the man was eventually removed.
- The Election Protection hotline has received a report from individuals who claim to have received recorded telephone message coming from Bill Clinton and ACT and reminding them to vote on Nov. 3rd.
- In Massachusetts, the EP Hotline has received a report that a radio station (WILD) is broadcasting that voters will be arrested on the spot if they have outstanding parking tickets.
- In Richland, South Carolina Election Protection has received a report of a poll manager turning away individuals who do not have photo ID issued to the county or a driver's license; an EP lawyer spoke with the Poll Manager at 8:20 am and told her that people with other forms of ID should be allowed to vote by provisional ballot.
- In Greenville, a caller reported that a white poll worker was asking Blacks for multiple form of I.D. Fortunately, the voter who reported the problem did have a second I.D. but reported that some others were turned away. Election Protection attorneys have alerted election officials.

- In Allegheny County, Pennsylvania, an official looking flyer advises Democratic voters to "create a peaceful voting environment" by voting on Wednesday, November 3
- The week before the election, flyers were circulated in Milwaukee under the heading "Milwaukee Black Voters League" with some "warnings for election time." The flyer listed false reasons for which you would be barred from voting (such as a traffic ticket) and then warned that "If you violate any of these laws you can get ten years in prison and your children will get taken away from you."
- There is a Jefferson County flyer which tells voters "See you at the Poles![sic]"... on November 4.

### **The Federal Crime of Election Fraud** **By Craig Donsanto**

In The Federal Crime of Election Fraud, Donsanto addresses the role of the United States Department of Justice in matters of election fraud. Specifically, it answers the most frequently asked questions concerning the federal law enforcement role in election matters. Particularly, what sort of election-related conduct is potentially actionable as a federal crime, what specific statutory theories apply to frauds occurring in elections lacking federal candidates on the ballot, what federalism, procedural, and policy considerations impact on the federalization of this type of case, and how Assistant United States Attorneys should respond to this type of complaint.

Donsanto indicates that as a general rule, the federal crime of voter fraud embraces only organized efforts to corrupt of the election process itself: i.e., the registration of voters, the casting of ballots, and the tabulation and certification of election results. Moreover, this definition excludes all activities that occur in connection with the political campaigning process, unless those activities are themselves illegal under some other specific law or prosecutorial theory. This definition also excludes isolated acts of individual wrongdoing that are not part of an organized effort to corrupt the voting process. Finally, Donsanto points out that mistakes and other gaffs that inevitably occur are not included as voter fraud. Where mistakes occur on a significant enough level to potentially affect the outcome of an election, the appropriate remedy is an election contest brought by the loser seeking civil judicial redress through the appropriate state election contest process.

Along with the limits discussed above, prosecuting election fraud offenses in federal court is further complicated by the constitutional limits that are placed on federal power over the election process. The conduct of elections is primarily a state rather than a federal activity.

Donsanto lists four types of election fraud: schemes to purposely and corruptly register voters who either do not exist, or who are known by the putative defendant to be

ineligible to vote under applicable state law; schemes to cast, record or fraudulently tabulate votes for voters who do not participate in the voting act at all; schemes to corrupt the voting act of voters who do participate in the voting act to a limited extent; and, schemes to knowingly prevent voters qualified voters from voting.

Donsanto lists four situations where federal prosecution is appropriate: Where the objective of the conduct is to corrupt the outcome of a federal elective contest, or where the consequential effect of the corrupt conduct impacts upon the vote count for federal office; Where the object of the scheme is to discriminate against racial, ethnic or language minority groups, the voting rights of which have been specifically protected by federal statutes such as the Voting Rights Act, 42 U.S.C. section 1973 et seq.; Where federalization is required in order to redress longstanding patterns of electoral fraud, either at the request of state or local authorities, or in the face of longstanding inaction by state authorities who appear to be unwilling or unable to respond under local law; and, Where there is a factual basis to believe that fraudulent registration or voting activity is sufficiently connected to other forms of criminal activity that perusing the voter fraud angle will yield evidence useful in the prosecution of other categories of federal offense.

Donsanto lists four advantages to federal prosecution: voter fraud investigations are labor intensive. Local law enforcement agencies often lack the manpower and the financial resources to take these cases on; voter fraud matters are always politically sensitive and very high profile endeavors at the local level. Local prosecutors (who are usually themselves elected) often shy away from prosecuting them for that reason; the successful prosecution of voter fraud cases demands that critical witnesses be examined under oath before criminal charges based on their testimony are filed. Many states lack the broad grand jury process that exists in the federal system; and, the defendants in voter fraud cases are apt to be politicians - or agents of politicians - and it is often impossible for either the government or the defendant to obtain a fair trial in a case that is about politics and is tried to a locally-drawn jury. The federal court system provides for juries to be drawn from broader geographic base, thus often avoiding this problem.

Several prosecutorial theories used by United States Attorneys to federalize election frauds are discussed. These include: schemes by polling officers to violate their duty under state law to safeguard the integrity of the election process by purposefully allowing void ballots to be cast (stuffing the ballot box), or by intentionally rendering fraudulent vote tallies which can be prosecuted as civil rights violations under 18 U.S.C. sections 241 or 242; schemes to stimulate or reward voter registration by offering or giving voters things having monetary value violate the "payment for registering" clause of 42 U.S.C. section 19731(c); schemes to register voters fraudulently through providing election officials materially false information about the voter's eligibility for the franchise; and, schemes to obtain and cast ballots that are materially defective in nonfederal elections can still be prosecuted under 18 U.S.C. section 1341. There are also some other federal statutes involved in election fraud cases such as 18 U.S.C. section 597 that prohibits making expenditures for the specific purpose of stimulating voters to cast ballots for candidates seeking the federal offices of Senator, Congressman or President and 42 U.S.C. section 1973i (e) that prohibits voting more than once in elections where federal

candidates are on the ballot.

Donsanto lists four questions used by prosecutors in evaluating the credibility of election complaints: does the substance of the complaint assuming it can be proven through investigation - suggest a potential crime; is the complaint sufficiently fact-specific that it provides leads for investigators to pursue; is there a federal statute that can be used to federalize the criminal activity at issue; and, is there a special federal interest in the matter that warrants federalization rather than deferral to state law enforcement.

All federal election investigations must avoid the following: non-interference in elections unless absolutely necessary to preserve evidence; interviewing voters during active voting periods; seizing official election documentation; investigative activity inside open polls; and prosecutors must adhere to 18 U.S.C. section 592, prohibiting the stationing of armed men at places where voting activity is taking place.

Finally, Donsanto indicates that election crimes based on race or language minority status are treated as civil rights matters under the Voting Rights Act.

### **Fooled Again, Mark Crispin Miller**

Fooled Again sets out to show that the 2004 election was won by Bush through nefarious means, and indicts the news media for not taking anomalies, irregularities, and alleged malfeasance in the process seriously enough.

Miller identifies a number of statistical anomalies based on polling and turnout results that he alleges puts the validity of the 2004 election in doubt. He accuses Republicans of committing crimes and improprieties throughout the country. These include deliberate disparities in voting machine distribution and long lines in Democratic jurisdictions; misinterpretation of voting laws by elections officials to the detriment of Democratic voters; dirty tricks and deceptive practices to mislead Democratic and minority voters about voting times, places and conditions; machine irregularities in Democratic jurisdictions; relocating polling sites in Democratic and minority areas; suspicious mishandling of absentee ballots; refusing to dispense voter registration forms to certain voter registration groups; intimidation of students; suspicious ballot spoilage rates in certain jurisdictions; "strategic distribution of provisional ballots," and trashing of provisional ballots; harassment of Native American voters; a Republican backed organization engaging in voter registration efforts throughout the country that allegedly destroyed the voter registration forms of Democrats; illegitimate challenges at the polls by Republican poll watchers; improper demands for identification in certain areas; Republican challenges to the voter registration status of thousands of voters before the election, and the creation of lists of voters to challenge at the polls; wrongful purging of eligible voters from voting rolls; partisan harassment; the selective placement of early voting sites; and the failure to send out absentee ballots in time for people to vote.

Miller details what he says was the inappropriate use of the Federal Voter Assistance Program that made voting for the military easy while throwing up obstacles for civilians overseas in their efforts to vote by absentee ballot, leading many of them to be disenfranchised. Miller says that most of the military voters would be Republicans and most of the overseas civilians Kerry voters.

In this book, Miller clearly tries to prove the Republican Party won the 2004 through illegitimate means. This must be kept strongly in mind in making any use of this work. However, the book is well sourced, and individual instances of alleged malfeasance discussed may be worth looking at.

### **Summary and Relevant Excerpts From Georgia Voter ID Litigation**

#### **Complaint For Declaratory And Injunctive Relief**

The Secretary of State, as the Chief Election Officer in Georgia, informed the General Assembly before the passage of Act 53 in a letter (attached hereto as Exhibit A), and also informed the Governor in a letter (attached hereto as Exhibit B) before he signed the bill into law, that there had been no documented cases of fraudulent voting by persons who obtained ballots unlawfully by misrepresenting their identities as registered voters to poll workers reported to her office during her nine years as Secretary of State .

Although the Secretary of State had informed the members of the General Assembly and the Governor prior to the enactment of Act 53, that her office had received many complaints of voter fraud involving absentee ballots and no documented complaints of fraud that involve ballots that were cast in person at the polls, the General Assembly ignored this information and arbitrarily chose instead to require only those registered voters who vote in person to present a Photo ID as a condition of voting, but deliberately refused to impose the same requirement on absentee voters

#### **The Stated Purpose Of The Photo ID Requirement Fraud Is A Pretext**

According to a press release prepared by the Communications Office of the Georgia House of Representatives, the purpose of Act 53 is:

... to address the issue of voter fraud by placing tighter restrictions on voter identification procedures. Those casting ballots will now be required to bring a photo ID with them before they will be allowed to vote.

Al Marks, Vice Chairman for Public Affairs and Communication of the Hall County GOP told the Gainesville Times:

I don't think we need it for voting, because I don't think there's a voter fraud problem. Gainesville Times, "States Voters Must Present Picture IDs" (September 15, 2005) ([www.gainesvilletimes.com](http://www.gainesvilletimes.com)).

There is no evidence that the existing provisions of Georgia law have not been effective in deterring and preventing imposters from fraudulently obtaining and casting ballots at the polls by misrepresenting their true identities to election officials and passing themselves off as registered voters whose names appear on the official voter registration list.

The pretextual nature of the purported justification for the burden which the Photo ID requirement imposes on the right to vote is shown by the following facts:

(a) Fraudulent voting was already prohibited by existing Georgia law without unduly burdening the right of a citizen to vote.

(i) Fraudulent voting was already prohibited as a crime under O.C.G.A. §§ 21-2-561, 21-2-562, 21-2-566, 21-2-571, 21-2-572 and 21-2-600, punishable by a fine of up to \$10,000 or imprisonment for up to ten years, or both.

(ii) Voter registration records are updated periodically by the Secretary of State and local election officials to eliminate people who have died, have moved, or are no longer eligible to vote in Georgia for some other reason.

(iii) Existing Georgia law also required election officials in each precinct to maintain a list of names and addresses of registered voters residing in that precinct, and to check off the names of each person from that official list as they cast their ballots.

(iv) Registered voters were also required by existing Georgia law to present at least one of the seventeen forms of documentary identification to election officials who were required, before issuing the voter a ballot, to match the name and address shown on the document to the name and address on the official roll of registered voters residing in the particular precinct. O.C.G.A. § 21-2-417.

(b) There is no evidence that the existing Georgia law has not been effective in deterring or preventing fraudulent in-person voting by impersonators - the only kind of fraudulent voting that might be prevented by the Photo ID requirement. To the contrary, the Secretary of State, who, as the Superintendent of Elections, is the highest election official in Georgia, informed both the General Assembly (Exhibit A) and the Governor (Exhibit B) in writing that there had been no documented cases of fraudulent in person voting by imposters reported to her during her nine years in office.

(c) If the true intention of the General Assembly had been to prevent fraudulent voting by imposters, the General Assembly would have imposed the same restrictions on the casting of absentee ballots - particularly after the Secretary of State had called to their attention the fact that there had been many documented instances of fraudulent casting of absentee ballots reported to her office.

(d) Fraudulent in-person voting is unlikely, would be easily detected if it had occurred in significant numbers, and would not be likely to have a substantial impact on the outcome of an election:

(i) Many people vote at a local neighborhood polling place where they are likely to be known to and recognized by neighbors or poll workers.

(ii) Voters were required by existing Georgia law (O.C.G.A. § 21-2-417), to provide one of the seventeen means of identification to election officials.

(iii) Election officials are required, before issuing the ballot to the voter, to check off the name of either voter from an up-to-date list of the names and addresses of every

registered voter residing in the precinct. If an imposter arrived at a poll and was successful in fraudulently obtaining a ballot before the registered voter arrived at the poll, a registered voter, who having taken the time to go to the polls to vote, would undoubtedly complain to elections officials if he or she were refused a ballot and not allowed to vote because his or her name had already been checked off the list of registered voters as having voted. Likewise, if an imposter arrived at the polls after the registered voter had voted and attempted to pass himself off as someone he was not, the election official would instantly know of the attempted fraud, would not issue the imposter a ballot or allow him to vote, and presumably would have the imposter arrested or at least investigate the attempted fraud and report the attempt to the Secretary of State as Superintendent of Elections.

#### EXHIBIT B

##### Letter from Secretary of State Cathy Cox to Governor Sonny Purdue, April 8, 2005

One of the primary justifications given by the Legislature for the passage of the photo identification provisions of House Bill 244 - the elimination of voter ID fraud at the polls is an unfounded justification I cannot recall one documented case of voter fraud during my tenure as Secretary of State or Assistant Secretary of State that specifically related to the impersonation of a registered voter at voting polls. Our state currently has several practices and procedures in existence to ensure that such cases of voter fraud would have been detected if they in fact occurred, and at the very least, we would have complaints of voters who were unable to vote because someone had previously represented himself or herself as such person on that respective Election Day. As a practical matter, there is no possibility that vote fraud of this type would have gone undetected if it had in fact occurred because there is a list of registered voters at each polling place that is checked off as each person votes. If the impersonator voted first and the legitimate voter came to the polling place later in the day and tried to vote, he or she would be told that they had already voted and would not be allowed to vote a second time in the same day. It is reasonable to suspect that a voter who cared enough to show up at the polls to cast a ballot would almost certainly have complained - but there have been no such complaints. If the opposite occurred, and the legitimate person came to the polls first and cast his ballot, the impersonator who showed up later would not be allowed to vote for the same reason and the attempted fraud would have been prevented.

In addition, this slate has adopted severe criminal sanctions for the type of vote impersonation that is purportedly of concern and it is evident that such penalties have been a sufficient deterrent. In essence, there is no voter fraud problem currently in existence that House Bill 244 addresses.

In contrast to the lack of voter fraud relating to impersonation of voters at polls during my tenure the State Election Board has reviewed numerous cases of voter fraud relating to the use of absentee ballots.

##### State Defendants' Initial Brief In Opposition To Plaintiffs' Motion For Preliminary Injunction

There are 159 counties and an even larger number of municipalities in Georgia that conduct elections. Neither the Secretary of State nor her staff can be physically present at the polling places for those elections and therefore could not possibly be aware of all in-person voter fraud that might occur. (Cox Decl. ¶ 6.)

Under the prior law before enactment of HB 244, it is beyond argument that in person voter fraud could have taken place. (Id. ¶ 5.) The Secretary of State's view of the scenario in which voter fraud would occur is when an imposter votes at the polling place and the actual voter shows up later and is unable to cast a ballot. (Id. ¶ 5.) However, the Secretary of State agrees that the scenario she describes is only one instance of potential voter fraud, and both her scenario and others were possible under the law as it existed prior to the enactment of HB 244. (Id.) As stated by the Director of Elections for the Forsyth County Board of Elections, the typical case of in-person voter fraud would be committed by identifying persons who do not typically vote and then having other individuals vote as those persons. (Smith Decl. ¶ 4.)

The Executive Director of the Richmond County Board of Elections has been aware of such complaints, but has been unable to gather evidence to prove the violations because the nature of the conduct makes such evidence hard to develop. (Bailey Decl. ¶ 9.) Indeed, past incidents of fraudulent registrations in Forsyth County and Fulton County were reported to the District Attorneys' offices in those respective counties. (Smith Decl. ¶ 6; MacDougald Decl. ¶ 4.) In Fulton County, the fraudulent registrations were also reported to the United States Attorney for the Northern District of Georgia, and he has opened an investigation of the fraudulent registrations. (MacDougald Decl. ¶ 4.)

#### Order for a Preliminary Injunction

As part of the order, Judge Murphy describes the testimony of Harry MacDougald, a member of the Fulton County Board of Registration and Election. Mr. MacDougald had stated he had observed voter registration fraud, which he referred to the U.S. Attorney and the District Attorney. In addition, since some precinct cards the Board sent out in 2004 were returned as undeliverable, MacDougald believes they were not eligible voters, yet they were allowed to vote.

Although the Secretary of State said she knew of no incidents of impersonation at the polls, she and her staff are not physically present in every polling site. Secretary Cox stated local officials are in the best position to know of such incidents. The State Election Board has received a number of complaints of irregularities with respect to absentee ballots. Cox is also aware of a case of vote buying of absentee ballots. She is also aware of efforts to submit fraudulent registrations.

According to Secretary of State Cox, Georgia has procedures and practices in place to detect voter fraud. Those procedures include verifying the voter's correct address, as well as the voter's name, during the check-in process for in-person voters. Georgia also imposes criminal penalties for voter impersonation. Most violations of Georgia election

laws are punishable as felonies. No evidence indicates that the criminal penalties do not sufficiently deter in-person voter fraud.

The integrity of the voter list also is extremely important in preventing voter fraud. The Atlanta Journal Constitution published an article indicating that Georgia had experienced 5,412 instances of voter fraud during a twenty-year period. Secretary of State Cox's office undertook an investigation in response to that article. The investigation revealed that the specific instance of voter fraud outlined in the Atlanta Journal-Constitution, involving a report that Alan J. Mandel had voted after his death, actually did not occur. Instead, an individual with a similar name, Alan J. Mandle, had voted at the polls, and the poll worker had marked Alan J. Mandel's name rather than marking Alan J. Mandle, the name of the individual who actually voted. Secretary of State Cox's office compared the signature on the voter certificate to the voter registration card of the living individual, and concluded that the living individual, Alan J. Mandle, rather than the deceased Alan J. Mandel, had voted.

The Secretary of State's Office subsequently attempted to ensure that voter records were maintained and up to date. The Secretary of State's Office sends information concerning dead voters to local elections officials on a monthly basis, and now has the authority to remove the names of deceased voters from the voter rolls if the local elections officials fail to do so in a timely manner. Secretary of State Cox is not aware of any reports of dead individuals voting since her office received authority to remove the names of deceased individuals from the voter rolls.

There seems to be little doubt that the Photo ID requirement fails the strict scrutiny test: accepting that preventing voter fraud is a legitimate and important State concern, the statute is not narrowly drawn to prevent voter fraud. Indeed, Secretary of State Cox pointed out that, to her knowledge, the State had not experienced one complaint of in-person fraudulent voting during her tenure. In contrast, Secretary of State Cox indicated that the State Election Board had received numerous complaints of voter fraud in the area of absentee voting. Furthermore, the Secretary of State's Office removes deceased voters from the voting rolls monthly, eliminating the potential for voter fraud noted by the Atlanta Journal-Constitution article alleging that more than 5,000 deceased people voted during a twenty-year period.

Further, although Defendants have presented evidence from elections officials of fraud in the area of voting, all of that evidence addresses fraud in the area of voter registration, rather than in-person voting. The Photo ID requirement does not apply to voter registration, and any Georgia citizen of appropriate age may register to vote without showing a Photo ID. Indeed, individuals may register to vote by producing copies of bank statements or utility bills, or without even producing identification at all. The Photo ID law thus does nothing to address the voter fraud issues that conceivably exist in Georgia.

## **Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote**

### **GAO Report**

In 2002, the Help America Vote Act (HAVA) was enacted and, among other things, it requires states to implement provisional voting for elections for federal office. HAVA, in general, requires that individuals not listed as registered or whose eligibility is questioned by an election official must be notified about and permitted to cast a provisional ballot that is set aside for review by election officials at a later time so that they can determine whether the person is eligible to vote under state law. HAVA also requires that provisional ballots be provided to first-time voters who had registered to vote by mail on or after January 1, 2003, but were unable to show photo identification or another qualifying identification document when voting in person or by mail in a federal election. In addition, HAVA requires that election officials must provide access to information that permits voters to learn if their provisional ballot was counted, and, if not, why not.

This Report focuses on the efforts of local election officials in 14 jurisdictions within 7 states to manage the registration process, maintain accurate voter registration lists, and ensure that eligible citizens in those jurisdictions had the opportunity to cast ballots during the 2004 election. Specifically, for the 2004 election, the Report concentrates on election officials' characterization of their experiences with regard to (1) managing the voter registration process and any challenges related to receiving voter registration applications; checking them for completeness, accuracy, and duplication; and entering information into voter registration lists; (2) removing voters' names from voter registration lists and ensuring that the names of eligible voters were not inadvertently removed; and (3) implementing HAVA provisional voting and identification requirements and addressing any challenges encountered related to these requirements. The Report also provides information on motor vehicle agency (MVA) officials' characterization of their experiences assisting citizens who apply to register to vote at MVA offices and forwarding voter registration applications to election offices.

The Report analyzed information collected from elections and motor vehicle agency offices in seven states—Arizona, California, Michigan, New York, Texas, Virginia, and Wisconsin. These states take various approaches to administering elections. Within each of the seven states, using population data from the 2000 U.S. Census, two jurisdictions were selected: a local jurisdiction with a large population and a local jurisdiction with a small population. The 14 jurisdictions we selected were Gila and Maricopa Counties, Arizona; Los Angeles and Yolo Counties, California; City of Detroit and Delta Township, Michigan; New York City and Rensselaer County, New York; Bexar and Webb Counties, Texas; Albemarle and Arlington Counties, Virginia; and the cities of Franklin and Madison, Wisconsin.

Information was gathered for the Report in a number of ways. First, relevant laws, state reports, and documents related to the voter registration process in the seven states were reviewed. Second, state and local election officials in the 7 states and 14 jurisdictions

were interviewed to obtain information on their registration processes and implementation of the HAVA requirements for provisional voting and voter identification. Third, a survey was sent to election officials in the 14 jurisdictions to gather information about their experiences with the November 2004 election. Finally, a survey was sent to state and local MVA officials in 6 of the 7 states and 12 of the 14 jurisdictions. The survey primarily asked questions about the MVA offices' experiences with (1) assisting citizens with completing voter registration applications, (2) forwarding the applications to election offices, and (3) responding to individuals and state or local election officials who contacted their offices about individuals who declared they had applied to register to vote at MVA offices but their names were not on voter registration lists when they went to vote in the November 2004 election.

Election officials representing all but one of the jurisdictions surveyed following the November 2004 election said they faced some challenges managing the voter registration process, including (1) receiving voter registration applications; (2) checking them for completeness, accuracy, and duplication; and (3) entering information into voter registration lists; when challenges occurred, election officials reported they took various steps to address them. Officials in 7 of the 14 jurisdictions reported that their staff faced challenges checking voter registration applications for completeness, accuracy, or duplicates. According to these officials, these challenges occurred for a variety of reasons, including problems contacting individuals to obtain complete and accurate information and insufficient staffing to check the applications. They reported that, among other things, their staff addressed these challenges by sending letters or calling applicants to obtain correct information. Finally, 6 of the 14 election officials reported that their staff faced challenges entering or scanning voter information into registration lists for reasons such as the volume of applications received close to Election Day and problems with the scanning equipment. To address these challenges, they reported that more staff were hired and staff worked overtime.

All but 1 of the jurisdictions reported removing names from registration lists during 2004 for various reasons, including that voters requested that their names be removed from the voter registration list; information from the U.S. Postal Service (USPS) showing that voters had moved outside the jurisdiction; felony records received from federal, state, or local governments identifying voters as ineligible due to felony convictions; and death records received from state or local vital statistics offices. When removing names from registration lists, election officials reported that they took various steps to ensure that the names of eligible voters were not inadvertently removed from voter registration lists. These steps included sending letters or postcards to registrants to verify that voters wanted their names removed; matching voters' identifying information with USPS data and sending voters identified by USPS as having moved outside the jurisdiction notices of removal; and matching voter registration records with felony records or death records to confirm it was the same person.

All of the jurisdictions reported that they permitted citizens to cast provisional ballots during the November 2004 election. In addition, 12 of the 14 jurisdictions to which this was applicable reported that they offered certain first-time voters who registered by mail

the opportunity to cast provisional ballots. Election officials in 13 of the 14 jurisdictions reported that 423,149 provisional ballots were cast, and 70 percent (297,662) were counted. Not all provisional votes were counted because, as election officials reported, not all provisional ballots met states' criteria for determining which ballots should be counted. Reasons that provisional ballots cast during the 2004 election were not counted, as reported by election officials, included, among others, that individuals did not meet the residency eligibility requirements, had not registered or tried to register to vote with the election office, had not submitted the voter registration applications at motor vehicle agency offices, or election officials did not have time to enter information from applicants into their voter registration lists because applications were received at the election offices very close to or after the state registration deadline.

Local election officials in 12 of the 13 jurisdictions 13 we surveyed reported that they set up mechanisms to inform voters—without cost—about the outcome of their provisional votes during the November 2004 election. These mechanisms included toll-free telephone numbers, Web sites, and letters sent to the voters who cast provisional ballots. Election officials also reported that provisional voters in their jurisdictions received written information at their polling places about how to find out the outcome of their provisional ballots, and provisional voters in 8 of the 13 jurisdictions had the opportunity to access information about the outcome of their ballots within 10 days after the election. Finally, election officials representing 8 of the 14 jurisdictions reported facing challenges implementing provisional voting for various reasons, including some poll workers not being familiar with provisional voting or, in one jurisdiction representing a large number of precincts, staff not having sufficient time to process provisional ballots. To address these challenges, the officials reported that they provided additional training to poll workers and hired additional staff to count provisional ballots.

## **INDIANA ID LITIGATION SUMMARY**

### **MEMORANDUM IN SUPPORT OF DEMOCRATS. MOTION FOR SUMMARY JUDGMENT**

Although the proponents of SEA 483 asserted that the law was intended to combat voter fraud, no evidence of the existence of such fraud has ever been provided. No voter has been convicted of or even charged with the offense of misrepresenting his identity for purposes of casting a fraudulent ballot in person, King Dep. 95-96; Mahern Aff. ¶¶ 2-3, though there have been documented instances of absentee ballot fraud. King Dep. 120. Indeed, no evidence of in person, on-site voting fraud was presented to the General Assembly during the legislative process leading up to the enactment of the Photo ID Law. Mahern Aff. ¶¶ 2-

The State cannot show any compelling justification for subjecting only voters who vote in person to the new requirements of the Photo ID Law, while exempting absentee voters who vote by mail or persons who live in state-certified residential facilities.

On the other hand, absentee ballots are peculiarly vulnerable to coercion and vote tampering since there is no election official or independent election observer available to ensure that there is no illegal coercion by family members, employers, churches, union officials, nursing home administrators, and others.

The Law gives virtually unbridled discretion to partisan precinct workers and challengers to make subjective determinations such as (a) whether a form of photo identification produced by a voter conforms to what is required by the Law, and (b) whether the voter presenting himself or herself at the polls is in fact the voter depicted in the photo. Robertson Dep. 29-34, 45; King Dep. 86, 89. This is significant because any voter who is challenged under this Law will be required to vote by provisional ballot and to make a special trip to the election board's office in order to have his vote counted. Robertson Dep. 37; King Dep. 58.

The Photo ID Law confers substantial discretion, not on law enforcement officials, but on partisan precinct poll workers and challengers appointed by partisan political officials, to determine both whether a voter has presented a form of identification which conforms to that required by the Law and whether the person presenting the identification is the person depicted on it. Conferring this degree of discretion upon partisan precinct officials and members of election boards to enforce the facially neutral requirements of the Law has the potential for becoming a means of suppressing a particular point of view.

The State arguably might be justified in imposing uniform, narrowly-tailored and not overly-burdensome voter identification requirements if the State were able to show that there is an intolerably high incidence of fraud among voters misidentifying themselves at the polls for the purpose of casting a fraudulent ballot. But here, the State has utterly failed to show that this genre of fraud is rampant or even that it has ever occurred in the context of on-site, in-person voting (as opposed to absentee voting by mail) so as to justify these extra burdens, which will fall disproportionately on the poor and elderly. In evaluating the breadth of the law and whether the State has used the least restrictive means for preventing fraud, the Court must take into account the other mechanisms the State currently employs to serve the statute's purported purposes, as well as other, less restrictive means it could reasonably employ. *Krislov*, 226 F.3d at 863. The State of Indiana has made it a felony for a voter to misrepresent his or her identity for purposes of casting a fraudulent ballot.

And where the State has already provided a mechanism for matching signatures, has made it a crime to misrepresent one's identity for purposes of voting, and requires the swearing out of an affidavit if the voter's identity is challenged, it already has provisions more than adequate to prevent or minimize fraud in the context of in-person voting, particularly in the absence of any evidence that the problem the Law seeks to address is anything more than the product of hypothesis, speculation and fantasy.

**MEMORANDUM OF THE STATE OF INDIANA, THE INDIANA SECRETARY OF STATE, AND THE CO-DIRECTORS OF THE INDIANA ELECTION**

**DIVISION IN SUPPORT OF THEIR JOINT MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO THE MOTIONS FOR SUMMARY JUDGMENT FILED BY BOTH SETS OF PLAINTIFFS**

In-person voter-identity fraud is notoriously difficult to detect and investigate. In his book *Stealing Elections*, John Fund observes that actual in-person voter fraud is nearly undetectable without a voter photo-identification requirement because anybody who provides a name that is on the rolls may vote and then walk away with no record of the person's actual identity. *See generally* John Fund, *Stealing Elections* (2004). The problem is only exacerbated by the increasingly transient nature of society. Documentation of in-person voter fraud often occurs only when a legitimate voter at the polls hears a fraudulent voter trying to use her name, as happened to a woman in California in 1994. *See* Larry J. Sabato & Glenn R. Simpson, *Dirty Little Secrets* 292 (1996).

Regardless of the lack of extensive evidence of in-person voter fraud, the Commission on Federal Election Reform (known as the Baker-Carter Commission) recently concluded that "there is no doubt that it occurs." State Ex. 1, p. 18.<sup>1</sup> Legal cases as well as newspaper and other reports confirm that in-person voter-identity fraud, including voter impersonation, double votes, dead votes, and fake addresses, plague federal and state elections. [The memorandum details several specific cases of various types of alleged voting fraud from the past several years]

Though they are largely unable to study verifiable data concerning in-person voter fraud, scholars are well aware of the conditions that foster fraudulent voting. *See* Fund, *supra*; Sabato & Simpson, *supra*, 321. In particular, fraud has become ever more likely as "it has become more difficult to keep the voting rolls clean of 'deadwood' voters who have moved or died" because such an environment makes "fraudulent voting easier and therefore more tempting for those so inclined." Sabato & Simpson, *supra*, 321. "In general, experts believe that one in five names on the rolls in Indiana do not belong there." State Ex. 25.

For this case, Clark Benson, a nationally recognized expert in the collection and analysis of voter-registration and population data, conducted his own examination of Indiana's voter registration lists and concluded that they are among the most highly inflated in the nation.

The Crawford Plaintiffs cite the concessions by Indiana Election Division Co-Director King and the Intervenor-State that they are unaware of any historical in-person incidence of voter fraud occurring at the polling place (Crawford Brief, p. 23) as conclusive evidence that in-person voter fraud does not exist in Indiana. They also seek to support this conclusion with the testimony of two "veteran poll watchers," Plaintiff Crawford and former president of the Plaintiff NAACP, Indianapolis Chapter, Roderick E. Bohannon, who testified that they had never seen any instances of in-person voter fraud. (*Id.*)

At best, the evidence on this issue is in equipoise. While common sense, the experiences of many other states, and the findings of the Baker-Carter Commission all lead to the reasonable inferences that (a) in-person polling place fraud likely exists, but (b) is nearly impossible to detect without requiring photo identification, the State can cite to no confirmed instances of such fraud. On the other hand, the Plaintiffs have no proof that it does not occur.

At the level of logic, moreover, it is just reasonable to conclude that the lack of confirmed incidents of in-person voting fraud in Indiana is the result of an ineffective identification security system as it is to conclude there is no in-person voting fraud in Indiana. So while it is undisputed that the state has no proof that in-person polling place fraud has occurred in Indiana, there does in fact remain a dispute over the existence *vel non* of in-person polling place fraud.

It is also important to understand that the nature of in-person election fraud is such that it is nearly impossible to detect or investigate. Unless a voter stumbles across someone else trying to use her identity, *see* Sabato & Simpson, *supra*, 292, or unless the over-taxed poll worker happens to notice that the voter's signature is different from her registration signature State Ext. 37, ¶ 9, the chances of detecting such in-person voter fraud are extremely small. Yet, inflated voter-registration rolls provide ample opportunity for those who wish to commit in-person voter fraud. *See* Fund, *supra*, 24, 65, 69, 138; Sabato & Simpson, *supra*, 321. And there is concrete evidence that the names of dead people have been used to cast fraudulent ballots. *See* Fund, *supra*, 64. Particularly in light of Indiana's highly inflated voter rolls State Ex. 27, p. 9, Plaintiffs' repeated claims that there has never been any in-person voter fraud in Indiana can hardly be plausible, even if the state is unable to prove that such fraud has in fact occurred.

**Summary of the U.S Department of Justice Section 5 Recommendation**  
**Memorandum: August 25, 2005 regarding HB 244 – parts that pertain to the issue of voter fraud.**

Overview: Five career attorneys with the civil rights department investigated and analyzed Georgia's election reform law. Four of those attorneys recommended objecting to Section 59, the voter identification requirement. The provision required all voters to present government issued photo identification in order to vote. The objection was based on the attorneys' findings that there was little to no evidence of polling place fraud, the only kind of fraud an ID requirement would address, and that the measure would disenfranchise many voters, predominantly minority voters, in violation of Section 5 of the Voting Rights Act.

Factual Analysis: The sponsor of the measure in the state legislature said she was motivated by the fact that she is aware of vote buying in certain districts; she read John Fund's book; and that "if there are fewer black voters because of this bill, it will only be because there is less opportunity for fraud. She said that when black voters in her black precincts are not paid to vote, they do not go to the polls."

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A member of the Fulton County Board of Registrations and Elections said that prior to November 2004, Fulton County received 8,112 applications containing "missing or irregular" information. Only 55 of those registrants responded to BOE letters. The member concluded that the rest must be "bogus" as a result. He also stated that 15,237 of 105,553 precinct cards came back as undeliverable, as did 3,071 cards sent to 45,907 new voters. Of these 3,071, 921 voted.

Secretary of State Cathy Cox submitted a letter testifying to the absence of any complaints of voter fraud via impersonation during her tenure.

In the legal analysis, the attorneys state that if they determine that Georgia could have fulfilled its stated purpose of election fraud, while preventing or ameliorating the retrogression, an objection is appropriate. /They conclude that the state could have avoided retrogression by retaining various forms of currently accepted voter ID for which no substantiated security concerns were raised. Another non-retrogressive alternative would have been to maintain the affidavit alternative for those without ID, since "There is no evidence that penalty of law is an insufficient deterrent to falsely signing an affidavit of identity."

The attorneys point out that the state's recitation of a case upholding voter fraud in Dodge County does not support the purpose of the Act because that case involved vote buying and selling, not impersonation or voting under a false identity.

#### **Securing the Vote: An Analysis of Election Fraud, by Lorraine Minnite**

Professor Lori Minnite conducted a comprehensive survey and analysis of vote fraud in the United States. The methodology included doing nexis searches for all 50 states and surveying existing research and reports. In addition, Minnite did a more in-depth study of 12 diverse states by doing nexis searches, studying statutory and case law, and conducting interviews with election officials and attorneys general. Finally, the study includes an analysis of a few of the most high profile cases of alleged fraud in the last 10 years, including the Miami mayoral election (1997), Orange County congressional race (1996), and the general election in Missouri (2000). In these cases, Minnite shows that many allegations of fraud do not end up being meritorious.

Minnite finds that available evidence suggests that the incidence of election fraud is minimal and rarely affects election outcomes. Election officials generally do a very good job of protecting against fraud. Conditions that give rise to election fraud have steadily declined over the last century as a result of weakened political parties, strengthened election administration, and improved voting technology. There is little available evidence that election reforms such as the National Voter Registration Act, election day registration, and mail-in voting have resulted in increases in election fraud.

Election fraud appears also to be very rare in the 12 states examined more in-depth. Legal and news records turned up little evidence of significant fraud in these states or any

indication that fraud is more than a minor problem. Interviews with state officials further confirmed this impression.

Minnite found that, overall, the absentee mail-in ballot process is the feature most vulnerable to voter fraud. There is not a lot of evidence of absentee ballot fraud but the potential for fraud is greatest in this area because of a lack of uniformly strong security measures in place in all states to prevent fraud.

Minnite suggest several reforms to prevent what voter fraud does take place. These include effective use of new statewide voter registration databases; identification requirements for first time voters who register by mail should be modified to expand the list of acceptable identifying documents; fill important election administration positions with nonpartisan professionals; strengthen enforcement through adequate funding and authority for offices responsible for detecting and prosecuting fraud; and establish Election Day Registration because it usually requires voter identification and authorization in person before a trained election worker, which reduces the opportunity for registration error or fraud.

**Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections, People for the American Way, NAACP, Lawyers Committee for Civil Rights**

Shattering the Myth is a description and analysis of the complaints and allegations of voting irregularities gathered by the Election Protection program during the 2004 presidential election. Election Protection was an effort involving hundreds of organizations and thousands of citizens to protect the voting rights of Americans across the country. The project included sending thousands of monitors to the polls and hosting a national toll free voters' rights hotline. EP mounted extensive field efforts in 17 states.

Election Protection received more than a thousand complaints of voter suppression or intimidation. Complaints ranged from intimidating experiences at polling places to coordinated suppression tactics. For example:

- Police stationed outside a Cook County, Illinois, polling place were requesting photo ID and telling voters if they had been convicted of a felony that they could not vote.
- In Pima, Arizona, voters at multiple polls were confronted by an individual, wearing a black tee shirt with "US Constitution Enforcer" and a military-style belt that gave the appearance he was armed. He asked voters if they were citizens, accompanied by a cameraman who filmed the encounters.
- There were numerous incidents of intimidation by partisan challengers at predominately low income and minority precincts
- Voters repeatedly complained about misinformation campaigns via flyers or phone calls encouraging them to vote on a day other than November 2, 2004 or of false information regarding their right to vote. In Polk County, Florida, for example, a voter received a call telling her to vote on November 3. Similar

complaints were also reported in other counties throughout Florida. In Wisconsin and elsewhere voters received flyers that said:

- o "If you already voted in any election this year, you can't vote in the Presidential Election."
- o "If anybody in your family has ever been found guilty of anything you can't vote in the Presidential Election."
- o "If you violate any of these laws, you can get 10 years in prison and your children will be taken away from you."

There were also numerous reports of poll workers refusing to give voters provisional ballots.

The following is a summary of the types of acts of suppression and intimidation included in the report and a list of the states in which they took place. All instances of irregularities that were more administrative in nature have been omitted:

1. Improper implementation of voter identification rules, especially asking only African Americans for proof of identity: Florida, Ohio, Pennsylvania, Illinois, Missouri, Arkansas, Georgia, Louisiana
2. Individuals at the polls posing as some sort of law enforcement authority and intimidating and harassing voters: Arizona, Missouri
3. Intimidating and harassing challengers at the polls: Ohio, Michigan, Wisconsin, Missouri, Minnesota
4. Deceptive practices and disinformation campaigns, such as the use of flyers with intentional misinformation about voting rights or voting procedures, often directed at minority communities; the use of phone calls giving people misinformation about polling sites and other procedures; and providing verbal misinformation at the polls in a way that appears to have been intentionally misleading: Florida, Pennsylvania, Illinois, Wisconsin, Missouri, North Carolina, Arkansas, Texas
5. Refusal to provide provisional ballots to certain voters: Ohio, Pennsylvania, Illinois, Michigan, Colorado, Missouri, Texas, Georgia, Louisiana
6. Registration applications submitted through third parties that were not processed: Arizona, Michigan, Nevada (registration forms destroyed by Sproul Associates)
7. Improper removal from the voter registration list: Arizona
8. Individuals questioning voters' citizenship: Arizona
9. Police officers at the polls intimidating voters: Illinois, Michigan, Wisconsin, Missouri, North Carolina

The report does not provide corroborating evidence for the allegations it describes. However, especially in the absence of a log of complaints received by the Department of Justice, this report provides a very useful overview of the types of experiences some voters more than likely endured on Election Day in 2004.

**Steal this Vote-Dirty Elections and the Rotten History of Democracy in America by Andrew Gumbel**

The bulk of the book comprises stories from United States electoral history outside the scope of this project. However, these tales are instructive in showing how far back irregular and illegal voting practices go. Cases include the 1868 New York City elections; the Tilden-Hayes election; the impact of the introduction of the secret ballot; the 1981 consent decree; the 1990 Helms campaign; the 1960 presidential election controversy in Chicago; the rise of the voting machine business, including the introduction of punch card machines; and allegations by Republicans regarding NVRA.

Steal this Vote focuses almost entirely on alleged transgressions by Republican, although at times it does include complaints about Democratic tactics. Gumbel's accusations, if credible, especially in the Bush-Gore election, would indicate there were a number of problems in key states in such areas as intimidation, vote counting, and absentee ballots. However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount and types of voter fraud and voter intimidation occurring.

**Stealing Elections, John Fund**

In Stealing Elections, John Fund says that "Election fraud, whether its phony voter registrations, illegal absentee ballots, shady recounts or old-fashioned ballot-box stuffing, can be found in every part of the United States, although it is probably spreading because of the ever-so-tight divisions that have polarized the country and created so many close elections lately. Although most fraud is found in urban areas, there are current scandals in rural South Dakota and Texas." Fund admits that "Democrats figure prominently in the vast majority of examples of election fraud described in this book." He argues Republican fraud is less common because Republicans are middle class and Democrats are poor and most fraud occurs in inner cities where there are a lot of minorities. However, because of politics, state and local prosecutors are reluctant to go after fraud.

He also stipulates that Democrats and Republicans have different worldviews on voting: Democrats are concerned about intimidation and disenfranchisement while Republicans are concerned with fraud and the need to police the polls.

Fund argues that fraud has been made easier by the passage of the National Voting Rights Act because it allows ineligible voters to remain on the voter rolls, allowing a voter to vote in the name of someone else. He claims dead people, people who have moved, and people in jail remain on the voting list. He believes because of NVRA illegal aliens have been allowed to vote. Absentee balloting makes it even worse: someone can register under false names and then use absentee ballots to cast multiple votes. Groups can get absentee ballots for the poor and elderly and then manipulate their choices.

Fund goes through a number of examples of alleged voter fraud, mostly perpetrated by Democrats. For example, he claims much fraud in St. Louis in 2000, including illegal court orders allowing people to vote, felons voting, people voting twice, dead people voting, voters were registered to vacant lots, election judges were not registered and evidence of false registrations

Another case he pays a great deal of attention to are the alleged transgressions by Democrats in Indian Country in South Dakota 2002, including voter registration fraud, suspicious absentee ballot requests, vote hauling, possible polling place fraud, abusive lawyers at polling sites, and possible vote buying.

Fund criticizes and scorns “conspiracy theories” around electronic voting perpetuated by Democrats. He says that “By whipping up a frenzy of suspicion about electronic voting, Democrats will have built a platform from which, if the presidential or key Senate elections in November 2004 are close, the can launch endless lawsuits everywhere there were problems with electronic machines.”

Stealing Elections focuses almost entirely on alleged transgressions by Democrats. Fund’s accusations, if credible, would indicate that fraud such as voter registration fraud, absentee ballot fraud, dead people voting, and felon voting is prevalent throughout the country. However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount and types of voter fraud and voter intimidation occurring.

### **The Long Shadow of Jim Crow, People for the American Way and the National Association for the Advancement of Colored People**

This report describes the pervasive and repeated practices of voter intimidation and vote suppression that have taken place in very recent years and during contemporary American history. The most recent cases included in the report are the incident in which Florida law enforcement questioned elderly African American voters in Orlando regarding the 2003 mayoral race, which had already been resolved, shortly before the 2004 election; the 2004 Florida felon purge list; the case of South Dakota in 2004 in which Native Americans were improperly and illegally required to show photo identification at the polls or denied the right to vote, and similar improper demands for ID from minorities in other parts of the country; the use of challengers in minority districts in many locations; the challenge to the right of African American students to vote in Texas in 2004; the presence of men looking like law enforcement challenging African American voters at the polls in Philadelphia in 2003; the distribution of flyers in Louisiana and elsewhere in a number of elections over the last few years in minority areas telling them to vote on the wrong day; and the FBI investigation into thousands of Native American voters in South Dakota in 2002, which resulted in no showing of wrongdoing.

The report also points out that, "Over the past two decades, the Republican Party has launched a series of 'ballot security' and 'voter integrity' initiatives which have targeted minority communities. At least three times, these initiatives were successfully challenged in federal courts as illegal attempts to suppress voter participation based on race.

It goes on to describe the numerous instances of voter intimidation and suppression during the 2000 election, the 1990s, the 1980s and back through the civil rights movement of the 1960s, putting current efforts in historical perspective. Describing the chronology of events in this way demonstrates the developing patterns and strategic underpinnings of the tactics used over the last forty years.

### **The New Poll Tax: Republican-Sponsored Ballot-Security Measures are Being Used to Keep Minorities from Voting**

By Laughlin McDonald

McDonald argues that "the discriminatory use of so-called 'ballot security' programs" has been a reoccurring scandal since the passage of the Voting Rights Act of 1965. These programs are deceptively presented as preventing voter fraud and thereby furthering good government. However, McDonald states "but far too often they [the ballot security programs] are actually designed to suppress minority voting -- and for nakedly partisan purposes."

McDonald blames the federal government as well as the states for use of suspect ballot security programs. He cites the implementation of the U.S. Department of Justice's in "Voting Integrity Initiative" in South Dakota as the worst example of a joint federal-state effort to prevent voter fraud. Alleged voter fraud only in counties with significant Native American populations was targeted. South Dakota Attorney General Mark Barnett "working with the FBI, announced plans to send state and federal agents to question almost 2,000 new Native-American registrants, many of whom were participating in the political process for the first time." However, statistics show that these efforts only served to increase Native American voter participation. Native Americans "were targeted based on fraud allegations that proved to be grossly exaggerated; at the end of the investigation, only one Native American was even charged with a voting-rules violation."

McDonald cites several other ballot security efforts that were really disguised attempts at minority voter suppression:

In Pine Bluff, Ark., Democrats accused Republican poll watchers of driving away voters in predominantly black precincts by taking photos of them and demanding identification during pre-election day balloting. Democrats in Michigan charged that a plan by Republicans to station hundreds of "spotters" at heavily Democratic precincts was an effort to intimidate black voters and suppress Democratic turnout. In South Carolina, a lawsuit filed the day before the election alleged that officials in Beaufort County had adopted a new and unauthorized policy allowing them to

challenge voters who gave rural route or box numbers for their registration address. According to the complaint, a disproportionate number of those affected by the new rule would be African-American voters who lived in the rural areas of the county.

McDonald is also critical of the Help America Vote Act (HAVA). He states that HAVA “contains other provisions that may enhance the opportunities for harassment and intimidation of minorities through ballot-security programs.” McDonald specifically attacks the photo ID requirement for anyone who registered by mail but has not previously voted. McDonald argues that the ID requirement will suppress minority voting because minorities are less likely than non-minorities to have a photo ID, a photo ID is expensive to obtain and all the alternatives to photo ID present similar obstacles to minority voters. He also argues that there is no evidence that photo ID will combat voter fraud but it only really provides “another opportunity for aggressive poll officials to single out minority voters and interrogate them.”

McDonald lists some classic past ballot security efforts by the Republicans that have been abused: the 1981 gubernatorial election anti-fraud initiative leading to the well known consent decree prohibiting the Republicans from repeating this, a similar Republican effort in Louisiana in 1986 in Senator John Breaux’s race which again resulted in prohibition by a state court judge, and a similar effort by Republicans in Senator Jesse Helms 1990 reelection. This time the Department of Justice sued the Republican Party and Helm’s reelection committee, resulting in another consent decree prohibiting future ballot security programs without court approval.

McDonald indicates that the crux of the problem is lax enforcement of federal voters rights laws. He states, “there is no record of the purveyors of any ballot-security program being criminally prosecuted by federal authorities for interfering with the right to vote.” The only positive case law McDonald cited was a decision by the United States Court of Appeals for the Eighth Circuit that affirmed “an award of damages ranging from \$500 to \$2,000, payable by individual poll officials to each of seven black voters who had been unlawfully challenged, harassed, denied assistance in voting or purged from the rolls in the town of Crawfordsville [Arkansas].”

McDonald concludes by stating that Congress and the states should adopt “nondiscriminatory, evenly applied measures to ensure the integrity of the ballot.”

**An Evaluation: Voter Registration Elections Board: Wisconsin Audit Report 05-12: September 2005**

The Joint Legislative Audit Committee of the Wisconsin Legislature required the Wisconsin Audit Report. The Report obviously does not include the 2006 statistics for statewide voter registration as required by HAVA. Wisconsin voter registration is required by statute in only 172 municipalities---those with populations of 5,000 or more. Another 167 smaller municipalities opted to maintain voter registration lists. Currently, 28.9 % of the voting-age population is not required to register before voting.

According to the Report, great variation was found in the implementation of existing voter registration laws. For example, 46 % of municipalities that responded to the survey did not send address verification cards to individuals who registered by mail or at the polls on Election Day in November 2004.

Further, only 85.3 % of survey respondents reported updating their voter registration lists to remove inactive voters, as required by law.

Current voter registration practices were determined to be insufficient to ensure the accuracy of voter registration lists used by poll workers or to prevent ineligible persons from registering to vote. The Report identified 105 instances of voting irregularities in six municipalities, including 98 ineligible felons who may have voted. The names of these individuals were forwarded to appropriate district attorneys for investigation.

Due to concerns about ineligible voting, stemming from the 2004 election, the Joint Legislative Audit Committee requested that voter registration procedures be evaluated. The following was investigated for this Report:

- \* voter registration requirements and the methods by which voters register, including requirements in other states;
- \* the address verification process, including the use of address verification cards to confirm the residency of those who register by mail or at the polls;
- \* procedures and practices for updating voter registration lists; and,
- \* the role of the Elections Board.

Wisconsin allows qualified electors to register in person, by mail, or with a special registration deputy before Election Day, and at the polls on Election Day. In municipalities where registration is required by statute, 20.3 % of Wisconsin voters registered at the polls on Election Day in November 2004. Municipal clerks rely on registrants to affirm their eligibility, including citizenship and age. However, requirements for providing identification or proof of residence vary depending on when an individual registers and by which method.

Address verification cards are the primary tool available to municipal clerks for verifying the residency of registered voters and detecting improper registrations by mail or at the polls. Statutes require that clerks send cards to everyone who registers by mail or on Election Day. However, only 42.7 % of the 150 municipalities surveyed sent cards to both groups, and 46 % did not send any address verification cards.

Statutes also require clerks to provide the local district attorney with the names of any Election Day registrants whose cards are undeliverable at the address provided. However, only 24.3 % of the clerks who sent cards also forwarded names from undeliverable cards

to district attorneys. District attorneys surveyed indicated that they require more information than is typically provided to conduct effective investigations.

To ensure that voter registration lists contain only the names of qualified electors, municipal clerks are required by statute to remove or inactivate the names of individuals who have not voted in four years, to update registration information for individuals who move or change their names, and to remove or inactivate the names of deceased individuals. They are also required to notify registered voters before removing their names from registration lists. These statutory requirements are not consistently followed:

\* 85.3 % of municipalities removed the names of inactive voters from their voter registration lists;

\* 71.4 % sometimes or always notified registered voters before removing their names; and

\* 54.0 % reported removing the names of ineligible felons.

Because of such inconsistencies, registration lists contain duplicate records and the names of ineligible individuals. For example, more than 348,000 electronic voter registration records from eight municipalities were reviewed, identifying 3,116 records that appear to show individuals who are registered more than once in the same municipality.

In six municipalities where sufficient information was available, there was 105 instances of potentially improper or fraudulent voting in the 2004 elections. These included: 98 ineligible felons who may have voted; 2 individuals who may have voted twice; 1 voter who may have been underage; and 4 absentee ballots that should not have been counted because the voters who cast them died before Election Day.

Recommendations:

\* adjusting the early registration deadline to provide clerks more time to prepare registration lists;

\* establishing more stringent requirements for special registration deputies, including prohibiting compensation based on the number of individuals registered;

\* establishing uniform requirements for demonstrating proof of residence for all registrants;

\* providing municipal clerks with more flexibility in the use of address verification cards;

\* Authorizing civil penalties for local election officials and municipalities that fail to comply with election laws; and,

\* implementing mandatory elections training requirements for municipal clerks.

The Report also recognized that the new HAVA registration procedures would help with existing registration problems.

**Preliminary Findings of Joint Task Force Investigating Possible Election Fraud:  
May 10, 2005**

On January 26, 2005, the Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, and the United States Attorney's Office formed a task force to investigate alleged voting irregularities during the November 2004 elections. The purpose of the task force was to determine whether evidence of criminal fraud existed in the irregularities and, if evidence of fraud was found, to pursue criminal prosecutions.

The task force has made the following specific determinations based on evidence examined to date:

- \* evidence of more than 100 individual instances of suspected double-voting, voting in names of persons who likely did not vote, and/or voting in names believed to be fake. Those investigations continue;
- \* more than 200 felons voted when they were not eligible to do so. In order to establish criminal cases, the government must establish willful violations in individual instances;
- \* persons who had been paid to register voters as "deputy registrars" falsely listed approximately 65 names in order to receive compensation for the registrations. The evidence does not indicate that these particular false registrations were later used to cast votes; and,
- \* the number of votes counted from the City of Milwaukee exceeds the number of persons recorded as voting by more than 4,500.

The investigation concentrated on the 70,000+ same-day registrations. It found that a large majority of the reported errors were the result of data entry errors, such as street address numbers being transposed. However, the investigation also found more than 100 instances where votes were cast in a manner suggesting fraud. These include:

- \* persons with the same name and date of birth recorded as voting more than once;
- \* persons who live outside Milwaukee, but who used non-existent City addresses to register and vote in the City;
- \* persons who registered and voted with identities and addresses that cannot in any way be linked to a real person;

\* persons listed as voting under a name and identity of a person known to be deceased;  
and

\* persons whose identities were used to vote, but who in subsequent interviews told task force investigators that they did not, in fact, vote in the City of Milwaukee.

The investigation found persons who were paid money to obtain registrations allegedly falsified approximately 65 names on registration forms, allegedly to obtain more money for each name submitted. There is no evidence gathered to date that votes were cast under these specific false names. Also found were more than 200 felons who were not eligible to vote in the 2004 election, but who are recorded as having done so.

An additional finding of the task force was that the number of votes cast far exceeds the total number of recorded voters. The day after the 2004 election, the City of Milwaukee reported the total number of votes as 277,344. In late November an additional 191 previously uncounted absentee ballots were added, for a total of 277,535 votes cast. Still later, an additional 30 ballots were added, bringing the total number of counted votes to 277,565. City records, however, have been unable to match this total to a similar number of names of voters who cast ballots – either at the polls (under a prior registration or same day registration) or cast absentee ballots. At present, the records show a total of 272,956 voter names – for a discrepancy of 4,609. This part of the investigation was hampered by widespread record keeping errors with respect to recording the number of voters.

In the 2004 election, same-day registrations were accepted in which the card had incomplete information that would help establish identity. For example: 48 original cards for persons listed as voting had no name; 548 had no address; 28 did not have signatures; and another 23 cards had illegible information. These were part of approximately 1,300 same-day registrations for which votes were cast, but which election officials could not authenticate as proper voters within the City. Included in this 1,300 were 141 same-day registrants from addresses outside the City of Milwaukee, but who voted within the City of Milwaukee. In several instances, the voter explicitly listed municipality names other than Milwaukee on the registration cards.

Another record keeping procedure hampering the investigation appears to be the post-election misfiling or loss of original green registration cards that were considered duplicates, but that in fact corresponded to additional votes. These cards were used to record votes, but approximately 100 cards of interest to investigators can no longer be located. In addition, other original green registration cards continue to be found.

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**Deliberative Process  
Privilege**

**Appendix "2"  
Summaries of Articles, Reports and Books**

## Articles

People for the American Way and the NAACP, "The Long Shadow of Jim Crow," December 6, 2004.

This report describes the pervasive and repeated practices of voter intimidation and vote suppression that have taken place in very recent years and during contemporary American history. It goes on to describe the numerous instances of voter intimidation and suppression during the 2000 election, the 1990s, the 1980s and back through the civil rights movement of the 1960s, putting current efforts in historical perspective.

Describing the chronology of events in this way demonstrates the developing patterns and strategic underpinnings of the tactics used over the last forty years. **Examples** include:

- Florida law enforcement questioned elderly African American voters in Orlando regarding the 2003 mayoral race, which had already been resolved, shortly before the 2004 election;
- the 2004 Florida felon purge list;
- the case of South Dakota in 2004 in which Native Americans were improperly and illegally required to show photo identification at the polls or denied the right to vote, and similar improper demands for ID from minorities in other parts of the country;
- the use of challengers in minority districts in many locations;
- the challenge to the right of African American students to vote in Texas in 2004;
- the presence of men looking like law enforcement challenging African American voters at the polls in Philadelphia in 2003;
- the distribution of flyers in Louisiana and elsewhere in a number of elections over the last few years in minority areas telling them to vote on the wrong day; and
- The FBI investigation into thousands of Native American voters in South Dakota in 2002.

Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.

Argues that "the discriminatory use of so-called 'ballot security' programs" has been a reoccurring scandal since the passage of the Voting Rights Act of 1965. These programs are deceptively presented as preventing voter fraud and thereby furthering good government. However, McDonald states "but far too often they [the ballot security programs] are actually designed to suppress minority voting -- and for nakedly partisan purposes." Blames the federal government as well as the states for use of suspect ballot security programs. McDonald cites several ballot security efforts that were really disguised attempts at minority voter suppression:

- SD-DOJ "voting integrity initiative".
- AR - poll watchers driving away voters in predominantly black precincts by taking photos of them and demanding identification during pre-election day balloting.
- MI - "spotters" at heavily Democratic precincts was an effort to intimidate black voters and suppress Democratic turnout
- SC - one county's officials instituted a new and unauthorized policy allowing them to challenge voters who gave rural route or box

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numbers for their registration address (disproportionately affecting African Americans).

- the 1981 gubernatorial election anti-fraud initiative leading to the well known consent decree prohibiting the Republicans from repeating this, a similar Republican effort in Louisiana in 1986 in Senator John Breaux's race which again resulted in prohibition by a state court judge, and a similar effort by Republicans in Senator Jesse Helms 1990 reelection.

States that HAVA "contains provisions that may enhance the opportunities for harassment and intimidation of minorities through ballot-security programs (especially voter ID). Indicates that the crux of the problem is **law enforcement of federal voter's rights laws** ("there is no record of the purveyors of any ballot-security program being criminally prosecuted by federal authorities for interfering with the right to vote." The only positive case law McDonald cited was a decision by the United States Court of Appeals for the Eighth Circuit that affirmed "an award of damages ranging from \$500 to \$2,000, payable by individual poll officials to each of seven black voters who had been unlawfully challenged, harassed, denied assistance in voting or purged from the rolls in the town of Crawfordsville [Arkansas].")

Recommends that Congress and the states should adopt "nondiscriminatory, evenly applied measures to ensure the integrity of the ballot."

Wisconsin Legislative Audit Bureau, "An Evaluation: Voter Registration Elections Board" Report 05-12, September, 2005.

Current voter registration practices were determined to be insufficient to ensure the accuracy of voter registration lists used by poll workers or to prevent ineligible persons from registering to vote. **In six municipalities where sufficient information was available, there was 105 instances of potentially improper or fraudulent voting in the 2004 elections. These included: 98 ineligible felons who may have voted; 2 individuals who may have voted twice; 1 voter who may have been underage; and 4 absentee ballots that should not have been counted because the voters who cast them died before Election Day** (all but dead voters were forwarded to appropriate district attorneys for investigation). Statutes require that clerks send cards to everyone who registers by mail or on Election Day. However, only 42.7 % of the 150 municipalities surveyed sent cards to both groups, and 46 % did not send any address verification cards to those registering to vote on Election Day in November 2004. Statutes also require clerks to provide the local district attorney with the names of any Election Day registrants whose cards are undeliverable at the address provided. However, only 24.3 % of the clerks who sent cards also forwarded names from undeliverable cards to district attorneys. District attorneys surveyed indicated that they require more information than is typically provided to conduct effective investigations. To ensure that voter registration lists contain only the names of qualified electors, municipal clerks are required by statute to remove or inactivate the names of individuals who have not voted in four years, to update registration information for individuals who move or change their names, and to remove or inactivate the names of deceased individuals. They are also required to notify registered voters before removing their names from registration lists. These statutory requirements are not consistently followed:

- 85.3 % of municipalities removed the names of inactive voters from their voter registration lists;
- 71.4 % sometimes or always notified registered voters before removing their names; and
- 54.0 % reported removing the names of ineligible felons.
- registration lists contain duplicate records and the names of ineligible individuals (e.g.; more than 348,000 electronic voter registration records from eight municipalities were reviewed, identifying 3,116 records that appear to show individuals who are registered more than once in the same municipality).

Recommendations:

- adjust the early registration deadline to provide clerks more time to prepare registration lists;

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- establish more stringent requirements for special registration deputies, including prohibiting compensation based on the number of individuals registered;
- establish uniform requirements for demonstrating proof of residence for all registrants;
- provide municipal clerks with more flexibility in the use of address verification cards;
- Authorize civil penalties for local election officials and municipalities that fail to comply with election laws; and
- implement mandatory elections training requirements for municipal clerks.

Report also recognized that the new **HAVA registration procedures would help with existing registration problems.**

Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, United States Attorney's Office "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," May 10, 2005.

On January 26, 2005, the Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, and the United States Attorney's Office formed a task force to investigate alleged voting irregularities during the November 2004 elections. The task force has made the following specific determinations based on evidence examined to date:

- **evidence of more than 100 individual instances of suspected double-voting, voting in names of persons who likely did not vote, and/or voting in names believed to be fake.**
- **more than 200 felons voted when they were not eligible to do so. (In order to establish criminal cases, the government must establish willful violations in individual instances);**
- **persons who had been paid to register voters as "deputy registrars" falsely listed approximately 65 names in order to receive compensation for the registrations. (The evidence does not indicate that these particular false registrations were later used to cast votes); and,**
- **the number of votes counted from the City of Milwaukee exceeds the number of persons recorded as voting by more than 4,500. (Evidence indicates widespread record keeping errors with respect to recording the number of voters)**

The investigation concentrated on the 70,000+ same-day registrations. It found that a large **majority of the reported errors were the result of data entry errors**, such as street address numbers being transposed. However, the investigation **also found more than 100 instances where votes were cast in a manner suggesting fraud.** These include:

- persons with the same name and date of birth recorded as voting more than once;
- persons who live outside Milwaukee, but who used non-existent City addresses to register and vote in the City (141 of them were same day registrants; in several instances, the voter explicitly listed municipality names other than Milwaukee on the registration cards);
- persons who registered and voted with identities and addresses that cannot in any way be linked to a real person;
- persons listed as voting under a name and identity of a person known to be deceased;
- persons whose identities were used to vote, but who in subsequent interviews told task force investigators that they did not, in fact, vote in the City of Milwaukee.

Investigation **also found:**

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- **persons who were paid money to obtain registrations allegedly falsified approximately 65 names on registration forms, allegedly to obtain more money for each name submitted.**
- **more than 200 felons who were not eligible to vote in the 2004 election, but who are recorded as having done so.**
- **same-day registrations were accepted in which the card had incomplete information that would help establish identity.** For example: 48 original cards for persons listed as voting had no name; 548 had no address; 28 did not have signatures; and another 23 cards had illegible information (part of approximately 1,300 same-day registrations for which votes were cast, but which election officials could not authenticate as proper voters within the City).
- **the post-election misfiling or loss of original green registration cards that were considered duplicates, but that in fact corresponded to additional votes. These cards were used to record votes, but approximately 100 cards of interest to investigators can no longer be located.** In addition, other original green registration cards continue to be found.

National Commission on Federal Election Reform, "Building Confidence in U.S. Elections," Center for Democracy and Election Management, American University, September 2005.

Among the observations made that are relevant to the EAC study of fraud and intimidation are the following:

- The November 2004 elections showed that irregularities and fraud still occur.
- Failure to provide voters with such basic information as their registration status and their polling site location raises a barrier to voting as significant as inconsistent procedures on provisional ballots or voter ID requirements.
- **There is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election.**
- The Commission is concerned that the different approaches to identification cards might prove to be a serious impediment to voting.
- **Voter registration lists are often inflated by the inclusion of citizens who have moved out of state but remain on the lists.** Moreover, under the National Voter Registration Act, names are often added to the list, but counties and municipalities often do not delete the names of those who moved. Inflated voter lists are also caused by phony registrations and efforts to register individuals who are ineligible. At the same time, inaccurate purges of voter lists have removed citizens who are eligible and are properly registered.
- Political party and nonpartisan voter registration drives generally contribute to the electoral process by generating interest in upcoming elections and expanding participation. However, they are occasionally abused. **There were reports in 2004 that some party activists failed to deliver voter registration forms of citizens who expressed a preference for the opposing party.**
- **Vote by mail raises concerns about privacy, as citizens voting at home may come under pressure to vote for certain candidates, and it increases the risk of fraud.**
- **While election fraud is difficult to measure, it occurs.** The U.S. Department of Justice has launched more than 180 investigations into election fraud since October 2002. These investigations have resulted in **charges of multiple voting, providing false information on their felon status, and other offenses** against 89 individuals and convictions of 52 individuals. The convictions related to a **variety of election fraud offenses, from vote buying to submitting false voter registration information and voting-related offenses by non-citizens.** In addition to the federal investigations, **state attorneys general and local prosecutors handle cases of election fraud. Other cases are never pursued because of**

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the difficulty in obtaining sufficient evidence for prosecution or because of the low priority given to election fraud cases.

- **Absentee ballots remain the largest source of potential voter fraud**
- **Non-citizens have registered to vote in several recent elections**
- **The growth of "third-party" (unofficial) voter registration drives in recent elections has led to a rise in reports of voter registration fraud.**
- **Many states allow the representatives of candidates or political parties to challenge a person's eligibility to register or vote or to challenge an inaccurate name on a voter roll. This practice of challenges may contribute to ballot integrity, but it can have the effect of intimidating eligible voters, preventing them from casting their ballot, or otherwise disrupting the voting process.**

Its pertinent recommendations for reform are as follows:

- **Interoperable state voter databases** are needed to facilitate updates in the registration of voters who move to another state and to eliminate duplicate registrations, which are a source of potential fraud.
- **Voters should be informed of their right to cast a provisional ballot** if their name does not appear on the voter roll, or if an election official asserts that the individual is not eligible to vote, but **States should take additional and effective steps to inform voters as to the location of their precinct**
- The Commission recommends that states use **"REAL ID" cards for voting purposes.**
- **To verify the identity of voters who cast absentee ballots, the voter's signature on the absentee ballot can be matched with a digitized version of the signature that the election administrator maintains.** While such signature matches are usually done, they should be done consistently in all cases, so that election officials can verify the identity of every new registrant who casts an absentee ballot.
- **Each state needs to audit its voter registration files** to determine the extent to which they are accurate (with correct and current information on individuals), complete (including all eligible voters), valid (excluding ineligible voters), and secure (with protections against unauthorized use). This can be done by matching voter files with records in other state agency databases in a regular and timely manner, contacting individuals when the matches are inconclusive, and conducting survey research to estimate the number of voters who believe they are registered but who are not in fact listed in the voter files.
- **Each state should oversee political party and nonpartisan voter registration drives** to ensure that they operate effectively, that registration forms are delivered promptly to election officials, that all completed registration forms are delivered to the election officials, and that none are "culled" and omitted according to the registrant's partisan affiliation. Measures should also be adopted to track and hold accountable those who are engaged in submitting fraudulent voter registrations. Such oversight might consist of training activists who conduct voter registration drives and tracking voter registration forms to make sure they are all accounted for. In addition, states should apply a criminal penalty to any activist who deliberately fails to deliver a completed voter registration form.
- **Investigation and prosecution of election fraud should include those acts committed by individuals, including election officials, poll workers, volunteers, challengers or other nonvoters associated with the administration of elections, and not just fraud by voters.**
- **In July of even-numbered years, the U.S. Department of Justice should issue a public report on its investigations of election fraud.** This report should specify the numbers of allegations made, matters investigated, cases prosecuted, and individuals convicted for various crimes. **Each state's attorney general and each local prosecutor should issue a similar report.**
- **The U.S. Department of Justice's Office of Public Integrity should increase its staff to investigate and prosecute election-related fraud.**
- In addition to the penalties set by the Voting Rights Act, it **should be a federal felony for any individual, group of individuals, or organization to engage in any act of violence, property destruction (of more than \$500 value), or threatened act of violence that is intended to deny**

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any individual his or her lawful right to vote or to participate in a federal election.

- To deter systemic efforts to deceive or intimidate voters, the Commission recommends federal legislation to prohibit any individual or group from deliberately providing the public with incorrect information about election procedures for the purpose of preventing voters from going to the polls.
- States should define clear procedures for challenges, which should mainly be raised and resolved before the deadline for voter registration. After that, challengers will need to defend their late actions. On Election Day, they should direct their concerns to poll workers, not to voters directly, and should in no way interfere with the smooth operation of the polling station.
- State and local jurisdictions should prohibit a person from handling absentee ballots other than the voter, an acknowledged family member, the U.S. Postal Service or other legitimate shipper, or election officials. The practice in some states of allowing candidates or party workers to pick up and deliver absentee ballots should be eliminated.
- All states should consider passing legislation that attempts to minimize the fraud that has resulted from "payment by the piece" to anyone in exchange for their efforts in voter registration, absentee ballot, or signature collection.
- Nonpartisan structures of election administration are very important, and election administrators should be neutral, professional, and impartial.
- No matter what institutions are responsible for conducting elections, conflict-of-interest standards should be introduced for all federal, state, and local election officials. Election officials should be prohibited by federal and/or state laws from serving on any political campaign committee, making any public comments in support of a candidate, taking a public position on any ballot measure, soliciting campaign funds, or otherwise campaigning for or against a candidate for public office. A decision by a secretary of state to serve as co-chair of his or her party's presidential election committee would clearly violate these standards.

The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law "Response to the Report of the 2005 Commission on Federal Election Reform," September 19, 2005.

Recommendation on Voter Identification -

- Report premises its burdensome identification proposals on the need to ensure ballot integrity and on the existence of or potential for widespread fraud. However, the Report admits that there is simply "no evidence" that the type of fraud that could be solved by stricter voter identification – individual voters who misrepresent their identity at the polls – is a widespread problem.
- The photo ID proposal guards against only one type of fraud: individuals arriving at the polls to vote using false information, such as the name of another registered voter, or a recent but not current address. Since the costs of this form of fraud are extremely high (federal law provides for up to five years' imprisonment), and the benefits to any individual voter are extremely low, it is highly unlikely that this will ever occur with any frequency. The limited types of fraud that could be prevented by a Real ID requirement are extremely rare and difficult.
- In the most comprehensive survey of alleged election fraud to date, Professor Loraine Minnite and David Callahan have shown that the incidence of individual voter fraud at the polls is negligible. A few prominent examples support their findings. In Ohio, a statewide survey found four instances of ineligible persons voting or attempting to vote in 2002 and 2004, out of 9,078,728 votes cast – a rate of 0.00004%. Earlier this year, Georgia Secretary of State Cathy Cox stated that she could not recall one documented case of voter fraud relating to the impersonation of a registered voter at the polls during her ten-year tenure as Secretary of State or Assistant Secretary of State.

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- The Report attempts to support its burdensome identification requirements on four specific examples of purported fraud or potential fraud. **None of the Report's cited examples of fraud stand up under closer scrutiny.** This response report goes through each instance of fraud raised by the Commission report and demonstrates that in each case the allegation in fact turned out later not to be true or the fraud cited was not of the type that would be addressed by a photo identification requirement.
- The Report fails to provide a good reason to create greater hurdles for voters who vote at the polls than for those who vote absentee. Despite the fact that **absentee ballots are more susceptible to fraud than regular ballots**, the Report exempts absentee voters from its proposed Real ID and proof of citizenship requirements.

Other points in ID requirement:

- **Report does not explain why the goals of improved election integrity will not be met through the existing provisions in the Help America Vote Act of 2002 (HAVA).**
- Report fails to consider alternative measures to advance its goals that are less restrictive to voters. To the extent that any limited fraud by **individuals at the polls does trickle into the system, it can be addressed by far less restrictive alternatives.** The first step is to recognize that only voters who appear on the registration list may vote a regular ballot. Proper cleaning of registration lists – and proper use of the lists at the poll—will therefore go a long way toward ensuring that every single ballot is cast by an eligible voter.
- In addition to the **better registration lists that full implementation will provide, better record keeping and administration at the polls will reduce the limited potential for voting by ineligible persons.** In the unlikely event that implementation of current law is not able to wipe out whatever potential for individual fraud remains, there are several effective and less burdensome alternatives to the Report's Real ID recommendation that received wholly insufficient consideration.
- Costs - If required as a precondition for voting, photo identification would operate as a de facto poll tax that could disenfranchise low-income voters. To alleviate this burden, the Report appropriately recommends that the "Real ID" card itself be issued free of charge. Nevertheless, the percentage of Americans without the documentary proof of citizenship necessary to obtain Real IDs is likely to remain high because the requisite documents are both expensive and burdensome to obtain. (Each of the documents an individual is required to show in order to obtain a "Real ID" card or other government-issued photo ID card costs money or presumes a minimal level of economic resources. Unless the federal and all state governments waive the cost of each of these other forms of identification, the indirect costs of photo IDs will be even greater than their direct costs. In addition, since government-issued IDs may only be obtained at specified government offices, which may be far from voters' residences and workplaces, individuals seeking such IDs will have to incur transportation costs and the costs of taking time off from work to visit those offices during often-abbreviated business hours.)
- Since voting generally depends on the voter's address, and since many states will not accept IDs that do not bear an individual's current voting address, an additional 41.5 million Americans each year will have ID that they may not be able to use to vote.
- The burden would fall disproportionately on the elderly, the disabled, students, the poor, and people of color.
- The ID recommendations reduce the benefits of voter registration at disability and other social service agencies provided by the National Voter Registration Act of 1993. Individuals who seek to register at those offices—which generally do not issue IDs Census data demonstrate that African Americans and Latinos are more than three times more likely than whites to register to vote at a public assistance agency, and that whites are more likely than African Americans and Latinos to register when seeking a driver's license. Accordingly, the voter registration procedure far more likely to be used by minorities than by whites will no longer provide Americans with full eligibility to vote.

- The Report's proposal to use Real ID as a condition of voting is so excessive that it would prevent eligible voters from proving their identity with even a valid U.S. passport or a U.S. military photo ID card. The Report's proposal to use Real ID as a condition of voting is so excessive that it would prevent eligible voters from proving their identity with even a valid U.S. passport or a U.S. military photo ID card

**Recommendation on Database Information Sharing Across States -serious efficacy, privacy, and security concerns raised by a nationally distributed database of the magnitude it contemplates.** These problems are exacerbated by the Report's recommendation that an individual's Social Security number be used as the broadly disseminated unique voting identifier.

**Recommendation on Voting Rights of Ex-Felons - This recommendation would set a standard more generous than the policies of the most regressive thirteen states in the nation but more restrictive than the remaining thirty-seven. The trend in the states is toward extension of the franchise.**

Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.

Focuses on **vote suppression through "ballot security programs"** (programs that, in the name of protecting against vote fraud, almost exclusively target heavily black, Latino, or Indian voting precincts and have the intent or effect of discouraging or preventing voters in those precincts from casting a ballot). Noteworthy **characteristics of these programs**:

- **focus on minority precincts almost exclusively**
- **is often on only the flimsiest evidence that vote fraud is likely to be perpetrated in such precincts;**
- **in addition to encouraging the presence of sometimes intimidating white Republican poll watchers or challengers who may slow down voting lines and embarrass potential voters by asking them humiliating questions,** these programs have sometimes posted people in official-looking uniforms with badges and side arms who question voters about their citizenship or their registration
- **warning signs may be posted near the polls, or radio ads may be targeted to minority listeners** containing dire threats of prison terms for people who are not properly registered—messages that seem designed to put minority voters on the defensive.
- sometimes **false information about voting qualifications** is sent to minority voters through the mail."
- **doing mailings, collecting returned materials, and using that as a basis for creating challenger lists** and challenging voters at the polls, started in the 1950s and continues to today (problem with this practice is that reasons for a mailing to be returned include a wrong address, out of date or inaccurate addresses, poor mail delivery in minority areas, and matching mistakes)

Provide numerous examples from the last 50 years to demonstrate his thesis, going through the historical development of Republican ballot security programs from the 1950s through to the present (including more recent incidents, such as 1981 in New Jersey, 1982 Dallas, Louisiana 1986, Houston 1986, Hidalgo 1988 Orange County 1988, North Carolina 1990, South Carolina 1980-1990, and South Dakota 2002). Author cites and quotes internal Republican letters and memoranda, primary sources and original documents, media reports, scholarly works, as well as the words of judges' rulings in some of the cases that ended up in litigation to prove his argument. author cites and quotes internal Republican letters and memoranda, primary sources and original documents, media reports, scholarly works, as well as the words of judges' rulings in some of the cases that ended up in litigation to prove his argument.

**Some of the features of vote suppression efforts** put forth by Republicans under the guise of ballot security programs:

1. **An organized, often widely publicized effort to field poll watchers in what Republicans call "heavily Democratic," but what are usually minority, precincts;**

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2. Stated concerns about vote fraud in these precincts, which are occasionally justified but often are not;
3. Misinformation and fear campaigns directed at these same precincts, spread by radio, posted signs in the neighborhoods, newspapers, fliers, and phone calls, which are often anonymously perpetrated;
4. Posting "official-looking" personnel at polling places, including but not limited to off-duty police—sometimes in uniform, sometimes armed;
5. Aggressive face-to-face challenging techniques at the polls that can confuse, humiliate, and intimidate—as well as slow the voting process—in these same minority precincts;
6. Challenging voters using inaccurate, unofficial lists of registrants derived from "do-not-forward" letters sent to low-income and minority neighborhoods;
7. Photographing, tape recording, or videotaping voters; and
8. Employing language and metaphors that trade on stereotypes of minority voters as venal and credulous.

The report ends with some observations on the state of research on the incidence of fraud, which the author finds lacking. He suggests that vote suppression of qualified minority voters by officials and partisan poll-watchers, challengers, and uniformed guards should also be considered as included in any definition of election fraud. Recommends Democrats should not protest all programs aimed at ballot integrity, but rather work with Republicans to find solutions to problems that confront both parties and the system as a whole.

Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.

Presents results from the first nationwide study to document the implementation of American felony disenfranchisement law. Data came from two main sources: a 33-state survey of state elections officials (spring 2004) and telephone interviews with almost one hundred city, county, town, and parish officials drawn from 10 selected states.

**Major Conclusions:**

1. **Broad variation and misunderstanding in interpretation and enforcement of voting laws** (more than one-third [37%] of local officials interviewed in ten states either described their state's fundamental eligibility law incorrectly, or stated that they did not know a central aspect of that law. / Local registrars differ in their knowledge of basic eligibility law, often within the same state. Differences also emerge in how they are notified of criminal convictions, what process they use to suspend, cancel, or "purge" voters from the rolls, whether particular documents are required to restore a voter to eligibility, and whether they have information about the criminal background of new arrivals to the state.)
2. **Misdemeanants disenfranchised in at least five states** (the commonly-used term "felon disenfranchisement" is not entirely accurate, since at least five states – Colorado, Illinois, Michigan, South Carolina, and Maryland -- also formally bar some or all people convicted of misdemeanors from voting [ it is likely that misdemeanants in other states who do retain the formal right to vote could have difficulty exercising that right, given ignorance of their eligibility and the lack of clear rules and procedures for absentee voting by people in jail who have not been convicted of a felony / Maryland excludes persons convicted of many misdemeanors, such as "Unlawful operation of vending machines," "Misrepresentation of tobacco leaf weight," and "Racing horse under false name.")
3. **Significant ambiguities in voting laws (disenfranchisement in Tennessee is dependent on which of five different time periods a felony conviction occurred between 1973 and the present / in Oregon, disenfranchisement is determined not by conviction or imprisonment for a felony, but for being placed under Department of Corrections supervision / since 1997, some persons convicted of a felony and sentenced to less than 12 months' custody have been sent to county jails and hence, are eligible to vote.**

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4. **Disenfranchisement results in contradictory policies within states (the “crazy-quilt” pattern of disenfranchisement laws exists even within states** / Alabama and Mississippi have both the most and least restrictive laws in the country, a result which is brought about by the fact that certain felonies result in the loss of voting rights for life, while others at least theoretically permit people in prison to vote / most felonies in Alabama result in permanent disenfranchisement, but drug and DUI offenses have been determined to not involve the “moral turpitude” that triggers the loss of voting rights / in Mississippi, ten felonies result in disenfranchisement, but do not include such common offenses as burglary and drug crimes.
5. **Confusing policies lead to the exclusion of legal voters and the inclusion of illegal voters:** The complexity of state disenfranchisement policies results in frequent misidentification of voter eligibility, largely because officials differ in their knowledge and application of disqualification and restoration law and procedures.
6. **Significant variation and uncertainty in how states respond to persons with a felony conviction from other states:** No state has a systematic mechanism in place to address the immigration of persons with a felony conviction, and there is no consensus among indefinite-disenfranchisement states on whether the disqualification is properly confined to the state of conviction, or should be considered in the new state of residence. Interpretation and enforcement of this part of disenfranchisement law varies not only across state lines, but also from one county to another within states. Local officials have no way of knowing about convictions in other states, and many are unsure what they would do if a would-be voter acknowledged an old conviction. Because there is no prospect of a national voter roll, this situation will continue even after full HAVA implementation.
7. **Disenfranchisement is a time-consuming, expensive practice:** Enforcement requires elections officials to gather records from different agencies and bureaucracies, including state and federal courts, Departments of Corrections, Probation and Parole, the state Board of Elections, the state police, and other counties’ elections offices.

Policy Implications

1. **Policies disenfranchising people living in the community on probation or parole, or who have completed a sentence are particularly difficult to enforce:** States which disenfranchise only persons who are currently incarcerated appear able to enforce their laws more consistently than those barring non-incarcerated citizens from voting.
2. Given large-scale misunderstanding of disenfranchisement law, **many eligible persons incorrectly believe they cannot vote, or have been misinformed by election officials:** More than one-third of election officials interviewed incorrectly described their state’s law on voting eligibility. More than 85% of the officials who misidentified their state’s law either did not know the eligibility standard or specified that the law was more restrictive than was actually the case.
3. **Occasional violation of disenfranchisement law by non-incarcerated voters not surprising:** Given the complexity of state laws and the number of state officials who lack an understanding of restoration and disqualification procedures, it should come as no surprise that many voters are ignorant of their voting status, a fact that is likely to have resulted in hundreds of persons with a felony conviction registering and voting illegally in recent years.
4. Taken together, these findings **undermine the most prominent rationale for disenfranchisement: that the policy reflects a strong, clear consensus that persons with a felony conviction are unfit to vote and constitute a threat to the polity:** First, when significant numbers of the people who administer elections do not know important aspects of disenfranchisement law, it is hard to conclude that the restriction is necessary to protect social order and the “purity” of the ballot box. Second, because they are all but invisible in the sentencing process, “collateral” sanctions like disenfranchisement simply cannot accomplish the denunciatory, expressive purposes their supporters claim. We now know that disenfranchisement is not entirely “visible” even to the people running American elections. Third, deep uncertainty regarding the voting rights of

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people with felony convictions who move from one state to another indicates that we do not even know what purpose disenfranchisement is supposed to serve – whether it is meant to be a punishment, or simply a non-penal regulation of the franchise.

#### Recommendations

1. **Clarify Policies Regarding Out-of-State Convictions:** State officials should clarify their policies and incorporate into training programs the means by which a felony conviction in another state affects an applicant's voting eligibility. For example, sentence-only disenfranchisement states should clarify those newcomers with old felony convictions from indefinite disenfranchisement states are eligible to vote. And those states which bar some people from voting even after their sentences are completed must clarify whether new arrivals with old felony convictions from sentence-only disenfranchisement states are automatically eligible, and must explain what procedures, if any, should be followed for restoration.
2. **Train Election Officials:** Clarify disenfranchisement policies and procedures for all state and local election officials through development of materials and training programs in each state. At a minimum, this should include distribution of posters, brochures and FAQ sheets to local and state elections offices.
3. **Train Criminal Justice Officials:** Provide training on disqualification and restoration policies for all correctional and criminal justice officials, particularly probation and parole staff. Correctional and criminal justice officials should also be actively engaged in describing these policies to persons under criminal justice supervision.
4. **Review Voting Restrictions on Non-Incarcerated People:** Given the serious practical difficulty of enforcing laws disqualifying people who are not incarcerated from voting – problems which clearly include both excluding eligible people from voting and allowing those who should be ineligible to vote -- state policymakers should review such policies to determine if they serve a useful public purpose.

American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.

Using court records, police reports and news articles, ACVR Legislative Fund presented this Report documenting hundreds of reported incidents and allegations from around the country. The report **most often alleges voter intimidation and voter registration fraud, and to a lesser degree absentee ballot fraud and vote buying**. This report alleges a coordinated effort by members of some organizations to rig the election system through voter registration fraud, the first step in any vote fraud scheme that corrupts the election process by burying local officials in fraudulent and suspicious registration forms. paid Democrat operatives were far more involved in voter intimidation and suppression activities than were their Republican counterparts during the 2004 presidential election. Identified five cities as "hot spots" which require additional immediate attention, based on the findings of this report and the cities' documented history of fraud and intimidation: Philadelphia, PA, Milwaukee, WI, Seattle, WA, St. Louis/East St. Louis, MO/IL, and Cleveland, OH. Refutes charges of voter intimidation and suppression made against Republican supporters, discusses similar charges against Democrats, details incidents vote fraud and illegal voting and finally discusses problems with vote fraud, voter registration fraud and election irregularities around the country. Recommends:

- **Both national political parties should formally adopt a zero-tolerance fraud and intimidation policy that commits the party to pursuing and fully prosecuting individuals and allied organizations who commit vote fraud or who seek to deter any eligible voter from participating in the election through fraud or intimidation.** No amount of legislative reform can effectively deter those who commit acts of fraud if there is no punishment for the crime and these acts continue to be tolerated.
- **States should adopt legislation requiring government-issued photo ID at the polls and for any voter seeking to vote by mail or by absentee ballot.** Government-issued photo identification should be readily available to all citizens without cost and provisions made to assure

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availability of government-issued identification to disabled and low-income citizens.

- States should adopt legislation requiring that all polling places be fully accessible and accommodating to all voters regardless of race, disability or political persuasion and that polling locations are free of intimidation or harassment.
- States should create and maintain current and accurate statewide voter registration databases as mandated by the federal Help America Vote Act (“HAVA”) and establish procedures to assure that the statewide voter roll is current and accurate and that the names of eligible voters on the roll are consistent with the voter roll used by local election authorities in conducting the election.
- States should adopt legislation establishing a 30-day voter registration cutoff to assure that all voter rolls are accurate and that all registrants can cast a regular ballot on Election Day and the election officials have opportunity to establish a current and accurate voter roll without duplicate or fictional names and assure that all eligible voters (including all recently registered voters) are included on the voter roll at their proper precinct.
- States should adopt legislation requiring voter registration applications to be delivered to the elections office within one week of being completed so that they are processed in a timely manner and to assure the individuals registered by third party organizations are properly included on the voter roll.
- States should adopt legislation and penalties for groups violating voter registration laws, and provide the list of violations and penalties to all registration solicitors. Legislation should require those organizations obtaining a voter’s registration to deliver that registration to election officials in a timely manner and should impose appropriate penalties upon any individual or organization that obtains an eligible voter’s registration and fails to deliver it to election authorities.
- States should adopt legislation prohibiting “bounty” payment to voter registration solicitors based on the number of registration cards they collect.

The Advancement Project, “America’s Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy” November 7, 2001

Written after the 2000 election, thesis of report is that **structural disenfranchisement**—the effect of breakdowns in the electoral system is the new poll tax. Structural disenfranchisement includes “bureaucratic blunders, governmental indifference, and flagrant disregard for voting rights.” Blame for structural disenfranchisement is laid squarely at the feet of **states and localities that “shirk their responsibilities or otherwise manipulate election systems,” resulting in voters “either turned away from the polls or their votes are thrown out.”** Data and conclusions in the Report are taken from **eight sample case studies** of states and cities across the country and a survey of state election directors that reinforces the findings of the case studies (New York City—in six polling places Chinese translations inverted the Democrats with the Republicans; Georgia—the state computer crashed two weeks before the election, dropping thousands of voters from the rolls; Virginia—registration problems kept an untold number from voting; Chicago—in inner-city precincts with predominately minority populations, almost four out of every ten votes cast for President (in 2000) were discarded; St. Louis—thousands of qualified voters were placed on inactive lists due to an overbroad purge; Florida—a voting list purge of voters whose name and birth date closely resembled those of people convicted of felonies; and, Texas—significant Jim Crow like barriers to minority voting.) Most ballot blockers involve the structural elements of electoral administration: “ill-trained poll workers, failures to process registration cards on time or at all, inaccurate registration rolls, overbroad purges of voter rolls, unreasonably long lines, inaccurate ballot translations and a shortage of translators to assist voters who have limited English language skills.”

Findings:

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- election directors lack the resources to effectively do their jobs and some lack the “ability or will to force local election officials to fix serious problems”;
- election officials are highly under funded and legislatures refuse to grant their requests for more money;
- due to a lack of funds, election officials must use old and inferior equipment and can’t improve training or meet structural needs;
- election officials are generally unaware of racial disparities in voting; only three of the 50 state election administrators are non-white.

Recommendations:

- federal policies that set nationwide and uniform election policies;
- federal guarantee of access to provisional ballots;
- enforcement of voter disability laws;
- automatic restoration of voting rights to those convicted of a crime after they have completed their sentence;
- a centralized data base of voters administered by non-partisan individuals;
- federal standards limiting precinct discarded vote rates to .25 %;
- federal requirements that jurisdiction provide voter education, including how to protect their right to vote; and laws that strengthen the ability of individuals to bring actions to enforce voting rights and anti-discrimination laws.

The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.

A September 15, 2005 Report submitted to the New Jersey Attorney General included lists of purportedly illegitimate votes in New Jersey in the 2004 general election, including lists of 10,969 individuals who purportedly voted twice and lists of 4,756 voters who were purportedly dead or incarcerated in November 2004. **Analysis of the suspect lists reveals that the evidence submitted does not show what it purports to show: cause for concern that there is serious risk of widespread fraud given the state of the New Jersey voter registration rolls.** These suspect lists were compiled by attempting to match the first name, last name, and birth date of persons on county voter registration files. **Analysis reveals several serious problems with the methodology used to compile the suspect lists that compromise the lists’ practical value.** For example, middle initials were ignored throughout all counties, so that “J\_\_\_\_\_ A. Smith” was presumed to be the same person as “J\_\_\_\_\_ G. Smith.” Suffixes were also ignored, so that fathers and sons – like “B\_\_\_\_\_ Johnson” and “B\_\_\_\_\_ Johnson, Jr.” – were said to be the same person. **A presumption that two records with the same name and date of birth must represent the same person is not consistent with basic statistical principles.**

Re Claim of Double Voting by 4,497 Individuals:

- 1,803 of these 4,397 records of ostensibly illegal votes seem to be the product of a glitch in the compilation of the registration files (far more likely that data error is to blame for the doubly logged vote - to irregularities in the data processing and compilation process for one single county);
- another 1,257 entries of the 4,397 records probably represent similar data errors;
- approximately 800 of the entries on the list likely represent different people, with different addresses and different middle initials or suffixes;
- for approximately 200 of the entries in this category, however, less information is available (lack of or differences in middle initial or middle name);
- 7 voters were apparently born in January 1, 1880 – which is most likely a system default for registrations lacking date-of-birth information;

- for 227 voters, only the month and year of birth are listed: this means only that two voters with the same name were born in the same month and year, an unsurprising coincidence in a state of several million people;
- leaves approximately 289 votes cast under the same name and birth date – like votes cast by “P \_\_\_\_\_ S. Rosen,” born in the middle of the baby boom – but from two different addresses. It may appear strange, but there may be two P \_\_\_\_\_ S. Rosens, born on the same date in 1948 – and such coincidences are surprisingly common. . In a group of just 23 people, it is more likely than not that two will share the same birthday. For 40 people, the probability is 90%. Many, if not most, of the 289 alleged double votes of persons registered at different addresses most likely reflect two separate individuals sharing a first name, last name, middle initial, and birth date.

But there is **no doubt that there are duplicate entries on New Jersey’s registration rolls**. It is well known that voter registration rolls contain “deadwood” – registration entries for individuals no longer living at a given address or deceased. There is no evidence, however, that these extra registrations are used for widespread illegal voting. Moreover, the **problem of deadwood will soon be largely resolved: both the National Voter Registration Act of 1993 and the Help America Vote Act of 2002 require states to implement several systems and procedures as of January 1, 2006, that will clean the voter rolls of duplicate or invalid entries while protecting eligible voters from unintended disfranchisement.**

Democratic National Committee, “Democracy at Risk: The November 2004 Election in Ohio,” DNC Services Corporation, 2005

Study re 2004 election in Ohio. Findings considered related to EAC study:

- **Statewide, 6 %of all voters reported feelings of intimidation: 16 percent of African Americans reported experiencing intimidation versus only 5 %of white voters.**
- **African American voters were 1.2 times more likely than white voters to be required to vote provisionally.** Of provisional voters in Cuyahoga County, 35% were African American, compared to 25% of non-provisional voters, matched by geography.
- Under Ohio law, the only voters who should have been asked for identification were those voting in their first Federal election that had registered by mail but did **not** provide identification in their registration application. **Although only 7% of all Ohio voters were newly registered (and only a small percentage of those voters registered by mail and failed to provide identification in their registration application), more than one third (37% reported being asked to provide identification.—meaning large numbers of voters were illegally required to produce identification. African American voters statewide were 47% more likely to be required to show identification than white voters. Indeed, 61% of African American men reported being asked to provide identification at the polls.**
- **Scarcity of voting machines caused long lines that deterred many people from voting: 3% of voters who went to the polls left their polling places and did not return due to the long lines; statewide, African American voters reported waiting an average of 52 minutes before voting while white voters reported waiting an average of 18 minutes; overall, 20% of white Ohio voters reported waiting more than twenty minutes, while 44% of African American voters reported doing so.**

The report also includes a useful summary and description of the reports that came through Ohio Election Protection on Election Day, which included a wide variety of problems, including voter intimidation and discrimination.

Pertinent recommendations:

- **codify into law all required election practices**, including requirements for the adequate training of official poll workers
- **adopt legislation to make clear and uniform the rules on voter registration.**

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- adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official poll workers among precincts, to ensure adequate and nondiscriminatory access
- improve training of official poll workers
- adopt clear and uniform rules on the use of, and the counting of, provisional ballots, and distribute them for public comment well in advance of each election day
- not adopt requirements that voters show identification at the polls, beyond those already required by federal law; vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.
- make voter suppression a criminal offense at the state level, in all states
- implement statewide voter lists in accordance with the Help America Vote Act ("HAVA")
- expend significantly more resources in educating voters on where, when and how to vote.
- partisan officials who volunteer to work for a candidate should not oversee or administer any elections.

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."

**Supervision of the Justice Department's nationwide response to election crimes:**

Election Crimes Branch oversees the Department's handling of all election crime allegations other than those involving civil rights violations, which are supervised by the Voting Section of the Civil Rights Division. Specifically, the Branch supervises four types of corruption cases: crimes that involve the voting process, crimes involving the financing of federal election campaigns, crimes relating to political shakedowns and other patronage abuses, and illegal lobbying with appropriated funds. Vote frauds and campaign-financing offenses are the most significant and also the most common types of election crimes. The purpose of Headquarters' oversight of election crime matters is to ensure that the Department's nationwide response to election crime is uniform, impartial, and effective. An Election Crimes Branch, headed by a Director and staffed by Section attorneys on a case-by-case basis, was created within the Section in 1980 to handle this supervisory responsibility.

**Voting Fraud:**

During 2002 the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. During 2003 the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virgin Islands, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. During 2004 the Branch assisted United States Attorneys' Offices in the following states in the handling of vote fraud matters that occurred in their respective districts: Alabama,

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Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Washington, and Wisconsin. This assistance included evaluating vote fraud allegations to determine whether investigation would produce a prosecutable federal criminal case, helping to structure investigations, providing legal advice concerning the formulation of charges, and assisting in establishing several task force teams of federal and state law enforcement officials to investigate vote fraud matters.

**Litigation:**

The Branch Director or Section attorneys also prosecute selected election crimes, either by assuming total operational responsibility for the case or by handling the case jointly with a United States Attorney's Office. The Section also may be asked to supervise the handling of a case in the event of a partial recusal of the local office. For example, in 2002 the Branch continued to supervise the prosecution of a sheriff and his election attorney for using data from the National Crime Information Center regarding voters' criminal histories to wage an election contest.

**District Election Officer Program:**

The Branch also assists in implementing the Department's long-standing District Election Officer (DEO) Program. This Program is designed to ensure that each of the 93 United States Attorneys' Offices has a trained prosecutor available to oversee the handling of election crime matters within the district and to coordinate district responses with Headquarters regarding these matters. The DEO Program involves the appointment of an Assistant United States Attorney in each federal district to serve a two-year term as a District Election Officer; the training of these prosecutors in the investigation and prosecution of election crimes; and the coordination of election-related initiatives and other law enforcement activities between Headquarters and the field. In addition, the DEO Program is a crucial feature of the Department's nationwide Election Day Program, which occurs in connection with the federal general elections held in November of even-numbered years. The Election Day Program ensures that federal prosecutors and investigators are available both at the Department's Headquarters in Washington and in each district to receive and handle complaints of election irregularities from the public while the polls are open and that the public is aware of how these individuals can be contacted on election day. In 2002 the Department enhanced the DEO Program by establishing a Ballot Integrity Initiative.

**Ballot Integrity Initiative:**

**Beginning in September of 2002**, the Public Integrity Section, acting at the request of the Attorney General, assisted in the implementation of a Ballot Integrity Initiative for the 2002 general election and subsequent elections. This initiative included increasing the law enforcement priority the Department gives to election crimes; holding a special day-long training event in Washington, DC for representatives of the 93 United States Attorneys' Offices; publicizing the identities and telephone numbers of the DEOs through press releases issued shortly before the November elections; and requiring the 93 U.S. Attorneys to communicate the enhanced federal prioritization of election crime matters to state and local election and law enforcement authorities. As part of Ballot Integrity Initiative, on October 8, 2002, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a Voting Integrity Symposium for District Election Officers representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Attorney General John Ashcroft delivered the keynote address on the importance of election crime and ballot integrity enforcement. Assistant Attorney General of the Civil Rights Division Ralph Boyd and Assistant Attorney General of the Criminal Division Michael Chertoff also spoke to attendees on the protection of voting rights and the prosecution of election cases. As part of Ballot Access and Voting Integrity Initiative, on September 23 and 24, 2003, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a two-day Symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Assistant Attorney General of the Civil Rights Division Alexander Acosta and Assistant Attorney General of the Criminal Division Christopher A.

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Wray delivered the keynote addresses on the importance of protecting voting rights and the prosecution of election cases. On July 20 and 21, 2004, the Public Integrity Section and the Voting Section of the Department's Civil Rights Division co-sponsored a two-day symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes available to prosecute such cases, and the handling of civil rights matters involving voting. Attorney General John Ashcroft delivered the keynote address on the importance of protecting voting rights and the prosecution of election fraud. In addition, Assistant Attorney General Christopher A. Wray of the Criminal Division and Assistant Attorney General R. Alexander Acosta of the Civil Rights Division addressed conference attendees on voting rights and election fraud enforcement issues respectively.

As a result of the Initiative, during 2002 the number of election crime matters opened by federal prosecutors throughout the country increased significantly, as did the Section's active involvement in election crime matters stemming from the Initiative. At the end of 2002, the Section was supervising and providing advice on approximately 43 election crime matters nationwide. In addition, as of December 31, 2002, 11 matters involving possible election crimes were pending in the Section. During 2002 the Section closed two election crime matters and continued its operational supervision of 8 voting fraud cases (conspiracy to illegally obtain criminal history records to use to challenge voters (AL) and 7 cases of vote buying involving 10 defendants (KY).

Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)

Addresses the role of the United States Department of Justice in matters of election fraud, specifically: what sort of election-related conduct is potentially actionable as a federal crime; what specific statutory theories apply to frauds occurring in elections lacking federal candidates on the ballot, what federalism; procedural, and policy considerations impact on the federalization of this type of case; and how Assistant United States Attorneys should respond to this type of complaint. As a general rule, the federal crime of voter fraud embraces only organized efforts to corrupt of the election process itself: i.e., the registration of voters, the casting of ballots, and the tabulation and certification of election results. Moreover, this definition excludes all activities that occur in connection with the political campaigning process, unless those activities are themselves illegal under some other specific law or prosecutorial theory. This definition also excludes isolated acts of individual wrongdoing that are not part of an organized effort to corrupt the voting process. Mistakes and other gaffs that inevitably occur are not included as voter fraud. Prosecuting election fraud offenses in federal court is further complicated by the constitutional limits that are placed on federal power over the election process. The conduct of elections is primarily a state rather than a federal activity.

**Four situations where federal prosecution is appropriate:**

1. Where the objective of the conduct is to corrupt the outcome of a federal elective contest, or where the consequential effect of the corrupt conduct impacts upon the vote count for federal office;
2. Where the object of the scheme is to discriminate against racial, ethnic or language minority groups, the voting rights of which have been specifically protected by federal statutes such as the Voting Rights Act, 42 U.S.C. section 1973 et seq.;
3. Where federalization is required in order to redress longstanding patterns of electoral fraud, either at the request of state or local authorities, or in the face of longstanding inaction by state authorities who appear to be unwilling or unable to respond under local law; and,
4. Where there is a factual basis to believe that fraudulent registration or voting activity is sufficiently connected to other forms of criminal activity that perusing the voter fraud angle will yield evidence useful in the prosecution of other categories of federal offense

**Four advantages to federal prosecution:**

1. Voter fraud investigations are labor intensive - local law enforcement agencies often lack the manpower and the financial resources to take these

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cases on;

2. Voter fraud matters are always politically sensitive and very high profile endeavors at the local level – local prosecutors (who are usually themselves elected) often shy away from prosecuting them for that reason; the successful prosecution of voter fraud cases demands that critical witnesses be examined under oath before criminal charges based on their testimony are filed.
3. Many states lack the broad grand jury process that exists in the federal system; and
4. The defendants in voter fraud cases are apt to be politicians - or agents of politicians - and it is often impossible for either the government or the defendant to obtain a fair trial in a case that is about politics and is tried to a locally-drawn jury. The federal court system provides for juries to be drawn from broader geographic base, thus often avoiding this problem.

Several prosecutorial theories used by United States Attorneys to federalize election frauds are discussed.

**Four questions used by prosecutors in evaluating the credibility of election complaints:**

1. does the substance of the complaint assuming it can be proven through investigation - suggest a potential crime;
2. is the complaint sufficiently fact-specific that it provides leads for investigators to pursue;
3. is there a federal statute that can be used to federalize the criminal activity at issue; and,
4. is there a special federal interest in the matter that warrants federalization rather than deferral to state law enforcement.

All federal election investigations must avoid the following: non-interference in elections unless absolutely necessary to preserve evidence; interviewing voters during active voting periods; seizing official election documentation; investigative activity inside open polls; and prosecutors must adhere to 18 U.S.C. section 592, prohibiting the stationing of armed men at places where voting activity is taking place.

Election crimes based on race or language minority status are treated as civil rights matters under the Voting Rights Act.

People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>

Election Protection 2004 was the nation's most far-reaching effort to protect voter rights before and on Election Day. The historic nonpartisan program included: (1) a toll-free number, 1-866-OUR-VOTE, with free, immediate and multi-lingual assistance to help voters with questions about registration and voting, and assist voters who encounter barriers to the ballot box; (2) distribution of more than five million "Voters' Bills of Rights" with state-specific information; (3) 25,000 volunteers, including 6,000 lawyers and law students, who watched for problems and assisted voters on the spot at more than 3,500 predominantly African-American and Latino precincts with a history of disenfranchisement in at least 17 states; and (4) civil rights lawyers and advocates represented voters in lawsuits, preserved access to the polls, exposed and prevented voter intimidation, worked with election officials to identify and solve problems with new voting machines, technology and ballot forms, and protected voter rights in advance and on Election Day.

**Voter Intimidation and Suppression Stories (Abridged):**

- An Associated Press story noted Election Protection's exposure of reported voter suppression tactics in **Colorado**: Officials with the Election Protection Coalition, a voter-rights group, also said **some voters in a predominantly black neighborhood north of Denver found papers on their doorsteps giving them the wrong address for their precinct.**
- Election Protection received a report from Boulder County, **Colorado** that a **poll worker made racist comments to Asian American voter and then told her she was not on the list and turned her away.** The voter saw others filling out provisional ballots and asked for one but was denied. Another Asian American woman behind her in line was also given trouble by the same poll worker (he questioned her nationality and also turned her away).
- Election Protection received a report from Florissant County, **Missouri** from a voter who lives in predominantly white neighborhood. While waiting

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in line to vote, a **Republican challenger challenged the black voters by requesting more proof of identification, residence, and signature match, while asking nothing from white voters.** Also, the same voter reportedly asked a few questions about voting but an election officials refused to provide any meaningful answer, insisting that "it's very simple", but provided white voters with information when requested. There was one other black voter in line who was also singled out for same treatment while white voters were not.

- The Election Protection hotline received reports from **Pinellas County, Florida** that individuals purporting to be from the Kerry campaign are going door-to-door handing out absentee ballots, and asking voters to fill them out, and then taking the ballots from them, saying "Vote here for Kerry. Don't bother going to the polls."
- The Election Protection Coalition received a report from a woman whose sister lives in **Milwaukee** and is on government assistance. Her sister was reportedly told by her "case manager" that if she voted for Kerry, she would stop receiving her checks.
- An illiterate, older and disabled voter in **Miami-Dade** asked for assistance reading the ballot and reported that a poll worker yelled at him and refused to assist him and also refused to allow him to bring a friend into the booth in order to read the ballot to him.
- The Election Protection Coalition have gathered reports that flyers are circulating in a black community in **Lexington, South Carolina** claiming they those who are behind on child support payments will be arrested as the polls.
- **Minority voters from Palm Beach County, Florida** reported to the hotline that they received middle-of-the-night, live harassing phone calls warning them away from the polls.
- A volunteer for **Rock the Vote** reported that two illiterate voters in **Michigan** requested assistance with their ballots but were refused and reportedly mocked by poll workers.
- The hotline received a call from a radio DJ in **Hillsborough County, Florida**, who stated that he has received many calls (most of which were from **African-Americans**) claiming that poll workers were turning voters away and not "letting" them vote.
- The hotline received a call from **Pima County, Arizona**, indicating that Democratic voters received calls throughout Monday evening, providing incorrect information about the precinct location. Voters have had to be transported en masse in order to correct the problem.
- A caller from **Alabama** claims that he was told at his polling place that he could vote there for everything but the President and that he would have to go elsewhere in order to vote for a presidential candidate.
- Poll monitors in **Philadelphia** reports groups of lawyers, traveling in threes, who pull voters out of line and challenge them to provide ID, but when challenged themselves, they hop into waiting cars or vans and leave. Similar activity by Republican lawyers in Philadelphia was reported in the 2002 election.
- In **Cuyahuga, Ohio**, a caller reported that all black voters are being asked to show ID, while white voters are not. Caller report that he is black and had to show ID while his girlfriend is white and did not have to show ID.
- Two months ago, suspicious phone calls to newly registered Democrats —telling them they weren't, in fact, registered to vote — were traced to the Republican headquarters in the **Eastern Panhandle**. On Monday, Democrats there said the calls have started again, even after the **Berkeley County Clerk — a Republican — sent the party a cease-and-desist letter**. The Berkeley prosecutor, who also is county Democratic chairman, has called on the U.S. attorney to investigate.
- In **Tuscon, Arizona** a misleading call informing voters that they should vote on November 3 has been traced back to the state GOP headquarters. The FBI is investigating.
- A man driving around in a big van covered in American flags and a big picture of a policeman was reportedly parked in front of a polling place; he then got out and moved within the 75 ft limit, until he was asked to leave; he then was found inside the polling place and was again

asked to leave. Election Protection volunteers contacted officials and the man was eventually removed.

- The Election Protection hotline has received a report from **individuals who claim to have received recorded telephone message coming from Bill Clinton and ACT and reminding them to vote on Nov. 3rd.**
- In **Massachusetts**, the EP Hotline has received a report that a **radio station (WILD) is broadcasting that voters will be arrested on the spot if they have outstanding parking tickets.**
- In **Richland, South Carolina** Election Protection has received a report of a **poll manager turning away individuals who do not have photo ID issued to the county or a driver's license;** an EP lawyer spoke with the Poll Manager at 8:20 am and told her that people with other forms of ID should be allowed to vote by provisional ballot.
- In **Greenville**, a caller reported that a **white poll worker was asking Blacks for multiple form of I.D.** Fortunately, the voter who reported the problem did have a second I.D. but reported that some others were turned away. Election Protection attorneys have alerted election officials.
- In **Allegheny County, Pennsylvania**, an official looking flyer advises **Democratic voters to "create a peaceful voting environment" by voting on Wednesday, November 3**
- The week before the election, **flyers were circulated in Milwaukee under the heading "Milwaukee Black Voters League" with some "warnings for election time."** The flyer listed false reasons for which you would be barred from voting (such as a traffic ticket) and then warned that **"If you violate any of these laws you can get ten years in prison and your children will get taken away from you."**
- There is a **Jefferson County flyer which tells voters "See you at the Poles!sic]"... on November 4.**

Craig Donsanto, "Prosecution of Electoral Fraud Under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

[NO SUMMARY FOUND] This is summary of federal role in prosecuting election crimes.

General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.

**[SUMMARY FAILS TO NOTE ELECTION OFFICIALS' RESPONSES THAT LITTLE VOTING FRAUD OR VOTER INTIMIDATION WAS DETECTED. DETECTED VOTING FRAUD WAS RELATED TO SUBMISSION OF FALSE/MATERIALLY INCORRECT VOTER REGISTRATION APPLICATIONS AND TO ABSENTEE BALLOT FRAUD. VOTER SUPPRESSION EFFORTS OCCUR.]** This Report focuses on the efforts of local election officials in 14 jurisdictions within 7 states to manage the registration process, maintain accurate voter registration lists, and ensure that eligible citizens in those jurisdictions had the opportunity to cast ballots during the 2004 election. the Report concentrates on election officials' characterization of their experiences with regard to (1) managing the voter registration process and any challenges related to receiving voter registration applications; checking them for completeness, accuracy, and duplication; and entering information into voter registration lists; (2) removing voters' names from voter registration lists and ensuring that the names of eligible voters were not inadvertently removed; and (3) implementing HAVA provisional voting and identification requirements and addressing any challenges encountered related to these requirements. The Report also provides information on motor vehicle agency (MVA) officials' characterization of their experiences assisting citizens who apply to register to vote at MVA offices and forwarding voter registration applications to election offices. The Report analyzed information collected from elections and motor vehicle agency offices in seven states—Arizona, California, Michigan, New York, Texas, Virginia, and Wisconsin. The 14 jurisdictions we selected were Gila and Maricopa Counties, Arizona; Los Angeles and Yolo Counties, California; City of Detroit and Delta Township, Michigan; New York City and Rensselaer County, New York; Bexar and Webb Counties, Texas; Albemarle

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and Arlington Counties, Virginia; and the cities of Franklin and Madison, Wisconsin.

Election officials representing all but one of the jurisdictions surveyed following the November 2004 election said they faced some challenges managing the voter registration process, including (1) receiving voter registration applications; (2) checking them for completeness, accuracy, and duplication; and (3) entering information into voter registration lists; when challenges occurred, election officials reported they took various steps to address them. All but 1 of the jurisdictions reported removing names from registration lists during 2004 for various reasons, including that voters requested that their names be removed from the voter registration list; information from the U.S. Postal Service (USPS) showing that voters had moved outside the jurisdiction; felony records received from federal, state, or local governments identifying voters as ineligible due to felony convictions; and death records received from state or local vital statistics offices. All of the jurisdictions reported that they permitted citizens to cast provisional ballots during the November 2004 election. In addition, 12 of the 14 jurisdictions to which this was applicable reported that they offered certain first-time voters who registered by mail the opportunity to cast provisional ballots. Local election officials in 12 of the 13 jurisdictions 13 we surveyed reported that they set up mechanisms to inform voters—without cost—about the outcome of their provisional votes during the November 2004 election. These mechanisms included toll-free telephone numbers, Web sites, and letters sent to the voters who cast provisional ballots. Election officials representing 8 of the 14 jurisdictions reported facing challenges implementing provisional voting for various reasons, including some poll workers not being familiar with provisional voting or, in one jurisdiction representing a large number of precincts, staff not having sufficient time to process provisional ballots.

Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.

A comprehensive survey and analysis of vote fraud in the United States. The methodology included doing nexis searches for all 50 states and surveying existing research and reports. In addition, Minnite did a more in-depth study of 12 diverse states by doing nexis searches, studying statutory and case law, and conducting interviews with election officials and attorneys general. Finally, the study includes an analysis of a few of the most high profile cases of alleged fraud in the last 10 years, including the Miami mayoral election (1997), Orange County congressional race (1996), and the general election in Missouri (2000). In these cases, Minnite shows that many allegations of fraud do not end up being meritorious. Minnite finds that **available evidence suggests that the incidence of election fraud is minimal and rarely affects election outcomes.** Election officials generally do a very good job of protecting against fraud. **Conditions that give rise to election fraud have steadily declined over the last century as a result of weakened political parties, strengthened election administration, and improved voting technology. There is little available evidence that election reforms such as the National Voter Registration Act, election day registration, and mail-in voting have resulted in increases in election fraud.** Election fraud appears also to be very rare in the 12 states examined more in-depth. Legal and news records turned up little evidence of significant fraud in these states or any indication that fraud is more than a minor problem. Interviews with state officials further confirmed this impression. Minnite found that, **overall, the absentee mail-in ballot process is the feature most vulnerable to voter fraud.** There is not a lot of evidence of absentee ballot fraud but the potential for fraud is greatest in this area because of a lack of uniformly strong security measures in place in all states to prevent fraud.

**Suggested reforms to prevent what voter fraud does take place:**

1. effective use of new statewide voter registration databases;
2. identification requirements for first time voters who register by mail should be modified to expand the list of acceptable identifying documents;
3. fill important election administration positions with nonpartisan professionals;
4. strengthen enforcement through adequate funding and authority for offices responsible for detecting and prosecuting fraud; and
5. establish Election Day Registration because it usually requires voter identification and authorization in person before a trained election worker, which reduces the opportunity for registration error or fraud.

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6.

People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

A description and analysis of the complaints and allegations of voting irregularities gathered by the Election Protection program during the 2004 presidential election. Election Protection received more than a thousand complaints of voter suppression or intimidation. Complaints ranged from intimidating experiences at polling places to coordinated suppression tactics. For example:

- Police stationed outside a Cook County, Illinois, polling place were requesting photo ID and telling voters if they had been convicted of a felony that they could not vote.
- In Pima, Arizona, voters at multiple polls were confronted by an individual, wearing a black tee shirt with "US Constitution Enforcer" and a military-style belt that gave the appearance he was armed. He asked voters if they were citizens, accompanied by a cameraman who filmed the encounters.
- There were numerous incidents of intimidation by partisan challengers at predominately low income and minority precincts
- Voters repeatedly complained about misinformation campaigns via flyers or phone calls encouraging them to vote on a day other than November 2, 2004 or of false information regarding their right to vote. In Polk County, Florida, for example, a voter received a call telling her to vote on November 3. Similar complaints were also reported in other counties throughout Florida. In Wisconsin and elsewhere voters received flyers that said:
  - "If you already voted in any election this year, you can't vote in the Presidential Election."
  - "If anybody in your family has ever been found guilty of anything you can't vote in the Presidential Election."
  - "If you violate any of these laws, you can get 10 years in prison and your children will be taken away from you."

There were also numerous reports of poll workers refusing to give voters provisional ballots.

The following is a summary of the types of acts of suppression and intimidation included in the report and a list of the states in which they took place. All instances of irregularities that were more administrative in nature have been omitted:

1. **Improper implementation of voter identification rules, especially asking only African Americans for proof of identity:** Florida, Ohio, Pennsylvania, Illinois, Missouri, Arkansas, Georgia, Louisiana
2. **Individuals at the polls posing as some sort of law enforcement authority and intimidating and harassing voters:** Arizona, Missouri
3. **Intimidating and harassing challengers at the polls:** Ohio, Michigan, Wisconsin, Missouri, Minnesota
4. **Deceptive practices and disinformation campaigns, such as the use of flyers with intentional misinformation about voting rights or voting procedures, often directed at minority communities; the use of phone calls giving people misinformation about polling sites and other procedures; and providing verbal misinformation at the polls in a way that appears to have been intentionally misleading:** Florida, Pennsylvania, Illinois, Wisconsin, Missouri, North Carolina, Arkansas, Texas
5. **Refusal to provide provisional ballots to certain voters:** Ohio, Pennsylvania, Illinois, Michigan, Colorado, Missouri, Texas, Georgia, Louisiana
6. **Registration applications submitted through third parties that were not processed:** Arizona, Michigan, Nevada (registration forms destroyed by Sproul Associates)
7. **Improper removal from the voter registration list:** Arizona
8. **Individuals questioning voters' citizenship:** Arizona
9. **Police officers at the polls intimidating voters:** Illinois, Michigan, Wisconsin, Missouri, North Carolina

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The report does not provide corroborating evidence for the allegations it describes. However, especially in the absence of a log of complaints received by the Department of Justice, this report provides a very useful overview of the types of experiences some voters more than likely endured on Election Day in 2004.

## Books

John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.

Focuses almost entirely on alleged transgressions by Democrats. Fund's accusations, if credible, would indicate that fraud such as voter registration fraud, absentee ballot fraud, dead people voting, and felon voting is prevalent throughout the country. However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount and types of voter fraud and voter intimidation occurring.

Fund says that "Election fraud, whether its phony voter registrations, illegal absentee ballots, shady recounts or old-fashioned ballot-box stuffing, can be found in every part of the United States, although it is probably spreading because of the ever-so-tight divisions that have polarized the country and created so many close elections lately. Fund argues that fraud **has been made easier by the passage of the National Voting Rights Act** because it allows ineligible voters to remain on the voter rolls, allowing a voter to vote in the name of someone else. He claims dead people, people who have moved, and people in jail remain on the voting list. He believes because of NVRA illegal aliens have been allowed to vote.

**Absentee balloting makes it even worse:** someone can register under false names and then use absentee ballots to cast multiple votes. Groups can get absentee ballots for the poor and elderly and then manipulate their choices.

Provides a number of examples of alleged voter fraud, mostly perpetrated by Democrats. For example, he claims much fraud in St. Louis in 2000, including illegal court orders allowing people to vote, **felons voting, people voting twice, dead people voting, voters were registered to vacant lots, election judges were not registered and evidence of false registrations.** Another case he pays a great deal of attention to are the alleged transgressions by Democrats in Indian Country in South Dakota 2002, including **voter registration fraud, suspicious absentee ballot requests, vote hauling, possible polling place fraud, abusive lawyers at polling sites, and possible vote buying.**

Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.

Bulk of the book comprises stories from United States electoral history outside the scope of this project; however, tales are instructive in showing how far back irregular and illegal voting practices go. Focuses almost entirely on alleged transgressions by Republican, although at times it does include complaints about Democratic tactics. Gumbel's accusations, if credible, especially in the Bush-Gore election, would indicate there were a number of problems in key states in such areas as **intimidation, vote counting, and absentee ballots.** However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount and types of voter fraud and voter intimidation occurring.

Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.

Traces the historical persistence of voter fraud from colonial times through the 2004 Bush-Kerry election. From the textual information, it quickly becomes obvious that voter fraud was not limited to certain types of people or to certain political parties. [SKIMPY SUMMARY-DOES NOT SAY MUCH.]

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David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.

**Adds almost nothing to the present study.** It contains no footnotes and no references to primary source material, save what may be able to be gleaned from the bibliography. Takes a historical look at United States Presidential elections from Andrew Jackson to George Bush by providing interesting stories and other historical information. There are only three pages out of the entire book that touches on vote fraud in the first Bush election. The authors assert that the exit polls in Florida were probably correct. The problem was the pollsters had no way of knowing that thousands of votes would be invalidated. But the authors do not believe that fraud was the cause of the tabulation inaccuracy.

Mark Crispin Miller, *Foiled Again*, Basic Books, 2005.

Sets out to show that the 2004 election was won by Bush through nefarious means, and indicts the news media for not taking anomalies, irregularities, and **alleged malfeasance** in the process seriously enough. However, book is well sourced, and individual instances of alleged malfeasance discussed may be worth looking at. He accuses Republicans of committing crimes and improprieties throughout the country, including:

1. **deliberate disparities in voting machine distribution and long lines in Democratic jurisdictions;**
2. **misinterpretation of voting laws by elections officials to the detriment of Democratic voters;**
3. **dirty tricks and deceptive practices to mislead Democratic and minority voters about voting times, places and conditions;**
4. **machine irregularities in Democratic jurisdictions;**
5. **relocating polling sites in Democratic and minority areas;**
6. **suspicious mishandling of absentee ballots;**
7. **refusing to dispense voter registration forms to certain voter registration groups;**
8. **intimidation of students;**
9. **suspicious ballot spoilage rates in certain jurisdictions;**
10. **"strategic distribution of provisional ballots," and trashing of provisional ballots;**
11. **harassment of Native American voters;**
12. **a Republican backed organization engaging in voter registration efforts throughout the country that allegedly destroyed the voter registration forms of Democrats;**
13. **illegitimate challenges at the polls by Republican poll watchers;**
14. **improper demands for identification in certain areas;**
15. **Republican challenges to the voter registration status of thousands of voters before the election, and the creation of lists of voters to challenge at the polls;**
16. **wrongful purging of eligible voters from voting rolls;**
17. **partisan harassment;**
18. **the selective placement of early voting sites; and**
19. **failure to send out absentee ballots in time for people to vote.**

Details what he says was the inappropriate use of the Federal Voter Assistance Program that made voting for the military easy while throwing up obstacles for civilians overseas in their efforts to vote by absentee ballot, leading many of them to be disenfranchised.

**Legal**

*Indiana Democratic Party vs. Rokita*, U.S. District Court Southern District of Indiana (Indianapolis) 1:05-cv-00634, U.S. Court of Appeals, 7<sup>th</sup> Circuit 06-2218

Although the proponents of SEA 483 asserted that the law was intended to combat voter fraud, no evidence of the existence of such fraud has ever been provided. No voter has been convicted of or even charged with the offense of misrepresenting his identity for purposes of casting a fraudulent ballot in person, King Dep. 95-96; Mahern Aff. ¶¶ 2-3, though there have been documented instances of absentee ballot fraud. King Dep. 120. Indeed, no evidence of in person, on-site voting fraud was presented to the General Assembly during the legislative process leading up to the enactment of the Photo ID Law. Mahern Aff. ¶¶ 2-

**The State cannot show any compelling justification for subjecting only voters who vote in person to the new requirements of the Photo ID Law, while exempting absentee voters who vote by mail or persons who live in state-certified residential facilities.**

On the other hand, absentee ballots are peculiarly vulnerable to coercion and vote tampering since there is no election official or independent election observer available to ensure that there is no illegal coercion by family members, employers, churches, union officials, nursing home administrators, and others.

**Law gives virtually unbridled discretion to partisan precinct workers and challengers to make subjective determinations such as (a) whether a form of photo identification produced by a voter conforms to what is required by the Law, and (b) whether the voter presenting himself or herself at the polls is in fact the voter depicted in the photo** Robertson Dep. 29-34, 45; King Dep. 86, 89. This is significant because any voter who is challenged under this Law will be required to vote by provisional ballot and to make a special trip to the election board's office in order to have his vote counted. Robertson Dep. 37; King Dep. 58.

**The Photo ID Law confers substantial discretion, not on law enforcement officials, but on partisan precinct poll workers and challengers appointed by partisan political officials, to determine both whether a voter has presented a form of identification which conforms to that required by the Law and whether the person presenting the identification is the person depicted on it. Conferring this degree of discretion upon partisan precinct officials and members of election boards to enforce the facially neutral requirements of the Law has the potential for becoming a means of suppressing a particular point of view.**

The State arguably might be justified in imposing uniform, narrowly-tailored and not overly-burdensome voter identification requirements if the State were able to show that there is an intolerably high incidence of fraud among voters misidentifying themselves at the polls for the purpose of casting a fraudulent ballot. But here, the State has utterly failed to show that this genre of fraud is rampant or even that it has ever occurred in the context of on-site, in-person voting (as opposed to absentee voting by mail) so as to justify these extra burdens, which will fall disproportionately on the poor and elderly.

**And where the State has already provided a mechanism for matching signatures, has made it a crime to misrepresent one's identity for purposes of voting, and requires the swearing out of an affidavit if the voter's identity is challenged, it already has provisions more than adequate to prevent or minimize fraud in the context of in-person voting, particularly in the absence of any evidence that the problem the Law seeks to address is anything more than the product of hypothesis, speculation and fantasy.**

**In-person voter-identity fraud is notoriously difficult to detect and investigate.** In his book *Stealing Elections*, John Fund observes that actual in-person voter fraud is nearly undetectable without a voter photo-identification requirement because anybody who provides a name that is on the rolls may vote and then walk away with no record of the person's actual identity. The problem is only exacerbated by the increasingly transient nature of society. **Documentation of in-person voter fraud often occurs only when a legitimate voter at the polls hears a fraudulent voter trying to use her name, as happened to a woman in California in 1994. See Larry J. Sabato & Glenn R. Simpson, *Dirty Little Secrets* 292 (1996).**

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Regardless of the lack of extensive evidence of in-person voter fraud, the Commission on Federal Election Reform (known as the Baker-Carter Commission) recently concluded that "there is no doubt that it occurs." State Ex. 1, p. 18.1 **Legal cases as well as newspaper and other reports confirm that in-person voter-identity fraud, including voter impersonation, double votes, dead votes, and fake addresses, plague federal and state elections. [The memorandum details several specific cases of various types of alleged voting fraud from the past several years]**

**Though they are largely unable to study verifiable data concerning in-person voter fraud, scholars are well aware of the conditions that foster fraudulent voting. See Fund, *supra*; Sabato & Simpson, *supra*, 321. In particular, fraud has become ever more likely as "it has become more difficult to keep the voting rolls clean of 'deadwood' voters who have moved or died" because such an environment makes "fraudulent voting easier and therefore more tempting for those so inclined." Sabato & Simpson, *supra*, 321. "In general, experts believe that one in five names on the rolls in Indiana do not belong there." State Ex. 25.**

For this case, Clark Benson, a nationally recognized expert in the collection and analysis of voter-registration and population data, conducted his own examination of **Indiana's voter registration lists and concluded that they are among the most highly inflated in the nation.**

The Crawford Plaintiffs cite the **concessions** by Indiana Election Division Co-Director King and the Intervenor-State that they are **unaware of any historical in-person incidence of voter fraud occurring at the polling place (Crawford Brief, p. 23) as conclusive evidence that in-person voter fraud does not exist in Indiana.** They also seek to support this conclusion with the testimony of two "veteran poll watchers," Plaintiff Crawford and former president of the Plaintiff NAACP, Indianapolis Chapter, Roderick E. Bohannon, who testified that they had never seen any instances of in-person voter fraud.

(*Id.*)

While common sense, the **experiences of many other states, and the findings of the Baker-Carter Commission all lead to the reasonable inferences that (a) in-person polling place fraud likely exists, but (b) is nearly impossible to detect without requiring photo identification, the State can cite to no confirmed instances of such fraud. On the other hand, the Plaintiffs have no proof that it does not occur.**

At the level of logic, moreover, it is **just reasonable to conclude that the lack of confirmed incidents of in-person voting fraud in Indiana is the result of an ineffective identification security system as it is to conclude there is no in-person voting fraud in Indiana.** So while it is undisputed that the state has no proof that in-person polling place fraud has occurred in Indiana, there does in fact remain a dispute over the existence *vel non* of in-person polling place fraud.

It is also important to understand that the **nature of in-person election fraud is such that it is nearly impossible to detect or investigate. Unless a voter stumbles across someone else trying to use her identity, see Sabato & Simpson, *supra*, 292, or unless the over-taxed poll worker happens to notice that the voter's signature is different from her registration signature State Ex. 37, ¶ 9, the chances of detecting such in-person voter fraud are extremely small. Yet, inflated voter-registration rolls provide ample opportunity for those who wish to commit in-person voter fraud. See Fund, *supra*, 24, 65, 69, 138; Sabato & Simpson, *supra*, 321. And there is concrete evidence that the names of dead people have been used to cast fraudulent ballots. See Fund, *supra*, 64. Particularly in light of Indiana's highly inflated voter rolls State Ex. 27, p. 9, Plaintiffs' repeated claims that there has never been any in-person voter fraud in Indiana can hardly be plausible, even if the state is unable to prove that such fraud has in fact occurred.**

*Common Cause of Georgia vs. Billups*, U.S. District Court, Northern District of Georgia (Rome) 4:05-cv-00201-HLM U.S. Court of Appeals, 11<sup>th</sup> Circuit 05-15784

The Secretary of State, as the Chief Election Officer in Georgia, informed the General Assembly before the passage of Act 53 in a letter (attached hereto

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as Exhibit A), and also informed the Governor in a letter (attached hereto as Exhibit B) before he signed the bill into law, that **there had been no documented cases of fraudulent voting by persons who obtained ballots unlawfully by misrepresenting their identities as registered voters to poll workers reported to her office during her nine years** as Secretary of State .

Although the Secretary of State had informed the members of the General Assembly and the Governor prior to the enactment of Act 53, that her office had received **many complaints of voter fraud involving absentee ballots and no documented complaints of fraud that involve ballots that were cast in person at the polls**, the General Assembly ignored this information and arbitrarily chose instead to require only those registered voters who vote in person to present a Photo ID as a condition of voting, but deliberately refused to impose the same requirement on absentee voters.

The Stated Purpose Of The Photo ID Requirement Fraud Is A Pretext.

According to a press release prepared by the Communications Office of the Georgia House of Representatives, the purpose of Act 53 is: to address the issue of voter fraud by placing tighter restrictions on voter identification procedures. Those casting ballots will now be required to bring a photo ID with them before they will be allowed to vote.

Al Marks, Vice Chairman for Public Affairs and Communication of the Hall County GOP told the Gainesville Times: I don't think we need it for voting, because I don't think there's a voter fraud problem. Gainesville Times, "States Voters Must Present Picture IDs" (September 15, 2005) ([www.gainesvilletimes.com](http://www.gainesvilletimes.com)).

**There is no evidence that the existing provisions of Georgia law have not been effective in deterring and preventing imposters from fraudulently obtaining and casting ballots at the polls by misrepresenting their true identities** to election officials and passing themselves off as registered voters whose names appear on the official voter registration list.

The pretextual nature of the purported justification for the burden which the Photo ID requirement imposes on the right to vote is shown by the following facts:

(a) Fraudulent voting was already prohibited by existing Georgia law without unduly burdening the right of a citizen to vote.

(i) Fraudulent voting was already prohibited as a crime under O.C .G.A. §§ 21-2-561, 21-2-562, 21-2-566, 21-2-571, 21-2-572 and 21-2-600, punishable by a fine of up to \$10,000 or imprisonment for up to ten years, or both.

(ii) Voter registration records are updated periodically by the Secretary of State and local election officials to eliminate people who have died, have moved, or are no longer eligible to vote in Georgia for some other reason.

(iii) Existing Georgia law also required election officials in each precinct to maintain a list of names and addresses of registered voters residing in that precinct, and to check off the names of each person from that official list as they cast their ballots.

(iv) Registered voters were also required by existing Georgia law to present at least one of the seventeen forms of documentary identification to election officials who were required, before issuing the voter a ballot, to match the name and address shown on the document to the name and address on the official roll of registered voters residing in the particular precinct. O .C .G.A. § 21-2-417 .

(b) There is no evidence that the existing Georgia law has not been effective in deterring or preventing fraudulent in-person voting by impersonators - the only kind of fraudulent voting that might be prevented by the Photo ID requirement. To the contrary, the

Secretary of State, who, as the Superintendent of Elections, is the highest election official in Georgia, informed both the General Assembly (Exhibit A) and the Governor (Exhibit B) in writing that there had been no documented cases of fraudulent in person voting by imposters reported to her during her nine years in office .

(c) If the true intention of the General Assembly had been to prevent fraudulent voting by imposters, the General Assembly would have imposed the same restrictions on the casting of absentee ballots - particularly after the Secretary of State had called to their attention the fact that there had been many documented instances of fraudulent casting of absentee ballots reported to her office.

(d) Fraudulent in-person voting is unlikely, would be easily detected if it had occurred in significant numbers, and would not be likely to have a substantial impact on the outcome of an election:

(i) Many people vote at a local neighborhood polling place where they are likely to be known to and recognized by neighbors or poll workers.

(ii) Voters were required by existing Georgia law (O.C.G.A. § 21-2-417), to provide one of the seventeen means of identification to election officials.

(iii) Election officials are required, before issuing the ballot to the voter, to check off the name of either voter from an up-to-date list of the names and addresses of every registered voter residing in the precinct. If an imposter arrived at a poll and was successful in fraudulently obtaining a ballot before the registered voter arrived at the poll, a registered voter, who having taken the time to go to the polls to vote, would undoubtedly complain to elections officials if he or she were refused a ballot and not allowed to vote because his or her name had already been checked off the list of registered voters as having voted. Likewise, if an imposter arrived at the polls after the registered voter had voted and attempted to pass himself off as someone he was not, the election official would instantly know of the attempted fraud, would not issue the imposter a ballot or allow him to vote, and presumably would have the imposter arrested or at least investigate the attempted fraud and report the attempt to the Secretary of State as Superintendent of Elections.

U.S. Department of Justice Section 5 Recommendation Memorandum (regarding HB 244), August 25, 2005 at <http://www.votingrights.org/news/downloads/Section%205%20Recommendation%20Memorandum.pdf>

**Overview:** Five career attorneys with the civil rights department investigated and analyzed Georgia's election reform law. Four of those attorneys recommended objecting to Section 59, the voter identification requirement. The provision required all voters to present government issued photo identification in order to vote. The objection was based on the attorneys' findings that there was little to no evidence of polling place fraud, the only kind of fraud an ID requirement would address, and that the measure would disenfranchise many voters, predominantly minority voters, in violation of Section 5 of the Voting Rights Act.

**Factual Analysis:** **The sponsor of the measure in the state legislature said she was motivated by the fact that she is aware of vote buying in certain districts; she read John Fund's book; and that "if there are fewer black voters because of this bill, it will only be because there is less opportunity for fraud. She said that when black voters in her black precincts are not paid to vote, they do not go to the polls."**

**A member of the Fulton County Board of Registrations and Elections said that prior to November 2004, Fulton County received 8,112 applications containing "missing or irregular" information. Only 55 of those registrants responded to BOE letters. The member concluded that the rest must be "bogus" as a result. He also stated that 15,237 of 105,553 precinct cards came back as undeliverable, as did 3,071 cards sent to 45,907 new voters. Of these 3,071, 921 voted.**

**Secretary of State Cathy Cox submitted a letter testifying to the absence of any complaints of voter fraud via impersonation during her tenure. In the legal analysis, the attorneys state that if they determine that Georgia could have fulfilled its stated purpose of election fraud, while preventing or ameliorating the retrogression, an objection is appropriate. They conclude that the state could have avoided retrogression by retaining various forms of currently accepted voter ID for which no substantiated security concerns were raised. Another non-retrogressive alternative would have been to maintain the affidavit alternative for those without ID, since "There is no evidence that penalty of law is an insufficient deterrent to falsely signing an affidavit of identity." The attorneys point out that the state's recitation of a case upholding voter fraud in Dodge County does not support the purpose of the Act because that case involved vote buying and selling, not impersonation or voting under a false identity.**

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**Interview with Commissioner Harry Van Sickle and Deputy Chief Counsel to the Secretary of State Larry Boyle, State of Pennsylvania**

March 1, 2006

As Commissioner Van Sickle has only been in office for about a year, Mr. Boyle answered most of our questions.

Fraud and Intimidation

Neither Van Sickle nor Boyle was aware of any fraud of any kind in the state of Pennsylvania over the last five years. They are not aware of the commission of any deceptive practices, such as flyers that intentionally misinform as to voting procedures. They also have never heard of any incidents of voter intimidation. With respect to the mayoral election of 2003, the local commission would know about that.

Since the Berks County case of 2003, where the Department of Justice found poll workers who treated Latino voters with hostility among other voting rights violations, the Secretary's office has brought together Eastern Pennsylvania election administrators and voting advocates to discuss the problems. As a result, other counties have voluntarily chosen to follow the guidance of the Berks County federal court order.

Regarding the allegations of fraud that surrounded the voter identification debate, Mr. Boyle said was not aware of any instances of fraud involving identity. He believes this is because Pennsylvania has laws in place to prevent this. For example, in 2002 the state legislature passed an ID law that is stricter than HAVA's – it requires all first time voters to present identification. In addition, the SURE System – the state's statewide voter registration database – is a great anti-fraud mechanism. The system will be in place statewide in the May 2006 election.

In addition, the state took many steps before the 2004 election to make sure it would be smooth. They had attorneys in the counties to consult on problems as well as staff at the central office to take calls regarding problems. In addition, in 2004 the state used provisional ballots for the first time. This resolved many of the problems that used to occur on Election Day.

Mr. Boyle is not aware of any voter registration fraud. This is because when someone registers to vote, the administrator does a duplicate check. In addition, under new laws a person registering to vote must provide their drivers license or Social Security number which are verified through the Department of Motor Vehicles and the Social Security Administration. Therefore, it would be unlikely that someone would be able to register to vote falsely.

Process

Most problems are dealt with at the local level and do not come within the review of the Secretary of State's office. For instance, if there is a complaint of intimidation, this is generally dealt with by the county courts which are specially designated solely to election cases on

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Election Day. The Secretary does not keep track of these cases. Since the passage of NVRA and HAVA counties will increasingly call the office when problems arise.

Recommendations

Mr. Boyle suggested we review the recommendations of the Pennsylvania Election Reform Task Force which is on the Secretary's website. Many of those recommendations have been introduced in the legislature.

**Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity Section, U.S. Department of Justice<sup>1</sup>**  
January 13, 2006

The Department of Justice's (DOJ) Election Crimes Branch is responsible for supervising federal criminal investigations and prosecutions of election crimes.

Questions

*How are Prosecution Decisions Made?*

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an Assistant U.S. Attorney (AUSA). Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario – a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings because such defendants are likely to provide information about others involved.

The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between the Voting Section and the Election Crimes Branch.

*Does the Decision to Prosecute Incorporate Particular Political Considerations within a State*

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<sup>1</sup> Due to a disagreement between DOJ and the consultants' regarding the interpretation of DOJ interview comments, EAC made clarifying edits to this portion of the consultants' interview summaries.

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*Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?*

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

*Does it Matter if the Complaint Comes from a Member of a Racial Minority?*

No. But if the question involves racial animus, that has also always been an aggravating factor, making it more likely the department will take it over

*What Kinds of Complaints Would Routinely Override Principles of Federalism?*

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office on the ballot.

*Are There Too Few Prosecutions?*

DOJ can't prosecute everything.

*What Should Be Done to Improve the System?*

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to “fix” *McNally*, did not include voter fraud.

As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

*Other Information*

The Department has held four symposia for District Election Officers (DEOs) and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the

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symposium. All other symposia have been closed to the public.

There are two types of attorneys in the division: prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

### Cases

Donsanto provided us with three case lists: cases still being investigated as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006; and cases closed for lack of evidence as of January 13, 2006.

If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.*

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought against conspiracies to corrupt the process rather than individual offenders acting alone. For deterrence purposes, the Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once. The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

1. Felon voters in Milwaukee.
2. Alien voters in the Southern District of Florida. FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.
3. Double voters in a variety of jurisdictions.

The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

*According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot*

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**Interview with Douglas Webber, Assistant Attorney General, Indiana**

February 15, 2006

Background

Mr. Webber was an attorney for the Marion County Election Board and was also part of the Indianapolis Ballot Security Team (sometimes called the Goon Squad). This Team was a group of attorneys well trained in election law whose mission was to enforce ballot security.

Litigation

Status of litigation in Indiana: On January 12 the briefing was completed. The parties are waiting for a decision from the U.S. district judge. The judge understood that one of the parties would seek a stay from the 7<sup>th</sup> Circuit Court of Appeals. The parties anticipate a decision in late March or early April. Mr. Webber did the discovery and depositions for the litigation. Mr. Webber feared the plaintiffs were going to state in their reply brief that HAVA's statewide database requirement would resolve the problems alleged by the state. However, the plaintiffs failed to do so, relying on a Motor Voter Act argument instead. Mr. Webber believes that the voter ID at issue will make the system much more user-friendly for the poll workers. The Legislature passed the ID legislation, and the state is defending it, on the basis of the problem of the *perception* of fraud.

Incidents of fraud and intimidation

Mr. Webber thinks that no one can put his or her thumb on whether there has been voter fraud in Indiana. For instance, if someone votes in place of another, no one knows about it. There have been no prosecuted cases of polling place fraud in Indiana. There is no recorded history of documented cases, but it does happen. In the litigation, he used articles from around the country about instances of voter fraud, but even in those examples there were ultimately no prosecutions, for example the case of Milwaukee. He also stated in the litigation that there are all kinds of examples of dead people voting---totaling in the hundreds of thousands of votes across the country.

One interesting example of actual fraud in Indiana occurred when a poll worker, in a poll using punch cards, glued the chads back and then punched out other chads for his candidate. But this would not be something that would be addressed by an ID requirement.

He also believes that the perception that the polls are loose can be addressed by the legislature. The legislature does not need to wait to see if the statewide database solve the problems and therefore affect the determination of whether an ID requirement is necessary. When he took the deposition of the Republican Co-Director, he said he thought Indiana was getting ahead of the curve. That is, there have been problems around the country, and confidence in elections is low. Therefore Indiana is now in front of getting that confidence back.

Mr. Webber stated that the largest vote problem in Indiana is absentee ballots. Absentee ballot fraud and vote buying are the most documented cases. It used to be the law that applications for absentee ballots could be sent anywhere. In one case absentee votes were exchanged for "a job on election day"---meaning one vote for a certain price. The election was contested and the trial

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judge found that although there was vote fraud, the incidents of such were less than the margin of victory and so he refused to overturn the election. Mr. Webber appealed the case for the state and argued the judge used the wrong statute. The Indiana Supreme Court agreed and reversed. Several people were prosecuted as a result – those cases are still pending.

Process

In Indiana, voter complaints first come to the attorney for the county election board who can recommend that a hearing be held. If criminal activity was found, the case could be referred to the county prosecutor or in certain instances to the Indiana Attorney General's Office. In practice, the Attorney General almost never handles such cases.

Mr. Webber has had experience training county of election boards in preserving the integrity and security of the polling place from political or party officials. Mr. Webber stated that the Indiana voter rolls need to be culled. He also stated that in Southern Indiana a large problem was vote buying while in Northern Indiana a large problem was based on government workers feeling compelled to vote for the party that gave them their jobs.

Recommendations

- Mr. Webber believes that all election fraud and intimidation complaints should be referred to the Attorney General's Office to circumvent the problem of local political prosecutions. The Attorney General should take more responsibility for complaints of fraud because at the local level, politics interferes. At the local level, everyone knows each other, making it harder to prosecute.
- Indiana currently votes 6 am to 6 pm on a weekday. Government workers and retirees are the only people who are available to work the polls. Mr. Webber suggested that the biggest change should be to move elections to weekends. This would involve more people acting as poll workers who would be much more careful about what was going on.
- Early voting at the clerk's office is good because the people there know what they are doing. People would be unlikely to commit fraud at the clerk's office. This should be expanded to other polling places in addition to that of the county clerk.
- Finally, Mr. Webber believes polling places should be open longer, run more professionally but that there needs to be fewer of them so that they are staffed by only the best, most professional people.

**Interview Sharon Priest, former Secretary of State, Arkansas  
January 24, 2006**

Process:

When there is an allegation of election fraud or intimidation, the county clerk refers it to the local district attorney. Most often, the DA does not pursue the claim. There is little that state administrators can do about this because in Arkansas, county clerks are partisanly elected and completely autonomous. Indeed, county clerks have total authority to determine who is an eligible voter.

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Data:

There is very little data collected in Arkansas on fraud and intimidation cases. Any information there might be stays at the county level. This again is largely because the clerks have so much control and authority, and will not release information. Any statewide data that does exist might be gotten from Susie Storms from the State Board of Elections.

Most Common Problems

The perception of fraud is much greater than the actual incidence of fraud.

- The DMV does not implement NVRA in that it does not take the necessary steps when providing the voter registration forms and does not process them properly. This leads to both ineligible voters potentially getting on the voting rolls (e.g. noncitizens, who have come to get a drivers license, fill out a voter registration form having no intention of actually voting) and voter thinking they are registered to vote to find they are not on the list on Election Day. Also, some people think they are automatically registered if they have applied for a drivers license.
- Absentee ballot fraud is the most frequent form of election fraud.
- In Arkansas, it is suspected that politicians pay ministers to tell their congregations to vote for them
- In 2003, the State Board documented 400 complaints against the Pulaski County Clerk for engaging in what was at least borderline fraud, e.g. certain people not receiving their absentee ballots. The case went to a grand jury but no indictment was brought.
- Transportation of ballot boxes is often insecure making it very easy for insiders to tamper with the ballots or stuff the ballot boxes. Priest has not actually witnessed this happen, but believes it may have.
- Intimidation at the poll sites in court houses. Many voters are afraid of the county judges or county employees and therefore will not vote. They justifiably believe their ballots will be opened by these employees to see who they voted for, and if they voted against the county people, retribution might ensue.
- Undue challenges to minority language voters at the poll sites
- Paid registration collectors fill out phony names, but these individuals are caught before anyone is able to cast an ineligible ballot.

Suggested Reforms for Improvement:

- Nonpartisan election administration
- Increased prosecution of election crimes through greater resources to district attorneys. In addition, during election time, there should be an attorney in the DA's office who is designated to handle election prosecution.
- There should be greater centralization of the process, especially with respect to the statewide database. Arkansas has a "bottom up" system. This means the counties still control the list and there is insufficient information sharing. For example, if someone

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lives in one county but dies in another, the county in which the voter lived – and was registered to vote – will not be notified of the death.

**Interview with Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians**

March 22, 2006

Background

Thompson is a member of the Cheyenne River Sioux tribe in South Dakota. For many years she worked locally on elections doing poll monitoring and legal work, from a nonpartisan perspective. In 2004, she headed the Native Vote Election Protection, a project run by the National Congress of American Indians, and was in charge of monitoring all Native American voting sites around the country, focusing on 10 or 15 states with the biggest Native populations. She is now permanently on staff of the National Congress of American Indians as the Director of Government relations. NCAI works jointly with NARF as well as the Election Protection Coalition.

Recent trends

Native election protection operations have intensified recently for several reasons. While election protection efforts in Native areas have been ongoing, leaders realized that they were failing to develop internal infrastructure or cultivate locally any of the knowledge and expertise which would arrive and leave with external protection groups.

Moreover, in recent years partisan groups have become more aware of the power of the native vote, and have become more active in native communities. This has partly resulted in an extreme increase in voter intimidation tactics. As native communities are easy to identify, easy to target, and generally dominated by a single party, they are especially vulnerable to such tactics.

Initially, reports of intimidation were only passed along by word of mouth. But it became such a problem in the past 5 to 6 years that tribal leaders decided to raise the issue to the national level. Thompson points to the Cantwell election in 2000 and the Johnson election in South Dakota in 2002 as tipping points where many began to realize the Indian vote could matter in Senate and national elections.

Thompson stressed that Native Vote places a great deal of importance on being nonpartisan. While a majority of native communities vote Democratic, there are notable exceptions, including communities in Oklahoma and Alaska, and they have both parties engaging in aggressive tactics. However, she believes the most recent increase in suppression and intimidation tactics have come from Republican Party organizations.

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Nature of Suppression/Intimidation of Native Voters

Thompson categorizes suppression into judge related and poll-watcher related incidents, both of which may be purposeful or inadvertent, as well as longstanding legal-structural constraints.

Structural problems

One example of inadvertent suppression built into the system stems from the fact that many Indian communities also include significant numbers of non-Indians due to allotment. Non-Indians tend to be most active in the state and local government while Indians tend to be more involved in the tribal government. Thus, the individuals running elections end up being non-Indian. Having Indians vote at polling places staffed by non-Indians often results in incidents of disrespect towards Native voters (Thompson emphasized the considerable racism which persists against Indians in these areas). Also, judges aren't familiar with Indian last names and are more dismissive of solving discrepancies with native voters.

Structural problems also arise from laws which mandate that the tribal government cannot run state or local elections. In places like South Dakota, political leaders used to make it intentionally difficult for Native Americans to participate in elections. For example, state, local and federal elections could not be held in the same location as tribal elections, leading to confusion when tribal and other elections are held in different locations. Also, it is common to have native communities with few suitable sites, meaning that a state election held in a secondary location can suddenly impose transportation obstacles.

Photo ID Issues

Thompson believes both state level and HAVA photo ID requirements have a considerable negative impact. For a number of reasons, many Indian voters don't have photo ID. Poor health care and poverty on reservations means that many children are born at home, leading to a lack of birth certificates necessary to obtain ID. Also, election workers and others may assume they are Hispanic, causing additional skepticism due to citizenship questions. There is a cultural issue as well—historically, whenever Indians register with the federal government it has been associated with a taking of land or removal of children. Thus many Indians avoid registering for anything with the government, even for tribal ID.

Thompson also offered examples of how the impact of ID requirements had been worsened by certain rules and the discriminatory way they have been carried out. In the South Dakota special election of 2003, poll workers told Native American voters that if they did not have ID with them and they lived within sixty miles of the precinct, the voter had to come back with ID. The poll workers did not tell the voters that they could vote by affidavit ballot and not need to return, as required by law. This was exacerbated by the fact that the poll workers didn't know the voters—as would be the case with non-Indian poll workers and Indian voters. Many left the poll site without voting and did not return.

In Minnesota, the state tried to prohibit the use of tribal ID's for voting outside of a reservation, even though Minnesota has a large urban Native population. Thompson believes this move was

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very purposeful, and despite any reasonable arguments from the Secretary of State, they had to file a lawsuit to stop the rule. They were very surprised to find national party representatives in the courtroom when they went to deal with lawsuit, representatives who could only have been alerted through a discussion with the Secretary of State.

Partisan Poll-Monitoring

Thompson believes the most purposeful suppression has been perpetrated by the party structures on an individual basis, of which South Dakota is a great example.

Some negative instances of poll monitoring are not purposeful. Both parties send in non-Indian, non-Western lawyers, largely from the East Coast, which can lead to uncomfortable cultural clashes. These efforts display a keen lack of understanding of these communities and the best way to negotiate within in them. But while it may be intimidating, it is not purposeful.

Yet there are also many instances of purposeful abuse of poll monitoring. While there were indeed problems during the 2002 Johnson election, it was small compared to the Janklow special election. Thompson says Republican workers shunned cultural understanding outreach, and had an extensive pamphlet of what to say at polls and were very aggressive about it. In one tactic, every time a voter would come up with no ID, poll monitors would repeat "You can't vote" over and over again, causing many voters to leave. This same tactic appeared across reservations, and eventually they looked to the Secretary of State to intervene.

In another example, the head of poll watchers drove from poll to poll and told voters without IDs to go home, to the point where the chief of police was going to evict him from the reservation. In Minnesota, on the Red Lake reservation, police actually did evict an aggressive poll watcher—the fact that the same strategies are employed several hundred miles apart points to standardized instructions.

None of these incidents ever went to court. Thompson argues this is due to few avenues for legal recourse. In addition, it is inherently difficult to settle these things, as they are he said-she said incidents and take place amidst the confusion of Election Day. Furthermore, poll watchers know what the outline of the law is, and they are careful to work within those parameters, leaving little room for legal action.

Other seeming instances of intimidation may be purely inadvertent, such as when, in 2002, the U.S. Attorney chose Election Day to give out subpoenas, and native voters stayed in their homes. In all fairness, she believes this was a misunderstanding.

The effect of intimidation on small communities is especially strong and is impossible to ultimately measure, as the ripple effect of rumors in insular communities can't be traced. In some communities, they try to combat this by using the Native radio to encourage people to vote and dispel myths.

She has suggestions for people who can describe incidents at a greater level of detail if interested.

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Vote Buying and Fraud

They haven't found a great deal of evidence on vote-buying and fraud. When cash is offered to register voters, individuals may abuse this, although Thompson believes this is not necessarily unique to the Native community, but a reflection of high rates of poverty. This doesn't amount to a concerted effort at conspiracy, but instead represents isolated incidents of people not observing the rules. While Thompson believes looking into such incidents is a completely fair inquiry, she also believes it has been exploited for political purposes and to intimidate. For example, large law enforcement contingents were sent to investigate these incidents. As Native voters tend not to draw distinctions between law enforcement and other officials, this made them unlikely to help with elections.

Remedies

As far as voter suppression is concerned, Native Vote has been asking the Department of Justice to look into what might be done, and to place more emphasis on law enforcement and combating intimidation. They have been urging the Department to focus on this at least much as it is focusing on enforcement of Section 203. Native groups have complained to DOJ repeatedly and DOJ has the entire log of handwritten incident reports they have collected. Therefore, Thompson recommends more DOJ enforcement of voting rights laws with respect to intimidation. People who would seek to abuse the process need to believe a penalty will be paid for doing so. Right now, there is no recourse and DOJ does not care, so both parties do it because they can.

Certain states should rescind bars on nonpartisan poll watchers on Election Day; Thompson believes this is contrary to the nonpartisan, pro-Indian presence which would best facilitate voting in Native communities.

As discussed above, Thompson believes ID requirements are a huge impediment to native voters. At a minimum, Thompson believes all states should be explicit about accepting tribal ID on Election Day.

Liberalized absentee ballot rules would also be helpful to Native communities. As many Indian voters are disabled and elderly, live far away from their precinct, and don't have transportation, tribes encourage members to vote by absentee ballot. Yet obstacles remain. Some voters are denied a chance to vote if they have requested a ballot and then show up at the polls. Thompson believes South Dakota's practice of tossing absentee ballots if a voter shows up at the ED would serve as an effective built-in protection. In addition, she believes there should be greater scrutiny of GOTV groups requesting absentee ballots without permission. Precinct location is a longstanding issue, but Thompson recognizes that states have limited resources. In the absence of those resources, better absentee ballot procedures are needed.

Basic voter registration issues and access are also important in native communities and need to be addressed.

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Thompson is mixed on what restrictions should be placed on poll watcher behavior, as she believes open elections and third party helpers are both important. However, she would be willing to explore some sort of stronger recourse and set of rules concerning poll watchers' behavior. Currently, the parties are aware that no recourse exists, and try to get away with what they will. This is not unique to a single party—both try to stay within law while shaking people up. The existing VRA provision is 'fluffy'—unless you have a consent decree, you have very little power. Thompson thinks a general voter intimidation law that is left a bit broad but that nonetheless makes people aware of some sort of kickback could be helpful.

**Interview with Jason Torchinsky, former attorney with the Civil Rights Section of the Department of Justice, assistant general counsel for the American Center for Voting Rights (ACVR) and Robin DeJarnette, political consultant for C4 and C5 organizations and executive director for the ACVR.**

February 16, 2006

ACVR Generally

Other officers of the ACVR-Thor Hearne II-general counsel and Brian Lunde, former executive director of the Democratic National Committee.

Board of Directors of ACVR-Brian Lunde, Thor Hearne II, and Cameron Quinn

ACVR works with a network of attorneys around the country and has been recently involved with lobbying in PA and MO.

Regarding the August 2005 Report

ACVR has not followed up on any of the cases it cited in the 2005 report to see if the allegations had been resolved in some manner. Mr. Torchinsky stated that there are problems with allegations of fraud in the report and prosecution---just because there was no prosecution, does not mean there was no vote fraud. He believes that it is very hard to come up with a measure of voter fraud short of prosecution. Mr. Torchinsky does not have a good answer to resolve this problem.

P. 35 of the Report indicates that there were coordinated efforts by groups to coordinate fraudulent voter registrations. P. 12 of the Ohio Report references a RICO suit filed against organizations regarding fraudulent voter registrations. Mr. Torchinsky does not know what happened in that case. He stated that there was a drive to increase voter registration numbers regardless of whether there was an actual person to register. He stated that when you have an organization like ACORN involved all over the place, there is reason to believe it is national in scope. When it is the same groups in multiple states, this leads to the belief that it is a concerted effort.

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Voting Problems

Mr. Torchinsky stated there were incidents of double voting---ex. a double voter in Kansas City, MO. If the statewide voter registration database requirement of HAVA is properly implemented, he believes it will stop multiple voting in the same state. He supports the HAVA requirement, if implemented correctly. Since Washington State implemented its statewide database, the Secretary of State has initiated investigations into felons who voted. In Philadelphia the major problem is permitting polling places in private homes and bars – even the homes of party chairs.

Mr. Torchinsky believes that voter ID would help, especially in cities in places like Ohio and Philadelphia, PA. The ACVR legislative fund supports the Real ID requirements suggested by the Carter-Baker Commission. Since federal real ID requirements will be in place in 2010, any objection to a voter ID requirement should be moot.

Mr. Torchinsky stated that there are two major poll and absentee voting problems---(1) fraudulent votes-ex. dead people voting in St. Louis and (2) people voting who are not legally eligible-ex. felons in most places. He also believes that problems could arise in places that still transport paper ballots from the voting location to a counting room. However, he does not believe this is as widespread a problem now as it once was.

Suggestions

Implement the Carter-Baker Commission recommendations because they represent a reasonable compromise between the political parties.

**Interview with Joe Rich, former Chief of the Voting Section,  
US Department of Justice  
February 7, 2006**

Background

Mr. Rich went to Yale undergraduate and received his law degree from the University of Michigan. He served as Chief of the Voting Section from 1999-2005. Prior to that he served in other leadership roles in the Civil Rights Division and litigated several civil rights cases.

Data Collection and Monitoring

The section developed a new database before the 2004 election to log complaint calls and what was done to follow up on them. They opened many investigations as a result of these complaints, including one on the long lines in Ohio (see DOJ letter on website, as well as critical commentary on the DOJ letter's analysis). DOJ found no Section 2 violation in Ohio. John Tanner should be able to give us this data. However, the database does not include complaints that were received by monitors and observers in the field.

All attorney observers in the field are required to submit reports after Election Day to the Department. These reports would give us a very good sense of the scope and type of problems that arose on that day and whether they were resolved on the spot or required further action.

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The monitoring in 2004 was the biggest operation ever. Prior to 2000, only certain jurisdictions could be observed – a VRA covered jurisdiction that was certified or a jurisdiction that had been certified by a court, e.g. through a consent decree. Since that time, and especially in 2004, the Department has engaged in more informal “monitoring.” In those cases, monitors assigned to certain jurisdictions, as opposed to observers, can only watch in the polling place with permission from the jurisdiction. The Department picked locations based on whether they had been monitored in the past, there had been problems before, or there had been allegations in the past. Many problems that arose were resolved by monitors on the spot.

Processes for Cases not Resolved at the Polling Site

If the monitor or observer believes that a criminal act has taken place, he refers it to the Public Integrity Section (PIN). If it is an instance of racial intimidation, it is referred to the Civil Rights Criminal Division. However, very few such cases are prosecuted because they are very hard to prove. The statutes covering such crimes require actual violence or the threat of violence in order to make a case. As a result, most matters are referred to PIN because they operate under statutes that make these cases easier to prove. In general, there are not a high number of prosecutions for intimidation and suppression.

If the act is not criminal, it may be brought as a civil matter, but only if it violated the Voting Rights Act – in other words, only if there is a racial aspect to the case. Otherwise the only recourse is to refer it to PIN.

However, PIN tends not to focus on intimidation and suppression cases, but rather cases such as alleged noncitizen voting, etc. Public Integrity used to only go after systematic efforts to corrupt the system. Now they focus on scattered individuals, which is a questionable resource choice. Criminal prosecutors over the past 5 years have been given more resources and more leeway because of a shift in focus and policy toward noncitizens and double voting, etc.

There have been very few cases brought involving African American voters. There have been 7 Section 2 cases brought since 2001 – only one was brought on behalf of African American voters. That case was initiated under the Clinton administration. The others have included Latinos and discrimination against whites.

Types of Fraud and Intimidation Occurring

There is no evidence that polling place fraud is a problem. There is also no evidence that the NVRA has increased the opportunity for fraud. Moreover, regardless of NVRA’s provisions, an election official can always look into a voter’s registration if he or she believes that person should no longer be on the list. The Department is now suing Missouri because of its poor registration list.

The biggest problem is with absentee ballots. The photo ID movement is a vote suppression strategy. This type of suppression is a bigger problem than intimidation. There has been an increase in vote suppression over the last five years, but it has been indirect, often in the way that

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laws are interpreted and implemented. Unequal implementation of ID requirements at the polls based on race would be a VRA violation.

The most common type of intimidation occurring is open hostility by poll workers toward minorities. It is a judgment call whether this is a crime or not – Craig Donsanto of PIN decides if it rises to a criminal matter.

Election Day challenges at the polls could be a VRA violation but such a case has never been formally pursued. Such cases are often resolved on the spot. Development of a pre-election challenge list targeted at minorities would be a VRA violation but this also has never been pursued. These are choices of current enforcement policy.

Long lines due to unequal distribution of voting machines based on race, list purges based on race and refusal to offer a provisional ballot on the basis of race would also be VRA violations.

Recommendations

Congress should pass a new law that allows the Department to bring civil actions for suppression that is NOT race based, for example, deceptive practices or wholesale challenges to voters in jurisdictions that tend to vote heavily for one party.

Given the additional resources and latitude given to the enforcement of acts such as double voting and noncitizen voting, there should be an equal commitment to enforcement of acts of intimidation and suppression cases.

There should also be increased resources dedicated to expanded monitoring efforts. This might be the best use of resources since monitors and observers act as a deterrent to fraud and intimidation.

**Interview with Joe Sandler, Counsel to the DNC**

February 24, 2006

Background

Sandler is an election attorney. He worked for the DNC in 1986, was in-house counsel from 1993-1998, and currently is outside counsel to the DNC and most state Democratic Parties. Sandler was part of the recount team in Florida in both 2002 and 2004. He recruited and trained attorneys in voting issues---starting in 2002 Sandler recruited in excess of 15, 000 attorneys in twenty-two states. He is now putting together a national lawyers council in each state.

2004-Administrative Incompetence v. Fraud

Sandler believes the 2004 election was a combination of administrative incompetence and fraud. Sandler stated there was a deliberate effort by the Republicans to disenfranchise voters across the

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country. This was accomplished by mailing out cards to registered voters and then moving to purge from the voters list those whose cards were returned. Sandler indicated that in New Mexico there was a deliberate attempt by Republicans to purge people registered by third parties. He stated that there were intentional efforts to disenfranchise voters by election officials like Ken Blackwell in Ohio.

The problems with machine distribution in 2004 were not deliberate. However, Sandler believes that a large problem exists in the states because there are no laws that spell out a formula to allocate so many voting machines per voter.

Sandler was asked how often names were intentionally purged from the voter lists. He responded that there will be a lot of names purged as a result of the creation of the voter lists under HAVA. However, Sandler stated most wrongful purging results from incompetence. Sandler also said there was not much intimidation at the polls because most such efforts are deterred and that the last systematic effort was in Philadelphia in 2003 where Republicans had official looking cars and people with badges and uniforms, etc.

Sandler stated that deliberate dissemination of misinformation was more incidental, with individuals misinforming and not a political party. Disinformation did occur in small Spanish speaking communities.

Republicans point to instances of voter registration fraud but Sandler believes it did not occur, except for once in a blue moon. Sandler did not believe non-citizen voting was a problem. He also does not believe that there is voter impersonation at the polls and that Republicans allege this as a way of disenfranchising voters through restrictive voter identification rules.

#### Fraud and Intimidation Trends

Sandler stated that over the years there has been a shift from organized efforts to intimidate minority voters through voter identification requirements, improper purging, failure to properly register voters, not allocating enough voting machines, failure to properly use the provisional ballot, etc., by voter officials as well as systematic efforts by Republicans to deregister voters.

At the federal level, Sandler said, the voting division has become so politicized that it is basically useless now on intimidation claims. At the local level, Sandler does not believe politics prevents or hinders prosecution for vote fraud.

#### Sandler's Recommendations

Moving the voter lists to the state level is a good idea where carefully done

Provisional ballots rules should follow the law and not be over-used

No voter ID

Partisanship should be taken out of election administration, perhaps by giving that responsibility by someone other than the Secretary of State. There should at least be conflict of interest rules

Enact laws that allow private citizens to bring suit under state law

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All suggestions from the DNC Ohio Report:

1. The Democratic Party must continue its efforts to monitor election law reform in all fifty states, the District of Columbia and territories.
2. States should be encouraged to codify into law all required election practices, including requirements for the adequate training of official poll workers.
3. States should adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts, to ensure adequate and nondiscriminatory access. These standards should be based on set ratios of numbers of machines and pollworkers per number of voters expected to turn out, and should be made available for public comment before being adopting.
4. States should adopt legislation to make clear and uniform the rules on voter registration.
5. The Democratic Party should monitor the processing of voter registrations by local election authorities on an ongoing basis to ensure the timely processing of registrations and changes, including both newly registered voters and voters who move within a jurisdiction or the state, and the Party should ask state Attorneys General to take action where necessary to force the timely updating of voter lists.
6. States should be urged to implement statewide voter lists in accordance with the Help America Vote Act ("HAVA"), the election reform law enacted by Congress in 2002 following the Florida debacle.
7. State and local jurisdictions should adopt clear and uniform rules on the use of, and the counting of, provisional ballots, and distribute them for public comment well in advance of each election day.
8. The Democratic Party should monitor the purging and updating of registered voter lists by local officials, and the Party should challenge, and ask state Attorneys General to challenge, unlawful purges and other improper list maintenance practices.
9. States should not adopt requirements that voters show identification at the polls, beyond those already required by federal law (requiring that identification be shown only by first time voters who did not show identification when registering.)
10. State Attorneys General and local authorities should vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.
11. Jurisdictions should be encouraged to use precinct-tabulated optical scan systems with a computer assisted device at each precinct, in preference to touchscreen ("direct recording equipment" or "DRE") machines.
12. Touchscreen (DRE) machines should not be used until a reliable voter verifiable audit feature can be uniformly incorporated into these systems. In the event of a recount, the paper or other auditable record should be considered the official record.
13. Remaining punchcard systems should be discontinued.
14. States should ask state Attorneys General to challenge unfair or discriminatory distribution of equipment and resources where necessary, and the Democratic Party should bring litigation as necessary.
15. Voting equipment vendors should be required to disclose their source code so that it can be examined by third parties. No voting machine should have wireless connections or be able to connect to the Internet.
16. Any equipment used by voters to vote or by officials to tabulate the votes should be used

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exclusively for that purpose. That is particularly important for tabulating/aggregating computers.

17. States should adopt "no excuse required" standards for absentee voting.
18. States should make it easier for college students to vote in the jurisdiction in which their school is located.
19. States should develop procedures to ensure that voting is facilitated, without compromising security or privacy, for all eligible voters living overseas.
20. States should make voter suppression a criminal offense at the state level, in all states.
21. States should improve the training of pollworkers.
22. States should expend significantly more resources in educating voters on where, when and how to vote.
23. Partisan officials who volunteer to work for a candidate should not oversee or administer any elections.

**Interview with John Ravitz, Executive Director, New York City Board of Elections**  
February 16, 2006

Process

If there is an allegation of fraud or intimidation, the commissioners can rule to act on it. For example, in 2004 there were allegations in Queens that people had registered to vote using the addresses of warehouses and stores. The Board sent out teams of investigators to look into this. The Board then developed a challenge list that was to be used at the polls if any of the suspect voters showed up to vote.

If the allegation rises to a criminal level, the Board will refer it to the county district attorney. If a poll worker or election official is involved, the Board may conduct an internal investigation. That individual would be interviewed, and if there is validity to the claim, the Board would take action.

Incidences of Fraud and Intimidation

Mr. Ravitz says there have been no complaints about voter intimidation since he has been at the Board. There have been instances of over-aggressive poll workers, but nothing threatening. Voter fraud has also generally not been a problem.

In 2004, the problem was monitors from the Department of Justice intimidating voters. They were not properly trained, and were doing things like going into the booth with voters. The Board had to contact their Department supervisors to put a stop to it.

Charges regarding "ballot security teams" have generally just been political posturing.

The problem of people entering false information on voter registration forms is a problem. However, sometimes a name people allege is false actually turns out to be the voter's real name. Moreover, these types of acts do not involve anyone actually casting a fraudulent ballot.

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With respect to the issue of voters being registered in both New York and Florida, the Board now compares its list with that of Florida and other places to address the problem. This will be less of an issue with the use of statewide voter registration databases, as information becomes easier to share. Despite the number of people who were on the voter registration lists of both jurisdictions, there was no one from those lists who voted twice.

Most of the problems at the polls have to do with poll workers not doing what they are supposed to do, not any sort of malfeasance. This indicates that improved training is the most important measure we can take.

There have been instances in which poll workers ask voters for identification when they shouldn't. However, the poll workers seem to do it when they cannot understand the name when the voter tells it to them. The Board has tried to train them that no matter what, the poll worker cannot ask for identification in order to get the person's name.

Absentee ballot fraud has also not been a problem in New York City. This is likely because absentee ballots are counted last – eight days after election day. This is so that they can be checked thoroughly and verified. This is a practice other jurisdictions might consider.

New York City has not had a problem with ex-felons voting or with ex-felons not knowing their voting rights. The City has not had any problems in recent years with deceptive practices, such as flyers providing misinformation about voting procedures.

Recommendations

- Better poll worker training
- Thorough inspection of absentee ballots subsequent to the election

**Interview with John Tanner, Chief, Voting Section, Civil Rights Division, U.S. Department of Justice<sup>2</sup>**

February 24, 2006

The Department of Justice's (DOJ) Voting Section is charged with the civil enforcement of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), and Title III of the Help America Vote Act (HAVA).

Authority and Process

The Voting Section, in contrast to the Public Integrity Section as Craig Donsanto described it, typically focuses only on systemic problems resulting from government action or inaction, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

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<sup>2</sup> Due to a disagreement between DOJ and the consultants' regarding the interpretation of DOJ interview comments, EAC made clarifying edits to this portion of the consultants' interview summaries.

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Federal voting laws enforced by the section only apply to state action, so the section only sues state and local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, with systematic changes forced upon those jurisdictions, the section now does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14<sup>th</sup> and 15<sup>th</sup> Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter that involves individual offenders or a systemic problem. When deciding what to do with the complaint, the section errs on the side of referring it criminally to avoid having any civil litigation complicate a possible criminal case.

When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

Voter Intimidation

Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been a formal investigation into the abusive use of challengers.

Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

However, Mr. Tanner said the department was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

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Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the Voting Section to become involved.

Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands of the states will be helpful because at this higher level of government you find a higher level of professionalism.

It is hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. However, the enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared, as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

The section is not filing as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore. Mr. Tanner said that race based problems are rare now.

NVRA has been effective in opening up the registration process. In terms of enforcement, Mr. Tanner said they do what they can when they have credible allegations. There is a big gap between complaints and what can be substantiated. Mr. Tanner stated that given the high quality of the attorneys now in the section, if they do not investigate it or bring action, that act complained of did not happen.

Recommendations

Mr. Tanner did not feel it was appropriate to make recommendations.

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Consultants Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. We did not have access to any information about or data from the section's election complaint in-take phone logs or data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws. Only a selected few samples of attorney-observer reports were provided, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. Mr. Tanner would not discuss any current investigations or cases the section is involved in.

**Interview with Kevin Kennedy, State Elections Director, State of Wisconsin**

April 11, 2006

Background

Kennedy is a nonpartisan, appointed official. He has been in this position since 1983.

Complaints of fraud and intimidation do not usually come to Kennedy's office. Kennedy says that complainants usually take their allegations to the media first because they are trying to make a political point.

2004 Election Incidents of Fraud

The investigations into the 2004 election uncovered some cases of double voting and voting by felons who did not know they were not eligible to vote, but found no concerted effort to commit fraud. There have been a couple of guilty pleas as a result, although not a number in the double digits. The task force and news reports initially referred to 100 cases of double voting and 200 cases of felon voting, but there were not nearly that many prosecutions. Further investigation since the task force investigation uncovered that in some instances there were mis-marks by poll workers, fathers and sons mistaken for the same voter, and even a husband and wife marked as the same voter. The double votes that are believed to have occurred were a mixture of absentee and polling place votes. It is unclear how many of these cases were instances of voting in two different locations.

In discussing the case from 2000 in which a student claimed – falsely – that he had voted several times, Kennedy said that double voting can be done. The deterrent is that it's a felony, and that one person voting twice is not an effective way to influence an election. One would need to get a lot of people involved for it to work.

The task force set up to investigate the 2004 election found a small number of illegal votes but given the 7,000 alleged, it was a relatively small number. There was no pattern of fraud.

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The one case Kennedy could recall of an organized effort to commit fraud was in the spring of 2003 or 2004. A community service agency had voters request that absentee ballots be sent to the agency instead of to the voters and some of those ballots were signed without the voters' knowledge. One person was convicted, the leader of the enterprise.

In Milwaukee, the main contention was that there were more ballots than voters. However, it was found that the 7,000 vote disparity was tied to poll worker error. The task force found that there was no concerted effort involved. Kennedy explained that there are many ways a ballot can get into a machine without a voter getting a number. These include a poll worker forgetting to give the voter one; someone does Election Day registration and fills out a registration form but does not get a number because the transaction all takes place at one table; and in Milwaukee, 20,000 voters who registered were not put on the list in time and as a short term solution the department sent the original registration forms to the polling places to be used instead of the list to provide proof of registration. This added another element of confusion that might have led to someone not getting a voter number.

The Republican Party used this original list and contracted with a private vendor to do a comparison with the U.S. postal list. They found initially that there were 5,000 bad addresses, and then later said there were 35,000 illegitimate addresses. When the party filed a complaint, the department told them they could force the voters on their list to cast a challenge ballot. On Election Day, the party used the list but found no actually voting from those addresses. Kennedy suspects that the private vendor made significant errors when doing the comparison.

In terms of noncitizen voting, Kennedy said that there is a Russian community in Milwaukee that the Republican Party singles out every year but it doesn't go very far. Kennedy has not seen much in the way of allegations of noncitizen voting.

However, when applying for a drivers license, a noncitizen could register to vote. There is no process for checking citizenship at this point, and the statewide registration database will not address this. Kennedy is not aware of any cases of noncitizen voting as a result, but it might have happened.

Kennedy said that the biggest concern seemed to be suspicions raised when groups of people are brought into the polling site from group homes, usually homes for the disabled. There are allegations that these voters are being told how to vote.

Incidents of Voter Intimidation

In 2004, there was a lot of hype about challenges, but in Wisconsin, a challenger must articulate a basis under oath. This acts as a deterrent, but at the same time it creates the potential that someone might challenge everyone and create long lines, keeping people from voting. In 2004, the Republican Party could use its list of suspect addresses as a legitimate basis for challenges, so there is the potential for abuse. It is also hard to train poll workers on that process. In 2004, there were isolated cases of problems with challengers.

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In 2002, a flyer was circulated only in Milwaukee claiming that you had vote by noon. This was taken as an intimidation tactic by the Democrats.

Reforms

Wisconsin has had difficulty with its database because 1) they have had a hard time getting a good product out of the vendor and 2) until now there was no registration record for one-quarter of the voters. Any jurisdiction with fewer than 5000 voters was not required to have a registration list.

In any case, once these performance issues are worked out, Kennedy does believe the statewide voter registration database will be very valuable. In particular, it will mean that people who move will not be on more than one list anymore. It should also address the double voting issue by identifying who is doing it, catching people who do it, and identifying where it could occur.

Recommendations

Better trained poll workers  
Ensure good security procedures for the tabulation process and more transparency in the vote counting process  
Conduct post-election audits

**Interview with Lori Minnite, Barnard College**

February 22, 2006

Background

Ms. Minnite is an assistant professor of political science at Barnard College. She has done substantial research on voter fraud and wrote the report "Securing the Vote." Ms. Minnite also did work related to an election lawsuit. The main question that she was asked to address in the lawsuit was---did election-day registration increase the possibility of fraud?

Securing the Vote

In Securing the Vote, Ms. Minnite found very little evidence of voter fraud because the historical conditions giving rise to fraud have weakened over the past twenty years. She stated that for fraud to take root a conspiracy was needed with a strong local political party and a complicit voter administration system. Since parties have weakened and there has been much improvement in the administration of elections and voting technology, the conditions no longer exist for large scale incidents of polling place fraud.

Ms. Minnite concentrates on fraud committed by voters not fraud committed by voting officials. She has looked at this issue on the national level and also concentrated on analyzing certain specific states. Ms. Minnite stressed that it is important to keep clear who the perpetrators of the

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fraud are and where the fraud occurs because that effects what the remedy should be. Often, voters are punished for fraud committed by voting officials.

Other Fraud Issues

Ms. Minnite found no evidence that NVRA was leading to more voter fraud. She supports non-partisan election administration. Ms. Minnite has found evidence that there is absentee ballot fraud. She can't establish that there is a certain amount of absentee ballot fraud or that it is the major kind of voter fraud.

Recommendations

Assure there are accurate voter records and centralize voter databases

Reduce partisanship in electoral administration.

**Interview with Nina Perales, Counsel, Mexican American Legal Defense and Education Fund**

March 7, 2006

Background

Ms. Perales is an attorney with the Mexican American Legal Defense Fund (MALDEF). MALDEF's mission is to foster sound public policies, laws and programs to safeguard the civil rights of the 40 million Latinos living in the United States and to empower the Latino community to fully participate in our society. One of the areas MALDEF works in is electoral issues, predominately centered on the Voting Rights Act. Ms. Perales did not seem to have a sense of the overall electoral issues in her working region (the southwest) effecting Hispanic voters and did not seem to want to offer her individual experiences and work activities as necessarily a perfect reflection of the challenges Hispanic voters face.

Largest Election Problems Since 2000

Santa Anna County, New Mexico-2004-intimidated voters by video taping them.

San Antonio-One African American voter subjected to a racial slur.

San Antonio-Relocated polling places at the last minute without Section 5 pre-clearance.

San Antonio-Closed polls while voters were still in line.

San Antonio-2003-only left open early voting polls in predominantly white districts.

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San Antonio-2005-racially contested mayoral run-off election switched from touch screen voting to paper ballots.

Voter Fraud and Intimidation

In Texas, the counties are refusing to open their records with respect to Section 203 compliance (bilingual voting assistance), and those that did respond to MALDEF's request submitted incomplete information. Ms. Perales believes this in itself is a form of voter intimidation.

Ms. Perales said it is hard to say if the obstacles minorities confront in voting are a result of intentional acts or not because the county commission is totally incompetent. There have continuously been problems with too few ballots, causing long lines, especially in places that had historically lower turnout. There is no formula in Texas for allocating ballots – each county makes these determinations.

When there is not enough language assistance at the polls, forcing a non-English speaker to rely on a family member to vote, that can suppress voter turnout.

Ms. Perales is not aware of deceptive practices or dirty tricks targeted at the Latino community.

There have been no allegations of illegal noncitizen voting in Texas. Indeed, the sponsor of a bill that would require proof of citizenship to vote could not provide any documentation of noncitizen voting in support of the bill. The bill was defeated in part because of the racist comments of the sponsor. In Arizona, such a measure was passed. Ms. Perales was only aware of one case of noncitizen voting in Arizona, involving a man of limited mental capacity who said he was told he was allowed to register and vote. Ms. Perales believes proof of citizenship requirements discriminate against Latinos.

Recommendations

Ms. Perales feels the laws are adequate, but that her organization does not have enough staff to do the monitoring necessary. This could be done by the federal government. However, even though the Department of Justice is focusing on Section 203 cases now, they have not even begun to scratch the surface. Moreover, the choices DOJ has made with respect to where they have brought claims do not seem to be based on any systematic analysis of where the biggest problems are. This may be because the administration is so ideological and partisan.

Ms. Perales does not believe making election administration nonpartisan would have a big impact. In Texas, administrators are appointed in a nonpartisan manner, but they still do not always have a nonpartisan approach. Each administrator tends to promote his or her personal view regardless of party.

**Interview with Pat Rogers, private attorney**

March 3, 2006

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Background

In addition to his legal practice with *Modrall, Sperling, Roehl, Harris & Sisk*, Rogers also does some state-level lobbying for Verizon Wireless, GM, Dumont and other companies. His experience in election law goes back to 1988, where his first elections case was a defense against Bill Richardson, who had sued to get another candidate tossed off a ballot because of petition fraud. Since 1988, he has been involved in election cases at least once every two years.

2004 Litigation

In a case that ended before the New Mexico Supreme Court, Rogers represented the Green Party and other plaintiffs against the New Mexico Secretary of State for sending a directive telling local boards not to require ID for first time voters registering by mail. He argued that this watered-down ID check conflicted with what seemed fairly clear statutory requirements for first time voters. In 2004 these requirements were especially important due to the large presence of 3<sup>rd</sup> party organizations registering voters such as a 527 funded by Governor Richardson, ACORN, and others.

Plaintiffs were seeking a temporary restraining order requiring Secretary of State to follow the law. Yet the Supreme Court ultimately decided that, whether the directive was right or wrong, it was too late to require ID lest Bush v. Gore issues be raised.

Today, the issue is moot as the state legislature has changed the law, and the Secretary of State will no longer be in office. It seems unlikely they will send any policy directives to county clerks lest they violate due process/public notice.

Major issues in NM w/ regard to vote fraud

Registration fraud seems to be the major issue, and while the legislature has taken some steps, Rogers is skeptical of the effect they will have, considering the history of unequal application of election laws. He also believes there are holes in the 3<sup>rd</sup> party registration requirement deadlines.

Rogers views a national law requiring ID as the best solution to registration problems. Rather than imposing a burden he contends it will enhance public confidence in the simplest way possible.

Registration Fraud in 2004 election

It came to light that ACORN had registered a 13 year old. The father was an APD officer and received the confirmation, but it was sent to the next door address, a vacant house. They traced this to an ACORN employee and it was established that this employee had been registering others under 18.

Two weeks later, in a crack cocaine bust of Cuban nationals, one of those raided said his job was registering voters for ACORN, and the police found signatures in his possession for fictitious persons.

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In a suspicious break-in at an entity that advertised itself as nonpartisan, only GOP registrations were stolen.

In another instance, a college student was allegedly fired for registering too many Republicans.

Rogers said he believed these workers were paid by the registration rather than hourly.

There have been no prosecution or convictions related to these incidents. In fact, there have been no prosecutions for election fraud in New Mexico in recent history. However, Rogers is skeptical that much action can be expected considering the positions of Attorney General, Governor, and Secretary of State are all held by Democrats. Nor has there been any interest from the U.S. attorney—Rogers heard that U.S. attorneys were given instruction to hold off until after the election in 2004 because it would seem too political.

As part of the case against the Secretary of State regarding the identification requirement, the parties also sued ACORN. At a hearing, the head of ACORN, and others aligned with the Democratic Party called as witnesses, took the 5<sup>th</sup> on the stand as to their registration practices.

Other incidents

Very recently, there have been reports of vote buying in the town of Espanola. Originally reported by the *Rio Grande Sun*, a resident of a low-income housing project is quoted as saying it has been going on for 10-12 years. The *Albuquerque Journal* is now reporting this as well. So far the investigation has been extremely limited.

In 1996, there were some prosecutions in Espanola, where a state district judge found registration fraud.

In 1991, the chair of Democratic Party of Bertolino County was convicted on fraud. Yet she was pardoned by Clinton on same day as Marc Rich.

Intimidation/Suppression

Rogers believes the most notable example of intimidation in the 2004 election was the discovery of a DNC Handbook from Colorado advising Democratic operatives to widely report intimidation regardless of confirmation in order to gain media attention.

In-person polling place fraud

There have only been isolated instances of people reporting that someone had voted in their name, and Rogers doesn't believe there is any large scale conspiracy. Yet he contends that perspective misses the larger point of voter confidence. Although there has been a large public outcry for voter ID in New Mexico, it has been deflected and avoided by Democrats.

In 2004, there were more Democratic lawyers at the polls than there are lawyers in New Mexico.

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Rogers believes these lawyers had a positive impact because they deterred people from committing bad acts.

Counting Procedures

The Secretary of State has also taken the position that canvassing of the vote should be done in private. In NM, they have a 'county canvas' where they review and certify, after which all materials—machine tapes, etc.—are centralized with the Secretary of State who does a final canvass for final certification. Conducting this in private is a serious issue, especially considering the margin in the 2000 presidential vote in New Mexico was only 366 votes. They wouldn't be changing machine numbers, but paper numbers are vulnerable.

On a related note, NM has adopted state procedures that will ensure their reports are slower and very late, considering the 2000 late discovery of ballots. In a close race, potential for fraud and mischief goes up astronomically in the period between poll closing and reporting. Rogers believes these changes are going to cause national embarrassment in the future.

Rogers attributes other harmful effects to what he terms the Secretary of State's incompetence and inability to discern a nonpartisan application of the law. In the 2004 election, no standards were issued for counting provisional ballots. Furthermore, the Secretary of State spent over \$1 million of HAVA money for 'voter education' in blatant self-promotional ads.

Recommendations

Rogers believes it would be unfeasible to have nonpartisan election administration and favors transparency instead. To make sure people have confidence in the election, there must be transparency in the whole process. Then you don't have the 1960 vote coming down to Illinois, or the Espanola ballot or Dona Anna County (ballots found there in the 2000 election). HAVA funds should also be restricted when you have an incompetent, partisan Secretary of State.

There should be national standards for reporting voting results so there is less opportunity for fraud in a close race. Although he is not generally an advocate of national laws, he does agree there should be more national uniformity into how votes are counted and recorded.

**Interview with Rebecca Vigil-Giron, Secretary of State, New Mexico**

March 24, 2006

Background

Vigil-Giron has been Secretary of State for twelve years and was the President of the National Association of Secretaries of State in 2004. Complaints of election fraud and intimidation are filed with the SOS office. She then decides whether to refer it to the local district attorney or the attorney general. Because the complaints are few and far between, the office does not keep a log of complaints; however, they do have all of the written complaints on file in the office.

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Incidents of Fraud and Intimidation

During the 2004 election, there were a couple of complaints of polling place observers telling people outside the polling place who had just voted, and then the people outside were following the voters to their cars and videotaping them. This happened in areas that are mostly second and third generation Latinos. The Secretary sent out the sheriff in one instance of this. The perpetrators moved to a different polling place. This was the only incident of fraud or intimidation Vigil-Giron was aware of in New Mexico.

There have not been many problems on Native reservations because, unlike in many other states, in New Mexico the polling place is on the reservation and is run by local Native Americans. Vigil-Giron said that it does not make sense to have non-Natives running those polls because it is necessary to have people there who can translate. Because most of the languages are unwritten, the HAVA requirement of accessibility through an audio device will be very helpful in this regard. Vigil-Giron said she was surprised to learn while testifying at the Voting Rights Act commission hearings of the lack of sensitivity to these issues and the common failure to provide assistance in language minority areas.

In 2004 the U.S. Attorney, a Republican, suddenly announced he was launching an investigation into voter fraud without consulting the Secretary of State's office. After all of that, there was maybe one prosecution. Even the allegations involving third party groups and voter registration are often misleading. People doing voter registration drives encourage voters to register if they are unsure if they are already registered, and the voter does not even realize that his or her name will then appear on the voter list twice. The bigger problem is where registrations do not get forwarded to election administrators and the voter does not end up on the voting list on Election Day. This is voter intimidation in itself, Vigil-Giron believes. It is very discouraging for that voter and she wonders whether he or she will try again.

Under the bill passed in 2004, third parties are required to turn around voter registration forms very quickly between the time they get them and when they must be returned. If they fail to return them within 48 hours of getting them, they are penalized. This, Vigil-Giron believes, is unfair. She has tried to get the Legislature to look at this issue again.

Regarding allegations of vote buying in Espanola, Vigil-Giron said that the Attorney General is investigating. The problem in that area of New Mexico is that they are still using rural routes, so they have not been able to properly district. There has, as a result, been manipulation of where people vote. Now they seem to have pushed the envelope too far on this. The investigation is not just about vote buying, however. There have also been allegations of voters being denied translators as well as assistance at the polls.

Vigil-Giron believes there was voter suppression in Ohio in 2004. County officials knew thirty days out how many people had registered to vote, they knew how many voters there would be. Administrators are supposed to use a formula for allocation of voting machines based on registered voters. Administrators in Ohio ignored this. As a result, people were turned away at the polls or left because of the huge lines. This, she believes, was a case of intentional vote suppression.

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A few years ago, Vigil-Giron heard that there may have been people voting in New Mexico and a bordering town in Colorado. She exchanged information with Colorado administrators and it turned out that there were no cases of double voting.

Recommendations

Vigil-Giron believes that linking voter registration databases across states may be a way to see if people who are registered twice are in fact voting twice.

The key to improving the process is better trained poll workers, who are certified, and know what to look for on Election Day. These poll workers should then work with law enforcement to ensure there are no transgressions.

There should be stronger teeth in the voter fraud laws. For example, it should be more than a fourth degree felony, as is currently the case.

**Interview with Sarah Bell Johnson Interview**

April 19, 2006

Procedures for Handling Fraud

Fraud complaints are directed first to the state Board of Elections. Unlike boards in other states, Kentucky's has no investigative powers. Instead, they work closely with both the Attorney General and the U.S. Attorney. Especially since the current administration took office, they have found the U.S. Attorney an excellent partner in pursuing fraud cases, and have seen many prosecutions in the last six years. She believes that there has been no increase in the incidence of fraud, but rather the increase in prosecutions is related to increased scrutiny and more resources.

Major Types of Fraud and Intimidation

Johnson says that vote buying and voter intimidation go hand in hand in Kentucky. While historically fraud activity focused on election day, in the last 20 years it has moved into absentee voting. In part, this is because new voting machines aren't easy to manipulate in the way that paper ballots were open to manipulation in the past, especially in distant rural counties. For this reason, she is troubled by the proliferation of states with early voting, but notes that there is a difference between absentee ballot and early voting on machines, which is far more difficult to manipulate.

Among the cases of absentee ballot fraud they have seen, common practice involves a group of candidates conspiring together to elect their specific slate. Nursing homes are an especially frequent target. Elderly residents request absentee ballots, and then workers show up and 'help'

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them vote their ballots. Though there have been some cases in the Eastern district of election day fraud, most have been absentee.

Johnson argues that it is hard to distinguish between intimidation and vote buying. They have also seen instances where civic groups and church groups intimidate members to vote in a specific manner, not for reward, but under threat of being ostracized or even telling them they will go to hell.

While she is aware of allegations of intimidation by the parties regarding minority precincts in Louisville, the board hasn't received calls about it and there haven't been any prosecutions.

### Challengers

Challengers are permitted at the polls in Kentucky. Each party is allowed two per location, and they must file proper paperwork. There is a set list of defined reasons for which they can challenge a voter, such as residency, and the challengers must also fill out paperwork to conduct a challenge.

As for allegations of challengers engaging in intimidation in minority districts, Johnson notes that challengers did indeed register in Jefferson County, and filed the proper paperwork, although they ultimately did not show up on election day.

She finds that relatively few challengers end up being officially registered, and that the practice has grown less common in recent years. This is due more to a change of fashion than anything. And after all, those wishing to affect election outcomes have little need for challengers in the precinct when they can target absentee voting instead.

In the event that intimidation is taking place, Kentucky has provisions to remove disruptive challengers, but this hasn't been used to her knowledge.

### Prosecutions

Election fraud prosecutions in Kentucky have only involved vote buying. This may be because that it is easier to investigate, by virtue of a cash and paper trail which investigators can follow. It is difficult to quantify any average numbers about the practice from this, due in part to the five year statute of limitations on vote buying charges. However, she does not believe that vote-buying is pervasive across the state, but rather confined to certain pockets.

### Vote-hauling Legislation

Vote hauling is a common form of vote buying by another name. Individuals are legally paid to drive others to the polls, and then divide that cash in order to purchase votes. Prosecutions have confirmed that vote hauling is used for this purpose. While the Secretary of State has been committed to legislation which would ban the practice, it has failed to pass in the past two sessions.

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Paying Voter Registration Workers Legislation

A law forbidding people to pay workers by the voter registration card or for obtaining cards with registrations for a specific party was passed this session. Individuals working as part of a registration campaign may still be paid by hour. Kentucky's experience in the last presidential election illustrates the problems arising from paying individuals by the card. That contest included a constitutional amendment to ban gay marriage on the ballot, which naturally attracted the attention of many national groups. One group paying people by the card resulted in the registrar being inundated with cards, including many duplicates in the same bundle, variants on names, and variants on addresses. As this practice threatens to overwhelm the voter registration process, Kentucky views it as constituting malicious fraud.

Deceptive practices

Other than general reports in the news, Johnson hasn't received any separate confirmation or reports of deceptive practices, i.e., false and misleading information being distributed to confuse voters.

Effect of Kentucky's Database

Johnson believes Kentucky's widely praised voter registration database is a key reason why the state doesn't have as much fraud as it might, especially the types alleged elsewhere like double and felon voting. While no database is going to be perfect, the connections with other state databases such as the DMV and vital statistics have been invaluable in allowing them to aggressively purge dead weight and create a cleaner list. When parties use their database list they are notably more successful. Johnson wonders how other states are able to conduct elections without a similar system.

Some factors have made especially important to their success. When the database was instituted in 1973, they were able to make everyone in the state re-register and thus start with a clean database. However, it is unlikely any state could get away with this today.

She is also a big supporter of a full Social Security number standard, as practiced in Kentucky. The full Social Security, which is compared to date of birth and letters in the first and last name, automatically makes matching far more accurate. The huge benefits Kentucky has reaped make Johnson skeptical of privacy concerns arguing for an abbreviated Social Security number. Individuals are willing to submit their Social Security number for many lesser purposes, so why not voting? And in any event, they don't require a Social Security number to register (unlike others such as Georgia). Less than a percent of voters in Kentucky are registered under unique identifiers, which the Board of Elections then works to fill in the number through cross referencing with the DMV.

Recommendations

Johnson believes the backbone of effective elections administration must be standardized procedures, strong record keeping, and detailed statutes. In Kentucky, all counties use the same

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database and the same pre election day forms. Rather than seeing that as oppressive, county officials report that the uniformity makes their jobs easier.

This philosophy extends to the provisional ballot question. While they did not have a standard in place like HAVA's at the time of enactment, they worked quickly to put a uniform standard in place.

They have also modified forms and procedures based on feedback from prosecutors. Johnson believes a key to enforcing voting laws is working with investigators and prosecutors and ensuring that they have the information they need to mount cases.

She also believes public education is important, and that the media could do more to provide information about what is legal and what is illegal. Kentucky tries to fulfill this role by information in polling places, press releases, and high profile press conferences before elections. She notes that they deliberately use language focusing on fraud *and* intimidation.

Johnson is somewhat pessimistic about reducing absentee ballot fraud. Absentee ballots do have a useful function for the military and others who cannot get to the polling place, and motivated individuals will always find a way to abuse the system if possible. At a minimum, however, she recommends that absentee ballots should require an excuse. She believes this has helped reduce abuse in Kentucky, and is wary of no-excuse practices in other states.

**Interview with Steve Ansolobhere and Chandler Davidson**  
February 17, 2006

Methodology suggestions

In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources: the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that asks whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. Mr. Ansolobhere recommended Jonathan Krosnick, Doug Rivers, and Paul Sniderman at Stanford; Donald Kinder and Arthur Lupia at Michigan; Edward Carmines at Indiana; and Phil Tetlock at Berkeley. In the alternative, Mr. Ansolobhere suggested that the EAC might work with the Census Bureau to have them ask different, additional questions in their Voter Population Surveys.

Mr. Chandler further suggested it is important to talk to private election lawyers, such as Randall Wood, who represented Ciro Rodriguez in his congressional election in Texas. Mr. Ansolobhere also recommended looking at experiments conducted by the British Election Commission.

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Incidents of Fraud and Intimidation

Mr. Davidson's study for the Lawyers Committee for Civil Rights on the Voting Rights Act documented evidence of widespread difficulty in the voting process. However, he did not attempt to quantify whether this was due to intentional, malevolent acts. In his 2005 report on ballot security programs, he found that there were many allegations of fraud made, but not very many prosecutions or convictions. He saw many cases that did go to trial and the prosecutors lost on the merits.

In terms of voter intimidation and vote suppression, Mr. Davidson said he believes the following types of activities do occur: videotaping of voters' license plates; poll workers asking intimidating questions; groups of officious-looking poll watchers at the poll sites who seem to be some sort of authority looking for wrongdoing; spreading of false information, such as phone calls, flyers, and radio ads that intentionally mislead as to voting procedures.

Mr. Ansolobhere believes the biggest problem is absentee ballot fraud. However, many of these cases involve people who do not realize what they are doing is illegal, for example, telling someone else how to vote. Sometimes there is real illegality occurring however. For example, vote selling involving absentee ballots, the filling out of absentee ballots en masse, people at nursing homes filling out the ballots of residents, and there are stories about union leaders getting members to vote a certain way by absentee ballot. This problem will only get bigger as more states liberalize their absentee ballot rules. Mr. Chandler agreed that absentee ballot fraud was a major problem.

Recommendations

Go back to "for cause" absentee ballot rules, because it is truly impossible to ever ensure the security of a mail ballot. Even in Oregon, there was a study showing fraud in their vote by mail system.

False information campaigns should be combated with greater voter education. Los Angeles County's voter education program should be used as a model.

**Interview with Tracy Campbell, author**

March 3, 2006

Background

Campbell's first book on election fraud looked at Ed Pritchard, a New Deal figure who went to jail for stuffing ballot boxes. While his initial goal in writing that book was to find out why Pritchard had engaged in vote stealing, his growing understanding of a pervasive culture of electoral corruption led him to consider instead how it was that Pritchard was ever caught. In 1998, he started working on a book regarding fraud in Kentucky, which quickly became a national study. He hoped to convey the 'real politics' which he feels readers, not to mention

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academics, have little sense about. While less blatant than in previous eras, fraud certainly still occurs, and he mentions some examples in his book. The major trend of the past 60-70 years has been that these tactics have grown more subtle.

While he hasn't conducted any scientific study of the current state of fraud, his sense as a historian is that it seems naive, after generations of watching the same patterns and practices influence elections, to view suspect election results today as merely attributable to simple error.

### Vote-buying and absentee fraud

Campbell sees fraud by absentee ballot and vote buying as the greatest threats to fair elections today. He says vote fraud is like real estate: location, location, location—the closer you can keep the ballots to the courthouse the better. Absentee ballots create a much easier target for vote brokers who can manage voting away from the polling place, or even mark a ballot directly, in exchange for, say, \$50—or even more if an individual can bring their entire family. He has noted some small counties where absentee ballots outnumber in-person ballots.

However, few people engaged in this activity would call it 'purchasing' a vote. Instead, it is candidate Jones' way of 'thanking' you for a vote you would have cast in any event. The issue is what happens if candidate Smith offers you more. Likewise, the politicians who engage in vote fraud don't see it as a threat to the republic but rather as a game they have to play in order to get elected.

### Regional patterns

Campbell suggests such practices are more prevalent in the South than the Northern states, and even more so compared to the West. The South has long been characterized as particularly dangerous in intimidation and suppression practices—throughout history, one can find routine stories of deaths at the polls each year. While he maintains that fraud seems less likely in the Western states, he sees the explosion of mail in and absentee ballots there as asking for trouble.

### Poll site closings as a means to suppress votes

Campbell points to a long historical record of moving poll sites in order to suppress votes. Polling places in the 1800s were frequently set-up on rail cars and moved further down the line to suppress black votes.

He would include door-to-door canvassing practices here, as well as voting in homes, which was in use in Kentucky until only a few years ago. All of these practices have been justified as making polling places 'more accessible' while their real purpose has been to suppress votes.

### Purge lists

Purge lists are, of course, needed in theory, yet Campbell believes the authority to mark names off the voter rolls presents extensive opportunity for abuse. For this reason, purging must be done in a manner that uses the best databases, and looks at only the most relevant information.

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When voters discover their names aren't on the list when they go to vote, for example, because they are "dead," it has a considerable demoralizing effect. Wrongful purging takes place both because of incompetence and as a tool to intentionally disenfranchise.

Campbell believes transparency is the real issue here. An hour after the polls close, we tend to just throw up our hands and look the other way, denying voters the chance to see that discrepancies are being rectified. He believes the cost in not immediately knowing election outcomes is a small price to pay for getting results right and showing the public a transparent process.

### Deceptive practices

Today's deceptive practices have are solidly rooted in Reconstruction-era practices—i.e. phony ballots, the Texas 'elimination' ballot. The ability to confuse voters is a powerful tool for those looking to sway elections.

### Language minorities

Campbell argues there is a fine line between offering help to non-English speakers and using that help against them. A related issue, particularly in the South, is taking advantage of the illiterate.

### Current intimidation

Another tactic Campbell considers an issue today is polling place layout: the further vote suppressers can keep people away from the polls, the better. Practices such as photographing people leaving a polling place may also tie into vote-buying, where photos are used to intimidate and validate purchased votes. A good way to combat such practices is by keeping electioneering as far from the polls as possible.

### Recommendations

Specific voting administration recommendations Campbell advocates would include reducing the use of absentee ballots and improving the protective zone around polling places.

Campbell would also like to see enforcement against fraud stepped up and stiffer penalties enacted, as current penalties make the risk of committing fraud relatively low. He compares the risk in election fraud similar to steroid use in professional sports—the potential value of the outcome is far higher than the risk of being caught or penalized for the infraction, so it is hard to prevent people from doing it. People need to believe they will pay a price for engaging in fraud or intimidation. Moreover, we need to have the will to kick people out of office if necessary.

He is skeptical of the feasibility of nonpartisan election administration, as he believes it would be difficult to find people who care about politics yet won't lean one way or the other—such an attempt would be unlikely to get very far before accusations of partisanship emerged. He considers the judiciary the only legitimate check on election fraud.

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**Interview with Wade Henderson, Executive Director, Leadership Conference for Civil Rights**

February 14, 2006

Data Collection

Mr. Henderson had several recommendations as to how to better gather additional information and data on election fraud and intimidation in recent years. He suggested interviewing the following individuals who have been actively involved in Election Protection and other similar efforts:

- Jon Greenbaum, Lawyers Committee for Civil Rights
- Tanya Clay, People for the American Way
- Melanie, Campbell, National Coalition for Black Political Participation
- Larry Gonzalez, National Association of Latino Election Officers
- Jacqueline Johnson, National Congress of American Indians
- Chellie Pingree, Common Cause
- Jim Dickson, disability rights advocate
- Mary Berry, former Chair of the US Commission on Civil Rights, currently at the University of Pennsylvania
- Judith Browne and Eddie Hailes, Advancement Project (former counsel to the US Commission on Civil Rights)
- Robert Rubin, Lawyers Committee for Civil Rights – San Francisco Office
- Former Senator Tom Daschle (currently a fellow at The Center for American Progress)

He also recommended we review the following documents and reports:

- The 2004 litigation brought by the Advancement Project and SEIU under the 1981 New Jersey Consent Decree
- Forthcoming LCCR state-by-state report on violations of the Voting Rights Act
- Forthcoming Lawyers Committee report on violations of the Voting Rights Act (February 21)

Types of Fraud and Intimidation Occurring

Mr. Henderson said he believed that the kinds of voter intimidation and suppression tactics employed over the last five years are ones that have evolved over many years. They are sometimes racially based, sometimes based on partisan motives. He believes the following types of activity have actually occurred, and are not just a matter of anecdote and innuendo, and rise to the level of either voter intimidation or vote suppression:

- Flyers with intentional misinformation, such as ones claiming that if you do not have identification, you cannot vote, and providing false dates for the election
- Observers with cameras, which people associate with potential political retribution or even violence
- Intimidating police presence at the polls

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- Especially in jurisdictions that authorize challenges, the use of challenge lists and challengers goes beyond partisanship to racial suppression and intimidation.
- Unequal deployment of voting equipment, such as occurred in Ohio. Also, he has seen situations in which historically Black colleges will have one voting machine while other schools will have more.

Mr. Henderson believes that these matters are not pursued formally because often they involve activities that current law does not reach. For example, there is no law prohibiting a Secretary of State from being the head of a political campaign, and then deploying voting machines in an uneven manner. There is no way to pursue that. Also, once the election is over, civil litigation becomes moot. Finally, sometimes upon reflection after the campaign, some of the activities are not as sinister as believed at the time.

Mr. Henderson believes government does not engage in a sustained investigation of these matters or pursue any kind of resolution to them. LCCR has filed a FOIA request with both the Civil Rights Division and the Criminal Division of the Department of Justice to examine this issue.

Election Protection activities will be intensified for the 2006 elections, although the focus may shift somewhat given the implementation of new HAVA requirements.

Recommendations for Reform

There was tremendous concern after the 2004 election about conflicts of interest – the “Blackwell problem” – whereby a campaign chair is also in charge of the voting system. We need to get away from that.

He also supports Senator Barak Obama’s bill regarding deceptive practices, and is opposed to the voter identification laws passing many state legislatures.

- States should adopt election-day registration, in order to boost turnout as well as to allow eligible voters to immediately rectify erroneous or improperly purged registration records
- Expansion of early voting & no-excuse absentee voting, to boost turnout and reduce the strain on election-day resources.
- Provisional ballot reforms:
  - Should be counted statewide – if cast in the wrong polling place, votes should still be counted in races for which the voter was eligible to vote (governor, etc.)
  - Provisional ballots should also function as voter registration applications, to increase the likelihood that voters will be properly registered in future elections
- Voter ID requirements: states should allow voters to use signature attestation to establish their identity
- The Department of Justice should increase enforcement of Americans with Disabilities Act and the accessibility requirements of the Help America Vote Act
- Statewide registration databases should be linked to social service agency databases
- Prohibit chief state election officials from simultaneously participating in partisan electoral campaigns within their states
- Create and enforce strong penalties for deceptive or misleading voting practices

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**Interview with Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center**

Brennan Center findings on fraud

The Brennan Center's primary work on fraud is their report for the Carter Baker Commission with commissioner Spencer Overton, written in response to the Commission's ID recommendations. Brennan reviewed all existing reports and election contests related to voter fraud. They believe the contests serve as an especially good record of whether or not fraud exists, as the parties involved in contested elections have a large incentive to root out fraudulent voters. Yet despite this, the incidence of voter impersonation fraud discovered is extremely low—something on the order 1/10000<sup>th</sup> of a percentage of voters. See also the brief Brennan filed on 11<sup>th</sup> circuit in Georgia photo ID case which cites sources in Carter Baker report and argues the incidence of voter fraud too low to justify countermeasures.

Among types of fraud, they found impersonation, or polling place fraud, is probably the least frequent type, although other types, such as absentee ballot fraud are also very infrequent. Weiser believes this is because impersonation fraud is more likely to be caught and is therefore not worth the risk. Unlike in an absentee situation, actual poll workers are present to disrupt impersonation fraud, for instance, by catching the same individual voting twice. She believes perhaps one half to one quarter of the time the person will be caught. Also, there is a chance the pollworker will have personal knowledge of the person. Georgia Secretary of State Cathy Cox has mentioned that there are many opportunities for discovery of in person fraud as well. For example, if one votes in the name of another voter, and that voter shows up at the polls, the fraud will be discovered.

Weiser believes court proceedings in election contests are especially useful. Some are very extensive, with hundreds of voters brought up by each side and litigated. In both pre-election challenges and post-election contests, parties have devoted extraordinary resources into 'smoking out' fraudulent voters. Justin Leavitt at Brennan scoured such proceedings for the Carter Baker report, which includes these citations. Contact him for answers to particular questions.

Countermeasures/statewide databases

Brennan has also considered what states are doing to combat impersonation fraud besides photo ID laws, although again, it seems to be the rarest kind of fraud, beyond statistically insignificant. In the brief Brennan filed in the Georgia case, the Center detailed what states are already doing to effectively address fraud. In another on the web site includes measures that can be taken that no states have adopted yet. Weiser adds that an effort to look at strategies states have to prevent fraud, state variations, effectiveness, ease of enforcement would be very useful.

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Weiser believes the best defense against fraud will be better voter lists—she argues the fraud debate is actually premature because states have yet to fully implement the HAVA database requirement. This should eliminate a great deal of ‘deadwood’ on voter rolls and undermine the common argument that fraud is made possible by this deadwood. This was the experience for Michigan, which was able to remove 600,000 names initially, and later removed almost 1 million names from their rolls. It is fairly easy to cull deadwood from lists due to consolidation at the state level—most deadwood is due to individuals moving within the state and poor communication between jurisdictions. (Also discuss with Chris Thomas, who masterminded the Michigan database for more information and a historical perspective.)

Regarding the question of whether the effect of this maintenance on fraud in Michigan can be quantified, Weiser would caution against drawing direct lines between list problems and fraud. Brennan has found various groups abusing the existence of list deadwood to make claims about fraudulent voting. This is analyzed in greater detail in the Brennan Center’s critique of a purge list produced by the NJ Republican party, and was illustrated by the purge list produced by the state of Florida. When compiling such lists and doing comparisons, sound statistical methods must be utilized, and often are not.

The NJ GOP created a list and asked NJ election officials to purge names of ineligible voters on it. Their list assumed that people appearing on the list twice had voted twice. Brennan found their assumptions shoddy and based on incorrect statistical practices, such as treating individuals with the same name and birthdays as duplicates, although this is highly unlikely according to proper statistical methods. Simply running algorithms on voter lists creates a number of false positives, does not provide an accurate basis for purging, and should not be taken as an indicator of fraud.

Regarding the Florida purge list, faulty assumptions caused the list to systematically exclude Hispanics while overestimating African Americans. Matching protocols required that race fields match exactly, despite inconsistent fields across databases.

The kinds of list comparisons that are frequently done to allege fraud are unreliable. Moreover, even if someone is on a voter list twice, that does not mean that voter has voted twice. That, in fact, is almost never the case.

Ultimately, even matching protocols without faulty assumptions will have a 4 percent to 35 percent error rate—that’s simply the nature of database work. Private industry has been working on improving this for years. Now that HAVA has introduced a matching requirement, even greater skepticism is called for in judging the accuracy of list maintenance.

### Intimidation and Suppression

Brennan does not have a specific focus here, although they do come across it and have provided assistance on bills to prevent suppression and intimidation. They happen to have an extensive paper file of intimidating fliers and related stories from before the 2004 election. (They can supply copies after this week).

### Challengers

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Brennan has analyzed cases where challenger laws have been beneficial and where they have been abused. See the decision and record from the 1982 NJ vs. RNC case for some of the history of these laws. Brennan is currently working on developing a model challenger law.

Weiser believes challenge laws with no requirement that the challenger have any specific basis for the challenge or showing of ineligibility are an invitation to blanket harassing challenges and have a range of pitfalls. State laws are vague and broad and often involve arcane processes such as where voters are required to meet a challenge within 5 days. There are incentives for political abuse, potential for delaying votes and disrupting the polls, and they are not necessarily directed toward the best result. Furthermore, when a voter receives a mailer alleging vote fraud with no basis, even the mere fact of a challenge can be chilling. A voter does not want to have to go through a quasi-court proceeding in order to vote.

Brennan recommends challenge processes that get results before election, minimize the burden for voters, and are restricted at polling place to challenges by poll workers and election officials, not voters. They believe limitless challenges can lead to pandemonium—that once the floodgates are open they won't stop.

Recommendations

**Intimidation**— Weiser believes Sen. Barak Obama's bill is a good one for combating voter harassment and deceptive practices. Many jurisdictions do not currently have laws prohibiting voter harassment and deceptive practices.

**Fraud**— Current state and federal codes seem sufficient for prosecuting fraud. Weiser doesn't consider them under-enforced, and sees no need for additional laws.

**Voter lists**— New legislation or regulations are needed to provide clear guidance and standards for generating voter lists and purging voters, otherwise states could wrongfully disenfranchise eligible voters.

**Challengers**—Challenge laws need to be reformed, especially ones that allow for pre-election mass challenges with no real basis. There is no one size fits all model for challenger legislation, but some bad models involving hurdles for voters lead to abuse and should be reformed. There should be room for poll workers to challenge fraudulent voters, but not for abuse.

Also useful would be recommendations for prosecutors investigating fraudulent activity, How should they approach these cases? How should they approach cases of large scale fraud/intimidation? While there is sufficient legislative cover to get at any election fraud activity, questions remain about what proper approaches and enforcement strategies should be.

**Interview with Bill Groth, Attorney for the Plaintiffs in Indiana Identification Litigation**  
February 22, 2006

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Fraud in Indiana

Indiana has never charged or prosecuted anyone for polling place fraud. Nor has any empirical evidence of *voter impersonation* fraud or dead voter fraud been presented. In addition, there is no record of any credible complaint about *voter impersonation* fraud in Indiana. State legislators signed an affidavit that said there had never been impostor voting in Indiana. At the same time, the Indiana Supreme Court has not necessarily required evidence of voter fraud before *approving* legislative attempts to address fraud.

The state attorney general has conceded that there is no concrete fraud in Indiana, but has instead referred to instances of fraud in other states. Groth filed a detailed motion to strike evidence such as John Fund's book relating to other states, arguing that none of that evidence was presented to the legislature and that it should have been in the form of sworn affidavits, so that it would have some indicia of verifiability.

Photo ID law

By imposing restrictive ID measures, Groth contends you will discourage 1,000 times more legitimate voters than illegitimate voters you might protect against. He feels the implementation of a REAL ID requirement is an inadequate justification for the law, as it will not affect the upcoming 2006 election where thousands of registered voters will be left without proper ID. In addition, he questions whether REAL ID will be implemented as planned in 2008 considering the backlash against the law so far. He also feels ID laws are unconstitutional because of inconsistent application.

Statewide database as remedy

Groth believes many problems will be addressed by the statewide database required under HAVA. To the extent that the rolls in Indiana are bloated, it is because state officials have not complied with NVRA list maintenance requirements. Thus, it is somewhat disingenuous for them to use bloated voter rolls as a reason for imposing additional measures such as the photo ID law. Furthermore, the state has ceded to the counties the obligation to do maintenance programs, which results in a hit or miss process (see discussion in reply brief, p 26 through p. 28).

Absentee fraud

To the extent that there has been an incidence of fraud, these have all been confined to absentee balloting. Most notably the East Chicago mayoral election case where courts found absentee voting fraud had occurred. See: Pabey vs. Pastrick 816 NE 2<sup>nd</sup> 1138 Decision by the Indiana Supreme Court in 2004.

Intimidation and vote suppression

Groth is only aware of anecdotal evidence supporting intimidation and suppression activities. While he considers the sources of this evidence credible, it is still decidedly anecdotal. Instances he is aware of include police cars parked in front of African American polling places. However,

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most incidents of suppression which are discussed occurred well in the past. Trevor Davidson claims a fairly large scale intimidation program in Louisville.

Challengers

There was widespread information that the state Republican Party had planned a large scale challenger operation in Democratic precincts for 2004, but abandoned the plan at the last minute.

Last year the legislature made a crucial change to election laws which will allow partisan challengers to be physically inside the polling area next to members of the precinct board. Previously, challengers at the polling place have been restricted to the 'chute,' which provides a buffer zone between voting and people engaging in political activity. That change will make it much easier to challenge voters. As there is no recorded legislative history in Indiana, it is difficult to determine the justification behind this change. As both chambers and the governorship are under single-party control, the challenger statute was passed under the radar screen.

Photo ID and Challengers

Observers are especially concerned about how this change will work in conjunction with the photo ID provision. Under the law, there are at least two reasons why a member of the precinct board or a challenger can raise object to an ID: whether a presented ID conforms to ID standards, and whether the photo on an ID is actually a picture of the voter presenting it. The law does not require bipartisan agreement that a challenge is valid. All it takes is one challenge to raise a challenge to that voter, and that will lead to the voter voting by provisional ballot.

Provisional ballot voting means that voter must make a second trip to the election board (located at the county seat) within 13 days to produce the conforming ID or to swear out an affidavit that they are who they claim to be. This may pose a considerable burden to voters. For example, Indianapolis and Marion County are coterminous—anyone challenged under the law will be required to make second trip to seat of government in downtown Indianapolis. If the voter in question did not have a driver's license in the first place, they will likely need to arrange transportation. Furthermore, in most cases the election result will already be known.

The law is vague about acceptable cause for challenging a voter's ID. Some requirements for valid photo ID include being issued by state or fed gov't, w/ expiration date, and the names must conform exactly. The League of Women Voters is concerned about voters with hyphenated names, as the Indiana DMV fails to put hyphens on driver's licenses potentially leading to a basis for challenge. Misspelling of names would also be a problem. The other primary mode of challenge is saying the photo doesn't look like the voter, which could be happen in a range of instances. Essentially, the law gives unbridled discretion to challengers to decide what conforms and what does not.

Furthermore, there is no way to determine whether a challenge is in good or bad faith, and *there is* little penalty for making a bad faith challenge. The fact that there are no checks on the challenges at the precinct level, or even a requirement of concurrence from an opposing party,

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challenger leads to the concern that challenge process will be abused. The voter on the other hand, will need to get majority approval of county election board members to defeat the challenge.

Groth suggests the political situation in Indianapolis also presents a temptation to abuse this process, as electoral margins are growing increasingly close due to shifting political calculus.

Other cases

Groth's other election law work has included a redistricting dispute, a dispute over ballot format, NVRA issues, and a case related to improper list purging, but nothing else related to fraud or intimidation. The purging case involved the election board attempting to refine its voter list by sending registration postcards to everyone on the list. When postcards didn't come back they wanted to purge those voters. Groth blames this error more on incompetence, than malevolence, however, as the county board is bipartisan. (The Indiana Election Commission and the Indiana election division are both bipartisan, but the 92 county election boards which will be administering photo id are controlled by one political party or the other—they are always an odd number, with the partisan majority determined by who controls the clerk of circuit court office.)

Recommendations

Supports nonpartisan administration of elections. Indiana specific recommendations including a longer voting day, time off for workers to vote, and an extended registration period.

He views the central problem of the Indiana photo ID law is that the list of acceptable forms of ID is too narrow and provides no fallback to voters without ID. At the least, he believes the state needs to expand the list so that most people will have at least one. If not, they should be allowed to swear an affidavit regarding their identity, under penalty of perjury/felony prosecution. This would provide sufficient deterrence for anyone considering impersonation fraud. He believes absentee ballot fraud should be addressed by requiring those voters to produce ID as well, as under HAVA.

His personal preference would be signature comparison. Indiana has never encountered an instance of someone trying to forge a name in the poll book, and while this leaves open the prospect of dead voters, that danger will be substantially diminished by the statewide database. But if we are going to have some form of ID, he believes we should apply it to everyone and avoid disenfranchisement, provided they swear an affidavit.

**Interview with Neil Bradley, February 21, 2004**

Voter Impersonation Cases (issue the Georgia ID litigation revolves around)

Mr. Bradley asserted that Georgia Secretary of State Cox stated in the case at issue: that she clearly would know if there had been any instances of voter impersonation at the polls; that she works very closely with the county and local officials and she would have heard about voter

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impersonation from them if she did not learn about it directly; and that she said that she had not heard of "any incident"---which includes acts that did not rise to the level of an official investigation or charges.

Mr. Bradley said that it is also possible to establish if someone has impersonated another voter at the polls. Officials must check off the type of voter identification the voter used. Voters without ID may vote by affidavit ballot. One could conduct a survey of those voters to see if they in fact voted or not.

The type of voter fraud that involves impersonating someone else is very unlikely to occur. If someone wants to steal an election, it is much more effective to do so using absentee ballots. In order to change an election outcome, one must steal many votes. Therefore, one would have to have lots of people involved in the enterprise, meaning there would be many people who know you committed a felony. It's simply not an efficient way to steal an election.

Mr. Bradley is not aware of any instance of voter impersonation anywhere in the country except in local races. He does not believe it occurs in statewide elections.

Voter fraud and intimidation in Georgia

Georgia's process for preventing ineligible ex-felons from casting ballots has been improved since the Secretary of State now has the power to create the felon purge list. When this was the responsibility of the counties, there were many difficulties in purging felons because local officials did not want to have to call someone and ask if he or she was a criminal.

The State Board of Elections has a docket of irregularity complaints. The most common involve an ineligible person mailing in absentee ballots on behalf of another voter.

In general, Mr. Bradley does not think voter fraud and intimidation is a huge problem in Georgia and that people have confidence in the vote. The biggest problems are the new ID law; misinformation put out by elections officials; and advertisements that remind people that vote fraud is a felony, which are really meant to be intimidating. Most fraud that does occur involves an insider, and that's where you find the most prosecutions. Any large scale fraud involves someone who knows the system or is in the courthouse.

Prosecution of Fraud and Intimidation

Mr. Bradley stated that fraud and intimidation are hard to prosecute. However, Mr. Bradley made contradictory statements. When asked whether the decision to prosecute on the county level was politically motivated, he first said "no." Later, Mr. Bradley reversed himself stating the opposite.

Mr. Bradley also stated that with respect to US Attorneys, the message to them from the top is that this is not a priority. The Georgia ACLU has turned over information about violations of the Voting Rights Act that were felonies, and the US Attorney has done nothing with the information. The Department of Justice has never been very aggressive in pursuing cases of vote suppression, intimidation and fraud. But, the Georgia ACLU has not contacted Craig Donsanto

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in DC with information of voter fraud.

Mr. Bradley believes that voter fraud and intimidation is difficult to prove. It is very hard to collect the necessary factual evidence to make a case, and doing so is very labor-intensive.

Recommendations

In Georgia, the Secretary of State puts a lot of work into training local officials and poll workers, and much of her budget is put into that work. Increased and improved training of poll workers, including training on how to respectfully treat voters, is the most important reform that could be made.

Mr. Bradley also suggested that increased election monitoring would be helpful.

**Interview with Justice Evelyn Stratton, Supreme Court of Ohio**

February 17, 2006

The 2004 Election

Justice Stratton stated that usually in the period right before an election filings die down due to the Ohio expedited procedures for electoral challenges. However, the 2004 election was unusual because there were motions and cases decided up to the day of the election. Justice Stratton believed that most of the allegations were knee-jerk reactions without any substance. For example, without any factual claims, suit was brought alleging that all voter challengers posed a threat to voters. Thematically, allegations were either everyday voting problems or "conspiracies" depending on where the complaint came from. The major election cases in 2004 revolved around Secretary of State Blackwell.

Justice Stratton made a point that the Ohio Supreme Court bent over backwards in the 2004 election to be fair to both sides. There was never any discussion about a ruling helping one political party more than the other.

Justice Stratton cited two cases that summarize and refute the 2004 complaints---819 NE 2d 1125 (Ohio 2004) and 105 Ohio St. 3d 458 (2004).

General Election Fraud Issues

Justice Stratton has seen very few fraud cases in Ohio. Most challenges are for technical statutory reasons. She remembered one instance where a man who assisted handicapped voters marked the ballot differently than the voter wanted. Criminal charges were brought against this man and the question that the Ohio Supreme Court had to decide was whether ballots could be opened and inspected to see how votes were cast.

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Justice Stratton claimed she knew of isolated incidences of fictitious voter registration but these were not prosecuted. She has not seen any evidence of ballots being stuffed, dead people voting, etc.

Suggestions for Changes in Voting Procedures

The Ohio Supreme Court is very strict about laches---if a person sits on their rights too long, they lose the right to file suit. The Ohio expedited procedures make election challenges run very smooth. Justice Stratton does not remember any suits brought on the day of the election. She supports a non-partisan head of state elections. Justice Stratton believes that last minute challenges should not be permitted and that lower courts need to follow the rules for the expedited procedures. Even given the anomalies with lower courts permitting late election challenges in 2004, the Ohio Supreme Court does not want to make a new rule unless this pattern repeats itself in 2008.

**Interview with Tony Sirvello, Executive Director, IACREOT**

April 12, 2006

Biographical

Sirvello is currently the executive director of the International Association of Clerks, Recorders, Election Officials and Treasurers, an organization of 1700 members. Formerly, he ran elections in Harris County, Texas for 29 years.

Incidents of Election Fraud

Sirvello stated that one problem with election crimes is that they are not high on the priority list of either district attorneys or grand juries. Therefore, complaints of election crime very rarely are prosecuted or are indicted by the grand jury. In 1996 in Harris County, 14 people voted twice but the grand jury refused to indict. One woman voted twice, once during early voting and once on Election Day. She said she thought there were two elections. The jury believed her. Sirvello believes none of the people intentionally voted more than once. He said that he believes double voting is not as big of an issue as people make it out to be.

In 1986, it was found that there were 300 more ballots than voter signatures. It was clear that the elections officials stuffed the ballot boxes. The case was brought before a grand jury, but there was no indictment because all of the defendants were friends and relatives of each other and none would admit what had been done.

Sirvello stated that there have been isolated circumstances where a voter would show up at the poll and his name had already been signed and he had voted.

Finally, Sirvello indicated that some people who worked in Houston but did not live in Harris County were permitted to vote.

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Specific Absentee Ballot/Vote By Mail Issues

Sirvello said that mail voting presents the largest problem. With mail voting there is too much opportunity to influence voters or to fraudulently request a ballot.

If one applied for an absentee ballot, their name and address was made available to candidates and political consultants who would often send people to collect the ballot. Many did not want to give up the ballot but wanted to mail it personally. The result was to discourage voting.

In Texas, a person could only apply for an absentee ballot if over 65 years of age. Parties, candidates and consultants would get the list of voters over 65 and send them a professional mail piece telling them they could vote by mail and a ballot with everything filled out except the signature. Problems ensued -- for example, voters would print their names rather than sign them, and the ballot was rejected. In other cases, the elderly would give their absentee ballot to someone else.

If a person applied for an absentee ballot but then decided not to cast it but to vote in person, that person had to bring the non-voted absentee ballot to the poll and surrender it. If they did not they would not be permitted to vote at the polling place.

Incidents of Voter Intimidation

Sirvello only reported isolated cases of intimidation or suppression in Harris County. These mostly occurred in Presidential elections. Some people perceived intimidation when being told they were not eligible to vote under the law. Sirvello stated that the big issue in elections now is whether there should be a paper trail for touch screen voting.

Recommendations

District attorneys need to put more emphasis on election crime so people will not believe that it goes unpunished.

There should be either a national holiday for Election Day or a day should be given off of work without counting as a vacation day so that better poll workers are available and there can be more public education on election administration procedures.

**Interview with Commissioner Harry Van Sickle and Deputy Chief Counsel to the Secretary of State Larry Boyle, State of Pennsylvania**

March 1, 2006

As Commissioner Van Sickle has only been in office for about a year, Mr. Boyle answered most of our questions.

Fraud and Intimidation

Neither Van Sickle nor Boyle was aware of any fraud of any kind in the state of Pennsylvania over the last five years. They are not aware of the commission of any deceptive practices, such as flyers that intentionally misinform as to voting procedures. They also have never heard of any incidents of voter intimidation. With respect to the mayoral election of 2003, the local commission would know about that.

Since the Berks County case of 2003, where the Department of Justice found poll workers who treated Latino voters with hostility among other voting rights violations, the Secretary's office has brought together Eastern Pennsylvania election administrators and voting advocates to discuss the problems. As a result, other counties have voluntarily chosen to follow the guidance of the Berks County federal court order.

Regarding the allegations of fraud that surrounded the voter identification debate, Mr. Boyle said was not aware of any instances of fraud involving identity. He believes this is because Pennsylvania has laws in place to prevent this. For example, in 2002 the state legislature passed an ID law that is stricter than HAVA's – it requires all first time voters to present identification. In addition, the SURE System – the state's statewide voter registration database – is a great anti-fraud mechanism. The system will be in place statewide in the May 2006 election.

In addition, the state took many steps before the 2004 election to make sure it would be smooth. They had attorneys in the counties to consult on problems as well as staff at the central office to take calls regarding problems. In addition, in 2004 the state used provisional ballots for the first time. This resolved many of the problems that used to occur on Election Day.

Mr. Boyle is not aware of any voter registration fraud. This is because when someone registers to vote, the administrator does a duplicate check. In addition, under new laws a person registering to vote must provide their drivers license or Social Security number which are verified through the Department of Motor Vehicles and the Social Security Administration. Therefore, it would be unlikely that someone would be able to register to vote falsely.

Process

Most problems are dealt with at the local level and do not come within the review of the Secretary of State's office. For instance, if there is a complaint of intimidation, this is generally dealt with by the county courts which are specially designated solely to election cases on

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Election Day. The Secretary does not keep track of these cases. Since the passage of NVRA and HAVA counties will increasingly call the office when problems arise.

Recommendations

Mr. Boyle suggested we review the recommendations of the Pennsylvania Election Reform Task Force which is on the Secretary's website. Many of those recommendations have been introduced in the legislature.

**Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity Section, U.S. Department of Justice<sup>1</sup>**

January 13, 2006

The Department of Justice's (DOJ) Election Crimes Branch is responsible for supervising federal criminal investigations and prosecutions of election crimes.

Questions

*How are Prosecution Decisions Made?*

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an Assistant U.S. Attorney (AUSA). Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario – a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings because such defendants are likely to provide information about others involved.

The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between the Voting Section and the Election Crimes Branch.

*Does the Decision to Prosecute Incorporate Particular Political Considerations within a State*

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<sup>1</sup> This interviewee did not agree with the consultants' interpretation of his interview comments. Therefore, EAC made clarifying edits to this portion of the consultants' interview summaries.

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*Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?*

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

*Does it Matter if the Complaint Comes from a Member of a Racial Minority?*

No. But if the question involves racial animus, that has also always been an aggravating factor, making it more likely the department will take it over

*What Kinds of Complaints Would Routinely Override Principles of Federalism?*

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office on the ballot.

*Are There Too Few Prosecutions?*

DOJ can't prosecute everything.

*What Should Be Done to Improve the System?*

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to “fix” *McNally*, did not include voter fraud.

As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

*Other Information*

The Department has held four symposia for District Election Officers (DEOs) and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the

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symposium. All other symposia have been closed to the public.

There are two types of attorneys in the division: prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

Cases

Donsanto provided us with three case lists: cases still being investigated as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006; and cases closed for lack of evidence as of January 13, 2006.

If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.*

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought against conspiracies to corrupt the process rather than individual offenders acting alone. For deterrence purposes, the Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once. The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

1. Felon voters in Milwaukee.
2. Alien voters in the Southern District of Florida. FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.
3. Double voters in a variety of jurisdictions.

The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

*According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot*

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**Interview with Douglas Webber, Assistant Attorney General, Indiana**

February 15, 2006

Background

Mr. Webber was an attorney for the Marion County Election Board and was also part of the Indianapolis Ballot Security Team (sometimes called the Goon Squad). This Team was a group of attorneys well trained in election law whose mission was to enforce ballot security.

Litigation

Status of litigation in Indiana: On January 12 the briefing was completed. The parties are waiting for a decision from the U.S. district judge. The judge understood that one of the parties would seek a stay from the 7<sup>th</sup> Circuit Court of Appeals. The parties anticipate a decision in late March or early April. Mr. Webber did the discovery and depositions for the litigation. Mr. Webber feared the plaintiffs were going to state in their reply brief that HAVA's statewide database requirement would resolve the problems alleged by the state. However, the plaintiffs failed to do so, relying on a Motor Voter Act argument instead. Mr. Webber believes that the voter ID at issue will make the system much more user-friendly for the poll workers. The Legislature passed the ID legislation, and the state is defending it, on the basis of the problem of the *perception* of fraud.

Incidents of fraud and intimidation

Mr. Webber thinks that no one can put his or her thumb on whether there has been voter fraud in Indiana. For instance, if someone votes in place of another, no one knows about it. There have been no prosecuted cases of polling place fraud in Indiana. There is no recorded history of documented cases, but it does happen. In the litigation, he used articles from around the country about instances of voter fraud, but even in those examples there were ultimately no prosecutions, for example the case of Milwaukee. He also stated in the litigation that there are all kinds of examples of dead people voting---totaling in the hundreds of thousands of votes across the country.

One interesting example of actual fraud in Indiana occurred when a poll worker, in a poll using punch cards, glued the chads back and then punched out other chads for his candidate. But this would not be something that would be addressed by an ID requirement.

He also believes that the perception that the polls are loose can be addressed by the legislature. The legislature does not need to wait to see if the statewide database solve the problems and therefore affect the determination of whether an ID requirement is necessary. When he took the deposition of the Republican Co-Director, he said he thought Indiana was getting ahead of the curve. That is, there have been problems around the country, and confidence in elections is low. Therefore Indiana is now in front of getting that confidence back.

Mr. Webber stated that the largest vote problem in Indiana is absentee ballots. Absentee ballot fraud and vote buying are the most documented cases. It used to be the law that applications for absentee ballots could be sent anywhere. In one case absentee votes were exchanged for "a job on election day"---meaning one vote for a certain price. The election was contested and the trial

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judge found that although there was vote fraud, the incidents of such were less than the margin of victory and so he refused to overturn the election. Mr. Webber appealed the case for the state and argued the judge used the wrong statute. The Indiana Supreme Court agreed and reversed. Several people were prosecuted as a result – those cases are still pending.

Process

In Indiana, voter complaints first come to the attorney for the county election board who can recommend that a hearing be held. If criminal activity was found, the case could be referred to the county prosecutor or in certain instances to the Indiana Attorney General's Office. In practice, the Attorney General almost never handles such cases.

Mr. Webber has had experience training county of election boards in preserving the integrity and security of the polling place from political or party officials. Mr. Webber stated that the Indiana voter rolls need to be culled. He also stated that in Southern Indiana a large problem was vote buying while in Northern Indiana a large problem was based on government workers feeling compelled to vote for the party that gave them their jobs.

Recommendations

- Mr. Webber believes that all election fraud and intimidation complaints should be referred to the Attorney General's Office to circumvent the problem of local political prosecutions. The Attorney General should take more responsibility for complaints of fraud because at the local level, politics interferes. At the local level, everyone knows each other, making it harder prosecute.
- Indiana currently votes 6 am to 6 pm on a weekday. Government workers and retirees are the only people who are available to work the polls. Mr. Webber suggested that the biggest change should be to move elections to weekends. This would involve more people acting as poll workers who would be much more careful about what was going on.
- Early voting at the clerk's office is good because the people there know what they are doing. People would be unlikely to commit fraud at the clerk's office. This should be expanded to other polling places in addition to that of the county clerk.
- Finally, Mr. Webber believes polling places should be open longer, run more professionally but that there needs to be fewer of them so that they are staffed by only the best, most professional people.

**Interview Sharon Priest, former Secretary of State, Arkansas  
January 24, 2006**

Process:

When there is an allegation of election fraud or intimidation, the county clerk refers it to the local district attorney. Most often, the DA does not pursue the claim. There is little that state administrators can do about this because in Arkansas, county clerks are partisanly elected and completely autonomous. Indeed, county clerks have total authority to determine who is an eligible voter.

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Data:

There is very little data collected in Arkansas on fraud and intimidation cases. Any information there might be stays at the county level. This again is largely because the clerks have so much control and authority, and will not release information. Any statewide data that does exist might be gotten from Susie Storms from the State Board of Elections.

Most Common Problems

The perception of fraud is much greater than the actual incidence of fraud.

- The DMV does not implement NVRA in that it does not take the necessary steps when providing the voter registration forms and does not process them properly. This leads to both ineligible voters potentially getting on the voting rolls (e.g. noncitizens, who have come to get a drivers license, fill out a voter registration form having no intention of actually voting) and voter thinking they are registered to vote to find they are not on the list on Election Day. Also, some people think they are automatically registered if they have applied for a drivers license.
- Absentee ballot fraud is the most frequent form of election fraud.
- In Arkansas, it is suspected that politicians pay ministers to tell their congregations to vote for them
- In 2003, the State Board documented 400 complaints against the Pulaski County Clerk for engaging in what was at least borderline fraud, e.g. certain people not receiving their absentee ballots. The case went to a grand jury but no indictment was brought.
- Transportation of ballot boxes is often insecure making it very easy for insiders to tamper with the ballots or stuff the ballot boxes. Priest has not actually witnessed this happen, but believes it may have.
- Intimidation at the poll sites in court houses. Many voters are afraid of the county judges or county employees and therefore will not vote. They justifiably believe their ballots will be opened by these employees to see who they voted for, and if they voted against the county people, retribution might ensue.
- Undue challenges to minority language voters at the poll sites
- Paid registration collectors fill out phony names, but these individuals are caught before anyone is able to cast an ineligible ballot.

Suggested Reforms for Improvement:

- Nonpartisan election administration
- Increased prosecution of election crimes through greater resources to district attorneys. In addition, during election time, there should be an attorney in the DA's office who is designated to handle election prosecution.
- There should be greater centralization of the process, especially with respect to the statewide database. Arkansas has a "bottom up" system. This means the counties still control the list and there is insufficient information sharing. For example, if someone

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lives in one county but dies in another, the county in which the voter lived – and was registered to vote – will not be notified of the death.

**Interview with Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians**

March 22, 2006

Background

Thompson is a member of the Cheyenne River Sioux tribe in South Dakota. For many years she worked locally on elections doing poll monitoring and legal work, from a nonpartisan perspective. In 2004, she headed the Native Vote Election Protection, a project run by the National Congress of American Indians, and was in charge of monitoring all Native American voting sites around the country, focusing on 10 or 15 states with the biggest Native populations. She is now permanently on staff of the National Congress of American Indians as the Director of Government relations. NCAI works jointly with NARF as well as the Election Protection Coalition.

Recent trends

Native election protection operations have intensified recently for several reasons. While election protection efforts in Native areas have been ongoing, leaders realized that they were failing to develop internal infrastructure or cultivate locally any of the knowledge and expertise which would arrive and leave with external protection groups.

Moreover, in recent years partisan groups have become more aware of the power of the native vote, and have become more active in native communities. This has partly resulted in an extreme increase in voter intimidation tactics. As native communities are easy to identify, easy to target, and generally dominated by a single party, they are especially vulnerable to such tactics.

Initially, reports of intimidation were only passed along by word of mouth. But it became such a problem in the past 5 to 6 years that tribal leaders decided to raise the issue to the national level. Thompson points to the Cantwell election in 2000 and the Johnson election in South Dakota in 2002 as tipping points where many began to realize the Indian vote could matter in Senate and national elections.

Thompson stressed that Native Vote places a great deal of importance on being nonpartisan. While a majority of native communities vote Democratic, there are notable exceptions, including communities in Oklahoma and Alaska, and they have both parties engaging in aggressive tactics. However, she believes the most recent increase in suppression and intimidation tactics have come from Republican Party organizations.

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Nature of Suppression/Intimidation of Native Voters

Thompson categorizes suppression into judge related and poll-watcher related incidents, both of which may be purposeful or inadvertent, as well as longstanding legal-structural constraints.

Structural problems

One example of inadvertent suppression built into the system stems from the fact that many Indian communities also include significant numbers of non-Indians due to allotment. Non-Indians tend to be most active in the state and local government while Indians tend to be more involved in the tribal government. Thus, the individuals running elections end up being non-Indian. Having Indians vote at polling places staffed by non-Indians often results in incidents of disrespect towards Native voters (Thompson emphasized the considerable racism which persists against Indians in these areas). Also, judges aren't familiar with Indian last names and are more dismissive of solving discrepancies with native voters.

Structural problems also arise from laws which mandate that the tribal government cannot run state or local elections. In places like South Dakota, political leaders used to make it intentionally difficult for Native Americans to participate in elections. For example, state, local and federal elections could not be held in the same location as tribal elections, leading to confusion when tribal and other elections are held in different locations. Also, it is common to have native communities with few suitable sites, meaning that a state election held in a secondary location can suddenly impose transportation obstacles.

Photo ID Issues

Thompson believes both state level and HAVA photo ID requirements have a considerable negative impact. For a number of reasons, many Indian voters don't have photo ID. Poor health care and poverty on reservations means that many children are born at home, leading to a lack of birth certificates necessary to obtain ID. Also, election workers and others may assume they are Hispanic, causing additional skepticism due to citizenship questions. There is a cultural issue as well—historically, whenever Indians register with the federal government it has been associated with a taking of land or removal of children. Thus many Indians avoid registering for anything with the government, even for tribal ID.

Thompson also offered examples of how the impact of ID requirements had been worsened by certain rules and the discriminatory way they have been carried out. In the South Dakota special election of 2003, poll workers told Native American voters that if they did not have ID with them and they lived within sixty miles of the precinct, the voter had to come back with ID. The poll workers did not tell the voters that they could vote by affidavit ballot and not need to return, as required by law. This was exacerbated by the fact that the poll workers didn't know the voters—as would be the case with non-Indian poll workers and Indian voters. Many left the poll site without voting and did not return.

In Minnesota, the state tried to prohibit the use of tribal ID's for voting outside of a reservation, even though Minnesota has a large urban Native population. Thompson believes this move was

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very purposeful, and despite any reasonable arguments from the Secretary of State, they had to file a lawsuit to stop the rule. They were very surprised to find national party representatives in the courtroom when they went to deal with lawsuit, representatives who could only have been alerted through a discussion with the Secretary of State.

Partisan Poll-Monitoring

Thompson believes the most purposeful suppression has been perpetrated by the party structures on an individual basis, of which South Dakota is a great example.

Some negative instances of poll monitoring are not purposeful. Both parties send in non-Indian, non-Western lawyers, largely from the East Coast, which can lead to uncomfortable cultural clashes. These efforts display a keen lack of understanding of these communities and the best way to negotiate within in them. But while it may be intimidating, it is not purposeful.

Yet there are also many instances of purposeful abuse of poll monitoring. While there were indeed problems during the 2002 Johnson election, it was small compared to the Janklow special election. Thompson says Republican workers shunned cultural understanding outreach, and had an extensive pamphlet of what to say at polls and were very aggressive about it. In one tactic, every time a voter would come up with no ID, poll monitors would repeat "You can't vote" over and over again, causing many voters to leave. This same tactic appeared across reservations, and eventually they looked to the Secretary of State to intervene.

In another example, the head of poll watchers drove from poll to poll and told voters without IDs to go home, to the point where the chief of police was going to evict him from the reservation. In Minnesota, on the Red Lake reservation, police actually did evict an aggressive poll watcher—the fact that the same strategies are employed several hundred miles apart points to standardized instructions.

None of these incidents ever went to court. Thompson argues this is due to few avenues for legal recourse. In addition, it is inherently difficult to settle these things, as they are he said-she said incidents and take place amidst the confusion of Election Day. Furthermore, poll watchers know what the outline of the law is, and they are careful to work within those parameters, leaving little room for legal action.

Other seeming instances of intimidation may be purely inadvertent, such as when, in 2002, the U.S. Attorney chose Election Day to give out subpoenas, and native voters stayed in their homes. In all fairness, she believes this was a misunderstanding.

The effect of intimidation on small communities is especially strong and is impossible to ultimately measure, as the ripple effect of rumors in insular communities can't be traced. In some communities, they try to combat this by using the Native radio to encourage people to vote and dispel myths.

She has suggestions for people who can describe incidents at a greater level of detail if interested.

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Vote Buying and Fraud

They haven't found a great deal of evidence on vote-buying and fraud. When cash is offered to register voters, individuals may abuse this, although Thompson believes this is not necessarily unique to the Native community, but a reflection of high rates of poverty. This doesn't amount to a concerted effort at conspiracy, but instead represents isolated incidents of people not observing the rules. While Thompson believes looking into such incidents is a completely fair inquiry, she also believes it has been exploited for political purposes and to intimidate. For example, large law enforcement contingents were sent to investigate these incidents. As Native voters tend not to draw distinctions between law enforcement and other officials, this made them unlikely to help with elections.

Remedies

As far as voter suppression is concerned, Native Vote has been asking the Department of Justice to look into what might be done, and to place more emphasis on law enforcement and combating intimidation. They have been urging the Department to focus on this at least much as it is focusing on enforcement of Section 203. Native groups have complained to DOJ repeatedly and DOJ has the entire log of handwritten incident reports they have collected. Therefore, Thompson recommends more DOJ enforcement of voting rights laws with respect to intimidation. People who would seek to abuse the process need to believe a penalty will be paid for doing so. Right now, there is no recourse and DOJ does not care, so both parties do it because they can.

Certain states should rescind bars on nonpartisan poll watchers on Election Day; Thompson believes this is contrary to the nonpartisan, pro-Indian presence which would best facilitate voting in Native communities.

As discussed above, Thompson believes ID requirements are a huge impediment to native voters. At a minimum, Thompson believes all states should be explicit about accepting tribal ID on Election Day.

Liberalized absentee ballot rules would also be helpful to Native communities. As many Indian voters are disabled and elderly, live far away from their precinct, and don't have transportation, tribes encourage members to vote by absentee ballot. Yet obstacles remain. Some voters are denied a chance to vote if they have requested a ballot and then show up at the polls. Thompson believes South Dakota's practice of tossing absentee ballots if a voter shows up at the ED would serve as an effective built-in protection. In addition, she believes there should be greater scrutiny of GOTV groups requesting absentee ballots without permission. Precinct location is a longstanding issue, but Thompson recognizes that states have limited resources. In the absence of those resources, better absentee ballot procedures are needed.

Basic voter registration issues and access are also important in native communities and need to be addressed.

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Thompson is mixed on what restrictions should be placed on poll watcher behavior, as she believes open elections and third party helpers are both important. However, she would be willing to explore some sort of stronger recourse and set of rules concerning poll watchers' behavior. Currently, the parties are aware that no recourse exists, and try to get away with what they will. This is not unique to a single party—both try to stay within law while shaking people up. The existing VRA provision is 'fluffy'—unless you have a consent decree, you have very little power. Thompson thinks a general voter intimidation law that is left a bit broad but that nonetheless makes people aware of some sort of kickback could be helpful.

**Interview with Jason Torchinsky, former attorney with the Civil Rights Section of the Department of Justice, assistant general counsel for the American Center for Voting Rights (ACVR) and Robin DeJarnette, political consultant for C4 and C5 organizations and executive director for the ACVR.**

February 16, 2006

ACVR Generally

Other officers of the ACVR-Thor Hearne II-general counsel and Brian Lunde, former executive director of the Democratic National Committee.

Board of Directors of ACVR-Brian Lunde, Thor Hearne II, and Cameron Quinn

ACVR works with a network of attorneys around the country and has been recently involved with lobbying in PA and MO.

Regarding the August 2005 Report

ACVR has not followed up on any of the cases it cited in the 2005 report to see if the allegations had been resolved in some manner. Mr. Torchinsky stated that there are problems with allegations of fraud in the report and prosecution---just because there was no prosecution, does not mean there was no vote fraud. He believes that it is very hard to come up with a measure of voter fraud short of prosecution. Mr. Torchinsky does not have a good answer to resolve this problem.

P. 35 of the Report indicates that there were coordinated efforts by groups to coordinate fraudulent voter registrations. P. 12 of the Ohio Report references a RICO suit filed against organizations regarding fraudulent voter registrations. Mr. Torchinsky does not know what happened in that case. He stated that there was a drive to increase voter registration numbers regardless of whether there was an actual person to register. He stated that when you have an organization like ACORN involved all over the place, there is reason to believe it is national in scope. When it is the same groups in multiple states, this leads to the belief that it is a concerted effort.

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Voting Problems

Mr. Torchinsky stated there were incidents of double voting---ex. a double voter in Kansas City, MO. If the statewide voter registration database requirement of HAVA is properly implemented, he believes it will stop multiple voting in the same state. He supports the HAVA requirement, if implemented correctly. Since Washington State implemented its statewide database, the Secretary of State has initiated investigations into felons who voted. In Philadelphia the major problem is permitting polling places in private homes and bars – even the homes of party chairs.

Mr. Torchinsky believes that voter ID would help, especially in cities in places like Ohio and Philadelphia, PA. The ACVR legislative fund supports the Real ID requirements suggested by the Carter-Baker Commission. Since federal real ID requirements will be in place in 2010, any objection to a voter ID requirement should be moot.

Mr. Torchinsky stated that there are two major poll and absentee voting problems---(1) fraudulent votes-ex. dead people voting in St. Louis and (2) people voting who are not legally eligible-ex. felons in most places. He also believes that problems could arise in places that still transport paper ballots from the voting location to a counting room. However, he does not believe this is as widespread a problem now as it once was.

Suggestions

Implement the Carter-Baker Commission recommendations because they represent a reasonable compromise between the political parties.

**Interview with Joe Rich, former Chief of the Voting Section,  
US Department of Justice  
February 7, 2006**

Background

Mr. Rich went to Yale undergraduate and received his law degree from the University of Michigan. He served as Chief of the Voting Section from 1999-2005. Prior to that he served in other leadership roles in the Civil Rights Division and litigated several civil rights cases.

Data Collection and Monitoring

The section developed a new database before the 2004 election to log complaint calls and what was done to follow up on them. They opened many investigations as a result of these complaints, including one on the long lines in Ohio (see DOJ letter on website, as well as critical commentary on the DOJ letter's analysis). DOJ found no Section 2 violation in Ohio. John Tanner should be able to give us this data. However, the database does not include complaints that were received by monitors and observers in the field.

All attorney observers in the field are required to submit reports after Election Day to the Department. These reports would give us a very good sense of the scope and type of problems that arose on that day and whether they were resolved on the spot or required further action.

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The monitoring in 2004 was the biggest operation ever. Prior to 2000, only certain jurisdictions could be observed – a VRA covered jurisdiction that was certified or a jurisdiction that had been certified by a court, e.g. through a consent decree. Since that time, and especially in 2004, the Department has engaged in more informal “monitoring.” In those cases, monitors assigned to certain jurisdictions, as opposed to observers, can only watch in the polling place with permission from the jurisdiction. The Department picked locations based on whether they had been monitored in the past, there had been problems before, or there had been allegations in the past. Many problems that arose were resolved by monitors on the spot.

Processes for Cases not Resolved at the Polling Site

If the monitor or observer believes that a criminal act has taken place, he refers it to the Public Integrity Section (PIN). If it is an instance of racial intimidation, it is referred to the Civil Rights Criminal Division. However, very few such cases are prosecuted because they are very hard to prove. The statutes covering such crimes require actual violence or the threat of violence in order to make a case. As a result, most matters are referred to PIN because they operate under statutes that make these cases easier to prove. In general, there are not a high number of prosecutions for intimidation and suppression.

If the act is not criminal, it may be brought as a civil matter, but only if it violated the Voting Rights Act – in other words, only if there is a racial aspect to the case. Otherwise the only recourse is to refer it to PIN.

However, PIN tends not to focus on intimidation and suppression cases, but rather cases such as alleged noncitizen voting, etc. Public Integrity used to only go after systematic efforts to corrupt the system. Now they focus on scattered individuals, which is a questionable resource choice. Criminal prosecutors over the past 5 years have been given more resources and more leeway because of a shift in focus and policy toward noncitizens and double voting, etc.

There have been very few cases brought involving African American voters. There have been 7 Section 2 cases brought since 2001 – only one was brought on behalf of African American voters. That case was initiated under the Clinton administration. The others have included Latinos and discrimination against whites.

Types of Fraud and Intimidation Occurring

There is no evidence that polling place fraud is a problem. There is also no evidence that the NVRA has increased the opportunity for fraud. Moreover, regardless of NVRA’s provisions, an election official can always look into a voter’s registration if he or she believes that person should no longer be on the list. The Department is now suing Missouri because of its poor registration list.

The biggest problem is with absentee ballots. The photo ID movement is a vote suppression strategy. This type of suppression is a bigger problem than intimidation. There has been an increase in vote suppression over the last five years, but it has been indirect, often in the way that

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laws are interpreted and implemented. Unequal implementation of ID requirements at the polls based on race would be a VRA violation.

The most common type of intimidation occurring is open hostility by poll workers toward minorities. It is a judgment call whether this is a crime or not – Craig Donsanto of PIN decides if it rises to a criminal matter.

Election Day challenges at the polls could be a VRA violation but such a case has never been formally pursued. Such cases are often resolved on the spot. Development of a pre-election challenge list targeted at minorities would be a VRA violation but this also has never been pursued. These are choices of current enforcement policy.

Long lines due to unequal distribution of voting machines based on race, list purges based on race and refusal to offer a provisional ballot on the basis of race would also be VRA violations.

Recommendations

Congress should pass a new law that allows the Department to bring civil actions for suppression that is NOT race based, for example, deceptive practices or wholesale challenges to voters in jurisdictions that tend to vote heavily for one party.

Given the additional resources and latitude given to the enforcement of acts such as double voting and noncitizen voting, there should be an equal commitment to enforcement of acts of intimidation and suppression cases.

There should also be increased resources dedicated to expanded monitoring efforts. This might be the best use of resources since monitors and observers act as a deterrent to fraud and intimidation.

**Interview with Joe Sandler, Counsel to the DNC**

February 24, 2006

Background

Sandler is an election attorney. He worked for the DNC in 1986, was in-house counsel from 1993-1998, and currently is outside counsel to the DNC and most state Democratic Parties. Sandler was part of the recount team in Florida in both 2002 and 2004. He recruited and trained attorneys in voting issues---starting in 2002 Sandler recruited in excess of 15, 000 attorneys in twenty-two states. He is now putting together a national lawyers council in each state.

2004-Administrative Incompetence v. Fraud

Sandler believes the 2004 election was a combination of administrative incompetence and fraud. Sandler stated there was a deliberate effort by the Republicans to disenfranchise voters across the

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country. This was accomplished by mailing out cards to registered voters and then moving to purge from the voters list those whose cards were returned. Sandler indicated that in New Mexico there was a deliberate attempt by Republicans to purge people registered by third parties. He stated that there were intentional efforts to disenfranchise voters by election officials like Ken Blackwell in Ohio.

The problems with machine distribution in 2004 were not deliberate. However, Sandler believes that a large problem exists in the states because there are no laws that spell out a formula to allocate so many voting machines per voter.

Sandler was asked how often names were intentionally purged from the voter lists. He responded that there will be a lot of names purged as a result of the creation of the voter lists under HAVA. However, Sandler stated most wrongful purging results from incompetence. Sandler also said there was not much intimidation at the polls because most such efforts are deterred and that the last systematic effort was in Philadelphia in 2003 where Republicans had official looking cars and people with badges and uniforms, etc.

Sandler stated that deliberate dissemination of misinformation was more incidental, with individuals misinforming and not a political party. Disinformation did occur in small Spanish speaking communities.

Republicans point to instances of voter registration fraud but Sandler believes it did not occur, except for once in a blue moon. Sandler did not believe non-citizen voting was a problem. He also does not believe that there is voter impersonation at the polls and that Republicans allege this as a way of disenfranchising voters through restrictive voter identification rules.

#### Fraud and Intimidation Trends

Sandler stated that over the years there has been a shift from organized efforts to intimidate minority voters through voter identification requirements, improper purging, failure to properly register voters, not allocating enough voting machines, failure to properly use the provisional ballot, etc., by voter officials as well as systematic efforts by Republicans to deregister voters.

At the federal level, Sandler said, the voting division has become so politicized that it is basically useless now on intimidation claims. At the local level, Sandler does not believe politics prevents or hinders prosecution for vote fraud.

#### Sandler's Recommendations

Moving the voter lists to the state level is a good idea where carefully done

Provisional ballots rules should follow the law and not be over-used

No voter ID

Partisanship should be taken out of election administration, perhaps by giving that responsibility by someone other than the Secretary of State. There should at least be conflict of interest rules

Enact laws that allow private citizens to bring suit under state law

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All suggestions from the DNC Ohio Report:

1. The Democratic Party must continue its efforts to monitor election law reform in all fifty states, the District of Columbia and territories.
2. States should be encouraged to codify into law all required election practices, including requirements for the adequate training of official poll workers.
3. States should adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts, to ensure adequate and nondiscriminatory access. These standards should be based on set ratios of numbers of machines and pollworkers per number of voters expected to turn out, and should be made available for public comment before being adopting.
4. States should adopt legislation to make clear and uniform the rules on voter registration.
5. The Democratic Party should monitor the processing of voter registrations by local election authorities on an ongoing basis to ensure the timely processing of registrations and changes, including both newly registered voters and voters who move within a jurisdiction or the state, and the Party should ask state Attorneys General to take action where necessary to force the timely updating of voter lists.
6. States should be urged to implement statewide voter lists in accordance with the Help America Vote Act ("HAVA"), the election reform law enacted by Congress in 2002 following the Florida debacle.
7. State and local jurisdictions should adopt clear and uniform rules on the use of, and the counting of, provisional ballots, and distribute them for public comment well in advance of each election day.
8. The Democratic Party should monitor the purging and updating of registered voter lists by local officials, and the Party should challenge, and ask state Attorneys General to challenge, unlawful purges and other improper list maintenance practices.
9. States should not adopt requirements that voters show identification at the polls, beyond those already required by federal law (requiring that identification be shown only by first time voters who did not show identification when registering.)
10. State Attorneys General and local authorities should vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.
11. Jurisdictions should be encouraged to use precinct-tabulated optical scan systems with a computer assisted device at each precinct, in preference to touchscreen ("direct recording equipment" or "DRE") machines.
12. Touchscreen (DRE) machines should not be used until a reliable voter verifiable audit feature can be uniformly incorporated into these systems. In the event of a recount, the paper or other auditable record should be considered the official record.
13. Remaining punchcard systems should be discontinued.
14. States should ask state Attorneys General to challenge unfair or discriminatory distribution of equipment and resources where necessary, and the Democratic Party should bring litigation as necessary.
15. Voting equipment vendors should be required to disclose their source code so that it can be examined by third parties. No voting machine should have wireless connections or be able to connect to the Internet.
16. Any equipment used by voters to vote or by officials to tabulate the votes should be used

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exclusively for that purpose. That is particularly important for tabulating/aggregating computers.

17. States should adopt "no excuse required" standards for absentee voting.
18. States should make it easier for college students to vote in the jurisdiction in which their school is located.
19. States should develop procedures to ensure that voting is facilitated, without compromising security or privacy, for all eligible voters living overseas.
20. States should make voter suppression a criminal offense at the state level, in all states.
21. States should improve the training of pollworkers.
22. States should expend significantly more resources in educating voters on where, when and how to vote.
23. Partisan officials who volunteer to work for a candidate should not oversee or administer any elections.

**Interview with John Ravitz, Executive Director, New York City Board of Elections**  
February 16, 2006

Process

If there is an allegation of fraud or intimidation, the commissioners can rule to act on it. For example, in 2004 there were allegations in Queens that people had registered to vote using the addresses of warehouses and stores. The Board sent out teams of investigators to look into this. The Board then developed a challenge list that was to be used at the polls if any of the suspect voters showed up to vote.

If the allegation rises to a criminal level, the Board will refer it to the county district attorney. If a poll worker or election official is involved, the Board may conduct an internal investigation. That individual would be interviewed, and if there is validity to the claim, the Board would take action.

Incidences of Fraud and Intimidation

Mr. Ravitz says there have been no complaints about voter intimidation since he has been at the Board. There have been instances of over-aggressive poll workers, but nothing threatening. Voter fraud has also generally not been a problem.

In 2004, the problem was monitors from the Department of Justice intimidating voters. They were not properly trained, and were doing things like going into the booth with voters. The Board had to contact their Department supervisors to put a stop to it.

Charges regarding "ballot security teams" have generally just been political posturing.

The problem of people entering false information on voter registration forms is a problem. However, sometimes a name people allege is false actually turns out to be the voter's real name. Moreover, these types of acts do not involve anyone actually casting a fraudulent ballot.

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With respect to the issue of voters being registered in both New York and Florida, the Board now compares its list with that of Florida and other places to address the problem. This will be less of an issue with the use of statewide voter registration databases, as information becomes easier to share. Despite the number of people who were on the voter registration lists of both jurisdictions, there was no one from those lists who voted twice.

Most of the problems at the polls have to do with poll workers not doing what they are supposed to do, not any sort of malfeasance. This indicates that improved training is the most important measure we can take.

There have been instances in which poll workers ask voters for identification when they shouldn't. However, the poll workers seem to do it when they cannot understand the name when the voter tells it to them. The Board has tried to train them that no matter what, the poll worker cannot ask for identification in order to get the person's name.

Absentee ballot fraud has also not been a problem in New York City. This is likely because absentee ballots are counted last – eight days after election day. This is so that they can be checked thoroughly and verified. This is a practice other jurisdictions might consider.

New York City has not had a problem with ex-felons voting or with ex-felons not knowing their voting rights. The City has not had any problems in recent years with deceptive practices, such as flyers providing misinformation about voting procedures.

Recommendations

- Better poll worker training
- Thorough inspection of absentee ballots subsequent to the election

**Interview with John Tanner, Chief, Voting Section, Civil Rights Division, U.S. Department of Justice<sup>2</sup>**

February 24, 2006

The Department of Justice's (DOJ) Voting Section is charged with the civil enforcement of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), and Title III of the Help America Vote Act (HAVA).

Authority and Process

The Voting Section, in contrast to the Public Integrity Section as Craig Donsanto described it, typically focuses only on systemic problems resulting from government action or inaction, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

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<sup>2</sup> This interviewee did not agree with the consultants' interpretation of his interview comments. Therefore, EAC made clarifying edits to this portion of the consultants' interview summaries.

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Federal voting laws enforced by the section only apply to state action, so the section only sues state and local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, with systematic changes forced upon those jurisdictions, the section now does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14<sup>th</sup> and 15<sup>th</sup> Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter that involves individual offenders or a systemic problem. When deciding what to do with the complaint, the section errs on the side of referring it criminally to avoid having any civil litigation complicate a possible criminal case.

When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

Voter Intimidation

Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been a formal investigation into the abusive use of challengers.

Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

However, Mr. Tanner said the department was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

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Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the Voting Section to become involved.

Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands of the states will be helpful because at this higher level of government you find a higher level of professionalism.

It is hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. However, the enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared, as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

The section is not filing as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore. Mr. Tanner said that race based problems are rare now.

NVRA has been effective in opening up the registration process. In terms of enforcement, Mr. Tanner said they do what they can when they have credible allegations. There is a big gap between complaints and what can be substantiated. Mr. Tanner stated that given the high quality of the attorneys now in the section, if they do not investigate it or bring action, that act complained of did not happen.

Recommendations

Mr. Tanner did not feel it was appropriate to make recommendations.

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Consultants Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. We did not have access to any information about or data from the section's election complaint in-take phone logs or data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws. Only a selected few samples of attorney-observer reports were provided, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. Mr. Tanner would not discuss any current investigations or cases the section is involved in.

**Interview with Kevin Kennedy, State Elections Director, State of Wisconsin**

April 11, 2006

Background

Kennedy is a nonpartisan, appointed official. He has been in this position since 1983.

Complaints of fraud and intimidation do not usually come to Kennedy's office. Kennedy says that complainants usually take their allegations to the media first because they are trying to make a political point.

2004 Election Incidents of Fraud

The investigations into the 2004 election uncovered some cases of double voting and voting by felons who did not know they were not eligible to vote, but found no concerted effort to commit fraud. There have been a couple of guilty pleas as a result, although not a number in the double digits. The task force and news reports initially referred to 100 cases of double voting and 200 cases of felon voting, but there were not nearly that many prosecutions. Further investigation since the task force investigation uncovered that in some instances there were mis-marks by poll workers, fathers and sons mistaken for the same voter, and even a husband and wife marked as the same voter. The double votes that are believed to have occurred were a mixture of absentee and polling place votes. It is unclear how many of these cases were instances of voting in two different locations.

In discussing the case from 2000 in which a student claimed – falsely – that he had voted several times, Kennedy said that double voting can be done. The deterrent is that it's a felony, and that one person voting twice is not an effective way to influence an election. One would need to get a lot of people involved for it to work.

The task force set up to investigate the 2004 election found a small number of illegal votes but given the 7,000 alleged, it was a relatively small number. There was no pattern of fraud.

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The one case Kennedy could recall of an organized effort to commit fraud was in the spring of 2003 or 2004. A community service agency had voters request that absentee ballots be sent to the agency instead of to the voters and some of those ballots were signed without the voters' knowledge. One person was convicted, the leader of the enterprise.

In Milwaukee, the main contention was that there were more ballots than voters. However, it was found that the 7,000 vote disparity was tied to poll worker error. The task force found that there was no concerted effort involved. Kennedy explained that there are many ways a ballot can get into a machine without a voter getting a number. These include a poll worker forgetting to give the voter one; someone does Election Day registration and fills out a registration form but does not get a number because the transaction all takes place at one table; and in Milwaukee, 20,000 voters who registered were not put on the list in time and as a short term solution the department sent the original registration forms to the polling places to be used instead of the list to provide proof of registration. This added another element of confusion that might have led to someone not getting a voter number.

The Republican Party used this original list and contracted with a private vendor to do a comparison with the U.S. postal list. They found initially that there were 5,000 bad addresses, and then later said there were 35,000 illegitimate addresses. When the party filed a complaint, the department told them they could force the voters on their list to cast a challenge ballot. On Election Day, the party used the list but found no actually voting from those addresses. Kennedy suspects that the private vendor made significant errors when doing the comparison.

In terms of noncitizen voting, Kennedy said that there is a Russian community in Milwaukee that the Republican Party singles out every year but it doesn't go very far. Kennedy has not seen much in the way of allegations of noncitizen voting.

However, when applying for a drivers license, a noncitizen could register to vote. There is no process for checking citizenship at this point, and the statewide registration database will not address this. Kennedy is not aware of any cases of noncitizen voting as a result, but it might have happened.

Kennedy said that the biggest concern seemed to be suspicions raised when groups of people are brought into the polling site from group homes, usually homes for the disabled. There are allegations that these voters are being told how to vote.

Incidents of Voter Intimidation

In 2004, there was a lot of hype about challenges, but in Wisconsin, a challenger must articulate a basis under oath. This acts as a deterrent, but at the same time it creates the potential that someone might challenge everyone and create long lines, keeping people from voting. In 2004, the Republican Party could use its list of suspect addresses as a legitimate basis for challenges, so there is the potential for abuse. It is also hard to train poll workers on that process. In 2004, there were isolated cases of problems with challengers.

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In 2002, a flyer was circulated only in Milwaukee claiming that you had vote by noon. This was taken as an intimidation tactic by the Democrats.

Reforms

Wisconsin has had difficulty with its database because 1) they have had a hard time getting a good product out of the vendor and 2) until now there was no registration record for one-quarter of the voters. Any jurisdiction with fewer than 5000 voters was not required to have a registration list.

In any case, once these performance issues are worked out, Kennedy does believe the statewide voter registration database will be very valuable. In particular, it will mean that people who move will not be on more than one list anymore. It should also address the double voting issue by identifying who is doing it, catching people who do it, and identifying where it could occur.

Recommendations

Better trained poll workers

Ensure good security procedures for the tabulation process and more transparency in the vote counting process

Conduct post-election audits

**Interview with Lori Minnite, Barnard College**

February 22, 2006

Background

Ms. Minnite is an assistant professor of political science at Barnard College. She has done substantial research on voter fraud and wrote the report "Securing the Vote." Ms. Minnite also did work related to an election lawsuit. The main question that she was asked to address in the lawsuit was---did election-day registration increase the possibility of fraud?

Securing the Vote

In Securing the Vote, Ms. Minnite found very little evidence of voter fraud because the historical conditions giving rise to fraud have weakened over the past twenty years. She stated that for fraud to take root a conspiracy was needed with a strong local political party and a complicit voter administration system. Since parties have weakened and there has been much improvement in the administration of elections and voting technology, the conditions no longer exist for large scale incidents of polling place fraud.

Ms. Minnite concentrates on fraud committed by voters not fraud committed by voting officials. She has looked at this issue on the national level and also concentrated on analyzing certain specific states. Ms. Minnite stressed that it is important to keep clear who the perpetrators of the

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fraud are and where the fraud occurs because that effects what the remedy should be. Often, voters are punished for fraud committed by voting officials.

Other Fraud Issues

Ms. Minnite found no evidence that NVRA was leading to more voter fraud. She supports non-partisan election administration. Ms. Minnite has found evidence that there is absentee ballot fraud. She can't establish that there is a certain amount of absentee ballot fraud or that it is the major kind of voter fraud.

Recommendations

Assure there are accurate voter records and centralize voter databases

Reduce partisanship in electoral administration.

**Interview with Nina Perales, Counsel, Mexican American Legal Defense and Education Fund**

March 7, 2006

Background

Ms. Perales is an attorney with the Mexican American Legal Defense Fund (MALDEF). MALDEF's mission is to foster sound public policies, laws and programs to safeguard the civil rights of the 40 million Latinos living in the United States and to empower the Latino community to fully participate in our society. One of the areas MALDEF works in is electoral issues, predominately centered on the Voting Rights Act. Ms. Perales did not seem to have a sense of the overall electoral issues in her working region (the southwest) effecting Hispanic voters and did not seem to want to offer her individual experiences and work activities as necessarily a perfect reflection of the challenges Hispanic voters face.

Largest Election Problems Since 2000

Santa Anna County, New Mexico-2004-intimidated voters by video taping them.

San Antonio-One African American voter subjected to a racial slur.

San Antonio-Relocated polling places at the last minute without Section 5 pre-clearance.

San Antonio-Closed polls while voters were still in line.

San Antonio-2003-only left open early voting polls in predominantly white districts.

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San Antonio-2005-racially contested mayoral run-off election switched from touch screen voting to paper ballots.

Voter Fraud and Intimidation

In Texas, the counties are refusing to open their records with respect to Section 203 compliance (bilingual voting assistance), and those that did respond to MALDEF's request submitted incomplete information. Ms. Perales believes this in itself is a form of voter intimidation.

Ms. Perales said it is hard to say if the obstacles minorities confront in voting are a result of intentional acts or not because the county commission is totally incompetent. There have continuously been problems with too few ballots, causing long lines, especially in places that had historically lower turnout. There is no formula in Texas for allocating ballots – each county makes these determinations.

When there is not enough language assistance at the polls, forcing a non-English speaker to rely on a family member to vote, that can suppress voter turnout.

Ms. Perales is not aware of deceptive practices or dirty tricks targeted at the Latino community.

There have been no allegations of illegal noncitizen voting in Texas. Indeed, the sponsor of a bill that would require proof of citizenship to vote could not provide any documentation of noncitizen voting in support of the bill. The bill was defeated in part because of the racist comments of the sponsor. In Arizona, such a measure was passed. Ms. Perales was only aware of one case of noncitizen voting in Arizona, involving a man of limited mental capacity who said he was told he was allowed to register and vote. Ms. Perales believes proof of citizenship requirements discriminate against Latinos.

Recommendations

Ms. Perales feels the laws are adequate, but that her organization does not have enough staff to do the monitoring necessary. This could be done by the federal government. However, even though the Department of Justice is focusing on Section 203 cases now, they have not even begun to scratch the surface. Moreover, the choices DOJ has made with respect to where they have brought claims do not seem to be based on any systematic analysis of where the biggest problems are. This may be because the administration is so ideological and partisan.

Ms. Perales does not believe making election administration nonpartisan would have a big impact. In Texas, administrators are appointed in a nonpartisan manner, but they still do not always have a nonpartisan approach. Each administrator tends to promote his or her personal view regardless of party.

**Interview with Pat Rogers, private attorney**

March 3, 2006

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Background

In addition to his legal practice with *Modrall, Sperling, Roehl, Harris & Sisk*, Rogers also does some state-level lobbying for Verizon Wireless, GM, Dumont and other companies. His experience in election law goes back to 1988, where his first elections case was a defense against Bill Richardson, who had sued to get another candidate tossed off a ballot because of petition fraud. Since 1988, he has been involved in election cases at least once every two years.

2004 Litigation

In a case that ended before the New Mexico Supreme Court, Rogers represented the Green Party and other plaintiffs against the New Mexico Secretary of State for sending a directive telling local boards not to require ID for first time voters registering by mail. He argued that this watered-down ID check conflicted with what seemed fairly clear statutory requirements for first time voters. In 2004 these requirements were especially important due to the large presence of 3<sup>rd</sup> party organizations registering voters such as a 527 funded by Governor Richardson, ACORN, and others.

Plaintiffs were seeking a temporary restraining order requiring Secretary of State to follow the law. Yet the Supreme Court ultimately decided that, whether the directive was right or wrong, it was too late to require ID lest Bush v. Gore issues be raised.

Today, the issue is moot as the state legislature has changed the law, and the Secretary of State will no longer be in office. It seems unlikely they will send any policy directives to county clerks lest they violate due process/public notice.

Major issues in NM w/ regard to vote fraud

Registration fraud seems to be the major issue, and while the legislature has taken some steps, Rogers is skeptical of the effect they will have, considering the history of unequal application of election laws. He also believes there are holes in the 3<sup>rd</sup> party registration requirement deadlines.

Rogers views a national law requiring ID as the best solution to registration problems. Rather than imposing a burden he contends it will enhance public confidence in the simplest way possible.

Registration Fraud in 2004 election

It came to light that ACORN had registered a 13 year old. The father was an APD officer and received the confirmation, but it was sent to the next door address, a vacant house. They traced this to an ACORN employee and it was established that this employee had been registering others under 18.

Two weeks later, in a crack cocaine bust of Cuban nationals, one of those raided said his job was registering voters for ACORN, and the police found signatures in his possession for fictitious persons.

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In a suspicious break-in at an entity that advertised itself as nonpartisan, only GOP registrations were stolen.

In another instance, a college student was allegedly fired for registering too many Republicans.

Rogers said he believed these workers were paid by the registration rather than hourly.

There have been no prosecution or convictions related to these incidents. In fact, there have been no prosecutions for election fraud in New Mexico in recent history. However, Rogers is skeptical that much action can be expected considering the positions of Attorney General, Governor, and Secretary of State are all held by Democrats. Nor has there been any interest from the U.S. attorney—Rogers heard that U.S. attorneys were given instruction to hold off until after the election in 2004 because it would seem too political.

As part of the case against the Secretary of State regarding the identification requirement, the parties also sued ACORN. At a hearing, the head of ACORN, and others aligned with the Democratic Party called as witnesses, took the 5<sup>th</sup> on the stand as to their registration practices.

Other incidents

Very recently, there have been reports of vote buying in the town of Espanola. Originally reported by the *Rio Grande Sun*, a resident of a low-income housing project is quoted as saying it has been going on for 10-12 years. The Albuquerque Journal is now reporting this as well. So far the investigation has been extremely limited.

In 1996, there were some prosecutions in Espanola, where a state district judge found registration fraud.

In 1991, the chair of Democratic Party of Bertolino County was convicted on fraud. Yet she was pardoned by Clinton on same day as Marc Rich.

Intimidation/Suppression

Rogers believes the most notable example of intimidation in the 2004 election was the discovery of a DNC Handbook from Colorado advising Democratic operatives to widely report intimidation regardless of confirmation in order to gain media attention.

In-person polling place fraud

There have only been isolated instances of people reporting that someone had voted in their name, and Rogers doesn't believe there is any large scale conspiracy. Yet he contends that perspective misses the larger point of voter confidence. Although there has been a large public outcry for voter ID in New Mexico, it has been deflected and avoided by Democrats.

In 2004, there were more Democratic lawyers at the polls than there are lawyers in New Mexico.

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Rogers believes these lawyers had a positive impact because they deterred people from committing bad acts.

Counting Procedures

The Secretary of State has also taken the position that canvassing of the vote should be done in private. In NM, they have a 'county canvas' where they review and certify, after which all materials—machine tapes, etc.—are centralized with the Secretary of State who does a final canvass for final certification. Conducting this in private is a serious issue, especially considering the margin in the 2000 presidential vote in New Mexico was only 366 votes. They wouldn't be changing machine numbers, but paper numbers are vulnerable.

On a related note, NM has adopted state procedures that will ensure their reports are slower and very late, considering the 2000 late discovery of ballots. In a close race, potential for fraud and mischief goes up astronomically in the period between poll closing and reporting. Rogers believes these changes are going to cause national embarrassment in the future.

Rogers attributes other harmful effects to what he terms the Secretary of State's incompetence and inability to discern a nonpartisan application of the law. In the 2004 election, no standards were issued for counting provisional ballots. Furthermore, the Secretary of State spent over \$1 million of HAVA money for 'voter education' in blatant self-promotional ads.

Recommendations

Rogers believes it would be unfeasible to have nonpartisan election administration and favors transparency instead. To make sure people have confidence in the election, there must be transparency in the whole process. Then you don't have the 1960 vote coming down to Illinois, or the Espanola ballot or Dona Anna County (ballots found there in the 2000 election). HAVA funds should also be restricted when you have an incompetent, partisan Secretary of State.

There should be national standards for reporting voting results so there is less opportunity for fraud in a close race. Although he is not generally an advocate of national laws, he does agree there should be more national uniformity into how votes are counted and recorded.

**Interview with Rebecca Vigil-Giron, Secretary of State, New Mexico**

March 24, 2006

Background

Vigil-Giron has been Secretary of State for twelve years and was the President of the National Association of Secretaries of State in 2004. Complaints of election fraud and intimidation are filed with the SOS office. She then decides whether to refer it to the local district attorney or the attorney general. Because the complaints are few and far between, the office does not keep a log of complaints; however, they do have all of the written complaints on file in the office.

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Incidents of Fraud and Intimidation

During the 2004 election, there were a couple of complaints of polling place observers telling people outside the polling place who had just voted, and then the people outside were following the voters to their cars and videotaping them. This happened in areas that are mostly second and third generation Latinos. The Secretary sent out the sheriff in one instance of this. The perpetrators moved to a different polling place. This was the only incident of fraud or intimidation Vigil-Giron was aware of in New Mexico.

There have not been many problems on Native reservations because, unlike in many other states, in New Mexico the polling place is on the reservation and is run by local Native Americans. Vigil-Giron said that it does not make sense to have non-Natives running those polls because it is necessary to have people there who can translate. Because most of the languages are unwritten, the HAVA requirement of accessibility through an audio device will be very helpful in this regard. Vigil-Giron said she was surprised to learn while testifying at the Voting Rights Act commission hearings of the lack of sensitivity to these issues and the common failure to provide assistance in language minority areas.

In 2004 the U.S. Attorney, a Republican, suddenly announced he was launching an investigation into voter fraud without consulting the Secretary of State's office. After all of that, there was maybe one prosecution. Even the allegations involving third party groups and voter registration are often misleading. People doing voter registration drives encourage voters to register if they are unsure if they are already registered, and the voter does not even realize that his or her name will then appear on the voter list twice. The bigger problem is where registrations do not get forwarded to election administrators and the voter does not end up on the voting list on Election Day. This is voter intimidation in itself, Vigil-Giron believes. It is very discouraging for that voter and she wonders whether he or she will try again.

Under the bill passed in 2004, third parties are required to turn around voter registration forms very quickly between the time they get them and when they must be returned. If they fail to return them within 48 hours of getting them, they are penalized. This, Vigil-Giron believes, is unfair. She has tried to get the Legislature to look at this issue again.

Regarding allegations of vote buying in Espanola, Vigil-Giron said that the Attorney General is investigating. The problem in that area of New Mexico is that they are still using rural routes, so they have not been able to properly district. There has, as a result, been manipulation of where people vote. Now they seem to have pushed the envelope too far on this. The investigation is not just about vote buying, however. There have also been allegations of voters being denied translators as well as assistance at the polls.

Vigil-Giron believes there was voter suppression in Ohio in 2004. County officials knew thirty days out how many people had registered to vote, they knew how many voters there would be. Administrators are supposed to use a formula for allocation of voting machines based on registered voters. Administrators in Ohio ignored this. As a result, people were turned away at the polls or left because of the huge lines. This, she believes, was a case of intentional vote suppression.

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A few years ago, Vigil-Giron heard that there may have been people voting in New Mexico and a bordering town in Colorado. She exchanged information with Colorado administrators and it turned out that there were no cases of double voting.

Recommendations

Vigil-Giron believes that linking voter registration databases across states may be a way to see if people who are registered twice are in fact voting twice.

The key to improving the process is better trained poll workers, who are certified, and know what to look for on Election Day. These poll workers should then work with law enforcement to ensure there are no transgressions.

There should be stronger teeth in the voter fraud laws. For example, it should be more than a fourth degree felony, as is currently the case.

**Interview with Sarah Bell Johnson Interview**

April 19, 2006

Procedures for Handling Fraud

Fraud complaints are directed first to the state Board of Elections. Unlike boards in other states, Kentucky's has no investigative powers. Instead, they work closely with both the Attorney General and the U.S. Attorney. Especially since the current administration took office, they have found the U.S. Attorney an excellent partner in pursuing fraud cases, and have seen many prosecutions in the last six years. She believes that there has been no increase in the incidence of fraud, but rather the increase in prosecutions is related to increased scrutiny and more resources.

Major Types of Fraud and Intimidation

Johnson says that vote buying and voter intimidation go hand in hand in Kentucky. While historically fraud activity focused on election day, in the last 20 years it has moved into absentee voting. In part, this is because new voting machines aren't easy to manipulate in the way that paper ballots were open to manipulation in the past, especially in distant rural counties. For this reason, she is troubled by the proliferation of states with early voting, but notes that there is a difference between absentee ballot and early voting on machines, which is far more difficult to manipulate.

Among the cases of absentee ballot fraud they have seen, common practice involves a group of candidates conspiring together to elect their specific slate. Nursing homes are an especially frequent target. Elderly residents request absentee ballots, and then workers show up and 'help'

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them vote their ballots. Though there have been some cases in the Eastern district of election day fraud, most have been absentee.

Johnson argues that it is hard to distinguish between intimidation and vote buying. They have also seen instances where civic groups and church groups intimidate members to vote in a specific manner, not for reward, but under threat of being ostracized or even telling them they will go to hell.

While she is aware of allegations of intimidation by the parties regarding minority precincts in Louisville, the board hasn't received calls about it and there haven't been any prosecutions.

### Challengers

Challengers are permitted at the polls in Kentucky. Each party is allowed two per location, and they must file proper paperwork. There is a set list of defined reasons for which they can challenge a voter, such as residency, and the challengers must also fill out paperwork to conduct a challenge.

As for allegations of challengers engaging in intimidation in minority districts, Johnson notes that challengers did indeed register in Jefferson County, and filed the proper paperwork, although they ultimately did not show up on election day.

She finds that relatively few challengers end up being officially registered, and that the practice has grown less common in recent years. This is due more to a change of fashion than anything. And after all, those wishing to affect election outcomes have little need for challengers in the precinct when they can target absentee voting instead.

In the event that intimidation is taking place, Kentucky has provisions to remove disruptive challengers, but this hasn't been used to her knowledge.

### Prosecutions

Election fraud prosecutions in Kentucky have only involved vote buying. This may be because that it is easier to investigate, by virtue of a cash and paper trail which investigators can follow. It is difficult to quantify any average numbers about the practice from this, due in part to the five year statute of limitations on vote buying charges. However, she does not believe that vote-buying is pervasive across the state, but rather confined to certain pockets.

### Vote-hauling Legislation

Vote hauling is a common form of vote buying by another name. Individuals are legally paid to drive others to the polls, and then divide that cash in order to purchase votes. Prosecutions have confirmed that vote hauling is used for this purpose. While the Secretary of State has been committed to legislation which would ban the practice, it has failed to pass in the past two sessions.

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Paying Voter Registration Workers Legislation

A law forbidding people to pay workers by the voter registration card or for obtaining cards with registrations for a specific party was passed this session. Individuals working as part of a registration campaign may still be paid by hour. Kentucky's experience in the last presidential election illustrates the problems arising from paying individuals by the card. That contest included a constitutional amendment to ban gay marriage on the ballot, which naturally attracted the attention of many national groups. One group paying people by the card resulted in the registrar being inundated with cards, including many duplicates in the same bundle, variants on names, and variants on addresses. As this practice threatens to overwhelm the voter registration process, Kentucky views it as constituting malicious fraud.

Deceptive practices

Other than general reports in the news, Johnson hasn't received any separate confirmation or reports of deceptive practices, i.e., false and misleading information being distributed to confuse voters.

Effect of Kentucky's Database

Johnson believes Kentucky's widely praised voter registration database is a key reason why the state doesn't have as much fraud as it might, especially the types alleged elsewhere like double and felon voting. While no database is going to be perfect, the connections with other state databases such as the DMV and vital statistics have been invaluable in allowing them to aggressively purge dead weight and create a cleaner list. When parties use their database list they are notably more successful. Johnson wonders how other states are able to conduct elections without a similar system.

Some factors have made especially important to their success. When the database was instituted in 1973, they were able to make everyone in the state re-register and thus start with a clean database. However, it is unlikely any state could get away with this today.

She is also a big supporter of a full Social Security number standard, as practiced in Kentucky. The full Social Security, which is compared to date of birth and letters in the first and last name, automatically makes matching far more accurate. The huge benefits Kentucky has reaped make Johnson skeptical of privacy concerns arguing for an abbreviated Social Security number. Individuals are willing to submit their Social Security number for many lesser purposes, so why not voting? And in any event, they don't require a Social Security number to register (unlike others such as Georgia). Less than a percent of voters in Kentucky are registered under unique identifiers, which the Board of Elections then works to fill in the number through cross referencing with the DMV.

Recommendations

Johnson believes the backbone of effective elections administration must be standardized procedures, strong record keeping, and detailed statutes. In Kentucky, all counties use the same

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database and the same pre election day forms. Rather than seeing that as oppressive, county officials report that the uniformity makes their jobs easier.

This philosophy extends to the provisional ballot question. While they did not have a standard in place like HAVA's at the time of enactment, they worked quickly to put a uniform standard in place.

They have also modified forms and procedures based on feedback from prosecutors. Johnson believes a key to enforcing voting laws is working with investigators and prosecutors and ensuring that they have the information they need to mount cases.

She also believes public education is important, and that the media could do more to provide information about what is legal and what is illegal. Kentucky tries to fulfill this role by information in polling places, press releases, and high profile press conferences before elections. She notes that they deliberately use language focusing on fraud *and* intimidation.

Johnson is somewhat pessimistic about reducing absentee ballot fraud. Absentee ballots do have a useful function for the military and others who cannot get to the polling place, and motivated individuals will always find a way to abuse the system if possible. At a minimum, however, she recommends that absentee ballots should require an excuse. She believes this has helped reduce abuse in Kentucky, and is wary of no-excuse practices in other states.

**Interview with Steve Ansolobhere and Chandler Davidson**  
February 17, 2006

Methodology suggestions

In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources: the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that asks whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. Mr. Ansolobhere recommended Jonathan Krosnick, Doug Rivers, and Paul Sniderman at Stanford; Donald Kinder and Arthur Lupia at Michigan; Edward Carmines at Indiana; and Phil Tetlock at Berkeley. In the alternative, Mr. Ansolobhere suggested that the EAC might work with the Census Bureau to have them ask different, additional questions in their Voter Population Surveys.

Mr. Chandler further suggested it is important to talk to private election lawyers, such as Randall Wood, who represented Ciro Rodriguez in his congressional election in Texas. Mr. Ansolobhere also recommended looking at experiments conducted by the British Election Commission.

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Incidents of Fraud and Intimidation

Mr. Davidson's study for the Lawyers Committee for Civil Rights on the Voting Rights Act documented evidence of widespread difficulty in the voting process. However, he did not attempt to quantify whether this was due to intentional, malevolent acts. In his 2005 report on ballot security programs, he found that there were many allegations of fraud made, but not very many prosecutions or convictions. He saw many cases that did go to trial and the prosecutors lost on the merits.

In terms of voter intimidation and vote suppression, Mr. Davidson said he believes the following types of activities do occur: videotaping of voters' license plates; poll workers asking intimidating questions; groups of officious-looking poll watchers at the poll sites who seem to be some sort of authority looking for wrongdoing; spreading of false information, such as phone calls, flyers, and radio ads that intentionally mislead as to voting procedures.

Mr. Ansolobhere believes the biggest problem is absentee ballot fraud. However, many of these cases involve people who do not realize what they are doing is illegal, for example, telling someone else how to vote. Sometimes there is real illegality occurring however. For example, vote selling involving absentee ballots, the filling out of absentee ballots en masse, people at nursing homes filling out the ballots of residents, and there are stories about union leaders getting members to vote a certain way by absentee ballot. This problem will only get bigger as more states liberalize their absentee ballot rules. Mr. Chandler agreed that absentee ballot fraud was a major problem.

Recommendations

Go back to "for cause" absentee ballot rules, because it is truly impossible to ever ensure the security of a mail ballot. Even in Oregon, there was a study showing fraud in their vote by mail system.

False information campaigns should be combated with greater voter education. Los Angeles County's voter education program should be used as a model.

**Interview with Tracy Campbell, author**

March 3, 2006

Background

Campbell's first book on election fraud looked at Ed Pritchard, a New Deal figure who went to jail for stuffing ballot boxes. While his initial goal in writing that book was to find out why Pritchard had engaged in vote stealing, his growing understanding of a pervasive culture of electoral corruption led him to consider instead how it was that Pritchard was ever caught. In 1998, he started working on a book regarding fraud in Kentucky, which quickly became a national study. He hoped to convey the 'real politics' which he feels readers, not to mention

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academics, have little sense about. While less blatant than in previous eras, fraud certainly still occurs, and he mentions some examples in his book. The major trend of the past 60-70 years has been that these tactics have grown more subtle.

While he hasn't conducted any scientific study of the current state of fraud, his sense as a historian is that it seems naive, after generations of watching the same patterns and practices influence elections, to view suspect election results today as merely attributable to simple error.

### Vote-buying and absentee fraud

Campbell sees fraud by absentee ballot and vote buying as the greatest threats to fair elections today. He says vote fraud is like real estate: location, location, location—the closer you can keep the ballots to the courthouse the better. Absentee ballots create a much easier target for vote brokers who can manage voting away from the polling place, or even mark a ballot directly, in exchange for, say, \$50—or even more if an individual can bring their entire family. He has noted some small counties where absentee ballots outnumber in-person ballots.

However, few people engaged in this activity would call it 'purchasing' a vote. Instead, it is candidate Jones' way of 'thanking' you for a vote you would have cast in any event. The issue is what happens if candidate Smith offers you more. Likewise, the politicians who engage in vote fraud don't see it as a threat to the republic but rather as a game they have to play in order to get elected.

### Regional patterns

Campbell suggests such practices are more prevalent in the South than the Northern states, and even more so compared to the West. The South has long been characterized as particularly dangerous in intimidation and suppression practices—throughout history, one can find routine stories of deaths at the polls each year. While he maintains that fraud seems less likely in the Western states, he sees the explosion of mail in and absentee ballots there as asking for trouble.

### Poll site closings as a means to suppress votes

Campbell points to a long historical record of moving poll sites in order to suppress votes. Polling places in the 1800s were frequently set-up on rail cars and moved further down the line to suppress black votes.

He would include door-to-door canvassing practices here, as well as voting in homes, which was in use in Kentucky until only a few years ago. All of these practices have been justified as making polling places 'more accessible' while their real purpose has been to suppress votes.

### Purge lists

Purge lists are, of course, needed in theory, yet Campbell believes the authority to mark names off the voter rolls presents extensive opportunity for abuse. For this reason, purging must be done in a manner that uses the best databases, and looks at only the most relevant information.

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When voters discover their names aren't on the list when they go to vote, for example, because they are "dead," it has a considerable demoralizing effect. Wrongful purging takes place both because of incompetence and as a tool to intentionally disenfranchise.

Campbell believes transparency is the real issue here. An hour after the polls close, we tend to just throw up our hands and look the other way, denying voters the chance to see that discrepancies are being rectified. He believes the cost in not immediately knowing election outcomes is a small price to pay for getting results right and showing the public a transparent process.

Deceptive practices

Today's deceptive practices have are solidly rooted in Reconstruction-era practices—i.e. phony ballots, the Texas 'elimination' ballot. The ability to confuse voters is a powerful tool for those looking to sway elections.

Language minorities

Campbell argues there is a fine line between offering help to non-English speakers and using that help against them. A related issue, particularly in the South, is taking advantage of the illiterate.

Current intimidation

Another tactic Campbell considers an issue today is polling place layout: the further vote suppressers can keep people away from the polls, the better. Practices such as photographing people leaving a polling place may also tie into vote-buying, where photos are used to intimidate and validate purchased votes. A good way to combat such practices is by keeping electioneering as far from the polls as possible.

Recommendations

Specific voting administration recommendations Campbell advocates would include reducing the use of absentee ballots and improving the protective zone around polling places.

Campbell would also like to see enforcement against fraud stepped up and stiffer penalties enacted, as current penalties make the risk of committing fraud relatively low. He compares the risk in election fraud similar to steroid use in professional sports—the potential value of the outcome is far higher than the risk of being caught or penalized for the infraction, so it is hard to prevent people from doing it. People need to believe they will pay a price for engaging in fraud or intimidation. Moreover, we need to have the will to kick people out of office if necessary.

He is skeptical of the feasibility of nonpartisan election administration, as he believes it would be difficult to find people who care about politics yet won't lean one way or the other—such an attempt would be unlikely to get very far before accusations of partisanship emerged. He considers the judiciary the only legitimate check on election fraud.

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**Interview with Wade Henderson, Executive Director, Leadership Conference for Civil Rights**

February 14, 2006

Data Collection

Mr. Henderson had several recommendations as to how to better gather additional information and data on election fraud and intimidation in recent years. He suggested interviewing the following individuals who have been actively involved in Election Protection and other similar efforts:

- Jon Greenbaum, Lawyers Committee for Civil Rights
- Tanya Clay, People for the American Way
- Melanie, Campbell, National Coalition for Black Political Participation
- Larry Gonzalez, National Association of Latino Election Officers
- Jacqueline Johnson, National Congress of American Indians
- Chellie Pingree, Common Cause
- Jim Dickson, disability rights advocate
- Mary Berry, former Chair of the US Commission on Civil Rights, currently at the University of Pennsylvania
- Judith Browne and Eddie Hailes, Advancement Project (former counsel to the US Commission on Civil Rights)
- Robert Rubin, Lawyers Committee for Civil Rights – San Francisco Office
- Former Senator Tom Daschle (currently a fellow at The Center for American Progress)

He also recommended we review the following documents and reports:

- The 2004 litigation brought by the Advancement Project and SEIU under the 1981 New Jersey Consent Decree
- Forthcoming LCCR state-by-state report on violations of the Voting Rights Act
- Forthcoming Lawyers Committee report on violations of the Voting Rights Act (February 21)

Types of Fraud and Intimidation Occurring

Mr. Henderson said he believed that the kinds of voter intimidation and suppression tactics employed over the last five years are ones that have evolved over many years. They are sometimes racially based, sometimes based on partisan motives. He believes the following types of activity have actually occurred, and are not just a matter of anecdote and innuendo, and rise to the level of either voter intimidation or vote suppression:

- Flyers with intentional misinformation, such as ones claiming that if you do not have identification, you cannot vote, and providing false dates for the election
- Observers with cameras, which people associate with potential political retribution or even violence
- Intimidating police presence at the polls

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- Especially in jurisdictions that authorize challenges, the use of challenge lists and challengers goes beyond partisanship to racial suppression and intimidation
- Unequal deployment of voting equipment, such as occurred in Ohio. Also, he has seen situations in which historically Black colleges will have one voting machine while other schools will have more.

Mr. Henderson believes that these matters are not pursued formally because often they involve activities that current law does not reach. For example, there is no law prohibiting a Secretary of State from being the head of a political campaign, and then deploying voting machines in an uneven manner. There is no way to pursue that. Also, once the election is over, civil litigation becomes moot. Finally, sometimes upon reflection after the campaign, some of the activities are not as sinister as believed at the time.

Mr. Henderson believes government does not engage in a sustained investigation of these matters or pursue any kind of resolution to them. LCCR has filed a FOIA request with both the Civil Rights Division and the Criminal Division of the Department of Justice to examine this issue.

Election Protection activities will be intensified for the 2006 elections, although the focus may shift somewhat given the implementation of new HAVA requirements.

Recommendations for Reform

There was tremendous concern after the 2004 election about conflicts of interest – the “Blackwell problem” – whereby a campaign chair is also in charge of the voting system. We need to get away from that.

He also supports Senator Barak Obama’s bill regarding deceptive practices, and is opposed to the voter identification laws passing many state legislatures.

- States should adopt election-day registration, in order to boost turnout as well as to allow eligible voters to immediately rectify erroneous or improperly purged registration records
- Expansion of early voting & no-excuse absentee voting, to boost turnout and reduce the strain on election-day resources.
- Provisional ballot reforms:
  - Should be counted statewide – if cast in the wrong polling place, votes should still be counted in races for which the voter was eligible to vote (governor, etc.)
  - Provisional ballots should also function as voter registration applications, to increase the likelihood that voters will be properly registered in future elections
- Voter ID requirements: states should allow voters to use signature attestation to establish their identity
- The Department of Justice should increase enforcement of Americans with Disabilities Act and the accessibility requirements of the Help America Vote Act
- Statewide registration databases should be linked to social service agency databases
- Prohibit chief state election officials from simultaneously participating in partisan electoral campaigns within their states
- Create and enforce strong penalties for deceptive or misleading voting practices

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**Interview with Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center**

Brennan Center findings on fraud

The Brennan Center's primary work on fraud is their report for the Carter Baker Commission with commissioner Spencer Overton, written in response to the Commission's ID recommendations. Brennan reviewed all existing reports and election contests related to voter fraud. They believe the contests serve as an especially good record of whether or not fraud exists, as the parties involved in contested elections have a large incentive to root out fraudulent voters. Yet despite this, the incidence of voter impersonation fraud discovered is extremely low—something on the order 1/10000<sup>th</sup> of a percentage of voters. See also the brief Brennan filed on 11<sup>th</sup> circuit in Georgia photo ID case which cites sources in Carter Baker report and argues the incidence of voter fraud too low to justify countermeasures.

Among types of fraud, they found impersonation, or polling place fraud, is probably the least frequent type, although other types, such as absentee ballot fraud are also very infrequent. Weiser believes this is because impersonation fraud is more likely to be caught and is therefore not worth the risk. Unlike in an absentee situation, actual poll workers are present to disrupt impersonation fraud, for instance, by catching the same individual voting twice. She believes perhaps one half to one quarter of the time the person will be caught. Also, there is a chance the pollworker will have personal knowledge of the person. Georgia Secretary of State Cathy Cox has mentioned that there are many opportunities for discovery of in person fraud as well. For example, if one votes in the name of another voter, and that voter shows up at the polls, the fraud will be discovered.

Weiser believes court proceedings in election contests are especially useful. Some are very extensive, with hundreds of voters brought up by each side and litigated. In both pre-election challenges and post-election contests, parties have devoted extraordinary resources into 'smoking out' fraudulent voters. Justin Leavitt at Brennan scoured such proceedings for the Carter Baker report, which includes these citations. Contact him for answers to particular questions.

Countermeasures/statewide databases

Brennan has also considered what states are doing to combat impersonation fraud besides photo ID laws, although again, it seems to be the rarest kind of fraud, beyond statistically insignificant. In the brief Brennan filed in the Georgia case, the Center detailed what states are already doing to effectively address fraud. In another on the web site includes measures that can be taken that no states have adopted yet. Weiser adds that an effort to look at strategies states have to prevent fraud, state variations, effectiveness, ease of enforcement would be very useful.

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Weiser believes the best defense against fraud will be better voter lists—she argues the fraud debate is actually premature because states have yet to fully implement the HAVA database requirement. This should eliminate a great deal of ‘deadwood’ on voter rolls and undermine the common argument that fraud is made possible by this deadwood. This was the experience for Michigan, which was able to remove 600,000 names initially, and later removed almost 1 million names from their rolls. It is fairly easy to cull deadwood from lists due to consolidation at the state level—most deadwood is due to individuals moving within the state and poor communication between jurisdictions. (Also discuss with Chris Thomas, who masterminded the Michigan database for more information and a historical perspective.)

Regarding the question of whether the effect of this maintenance on fraud in Michigan can be quantified, Weiser would caution against drawing direct lines between list problems and fraud. Brennan has found various groups abusing the existence of list deadwood to make claims about fraudulent voting. This is analyzed in greater detail in the Brennan Center’s critique of a purge list produced by the NJ Republican party, and was illustrated by the purge list produced by the state of Florida. When compiling such lists and doing comparisons, sound statistical methods must be utilized, and often are not.

The NJ GOP created a list and asked NJ election officials to purge names of ineligible voters on it. Their list assumed that people appearing on the list twice had voted twice. Brennan found their assumptions shoddy and based on incorrect statistical practices, such as treating individuals with the same name and birthdays as duplicates, although this is highly unlikely according to proper statistical methods. Simply running algorithms on voter lists creates a number of false positives, does not provide an accurate basis for purging, and should not be taken as an indicator of fraud.

Regarding the Florida purge list, faulty assumptions caused the list to systematically exclude Hispanics while overestimating African Americans. Matching protocols required that race fields match exactly, despite inconsistent fields across databases.

The kinds of list comparisons that are frequently done to allege fraud are unreliable. Moreover, even if someone is on a voter list twice, that does not mean that voter has voted twice. That, in fact, is almost never the case.

Ultimately, even matching protocols without faulty assumptions will have a 4 percent to 35 percent error rate—that’s simply the nature of database work. Private industry has been working on improving this for years. Now that HAVA has introduced a matching requirement, even greater skepticism is called for in judging the accuracy of list maintenance.

#### Intimidation and Suppression

Brennan does not have a specific focus here, although they do come across it and have provided assistance on bills to prevent suppression and intimidation. They happen to have an extensive paper file of intimidating fliers and related stories from before the 2004 election. (They can supply copies after this week).

#### Challengers

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Brennan has analyzed cases where challenger laws have been beneficial and where they have been abused. See the decision and record from the 1982 NJ vs. RNC case for some of the history of these laws. Brennan is currently working on developing a model challenger law.

Weiser believes challenge laws with no requirement that the challenger have any specific basis for the challenge or showing of ineligibility are an invitation to blanket harassing challenges and have a range of pitfalls. State laws are vague and broad and often involve arcane processes such as where voters are required to meet a challenge within 5 days. There are incentives for political abuse, potential for delaying votes and disrupting the polls, and they are not necessarily directed toward the best result. Furthermore, when a voter receives a mailer alleging vote fraud with no basis, even the mere fact of a challenge can be chilling. A voter does not want to have to go through a quasi-court proceeding in order to vote.

Brennan recommends challenge processes that get results before election, minimize the burden for voters, and are restricted at polling place to challenges by poll workers and election officials, not voters. They believe limitless challenges can lead to pandemonium—that once the floodgates are open they won't stop.

Recommendations

**Intimidation**— Weiser believes Sen. Barak Obama's bill is a good one for combating voter harassment and deceptive practices. Many jurisdictions do not currently have laws prohibiting voter harassment and deceptive practices.

**Fraud**— Current state and federal codes seem sufficient for prosecuting fraud. Weiser doesn't consider them under-enforced, and sees no need for additional laws.

**Voter lists**— New legislation or regulations are needed to provide clear guidance and standards for generating voter lists and purging voters, otherwise states could wrongfully disenfranchise eligible voters.

**Challengers**—Challenge laws need to be reformed, especially ones that allow for pre-election mass challenges with no real basis. There is no one size fits all model for challenger legislation, but some bad models involving hurdles for voters lead to abuse and should be reformed. There should be room for poll workers to challenge fraudulent voters, but not for abuse.

Also useful would be recommendations for prosecutors investigating fraudulent activity, How should they approach these cases? How should they approach cases of large scale fraud/intimidation? While there is sufficient legislative cover to get at any election fraud activity, questions remain about what proper approaches and enforcement strategies should be.

**Interview with Bill Groth, Attorney for the Plaintiffs in Indiana Identification Litigation**  
February 22, 2006

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Fraud in Indiana

Indiana has never charged or prosecuted anyone for polling place fraud. Nor has any empirical evidence of *voter impersonation* fraud or dead voter fraud been presented. In addition, there is no record of any credible complaint about *voter impersonation* fraud in Indiana. State legislators signed an affidavit that said there had never been impostor voting in Indiana. At the same time, the Indiana Supreme Court has not necessarily required evidence of voter fraud before *approving* legislative attempts to address fraud.

The state attorney general has conceded that there is no concrete fraud in Indiana, but has instead referred to instances of fraud in other states. Groth filed a detailed motion to strike evidence such as John Fund's book relating to other states, arguing that none of that evidence was presented to the legislature and that it should have been in the form of sworn affidavits, so that it would have some indicia of verifiability.

Photo ID law

By imposing restrictive ID measures, Groth contends you will discourage 1,000 times more legitimate voters than illegitimate voters you might protect against. He feels the implementation of a REAL ID requirement is an inadequate justification for the law, as it will not affect the upcoming 2006 election where thousands of registered voters will be left without proper ID. In addition, he questions whether REAL ID will be implemented as planned in 2008 considering the backlash against the law so far. He also feels ID laws are unconstitutional because of inconsistent application.

Statewide database as remedy

Groth believes many problems will be addressed by the statewide database required under HAVA. To the extent that the rolls in Indiana are bloated, it is because state officials have not complied with NVRA list maintenance requirements. Thus, it is somewhat disingenuous for them to use bloated voter rolls as a reason for imposing additional measures such as the photo ID law. Furthermore, the state has ceded to the counties the obligation to do maintenance programs, which results in a hit or miss process (see discussion in reply brief, p 26 through p. 28).

Absentee fraud

To the extent that there has been an incidence of fraud, these have all been confined to absentee balloting. Most notably the East Chicago mayoral election case where courts found absentee voting fraud had occurred. See: *Pabey vs. Pastrick* 816 NE 2<sup>nd</sup> 1138 Decision by the Indiana Supreme Court in 2004.

Intimidation and vote suppression

Groth is only aware of anecdotal evidence supporting intimidation and suppression activities. While he considers the sources of this evidence credible, it is still decidedly anecdotal. Instances he is aware of include police cars parked in front of African American polling places. However,

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most incidents of suppression which are discussed occurred well in the past. Trevor Davidson claims a fairly large scale intimidation program in Louisville.

### Challengers

There was widespread information that the state Republican Party had planned a large scale challenger operation in Democratic precincts for 2004, but abandoned the plan at the last minute.

Last year the legislature made a crucial change to election laws which will allow partisan challengers to be physically inside the polling area next to members of the precinct board. Previously, challengers at the polling place have been restricted to the 'chute,' which provides a buffer zone between voting and people engaging in political activity. That change will make it much easier to challenge voters. As there is no recorded legislative history in Indiana, it is difficult to determine the justification behind this change. As both chambers and the governorship are under single-party control, the challenger statute was passed under the radar screen.

### Photo ID and Challengers

Observers are especially concerned about how this change will work in conjunction with the photo ID provision. Under the law, there are at least two reasons why a member of the precinct board or a challenger can raise object to an ID: whether a presented ID conforms to ID standards, and whether the photo on an ID is actually a picture of the voter presenting it. The law does not require bipartisan agreement that a challenge is valid. All it takes is one challenge to raise a challenge to that voter, and that will lead to the voter voting by provisional ballot.

Provisional ballot voting means that voter must make a second trip to the election board (located at the county seat) within 13 days to produce the conforming ID or to swear out an affidavit that they are who they claim to be. This may pose a considerable burden to voters. For example, Indianapolis and Marion County are coterminous—anyone challenged under the law will be required to make second trip to seat of government in downtown Indianapolis. If the voter in question did not have a driver's license in the first place, they will likely need to arrange transportation. Furthermore, in most cases the election result will already be known.

The law is vague about acceptable cause for challenging a voter's ID. Some requirements for valid photo ID include being issued by state or fed gov't, w/ expiration date, and the names must conform exactly. The League of Women Voters is concerned about voters with hyphenated names, as the Indiana DMV fails to put hyphens on driver's licenses potentially leading to a basis for challenge. Misspelling of names would also be a problem. The other primary mode of challenge is saying the photo doesn't look like the voter, which could be happen in a range of instances. Essentially, the law gives unbridled discretion to challengers to decide what conforms and what does not.

Furthermore, there is no way to determine whether a challenge is in good or bad faith, and *there is* little penalty for making a bad faith challenge. The fact that there are no checks on the challenges at the precinct level, or even a requirement of concurrence from an opposing party

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challenger leads to the concern that challenge process will be abused. The voter on the other hand, will need to get majority approval of county election board members to defeat the challenge.

Groth suggests the political situation in Indianapolis also presents a temptation to abuse this process, as electoral margins are growing increasingly close due to shifting political calculus.

Other cases

Groth's other election law work has included a redistricting dispute, a dispute over ballot format, NVRA issues, and a case related to improper list purging, but nothing else related to fraud or intimidation. The purging case involved the election board attempting to refine its voter list by sending registration postcards to everyone on the list. When postcards didn't come back they wanted to purge those voters. Groth blames this error more on incompetence, than malevolence, however, as the county board is bipartisan. (The Indiana Election Commission and the Indiana election division are both bipartisan, but the 92 county election boards which will be administering photo id are controlled by one political party or the other—they are always an odd number, with the partisan majority determined by who controls the clerk of circuit court office.)

Recommendations

Supports nonpartisan administration of elections. Indiana specific recommendations including a longer voting day, time off for workers to vote, and an extended registration period.

He views the central problem of the Indiana photo ID law is that the list of acceptable forms of ID is too narrow and provides no fallback to voters without ID. At the least, he believes the state needs to expand the list so that most people will have at least one. If not, they should be allowed to swear an affidavit regarding their identity, under penalty of perjury/felony prosecution. This would provide sufficient deterrence for anyone considering impersonation fraud. He believes absentee ballot fraud should be addressed by requiring those voters to produce ID as well, as under HAVA.

His personal preference would be signature comparison. Indiana has never encountered an instance of someone trying to forge a name in the poll book, and while this leaves open the prospect of dead voters, that danger will be substantially diminished by the statewide database. But if we are going to have some form of ID, he believes we should apply it to everyone and avoid disenfranchisement, provided they swear an affidavit.

**Interview with Neil Bradley, February 21, 2004**

Voter Impersonation Cases (issue the Georgia ID litigation revolves around)

Mr. Bradley asserted that Georgia Secretary of State Cox stated in the case at issue: that she clearly would know if there had been any instances of voter impersonation at the polls; that she works very closely with the county and local officials and she would have heard about voter

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impersonation from them if she did not learn about it directly; and that she said that she had not heard of "any incident"---which includes acts that did not rise to the level of an official investigation or charges.

Mr. Bradley said that it is also possible to establish if someone has impersonated another voter at the polls. Officials must check off the type of voter identification the voter used. Voters without ID may vote by affidavit ballot. One could conduct a survey of those voters to see if they in fact voted or not.

The type of voter fraud that involves impersonating someone else is very unlikely to occur. If someone wants to steal an election, it is much more effective to do so using absentee ballots. In order to change an election outcome, one must steal many votes. Therefore, one would have to have lots of people involved in the enterprise, meaning there would be many people who know you committed a felony. It's simply not an efficient way to steal an election.

Mr. Bradley is not aware of any instance of voter impersonation anywhere in the country except in local races. He does not believe it occurs in statewide elections.

Voter fraud and intimidation in Georgia

Georgia's process for preventing ineligible ex-felons from casting ballots has been improved since the Secretary of State now has the power to create the felon purge list. When this was the responsibility of the counties, there were many difficulties in purging felons because local officials did not want to have to call someone and ask if he or she was a criminal.

The State Board of Elections has a docket of irregularity complaints. The most common involve an ineligible person mailing in absentee ballots on behalf of another voter.

In general, Mr. Bradley does not think voter fraud and intimidation is a huge problem in Georgia and that people have confidence in the vote. The biggest problems are the new ID law; misinformation put out by elections officials; and advertisements that remind people that vote fraud is a felony, which are really meant to be intimidating. Most fraud that does occur involves an insider, and that's where you find the most prosecutions. Any large scale fraud involves someone who knows the system or is in the courthouse.

Prosecution of Fraud and Intimidation

Mr. Bradley stated that fraud and intimidation are hard to prosecute. However, Mr. Bradley made contradictory statements. When asked whether the decision to prosecute on the county level was politically motivated, he first said "no." Later, Mr. Bradley reversed himself stating the opposite.

Mr. Bradley also stated that with respect to US Attorneys, the message to them from the top is that this is not a priority. The Georgia ACLU has turned over information about violations of the Voting Rights Act that were felonies, and the US Attorney has done nothing with the information. The Department of Justice has never been very aggressive in pursuing cases of vote suppression, intimidation and fraud. But, the Georgia ACLU has not contacted Craig Donsanto

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in DC with information of voter fraud.

Mr. Bradley believes that voter fraud and intimidation is difficult to prove. It is very hard to collect the necessary factual evidence to make a case, and doing so is very labor-intensive.

Recommendations

In Georgia, the Secretary of State puts a lot of work into training local officials and poll workers, and much of her budget is put into that work. Increased and improved training of poll workers, including training on how to respectfully treat voters, is the most important reform that could be made.

Mr. Bradley also suggested that increased election monitoring would be helpful.

**Interview with Justice Evelyn Stratton, Supreme Court of Ohio**

February 17, 2006

The 2004 Election

Justice Stratton stated that usually in the period right before an election filings die down due to the Ohio expedited procedures for electoral challenges. However, the 2004 election was unusual because there were motions and cases decided up to the day of the election. Justice Stratton believed that most of the allegations were knee-jerk reactions without any substance. For example, without any factual claims, suit was brought alleging that all voter challengers posed a threat to voters. Thematically, allegations were either everyday voting problems or "conspiracies" depending on where the complaint came from. The major election cases in 2004 revolved around Secretary of State Blackwell.

Justice Stratton made a point that the Ohio Supreme Court bent over backwards in the 2004 election to be fair to both sides. There was never any discussion about a ruling helping one political party more than the other.

Justice Stratton cited two cases that summarize and refute the 2004 complaints---819 NE 2d 1125 (Ohio 2004) and 105 Ohio St. 3d 458 (2004).

General Election Fraud Issues

Justice Stratton has seen very few fraud cases in Ohio. Most challenges are for technical statutory reasons. She remembered one instance where a man who assisted handicapped voters marked the ballot differently than the voter wanted. Criminal charges were brought against this man and the question that the Ohio Supreme Court had to decide was whether ballots could be opened and inspected to see how votes were cast.

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Justice Stratton claimed she knew of isolated incidences of fictitious voter registration but these were not prosecuted. She has not seen any evidence of ballots being stuffed, dead people voting, etc.

Suggestions for Changes in Voting Procedures

The Ohio Supreme Court is very strict about laches---if a person sits on their rights too long, they loose the right to file suit. The Ohio expedited procedures make election challenges run very smooth. Justice Stratton does not remember any suits brought on the day of the election. She supports a non-partisan head of state elections. Justice Stratton believes that last minute challenges should not be permitted and that lower courts need to follow the rules for the expedited procedures. Even given the anomalies with lower courts permitting late election challenges in 2004, the Ohio Supreme Court does not want to make a new rule unless this pattern repeats itself in 2008.

**Interview with Tony Sirvello, Executive Director, IACREOT**

April 12, 2006

Biographical

Sirvello is currently the executive director of the International Association of Clerks, Recorders, Election Officials and Treasurers, an organization of 1700 members. Formerly, he ran elections in Harris County, Texas for 29 years.

Incidents of Election Fraud

Sirvello stated that one problem with election crimes is that they are not high on the priority list of either district attorneys or grand juries. Therefore, complaints of election crime very rarely are prosecuted or are indicted by the grand jury. In 1996 in Harris County, 14 people voted twice but the grand jury refused to indict. One woman voted twice, once during early voting and once on Election Day. She said she thought there were two elections. The jury believed her. Sirvello believes none of the people intentionally voted more than once. He said that he believes double voting is not as big of an issue as people make it out to be.

In 1986, it was found that there were 300 more ballots than voter signatures. It was clear that the elections officials stuffed the ballot boxes. The case was brought before a grand jury, but there was no indictment because all of the defendants were friends and relatives of each other and none would admit what had been done.

Sirvello stated that there have been isolated circumstances where a voter would show up at the poll and his name had already been signed and he had voted.

Finally, Sirvello indicated that some people who worked in Houston but did not live in Harris County were permitted to vote.

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Specific Absentee Ballot/Vote By Mail Issues

Sirvello said that mail voting presents the largest problem. With mail voting there is too much opportunity to influence voters or to fraudulently request a ballot.

If one applied for an absentee ballot, their name and address was made available to candidates and political consultants who would often send people to collect the ballot. Many did not want to give up the ballot but wanted to mail it personally. The result was to discourage voting.

In Texas, a person could only apply for an absentee ballot if over 65 years of age. Parties, candidates and consultants would get the list of voters over 65 and send them a professional mail piece telling them they could vote by mail and a ballot with everything filled out except the signature. Problems ensued -- for example, voters would print their names rather than sign them, and the ballot was rejected. In other cases, the elderly would give their absentee ballot to someone else.

If a person applied for an absentee ballot but then decided not to cast it but to vote in person, that person had to bring the non-voted absentee ballot to the poll and surrender it. If they did not they would not be permitted to vote at the polling place.

Incidents of Voter Intimidation

Sirvello only reported isolated cases of intimidation or suppression in Harris County. These mostly occurred in Presidential elections. Some people perceived intimidation when being told they were not eligible to vote under the law. Sirvello stated that the big issue in elections now is whether there should be a paper trail for touch screen voting.

Recommendations

District attorneys need to put more emphasis on election crime so people will not believe that it goes unpunished.

There should be either a national holiday for Election Day or a day should be given off of work without counting as a vacation day so that better poll workers are available and there can be more public education on election administration procedures.

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**Appendix "3"  
Summaries of Interviews**

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Wade Henderson, Executive Director, Leadership Conference for Civil Rights

Data Collection

Mr. Henderson had **several recommendations as to how to better gather additional information and data on election fraud and intimidation in recent years.** He suggested interviewing the following individuals who have been actively involved in Election Protection and other similar efforts:

- Jon Greenbaum, Lawyers Committee for Civil Rights
- Tanya Clay, People for the American Way
- Melanie, Campbell, National Coalition for Black Political Participation
- Larry Gonzalez, National Association of Latino Election Officers
- Jacqueline Johnson, National Congress of American Indians
- Chellie Pingree, Common Cause
- Jim Dickson, disability rights advocate
- Mary Berry, former Chair of the US Commission on Civil Rights, currently at the University of Pennsylvania
- Judith Browne and Eddie Hailes, Advancement Project (former counsel to the US Commission on Civil Rights)
- Robert Rubin, Lawyers Committee for Civil Rights – San Francisco Office
- Former Senator Tom Daschle (currently a fellow at The Center for American Progress)

He also recommended we **review the following documents and reports:**

- The 2004 litigation brought by the Advancement Project and SEIU under the 1981 New Jersey Consent Decree
- Forthcoming LCCR state-by-state report on violations of the Voting Rights Act
- Forthcoming Lawyers Committee report on violations of the Voting Rights Act (February 21)

Types of Fraud and Intimidation Occurring

Mr. Henderson said he believed that the kinds of **voter intimidation and suppression tactics employed over the last five years are ones that have evolved over many years.** They are **sometimes racially based, sometimes based on partisan motives.** He believes the **following types of activity have actually occurred, and are not just a matter of anecdote and innuendo, and rise to the level of either voter intimidation or vote suppression:**

- **Flyers with intentional misinformation, such as ones claiming that if you do not have identification, you cannot vote, and providing false dates for the election**
- **Observers with cameras, which people associate with potential political retribution or even violence**
- **Intimidating police presence at the polls**
- **Especially in jurisdictions that authorize challenges, the use of challenge lists and challengers goes beyond partisanship to racial suppression and intimidation**
- **Unequal deployment of voting equipment, such as occurred in Ohio. Also, he has seen situations in which historically Black colleges will have one voting machine while other schools will have more.**

Mr. Henderson believes that **these matters are not pursued formally because often they involve activities that current law does not reach.** For example, there is no law prohibiting a Secretary of State from being the head of a political campaign, and then deploying voting machines in an uneven manner. There is no way to pursue that. Also, **once the election is over, civil litigation becomes moot.** Finally, sometimes upon reflection **after the campaign, some of the activities are not as sinister as believed at the time.**

Mr. Henderson believes **government does not engage in a sustained investigation of these matters or pursue any kind of resolution to**

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**them.** LCCR has filed a FOIA request with both the Civil Rights Division and the Criminal Division of the Department of Justice to examine this issue.

Election Protection activities will be intensified for the 2006 elections, although the focus may shift somewhat given the implementation of new HAVA requirements.

Recommendations for Reform

There was tremendous concern after the 2004 election about conflicts of interest – the “Blackwell problem” – whereby a campaign chair is also in charge of the voting system. We need to get away from that.

He also **supports Senator Barak Obama’s bill regarding deceptive practices**, and is opposed to the voter identification laws passing many state legislatures.

- States should adopt **election-day registration**, in order to boost turnout as well as to allow eligible voters to immediately rectify erroneous or improperly purged registration records
- **Expansion of early voting & no-excuse absentee voting**, to boost turnout and reduce the strain on election-day resources.
- **Provisional ballot reforms:**
  - Should be **counted statewide** – if cast in the wrong polling place, votes should still be counted in races for which the voter was eligible to vote (governor, etc.)
  - Provisional ballots should also **function as voter registration applications**, to increase the likelihood that voters will be properly registered in future elections
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- **Prohibit chief state election officials from simultaneously participating in partisan electoral campaigns** within their states
- Create and enforce **strong penalties for deceptive or misleading voting practices**

Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center

Brennan Center findings on fraud

The Brennan Center’s primary work on fraud is their report for the Carter Baker Commission with commissioner Spencer Overton, written in response to the Commission’s ID recommendations. Brennan reviewed all existing reports and election contests related to voter fraud. They believe the contests serve as an especially good record of whether or not fraud exists, as the parties involved in contested elections have a large incentive to root out fraudulent voters. Yet despite this, the incidence of voter impersonation fraud discovered is extremely low—something on the order 1/10000<sup>th</sup> of a percentage of voters. See also the brief Brennan filed on 11<sup>th</sup> circuit in Georgia photo ID case which cites sources in Carter Baker report and argues the incidence of voter fraud too low to justify countermeasures.

Among types of fraud, they found **impersonation, or polling place fraud, is probably the least frequent type, although other types, such as absentee ballot fraud are also very infrequent. Weiser believes this is because impersonation fraud is more likely to be caught and is therefore not worth the risk. Unlike in an absentee situation, actual poll workers are present to disrupt impersonation fraud, for instance, by catching the same individual voting twice. She believes perhaps one half to one quarter of the time the person will be caught.** Also, there is a chance the poll worker will have personal knowledge of the person. Georgia Secretary of State Cathy Cox has mentioned that there are many opportunities for discovery of in person fraud as well. For example, **if one votes in the name of another voter,**

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**and that voter shows up at the polls, the fraud will be discovered.**

Weiser believes court proceedings in election contests are especially useful. Some are very extensive, with hundreds of voters brought up by each side and litigated. In both pre-election challenges and post-election contests, **parties have devoted extraordinary resources into 'smoking out' fraudulent voters.** Justin Leavitt at Brennan scoured such proceedings for the Carter Baker report, which includes these citations. Contact him for answers to particular questions.

Countermeasures/statewide databases

Brennan has also considered what **states are doing to combat impersonation fraud besides photo ID laws**, although again, it seems to be the rarest kind of fraud, beyond statistically insignificant. In the **brief Brennan filed in the Georgia case, the Center detailed what states are already doing to effectively address fraud.** In another **on the web site includes measures that can be taken that no states have adopted yet.** Weiser adds that an effort to look at strategies states have to prevent fraud, state variations, effectiveness, ease of enforcement would be very useful.

Weiser believes the **best defense against fraud will be better voter lists**—she argues the fraud debate is actually premature because states have yet to fully implement the HAVA database requirement. This should eliminate a great deal of 'deadwood' on voter rolls and undermine the common argument that fraud is made possible by this deadwood. This was the experience for Michigan, which was able to remove 600,000 names initially, and later removed almost 1 million names from their rolls. It is fairly easy to cull deadwood from lists due to consolidation at the state level—most deadwood is due to individuals moving within the state and poor communication between jurisdictions. (Also discuss with Chris Thomas, who masterminded the Michigan database for more information and a historical perspective.)

Regarding the question of whether the effect of this maintenance on fraud in Michigan can be quantified, Weiser would caution against drawing direct lines between list problems and fraud. **Brennan has found various groups abusing the existence of list deadwood to make claims about fraudulent voting.** This is analyzed in greater detail in the Brennan Center's critique of a purge list produced by the NJ Republican party, and was illustrated by the purge list produced by the state of Florida. **When compiling such lists and doing comparisons, sound statistical methods must be utilized, and often are not.**

**The NJ GOP created a list and asked NJ election officials to purge names of ineligible voters on it. Their list assumed that people appearing on the list twice had voted twice. Brennan found their assumptions shoddy and based on incorrect statistical practices, such as treating individuals with the same name and birthdays as duplicates,** although this is highly unlikely according to proper statistical methods. **Simply running algorithms on voter lists creates a number of false positives, does not provide an accurate basis for purging, and should not be taken as an indicator of fraud.**

Regarding the Florida purge list, **faulty assumptions caused the list to systematically exclude Hispanics while overestimating African Americans. Matching protocols required that race fields match exactly, despite inconsistent fields across databases.**

The kinds of list comparisons that are frequently done to allege fraud are unreliable. Moreover, **even if someone is on a voter list twice, that does not mean that voter has voted twice. That, in fact, is almost never the case.**

Ultimately, **even matching protocols without faulty assumptions will have a 4 percent to 35 percent error rate—that's simply the nature of database work. Private industry has been working on improving this for years. Now that HAVA has introduced a matching requirement, even greater skepticism is called for in judging the accuracy of list maintenance.**

Intimidation and Suppression

Brennan does not have a specific focus here, although they do come across it and have provided assistance on bills to prevent suppression and intimidation. They happen to have an **extensive paper file of intimidating fliers and related stories from before the 2004 election.** (They can supply copies after this week).

Challengers

**Brennan has analyzed cases where challenger laws have been beneficial and where they have been abused. See the decision and record**

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from the 1982 NJ vs. RNC case for some of the history of these laws. **Brennan is currently working on developing a model challenger law.** Weiser believes challenge laws with no requirement that the challenger have any specific basis for the challenge or showing of ineligibility are an invitation to blanket harassing challenges and have a range of pitfalls. State laws are vague and broad and often involve arcane processes such as where voters are required to meet a challenge within 5 days. There are incentives for political abuse, potential for delaying votes and disrupting the polls, and they are not necessarily directed toward the best result. Furthermore, when a voter receives a mailer alleging vote fraud with no basis, even the mere fact of a challenge can be chilling. A voter does not want to have to go through a quasi-court proceeding in order to vote.

Brennan recommends challenge processes that get results before election, minimize the burden for voters, and are restricted at polling place to challenges by poll workers and election officials, not voters. They believe limitless challenges can lead to pandemonium—that once the floodgates are open they won't stop.

Recommendations

- **Intimidation**— Weiser believes Sen. Barak Obama's bill is a good one for combating voter harassment and deceptive practices. Many jurisdictions do not currently have laws prohibiting voter harassment and deceptive practices.
- **Fraud**— Current state and federal codes seem sufficient for prosecuting fraud. Weiser doesn't consider them under-enforced, and sees no need for additional laws.
- **Voter lists**— New legislation or regulations are needed to provide clear guidance and standards for generating voter lists and purging voters, otherwise states could wrongfully disenfranchise eligible voters.
- **Challengers**—Challenge laws need to be reformed, especially ones that allow for pre-election mass challenges with no real basis. There is no one size fits all model for challenger legislation, but some bad models involving hurdles for voters lead to abuse and should be reformed. There should be room for poll workers to challenge fraudulent voters, but not for abuse.

Also useful would be recommendations for prosecutors investigating fraudulent activity, How should they approach these cases? How should they approach cases of large scale fraud/intimidation? While there is sufficient legislative cover to get at any election fraud activity, questions remain about what proper approaches and enforcement strategies should be.

William Groth, attorney for the plaintiffs in the Indiana voter identification litigation

Fraud in Indiana

Indiana has never charged or prosecuted anyone for polling place fraud. Nor has any empirical evidence of voter impersonation fraud or dead voter fraud been presented. In addition, there is no record of any credible complaint about voter impersonation fraud in Indiana. State legislators signed an affidavit that said there had never been impostor voting in Indiana. At the same time, the Indiana Supreme Court has not necessarily required evidence of voter fraud before approving legislative attempts to address fraud.

The state attorney general has conceded that there is no concrete fraud in Indiana, but has instead referred to instances of fraud in other states. Groth filed a detailed motion to strike evidence such as John Fund's book relating to other states, arguing that none of that evidence was presented to the legislature and that it should have been in the form of sworn affidavits, so that it would have some indicia of verifiability.

Photo ID law

By imposing restrictive ID measures, Groth contends you will discourage 1,000 times more legitimate voters than illegitimate voters you might protect against. He feels the implementation of a REAL ID requirement is an inadequate justification for the law, as it will not affect the upcoming 2006 election where thousands of registered voters will be left without proper ID. In addition, he questions whether REAL ID will be

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implemented as planned in 2008 considering the backlash against the law so far. **He also feels ID laws are unconstitutional because of inconsistent application.**

Statewide database as remedy

Groth believes **many problems will be addressed by the statewide database required under HAVA.** To the extent that the rolls in Indiana are bloated, it is because state officials have not complied with NVRA list maintenance requirements. Thus, it is somewhat disingenuous for them to use bloated voter rolls as a reason for imposing additional measures such as the photo ID law. Furthermore, the state has ceded to the counties the obligation to do maintenance programs, which results in a hit or miss process (see discussion in reply brief, p 26 through p. 28).

Absentee fraud

**To the extent that there has been an incidence of fraud, these have all been confined to absentee balloting.** Most notably the East Chicago mayoral election case where courts found absentee voting fraud had occurred. See: Pabey vs. Pastrick 816 NE 2<sup>nd</sup> 1138 Decision by the Indiana Supreme Court in 2004.

Intimidation and vote suppression

**Groth is only aware of anecdotal evidence supporting intimidation and suppression activities.** While he considers the sources of this evidence credible, it is still decidedly anecdotal. Instances he is aware of include **police cars parked in front of African American polling places.** However, **most incidents of suppression which are discussed occurred well in the past.** Trevor Davidson claims a fairly large scale intimidation program in Louisville.

Challengers

There was **widespread information that the state Republican Party had planned a large scale challenger operation in Democratic precincts for 2004, but abandoned the plan at the last minute.**

Last year the legislature made a crucial change to election laws which will allow partisan challengers to be physically inside the polling area next to members of the precinct board. Previously, challengers at the polling place have been restricted to the 'chute,' which provides a buffer zone between voting and people engaging in political activity. That change will make **it much easier to challenge voters.** As there is no recorded legislative history in Indiana, it is difficult to determine the justification behind this change. As both chambers and the governorship are under single-party control, the challenger statute was passed under the radar screen.

Photo ID and Challengers

Observers are especially concerned **about how this change will work in conjunction with the photo ID provision.** Under the law, there are at least two reasons why a member of the precinct board or a challenger can raise object to an ID: whether a presented ID conforms to ID standards, and whether the photo on an ID is actually a picture of the voter presenting it. The law does not require bipartisan agreement that a challenge is valid. **All it takes is one challenge to raise a challenge to that voter, and that will lead to the voter voting by provisional ballot.**

**Provisional ballot voting means that voter must make a second trip to the election board (located at the county seat) within 13 days to produce the conforming ID or to swear out an affidavit that they are who they claim to be.** This may pose a considerable burden to voters. For example, Indianapolis and Marion County are coterminous—anyone challenged under the law will be required to make second trip to seat of government in downtown Indianapolis. If the voter in question did not have a driver's license in the first place, they will likely need to arrange transportation. Furthermore, in most cases the election result will already be known.

The law is **vague about acceptable cause for challenging a voter's ID.** Some requirements for valid photo ID include being issued by state or federal government, with expiration date, and the names must conform exactly. **The League of Women Voters is concerned about voters with hyphenated names, as the Indiana DMV fails to put hyphens on driver's licenses potentially leading to a basis for challenge.** Misspelling of names would also be a problem. The other primary mode of challenge is saying the photo doesn't look like the voter, which could be happen in a range of instances. Essentially, the law gives unbridled discretion to challengers to decide what conforms and what does not.

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Furthermore, there is **no way to determine whether a challenge is in good or bad faith, and *there is* little penalty for making a bad faith challenge.** The fact that there are no checks on the challenges at the precinct level, or even a requirement of concurrence from an opposing party challenger leads to the concern that challenge process will be abused. The voter on the other hand, will need to get majority approval of county election board members to defeat the challenge.

Groth suggests the political situation in Indianapolis also presents a temptation to abuse this process, as electoral margins are growing increasingly close due to shifting political calculus.

Other cases

Groth's other election law work has included a redistricting dispute, a dispute over ballot format, NVRA issues, and a case related to improper list purging, but nothing else related to fraud or intimidation. The purging case involved the election board attempting to refine its voter list by sending registration postcards to everyone on the list. When postcards didn't come back they wanted to purge those voters. Groth blames this error more on incompetence, than malevolence, however, as the county board is bipartisan. (The Indiana Election Commission and the Indiana election division are both bipartisan, but the 92 county election boards which will be administering photo id are controlled by one political party or the other—they are always an odd number, with the partisan majority determined by who controls the clerk of circuit court office.)

Recommendations

- **Supports nonpartisan administration of elections.**
- Indiana specific recommendations including a longer voting day, time off for workers to vote, and an extended registration period.
- He views the central problem of the Indiana photo ID law is that the list of acceptable forms of ID is too narrow and provides no fallback to voters without ID. At the least, he believes the state **needs to expand the list so that most people will have at least one.** If not, **they should be allowed to swear an affidavit regarding their identity, under penalty of perjury/felony prosecution. This would provide sufficient deterrence for anyone considering impersonation fraud. He believes absentee ballot fraud should be addressed by requiring those voters to produce ID as well, as under HAVA.**
- His personal preference would be **signature comparison.** Indiana has never encountered an instance of someone trying to forge a name in the poll book, and while this leaves open the prospect of dead voters, that danger will be substantially diminished by the statewide database. But if we are going to have some form of ID, he believes we should apply it to everyone and avoid disenfranchisement, provided they swear an affidavit.

Lori Minnite, Barnard College, Columbia University

Securing the Vote

In Securing the Vote, Ms. Minnite found very little evidence of voter fraud because the historical conditions giving rise to fraud have weakened over the past twenty years. She stated that for fraud to take root a conspiracy was needed with a strong local political party and a complicit voter administration system. Since parties have weakened and there has been much improvement in the administration of elections and voting technology, the conditions no longer exist for large scale incidents of polling place fraud. Ms. Minnite concentrates on fraud committed by voters not fraud committed by voting officials. She has looked at this issue on the national level and also concentrated on analyzing certain specific states. Ms. Minnite stressed that it is important to keep clear who the perpetrators of the fraud are and where the fraud occurs because that affects what the remedy should be. Often, voters are punished for fraud committed by voting officials.

Other Fraud Issues

Ms. Minnite found **no evidence that NVRA was leading to more voter fraud.** She supports non-partisan election administration. Ms.

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Minnite has found evidence that there is absentee ballot fraud. She can't establish that there is a certain amount of absentee ballot fraud or that it is the major kind of voter fraud.

Recommendations

- **Assure there are accurate voter records and centralize voter databases**
- **Reduce partisanship in electoral administration.**

Neil Bradley, ACLU Voting Rights Project

Voter Impersonation Cases (issue the Georgia ID litigation revolves around)

Mr. Bradley asserted that Georgia **Secretary of State Cox** stated in the case at issue: that she clearly would know if there had been any instances of voter impersonation at the polls; that she works very closely with the county and local officials and she **would have heard about voter impersonation** from them if she did not learn about it directly; and that she said that she had not heard of "any incident"---which includes acts that did not rise to the level of an official investigation or charges.

Mr. Bradley said that it is also **possible to establish if someone has impersonated another voter at the polls. Officials must check off the type of voter identification the voter used. Voters without ID may vote by affidavit ballot. One could conduct a survey of those voters to see if they in fact voted or not.**

The type of **voter fraud that involves impersonating someone else is very unlikely to occur.** If someone wants to steal an election, it is **much more effective to do so using absentee ballots.** In order to change an election outcome, one must steal many votes. Therefore, one would have to have lots of people involved in the enterprise, meaning there would be many people who know you committed a felony. It's simply not an efficient way to steal an election.

Mr. Bradley is not **aware of any instance of voter impersonation anywhere in the country except in local races. He does not believe it occurs in statewide elections.**

Voter fraud and intimidation in Georgia

Georgia's **process for preventing ineligible ex-felons from casting ballots has been improved** since the Secretary of State now has the power to create the felon purge list. When this was the responsibility of the counties, there were many difficulties in purging felons because local officials did not want to have to call someone and ask if he or she was a criminal.

**The State Board of Elections has a docket of irregularity complaints. The most common involve an ineligible person mailing in absentee ballots on behalf of another voter.**

In general, Mr. Bradley **does not think voter fraud and intimidation is a huge problem in Georgia** and that people have confidence in the vote. The biggest problems are the new ID law; misinformation put out by elections officials; and **advertisements that remind people that vote fraud is a felony, which are really meant to be intimidating. Most fraud that does occur involves an insider, and that's where you find the most prosecutions. Any large scale fraud involves someone who knows the system or is in the courthouse.**

Prosecution of Fraud and Intimidation

Mr. Bradley stated that **fraud and intimidation are hard to prosecute.** However, Mr. Bradley made contradictory statements. When asked whether the decision to prosecute on the county level was politically motivated, he first said "no." Later, Mr. Bradley reversed himself stating the opposite.

Mr. Bradley also stated that **with respect to US Attorneys, the message to them from the top is that this is not a priority. The Georgia ACLU has turned over information about violations of the Voting Rights Act that were felonies, and the US Attorney has done nothing with the information. The Department of Justice has never been very aggressive in pursuing cases of vote suppression, intimidation**

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**and fraud.** But, the Georgia ACLU has not contacted Craig Donsanto in DC with information of voter fraud. Mr. Bradley believes that **voter fraud and intimidation is difficult to prove. It is very hard to collect the necessary factual evidence to make a case, and doing so is very labor-intensive.**

Recommendations

In Georgia, the Secretary of State puts a lot of work into training local officials and poll workers, and much of her budget is put into that work. **Increased and improved training of poll workers**, including training on how to respectfully treat voters, is the most important reform that could be made. Mr. Bradley also suggested that **increased election monitoring** would be helpful.

Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

Ms. Perales **did not seem to have a sense of the overall electoral issues in her working region (the southwest) effecting Hispanic voters and did not seem to want to offer her individual experiences** and work activities as necessarily a perfect reflection of the challenges Hispanic voters face.

Largest Election Problems Since 2000

- **Santa Anna County, New Mexico-2004-intimidated voters by video taping them.**
- **San Antonio-One African American voter subjected to a racial slur.**
- **San Antonio-Relocated polling places at the last minute without Section 5 pre-clearance.**
- **San Antonio-Closed polls while voters were still in line.**
- **San Antonio-2003-only left open early voting polls in predominantly white districts.**
- **San Antonio-2005-racially contested mayoral run-off election switched from touch screen voting to paper ballots.**

Voter Fraud and Intimidation

In Texas, the counties are refusing to open their records with respect to **Section 203 compliance (bilingual voting assistance)**, and those that did respond to MALDEF's request submitted incomplete information. Ms. Perales **believes this in itself is a form of voter intimidation.**

Ms. Perales said it is **hard to say if the obstacles minorities confront in voting are a result of intentional acts or not because the county commission is totally incompetent.** There have continuously been problems with too few ballots, causing long lines, especially in places that had historically lower turnout. There is no formula in Texas for allocating ballots – each county makes these determinations.

When there is not enough language assistance at the polls, **forcing a non-English speaker to rely on a family member to vote, that can suppress voter turnout.**

Ms. Perales is **not aware of deceptive practices or dirty tricks targeted at the Latino community.**

There have been **no allegations of illegal noncitizen voting in Texas.** Indeed, the sponsor of a bill that would require **proof of citizenship to vote could not provide any documentation of noncitizen voting in support of the bill.** The bill was defeated in part because of the racist comments of the sponsor. In Arizona, such a measure was passed. Ms. Perales was only **aware of one case of noncitizen voting in Arizona, involving a man of limited mental capacity who said he was told he was allowed to register and vote.** Ms. Perales believes **proof of citizenship requirements discriminate against Latinos.**

Recommendations

Ms. Perales feels the **laws are adequate**, but that **her organization does not have enough staff to do the monitoring necessary. This could be done by the federal government.** However, even though the Department of Justice is focusing on Section 203 cases now, they have not even begun to scratch the surface. Moreover, the **choices DOJ has made with respect to where they have brought claims do not seem to be based on any systematic analysis of where the biggest problems are.** This may be because the administration is so ideological and partisan.

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Ms. Perales **does not believe making election administration nonpartisan would have a big impact.** In Texas, administrators are appointed in a nonpartisan manner, but they still do not always have a nonpartisan approach. Each administrator tends to promote his or her personal view regardless of party.

Pat Rogers, attorney, New Mexico

Major issues in NM w/ regard to vote fraud

**Registration fraud seems to be the major issue**, and while the legislature has taken some steps, Rogers is skeptical of the effect they will have, considering the history of unequal application of election laws. He also believes there are **holes in the 3<sup>rd</sup> party registration requirement deadlines.**

Rogers **views a national law requiring ID as the best solution to registration problems.** Rather than imposing a burden he contends it will enhance public confidence in the simplest way possible.

Registration Fraud in 2004 election

It came to light that **ACORN had registered a 13 year old. The father was an APD officer and received the confirmation, but it was sent to the next door address, a vacant house. They traced this to an ACORN employee and it was established that this employee had been registering others under 18.**

Two weeks later, in a crack cocaine bust of Cuban nationals, one of those raided said his job was registering voters for ACORN, and the police found signatures in his possession for fictitious persons.

**In a suspicious break-in at an entity that advertised itself as nonpartisan, only GOP registrations were stolen.**

In another instance, a college student was allegedly fired for registering too many Republicans.

Rogers said he **believed these workers were paid by the registration rather than hourly.**

There have been **no prosecution or convictions related to these incidents.** In fact, there have been no prosecutions for election fraud in New Mexico in recent history. However, Rogers is skeptical that much action can be expected considering the positions of Attorney General, Governor, and Secretary of State are all held by Democrats. Nor has there been any interest from the U.S. attorney—**Rogers heard that U.S. attorneys were given instruction to hold off until after the election in 2004 because it would seem too political.**

As part of the case against the Secretary of State regarding the identification requirement, the parties also sued ACORN. At a hearing, the head of ACORN, and others aligned with the Democratic Party called as witnesses, took the 5<sup>th</sup> on the stand as to their registration practices.

Other incidents

**Very recently, there have been reports of vote buying in the town of Espanola. Originally reported by the *Rio Grande Sun*, a resident of a low-income housing project is quoted as saying it has been going on for 10-12 years. The Albuquerque Journal is now reporting this as well. So far the investigation has been extremely limited.**

**In 1996, there were some prosecutions in Espanola, where a state district judge found registration fraud.**

**In 1991, the chair of Democratic Party of Bertolino County was convicted on fraud. Yet she was pardoned by Clinton on same day as Marc Rich.**

Intimidation/Suppression

Rogers believes the most notable example of intimidation in the 2004 election was the discovery of a DNC Handbook from Colorado advising Democratic operatives to widely report intimidation regardless of confirmation in order to gain media attention.

In-person polling place fraud

There have **only been isolated instances of people reporting that someone had voted in their name, and Rogers doesn't believe there is any large scale conspiracy.** Yet he contends that perspective misses the larger point of voter confidence. Although there has been a large

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public outcry for voter ID in New Mexico, it has been deflected and avoided by Democrats.

In 2004, there were more Democratic lawyers at the polls than there are lawyers in New Mexico. Rogers believes these lawyers had a positive impact because they deterred people from committing bad acts.

Counting Procedures

The **Secretary of State has also taken the position that canvassing of the vote should be done in private.** In NM, they have a 'county canvas' where they review and certify, after which all materials—machine tapes, etc.—are centralized with the Secretary of State who does a final canvass for final certification. Conducting this in private is a serious issue, especially considering the margin in the 2000 presidential vote in New Mexico was only 366 votes. **They wouldn't be changing machine numbers, but paper numbers are vulnerable.**

On a related note, NM has adopted state procedures that will ensure their reports are slower and very late, considering the 2000 late discovery of ballots. In a close race, potential for fraud and mischief goes up astronomically in the period between poll closing and reporting. Rogers believes these changes are going to cause national embarrassment in the future.

Rogers attributes other harmful effects to what he terms the Secretary of State's incompetence and inability to discern a nonpartisan application of the law. **In the 2004 election, no standards were issued for counting provisional ballots.** Furthermore, the Secretary of State spent over \$1 million of HAVA money for 'voter education' in blatant self-promotional ads.

Recommendations

- Rogers believes it would be unfeasible to have nonpartisan election administration and favors transparency instead. To make sure people have confidence in the election, there must be transparency in the whole process. Then you don't have the 1960 vote coming down to Illinois, or the Espanola ballot or Dona Anna County (ballots found there in the 2000 election). HAVA funds should also be restricted when you have an incompetent, partisan Secretary of State.
- There should be national standards for reporting voting results so there is less opportunity for fraud in a close race. Although he is not generally an advocate of national laws, he does agree there should be more national uniformity into how votes are counted and recorded.

Rebecca Vigil-Giron, Secretary of State, New Mexico

Complaints of election fraud and intimidation are filed with the SOS office. She then decides whether to refer it to the local district attorney or the attorney general. Because the complaints are few and far between, the office does not keep a log of complaints; however, they do have all of the written complaints on file in the office.

Incidents of Fraud and Intimidation

During the 2004 election, there were a couple of complaints of polling place observers telling people outside the polling place who had just voted, and then **the people outside were following the voters to their cars and videotaping them.** This happened in areas that are mostly second and third generation Latinos. The Secretary sent out the sheriff in one instance of this. The perpetrators moved to a different polling place. This was the **only incident of fraud or intimidation Vigil-Giron was aware of in New Mexico.**

There have **not been many problems on Native reservations because, unlike in many other states, in New Mexico the polling place is on the reservation and is run by local Native Americans.** Vigil-Giron said that it does not make sense to have non-Natives running those polls because it is necessary to have people there who can translate. Because most of the languages are unwritten, the HAVA requirement of accessibility through an audio device will be very helpful in this regard. Vigil-Giron said she was surprised to learn while testifying at the Voting Rights Act commission hearings of the lack of sensitivity to these issues and the common failure to provide assistance in language minority areas.

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In 2004 the U.S. Attorney, a Republican, suddenly announced he was launching an investigation into voter fraud without consulting the Secretary of State's office. After all of that, there was maybe one prosecution. Even the allegations involving third party groups and voter registration are often misleading. People doing voter registration drives encourage voters to register if they are unsure if they are already registered, and the voter does not even realize that his or her name will then appear on the voter list twice. The bigger problem is where registrations do not get forwarded to election administrators and the voter does not end up on the voting list on Election Day. This is voter intimidation in itself, Vigil-Giron believes. It is very discouraging for that voter and she wonders whether he or she will try again.

Under the bill passed in 2004, third parties are required to turn around voter registration forms very quickly between the time they get them and when they must be returned. If they fail to return them within 48 hours of getting them, they are penalized. This, Vigil-Giron believes, is unfair. She has tried to get the Legislature to look at this issue again.

Regarding allegations of vote buying in Espanola, Vigil-Giron said that the Attorney General is investigating. The problem in that area of New Mexico is that they are still using rural routes, so they have not been able to properly district. There has, as a result, been manipulation of where people vote. Now they seem to have pushed the envelope too far on this. The investigation is not just about vote buying, however. There have also been allegations of voters being denied translators as well as assistance at the polls.

Vigil-Giron believes there was voter suppression in Ohio in 2004. County officials knew thirty days out how many people had registered to vote, they knew how many voters there would be. Administrators are supposed to use a formula for allocation of voting machines based on registered voters. Administrators in Ohio ignored this. As a result, people were turned away at the polls or left because of the huge lines. This, she believes, was a case of intentional vote suppression.

A few years ago, Vigil-Giron heard that there may have been people voting in New Mexico and a bordering town in Colorado. She exchanged information with Colorado administrators and it turned out that there were no cases of double voting.

Recommendations

- Vigil-Giron believes that linking voter registration databases across states may be a way to see if people who are registered twice are in fact voting twice.
- The key to improving the process is better trained poll workers, who are certified, and know what to look for on Election Day. These poll workers should then work with law enforcement to ensure there are no transgressions.
- There should be stronger teeth in the voter fraud laws. For example, it should be more than a fourth degree felony, as is currently the case.

Sarah Ball Johnson, Executive Director of the State Board of Elections, Kentucky

Procedures for Handling Fraud

Fraud complaints are directed first to the state Board of Elections. Unlike boards in other states, Kentucky's has no investigative powers. Instead, they work closely with both the Attorney General and the U.S. Attorney. Especially since the current administration took office, they have found the U.S. Attorney an excellent partner in pursuing fraud cases, and have seen many prosecutions in the last six years. She believes that there has been no increase in the incidence of fraud, but rather the increase in prosecutions is related to increased scrutiny and more resources.

Major Types of Fraud and Intimidation

Johnson says that vote buying and voter intimidation go hand in hand in Kentucky. While historically fraud activity focused on election day, in the last 20 years it has moved into absentee voting. In part, this is because new voting machines aren't easy to manipulate in the way

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that paper ballots were open to manipulation in the past, especially in distant rural counties. For this reason, she is troubled by the proliferation of states with early voting, but notes that there is a difference between absentee ballot and early voting on machines, which is far more difficult to manipulate.

Among the cases of absentee ballot fraud they have seen, **common practice involves a group of candidates conspiring together to elect their specific slate. Nursing homes are an especially frequent target.** Elderly residents request absentee ballots, and then workers show up and 'help' them vote their ballots. **Though there have been some cases in the Eastern district of election day fraud, most have been absentee.**

Johnson argues that it is **hard to distinguish between intimidation and vote buying.** They have also **seen instances where civic groups and church groups intimidate members to vote in a specific manner, not for reward, but under threat of being ostracized or even telling them they will go to hell.**

While she is aware of allegations of intimidation by the parties regarding minority precincts in Louisville, the board hasn't received calls about it and there haven't been any prosecutions.

Challengers

**Challengers are permitted at the polls in Kentucky.** Each party is allowed two per location, and they must file proper paperwork. **There is a set list of defined reasons for which they can challenge a voter, such as residency, and the challengers must also fill out paperwork to conduct a challenge.**

As for allegations of challengers engaging in intimidation in minority districts, Johnson notes that challengers did indeed register in Jefferson County, and filed the proper paperwork, although they ultimately did not show up on election day.

She finds that **relatively few challengers end up being officially registered, and that the practice has grown less common in recent years.** This is due more to a change of fashion than anything. And after all, **those wishing to affect election outcomes have little need for challengers in the precinct when they can target absentee voting instead.**

**In the event that intimidation is taking place, Kentucky has provisions to remove disruptive challengers, but this hasn't been used to her knowledge.**

Prosecutions

**Election fraud prosecutions in Kentucky have only involved vote buying.** This may be because that it is easier to investigate, by virtue of a cash and paper trail which investigators can follow. It is difficult to quantify any average numbers about the practice from this, due in part to the five year statute of limitations on vote buying charges. However, she does not believe that vote-buying is pervasive across the state, but rather confined to certain pockets.

Vote-hauling Legislation

**Vote hauling is a common form of vote buying by another name. Individuals are legally paid to drive others to the polls, and then divide that cash in order to purchase votes.** Prosecutions have confirmed that vote hauling is used for this purpose. While the Secretary of State has been committed to legislation which would ban the practice, it has failed to pass in the past two sessions.

Paying Voter Registration Workers Legislation

**A law forbidding people to pay workers by the voter registration card or for obtaining cards with registrations for a specific party was passed this session.** Individuals working as part of a registration campaign may still be paid by hour. Kentucky's experience in the last presidential election illustrates the problems arising from paying individuals by the card. That contest included a constitutional amendment to ban gay marriage on the ballot, which naturally attracted the attention of many national groups. **One group paying people by the card resulted in the registrar being inundated with cards, including many duplicates in the same bundle, variants on names, and variants on addresses. As this practice threatens to overwhelm the voter registration process, Kentucky views it as constituting malicious fraud.**

Deceptive practices

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**Other than general reports in the news, Johnson hasn't received any separate confirmation or reports of deceptive practices, i.e., false and misleading information being distributed to confuse voters.**

Effect of Kentucky's Database

Johnson believes Kentucky's widely praised voter registration database is a key reason why the state doesn't have as much fraud as it might, especially the types alleged elsewhere like double and felon voting. While no database is going to be perfect, the connections with other state databases such as the DMV and vital statistics have been invaluable in allowing them to aggressively purge dead weight and create a cleaner list. When parties use their database list they are notably more successful. Johnson wonders how other states are able to conduct elections without a similar system.

**Some factors have made especially important to their success.**

- **When the database was instituted in 1973, they were able to make everyone in the state re-register and thus start with a clean database. However, it is unlikely any state could get away with this today.**
- She is also a big supporter of a **full Social Security number standard**, as practiced in Kentucky. The full Social Security, which is compared to date of birth and letters in the first and last name, automatically makes matching far more accurate. The huge benefits Kentucky has reaped make Johnson skeptical of privacy concerns arguing for an abbreviated Social Security number. Individuals are willing to submit their Social Security number for many lesser purposes, so why not voting? And in any event, they **don't require a Social Security number to register (unlike others such as Georgia). Less than a percent of voters in Kentucky are registered under unique identifiers, which the Board of Elections then works to fill in the number through cross referencing with the DMV.**

Recommendations

- Johnson believes the backbone of effective elections administration must be **standardized procedures, strong record keeping, and detailed statutes. In Kentucky, all counties use the same database and the same pre election day forms. Rather than seeing that as oppressive, county officials report that the uniformity makes their jobs easier.**
- This philosophy extends to the **provisional ballot question**. While they did not have a standard in place like HAVA's at the time of enactment, they worked quickly to put a uniform standard in place.
- They have also **modified forms and procedures based on feedback from prosecutors**. Johnson believes a **key to enforcing voting laws is working with investigators and prosecutors and ensuring that they have the information they need to mount cases.**
- She also believes **public education** is important, and that **the media could do more to provide information about what is legal and what is illegal**. Kentucky tries to fulfill this role by **information in polling places, press releases, and high profile press conferences before elections. She notes that they deliberately use language focusing on fraud and intimidation.**
- Johnson is somewhat **pessimistic about reducing absentee ballot fraud**. Absentee ballots do have a useful function for the military and others who cannot get to the polling place, and motivated individuals **will always find a way to abuse the system if possible. At a minimum, however, she recommends that absentee ballots should require an excuse. She believes this has helped reduce abuse in Kentucky, and is wary of no-excuse practices in other states.**

Stephen Ansolobehere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Methodology suggestions

In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. **In criminology, experts use two sources:**

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the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that asks whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. Mr. Ansolobohere recommended Jonathan Krosnick, Doug Rivers, and Paul Sniderman at Stanford; Donald Kinder and Arthur Lupia at Michigan; Edward Carmines at Indiana; and Phil Tetlock at Berkeley. In the alternative, Mr. Ansolobohere suggested that the EAC might work with the Census Bureau to have them ask different, additional questions in their Voter Population Surveys. Mr. Chandler further suggested it is important to talk to private election lawyers, such as Randall Wood, who represented Ciro Rodriguez in his congressional election in Texas. Mr. Ansolobohere also recommended looking at experiments conducted by the British Election Commission.

Incidents of Fraud and Intimidation

Mr. Davidson's study for the Lawyers Committee for Civil Rights on the Voting Rights Act documented evidence of widespread difficulty in the voting process. However, he did not attempt to quantify whether this was due to intentional, malevolent acts. In his 2005 report on ballot security programs, he found that there were many allegations of fraud made, but not very many prosecutions or convictions. He saw many cases that did go to trial and the prosecutors lost on the merits.

In terms of voter intimidation and vote suppression, Mr. Davidson said he believes the following types of activities do occur:

- videotaping of voters' license plates;
- poll workers asking intimidating questions;
- groups of officious-looking poll watchers at the poll sites who seem to be some sort of authority looking for wrongdoing;
- spreading of false information, such as phone calls, flyers, and radio ads that intentionally mislead as to voting procedures.

Mr. Ansolobohere believes the biggest problem is absentee ballot fraud. However, many of these cases involve people who do not realize what they are doing is illegal, for example, telling someone else how to vote. Sometimes there is real illegality occurring however.

For example:

- vote selling involving absentee ballots,
- the filling out of absentee ballots en masse,
- people at nursing homes filling out the ballots of residents, and
- there are stories about union leaders getting members to vote a certain way by absentee ballot.

This problem will only get bigger as more states liberalize their absentee ballot rules. Mr. Chandler agreed that absentee ballot fraud was a major problem.

Recommendations

- Go back to "for cause" absentee ballot rules, because it is truly impossible to ever ensure the security of a mail ballot. Even in Oregon, there was a study showing fraud in their vote by mail system.
- False information campaigns should be combated with greater voter education. Los Angeles County's voter education program should be used as a model.

Tracey Campbell, author, *Deliver the Vote*

While less blatant than in previous eras, fraud certainly still occurs, and he mentions some examples in his book. The major trend of the past 60-70 years has been that these tactics have grown more subtle.

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While he hasn't conducted any scientific study of the current state of fraud, his sense as a historian is that it seems naive, after generations of watching the same patterns and practices influence elections, to view suspect election results today as merely attributable to simple error.

Vote-buying and absentee fraud

Campbell sees fraud by absentee ballot and vote buying as the greatest threats to fair elections today. He says vote fraud is like real estate: location, location, location—the closer you can keep the ballots to the courthouse the better. Absentee ballots create a much easier target for vote brokers who can manage voting away from the polling place, or even mark a ballot directly, in exchange for, say, \$50—or even more if an individual can bring their entire family. He has noted some small counties where absentee ballots outnumber in-person ballots.

However, few people engaged in this activity would call it 'purchasing' a vote. Instead, it is candidate Jones' way of 'thanking' you for a vote you would have cast in any event. The issue is what happens if candidate Smith offers you more. Likewise, the politicians who engage in vote fraud don't see it as a threat to the republic but rather as a game they have to play in order to get elected.

Regional patterns

Campbell suggests such practices are more prevalent in the South than the Northern states, and even more so compared to the West. The South has long been characterized as particularly dangerous in intimidation and suppression practices—throughout history, one can find routine stories of deaths at the polls each year. While he maintains that fraud seems less likely in the Western states, he sees the explosion of mail in and absentee ballots there as asking for trouble.

Poll site closings as a means to suppress votes

Campbell points to a long historical record of moving poll sites in order to suppress votes. Polling places in the 1800s were frequently set-up on rail cars and moved further down the line to suppress black votes.

He would include door-to-door canvassing practices here, as well as voting in homes, which was in use in Kentucky until only a few years ago. All of these practices have been justified as making polling places 'more accessible' while their real purpose has been to suppress votes.

Purge lists

Purge lists are, of course, needed in theory, yet Campbell believes the authority to mark names off the voter rolls presents extensive opportunity for abuse. For this reason, purging must be done in a manner that uses the best databases, and looks at only the most relevant information. When voters discover their names aren't on the list when they go to vote, for example, because they are "dead," it has a considerable demoralizing effect. Wrongful purging takes place both because of incompetence and as a tool to intentionally disenfranchise.

Campbell believes transparency is the real issue here. An hour after the polls close, we tend to just throw up our hands and look the other way, denying voters the chance to see that discrepancies are being rectified. He believes the cost in not immediately knowing election outcomes is a small price to pay for getting results right and showing the public a transparent process.

Deceptive practices

Today's deceptive practices have are solidly rooted in Reconstruction-era practices—i.e. phony ballots, the Texas 'elimination' ballot. The ability to confuse voters is a powerful tool for those looking to sway elections.

Language minorities

Campbell argues there is a fine line between offering help to non-English speakers and using that help against them. A related issue, particularly in the South, is taking advantage of the illiterate.

Current intimidation

Another tactic Campbell considers an issue today is polling place layout: the further vote suppressers can keep people away from the

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polls, the better. Practices such as **photographing people leaving a polling place** may also tie into vote-buying, where photos are used to intimidate and validate purchased votes. A good way to combat such practices is by keeping electioneering as far from the polls as possible.

Recommendations

- Specific voting administration recommendations Campbell advocates would include **reducing the use of absentee ballots and improving the protective zone around polling places.**
- Campbell would also like to see **enforcement against fraud stepped up and stiffer penalties enacted, as current penalties make the risk of committing fraud relatively low.** He compares the risk in election fraud similar to steroid use in professional sports—the potential value of the outcome is far higher than the risk of being caught or penalized for the infraction, so it is hard to prevent people from doing it. People need to believe they will pay a price for engaging in fraud or intimidation. Moreover, we need to have the will to kick people out of office if necessary.
- He is **skeptical of the feasibility of nonpartisan election administration**, as he believes it would be difficult to find people who care about politics yet won't lean one way or the other—such an attempt would be unlikely to get very far before accusations of partisanship emerged. He **considers the judiciary the only legitimate check on election fraud.**

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Litigation

Status of litigation in Indiana: On January 12 the briefing was completed. The parties are waiting for a decision from the U.S. district judge. The judge understood that one of the parties would seek a stay from the 7<sup>th</sup> Circuit Court of Appeals. The parties anticipate a decision in late March or early April. Mr. Webber did the discovery and depositions for the litigation. Mr. Webber feared the plaintiffs were going to state in their reply brief that HAVA's statewide database requirement would resolve the problems alleged by the state. However, the plaintiffs failed to do so, relying on a Motor Voter Act argument instead. **Mr. Webber believes that the voter ID at issue will make the system much more user-friendly for the poll workers.** The Legislature passed the ID legislation, and the state is defending it, on the basis of the problem of the *perception* of fraud.

Incidents of fraud and intimidation

Mr. Webber thinks that **no one can put his or her thumb on whether there has been voter fraud in Indiana.** For instance, **if someone votes in place of another, no one knows about it. There have been no prosecuted cases of polling place fraud in Indiana. There is no recorded history of documented cases, but it does happen.** In the litigation, he used articles from around the country about instances of voter fraud, but even in those examples there were ultimately no prosecutions, for example the case of Milwaukee. He also stated in the litigation that **there are all kinds of examples of dead people voting---totaling in the hundreds of thousands of votes across the country.**

One interesting **example of actual fraud in Indiana occurred when a poll worker, in a poll using punch cards, glued the chads back and then punched out other chads for his candidate.** But this would not be something that would be addressed by an ID requirement.

He also believes that the perception that the polls are loose can be addressed by the legislature. The legislature does not need to wait to see if the statewide database solves the problems and therefore affect the determination of whether an ID requirement is necessary. When he took the deposition of the Republican Co-Director, he said he thought Indiana was getting ahead of the curve. That is, there have been problems around the country, and confidence in elections is low. Therefore Indiana is now in front of getting that confidence back.

Mr. Webber stated that the **largest vote problem in Indiana is absentee ballots. Absentee ballot fraud and vote buying are the most documented cases.** It used to be the law that applications for absentee ballots could be sent anywhere. **In one case absentee votes were**

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exchanged for “a job on election day”---meaning one vote for a certain price. The election was contested and the trial judge found that although there was vote fraud, the incidents of such were less than the margin of victory and so he refused to overturn the election. Mr. Webber appealed the case for the state and argued the judge used the wrong statute. The Indiana Supreme Court agreed and reversed. **Several people were prosecuted as a result – those cases are still pending.**

Process

In Indiana, voter complaints first come to the attorney for the county election board who can recommend that a hearing be held. If criminal activity was found, the case could be referred to the county prosecutor or in certain instances to the Indiana Attorney General's Office. In practice, the Attorney General almost never handles such cases.

Mr. Webber has had experience training county of election boards in preserving the integrity and security of the polling place from political or party officials. Mr. Webber stated that the Indiana voter rolls need to be culled. He also stated that in Southern Indiana a large problem was vote buying while in Northern Indiana a large problem was based on government workers feeling compelled to vote for the party that gave them their jobs.

Recommendations

- Mr. Webber believes that all election fraud and intimidation complaints should be referred to the Attorney General's Office to circumvent the problem of local political prosecutions. The Attorney General should take more responsibility for complaints of fraud because at the local level, politics interferes. At the local level, everyone knows each other, making it harder prosecute.
- Indiana currently votes 6 am to 6 pm on a weekday. Government workers and retirees are the only people who are available to work the polls. Mr. Webber suggested that the biggest change should be to move elections to weekends. This would involve more people acting as poll workers who would be much more careful about what was going on.
- Early voting at the clerk's office is good because the people there know what they are doing. People would be unlikely to commit fraud at the clerk's office. This should be expanded to other polling places in addition to that of the county clerk.
- Finally, Mr. Webber believes polling places should be open longer, run more professionally but that there needs to be fewer of them so that they are staffed by only the best, most professional people.

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Recent trends

Native election protection operations have intensified recently for several reasons. While election protection efforts in Native areas have been ongoing, leaders realized that they were failing to develop internal infrastructure or cultivate locally any of the knowledge and expertise which would arrive and leave with external protection groups.

Moreover, in recent years partisan groups have become more aware of the power of the native vote, and have become more active in native communities. This has partly resulted in an **extreme increase in voter intimidation tactics. As native communities are easy to identify, easy to target, and generally dominated by a single party, they are especially vulnerable to such tactics.**

**Initially, reports of intimidation were only passed along by word of mouth.** But it became such a problem in the past 5 to 6 years that tribal leaders decided to raise the issue to the national level. Thompson points to the Cantwell election in 2000 and the Johnson election in South Dakota in 2002 as tipping points where many began to realize the Indian vote could matter in Senate and national elections.

Thompson stressed that Native Vote places a great deal of importance on being nonpartisan. While a majority of native communities vote Democratic, there are notable exceptions, including communities in Oklahoma and Alaska, and they have both parties engaging in aggressive tactics. However, she believes the most recent increase in suppression and intimidation tactics have come from Republican Party organizations.

Nature of Suppression/Intimidation of Native Voters

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Thompson categorizes suppression into judge related and poll-watcher related incidents, both of which may be purposeful or inadvertent, as well as longstanding legal-structural constraints.

Structural problems

One example of inadvertent suppression built into the system stems from the fact that many Indian communities also include significant numbers of non-Indians due to allotment. Non-Indians tend to be most active in the state and local government while Indians tend to be more involved in the tribal government. Thus, the individuals running elections end up being non-Indian. Having Indians vote at polling places staffed by non-Indians often results in incidents of disrespect towards Native voters (Thompson emphasized the considerable racism which persists against Indians in these areas). Also, judges aren't familiar with Indian last names and are more dismissive of solving discrepancies with native voters.

Structural problems also arise from laws which mandate that the tribal government cannot run state or local elections. In places like South Dakota, political leaders used to make it intentionally difficult for Native Americans to participate in elections. For example, state, local and federal elections could not be held in the same location as tribal elections, leading to confusion when tribal and other elections are held in different locations. Also, it is common to have native communities with few suitable sites, meaning that a state election held in a secondary location can suddenly impose transportation obstacles.

Photo ID Issues

Thompson believes both state level and HAVA photo ID requirements have a considerable negative impact. For a number of reasons, many Indian voters don't have photo ID. Poor health care and poverty on reservations means that many children are born at home, leading to a lack of birth certificates necessary to obtain ID. Also, election workers and others may assume they are Hispanic, causing additional skepticism due to citizenship questions. There is a cultural issue as well—historically, whenever Indians register with the federal government it has been associated with a taking of land or removal of children. Thus many Indians avoid registering for anything with the government, even for tribal ID.

Thompson also offered examples of how the impact of ID requirements had been worsened by certain rules and the discriminatory way they have been carried out. In the South Dakota special election of 2003, poll workers told Native American voters that if they did not have ID with them and they lived within sixty miles of the precinct, the voter had to come back with ID. The poll workers did not tell the voters that they could vote by affidavit ballot and not need to return, as required by law. This was exacerbated by the fact that the poll workers didn't know the voters—as would be the case with non-Indian poll workers and Indian voters. Many left the poll site without voting and did not return.

In Minnesota, the state tried to prohibit the use of tribal ID's for voting outside of a reservation, even though Minnesota has a large urban Native population. Thompson believes this move was very purposeful, and despite any reasonable arguments from the Secretary of State, they had to file a lawsuit to stop the rule. They were very surprised to find national party representatives in the courtroom when they went to deal with lawsuit, representatives who could only have been alerted through a discussion with the Secretary of State.

Partisan Poll-Monitoring

Thompson believes the most purposeful suppression has been perpetrated by the party structures on an individual basis, of which South Dakota is a great example.

Some negative instances of poll monitoring are not purposeful. Both parties send in non-Indian, non-Western lawyers, largely from the East Coast, which can lead to uncomfortable cultural clashes. These efforts display a keen lack of understanding of these communities and the best way to negotiate within in them. But while it may be intimidating, it is not purposeful.

Yet there are also many instances of purposeful abuse of poll monitoring. While there were indeed problems during the 2002 Johnson election, it was small compared to the Janklow special election. Thompson says Republican workers shunned cultural understanding outreach, and had an extensive pamphlet of what to say at polls and were very aggressive about it. In one tactic, every time a voter

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would come up with no ID, poll monitors would repeat "You can't vote" over and over again, causing many voters to leave. This same tactic appeared across reservations, and eventually they looked to the Secretary of State to intervene. In another example, the head of poll watchers drove from poll to poll and told voters without IDs to go home, to the point where the chief of police was going to evict him from the reservation. In Minnesota, on the Red Lake reservation, police actually did evict an aggressive poll watcher—the fact that the same strategies are employed several hundred miles apart points to standardized instructions.

None of these incidents ever went to court. Thompson argues this is due to few avenues for legal recourse. In addition, it is inherently difficult to settle these things, as they are he said-she said incidents and take place amidst the confusion of Election Day. Furthermore, poll watchers know what the outline of the law is, and they are careful to work within those parameters, leaving little room for legal action.

Other seeming instances of intimidation may be purely inadvertent, such as when, in 2002, the U.S. Attorney chose Election Day to give out subpoenas, and native voters stayed in their homes. In all fairness, she believes this was a misunderstanding.

The effect of intimidation on small communities is especially strong and is impossible to ultimately measure, as the ripple effect of rumors in insular communities can't be traced. In some communities, they try to combat this by using the Native radio to encourage people to vote and dispel myths.

She has suggestions for people who can describe incidents at a greater level of detail if interested.

Vote Buying and Fraud

They haven't found a great deal of evidence on vote-buying and fraud. When cash is offered to register voters, individuals may abuse this, although Thompson believes this is not necessarily unique to the Native community, but a reflection of high rates of poverty. This doesn't amount to a concerted effort at conspiracy, but instead represents isolated incidents of people not observing the rules. While Thompson believes looking into such incidents is a completely fair inquiry, she also believes it has been exploited for political purposes and to intimidate. For example, large law enforcement contingents were sent to investigate these incidents. As Native voters tend not to draw distinctions between law enforcement and other officials, this made them unlikely to help with elections.

Remedies

- As far as voter suppression is concerned, Native Vote has been asking the Department of Justice to look into what might be done, and to place more emphasis on law enforcement and combating intimidation. They have been urging the Department to focus on this at least much as it is focusing on enforcement of Section 203. Native groups have complained to DOJ repeatedly and DOJ has the entire log of handwritten incident reports they have collected. Therefore, Thompson recommends more DOJ enforcement of voting rights laws with respect to intimidation. People who would seek to abuse the process need to believe a penalty will be paid for doing so. Right now, there is no recourse and DOJ does not care, so both parties do it because they can.
- Certain states should rescind bars on nonpartisan poll watchers on Election Day; Thompson believes this is contrary to the nonpartisan, pro-Indian presence which would best facilitate voting in Native communities.
- As discussed above, Thompson believes ID requirements are a huge impediment to native voters. At a minimum, Thompson believes all states should be explicit about accepting tribal ID on Election Day.
- Liberalized absentee ballot rules would also be helpful to Native communities. As many Indian voters are disabled and elderly, live far away from their precinct, and don't have transportation, tribes encourage members to vote by absentee ballot. Yet obstacles remain. Some voters are denied a chance to vote if they have requested a ballot and then show up at the polls. Thompson believes South Dakota's practice of tossing absentee ballots if a voter shows up at the ED would serve as an effective built-in protection. In addition, she believes there should be greater scrutiny of GOTV groups requesting absentee ballots without permission. Precinct location is a longstanding issue, but Thompson recognizes that states have limited resources. In the

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**absence of those resources, better absentee ballot procedures are needed.**

- **Basic voter registration issues and access** are also important in native communities and **need to be addressed.**
- **Thompson is mixed on what restrictions should be placed on poll watcher behavior, as she believes open elections and third party helpers are both important.** However, she would be **willing to explore some sort of stronger recourse and set of rules concerning poll watchers' behavior.** **Currently, the parties are aware that no recourse exists, and try to get away with what they will.** This is not unique to a single party—both try to stay within law while shaking people up. The existing VRA provision is 'fluffy'—unless you have a consent decree, you have very little power. Thompson thinks a **general voter intimidation law that is left a bit broad but that nonetheless makes people aware of some sort of kickback could be helpful.**

Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights

Regarding the August 2005 Report

**ACVR has not followed up on any of the cases it cited in the 2005 report to see if the allegations had been resolved in some manner.**

Mr. Torchinsky stated that **there are problems with allegations of fraud in the report and prosecution---just because there was no prosecution, does not mean there was no vote fraud.** He believes that it is **very hard to come up with a measure of voter fraud short of prosecution.** Mr. Torchinsky does not have a good answer to resolve this problem.

P. 35 of the Report indicates that there were coordinated efforts by groups to coordinate fraudulent voter registrations. P. 12 of the Ohio Report references a RICO suit filed against organizations regarding fraudulent voter registrations. Mr. Torchinsky does not know what happened in that case. He stated that there was a drive to increase voter registration numbers regardless of whether there was an actual person to register. He stated that when you have an organization like ACORN involved all over the place, there is reason to believe it is national in scope. When it is the same groups in multiple states, this leads to the belief that it is a concerted effort.

Voting Problems

Mr. Torchinsky stated **there were incidents of double voting---ex. a double voter in Kansas City, MO.** **If the statewide voter registration database requirement of HAVA is properly implemented, he believes it will stop multiple voting in the same state.** He supports the HAVA requirement, if implemented correctly. Since Washington State implemented its statewide database, the Secretary of State has initiated investigations into felons who voted. In Philadelphia the major problem is **permitting polling places in private homes and bars – even the homes of party chairs.**

Mr. Torchinsky believes that **voter ID would help, especially in cities in places like Ohio and Philadelphia, PA.** The ACVR legislative fund supports the Real ID requirements suggested by the Carter-Baker Commission. Since federal real ID requirements will be in place in 2010, any objection to a voter ID requirement should be moot.

Mr. Torchinsky stated that there are **two major poll and absentee voting problems---(1) fraudulent votes-ex. dead people voting in St. Louis and (2) people voting who are not legally eligible-ex. felons in most places.** He also believes that **problems could arise in places that still transport paper ballots from the voting location to a counting room.** However, he does not believe this is as widespread a problem now as it once was.

Suggestions

**Implement the Carter-Baker Commission recommendations because they represent a reasonable compromise between the political parties.**

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Robin DeJarnette, Executive Director, American Center for Voting Rights

[NO SUMMARY FOUND]

Joseph Rich, former Director of the Voting Section, Civil Rights Division, U.S. Department of Justice

Data Collection and Monitoring

- The (Voting) section developed a new database before the 2004 election to log complaint calls and what was done to follow up on them. They opened many investigations as a result of these complaints, including one on the long lines in Ohio (see DOJ letter on website, as well as critical commentary on the DOJ letter's analysis). DOJ found no Section 2 violation in Ohio. John Tanner should be able to give us this data. However, the database does not include complaints that were received by monitors and observers in the field.
- All attorney observers in the field are required to submit reports after Election Day to the Department. These reports would give us a very good sense of the scope and type of problems that arose on that day and whether they were resolved on the spot or required further action.
- The monitoring in 2004 was the biggest operation ever. Prior to 2000, only certain jurisdictions could be observed – a VRA covered jurisdiction that was certified or a jurisdiction that had been certified by a court, e.g. through a consent decree. Since that time, and especially in 2004, the Department has engaged in more informal "monitoring." In those cases, monitors assigned to certain jurisdictions, as opposed to observers, can only watch in the polling place with permission from the jurisdiction. The Department picked locations based on whether they had been monitored in the past, there had been problems before, or there had been allegations in the past. Many problems that arose were resolved by monitors on the spot.

Processes for Cases not Resolved at the Polling Site

- If the monitor or observer believes that a criminal act has taken place, he refers it to the Public Integrity Section (PIN). If it is an instance of racial intimidation, it is referred to the Civil Rights Criminal Division. However, very few such cases are prosecuted because they are very hard to prove. The statutes covering such crimes require actual violence or the threat of violence in order to make a case. As a result, most matters are referred to PIN because they operate under statutes that make these cases easier to prove. In general, there are not a high number of prosecutions for intimidation and suppression.
- If the act is not criminal, it may be brought as a civil matter, but only if it violated the Voting Rights Act – in other words, only if there is a racial aspect to the case. Otherwise the only recourse is to refer it to PIN.
- However, PIN tends not to focus on intimidation and suppression cases, but rather cases such as alleged noncitizen voting, etc. Public Integrity used to only go after systematic efforts to corrupt the system. Now they focus on scattered individuals, which is a questionable resource choice. Criminal prosecutors over the past 5 years have been given more resources and more leeway because of a shift in focus and policy toward noncitizens and double voting, etc.
- There have been very few cases brought involving African American voters. There have been 7 Section 2 cases brought since 2001 – only one was brought on behalf of African American voters. That case was initiated under the Clinton administration. The others have included Latinos and discrimination against whites.

Types of Fraud and Intimidation Occurring

- There is no evidence that polling place fraud is a problem. There is also no evidence that the NVRA has increased the opportunity for fraud. Moreover, regardless of NVRA's provisions, an election official can always look into a voter's registration if he or she believes that person should no longer be on the list. The Department is now suing Missouri because of its poor registration list.

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- The **biggest problem is with absentee ballots**. The photo ID movement is a **vote suppression strategy**. This type of suppression is a bigger problem than intimidation. There has been an increase in vote suppression over the last five years, but it has been indirect, often in the way that laws are interpreted and implemented. Unequal implementation of ID requirements at the polls based on race would be a VRA violation.
- The **most common type of intimidation occurring is open hostility by poll workers toward minorities**. It is a judgment call whether this is a crime or not – Craig Donsanto of PIN decides if it rises to a criminal matter.
- **Election Day challenges at the polls could be a VRA violation but such a case has never been formally pursued**. Such cases are often resolved on the spot. Development of a pre-election challenge list targeted at minorities would be a VRA violation but this also has never been pursued. These are choices of current enforcement policy.
- **Long lines due to unequal distribution of voting machines based on race, list purges based on race and refusal to offer a provisional ballot on the basis of race would also be VRA violations.**

Recommendations

- Congress should **pass a new law that allows the Department to bring civil actions for suppression that is NOT race based, for example, deceptive practices or wholesale challenges to voters in jurisdictions that tend to vote heavily for one party.**
- **Given the additional resources and latitude given to the enforcement of acts such as double voting and noncitizen voting, there should be an equal commitment to enforcement of acts of intimidation and suppression cases.**
- There should also be **increased resources dedicated to expanded monitoring efforts**. This might be the best use of resources since **monitors and observers act as a deterrent to fraud and intimidation.**

Joseph Sandler, Counsel to the Democratic National Committee

2004-Administrative Incompetence v. Fraud

Sandler believes the **2004 election was a combination of administrative incompetence and fraud**. Sandler stated there was a deliberate effort by the Republicans to disenfranchise voters across the country. This was accomplished by **mailing out cards to registered voters and then moving to purge from the voters list those whose cards were returned**. Sandler indicated that **in New Mexico there was a deliberate attempt by Republicans to purge people registered by third parties**. He stated that there were **intentional efforts to disenfranchise voters by election officials like Ken Blackwell in Ohio**.

The problems with machine distribution in 2004 were not deliberate. However, Sandler believes that a **large problem exists in the states because there are no laws that spell out a formula to allocate so many voting machines per voter**.

Sandler was asked how often names were intentionally purged from the voter lists. He responded that there will be a lot of names purged as a **result of the creation of the voter lists under HAVA**. However, Sandler stated **most wrongful purging results from incompetence**.

Sandler also said there was **not much intimidation at the polls because most such efforts are deterred and that the last systematic effort was in Philadelphia in 2003 where Republicans had official looking cars and people with badges and uniforms, etc.**

Sandler stated that **deliberate dissemination of misinformation was more incidental, with individuals misinforming and not a political party. Disinformation did occur in small Spanish speaking communities.**

Republicans point to instances of voter registration fraud but Sandler believes it **did not occur, except for once in a blue moon**. Sandler **did not believe non-citizen voting was a problem**. He also **does not believe that there is voter impersonation at the polls and that Republicans allege this as a way of disenfranchising voters through restrictive voter identification rules.**

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Fraud and Intimidation Trends

- Sandler stated that over the years there has been a shift from organized efforts to intimidate minority voters through voter identification requirements, improper purging, failure to properly register voters, not allocating enough voting machines, failure to properly use the provisional ballot, etc., by voter officials as well as systematic efforts by Republicans to deregister voters.
- At the federal level, Sandler said, the voting division has become so politicized that it is basically useless now on intimidation claims. At the local level, Sandler does not believe politics prevents or hinders prosecution for vote fraud.

Sandler's Recommendations:

- Moving the voter lists to the state level is a good idea where carefully done
- Provisional ballots rules should follow the law and not be over-used
- No voter ID
- Partisanship should be taken out of election administration, perhaps by giving that responsibility by someone other than the Secretary of State. There should at least be conflict of interest rules
- Enact laws that allow private citizens to bring suit under state law

All suggestions from the DNC Ohio Report:

1. The Democratic Party must continue its efforts to monitor election law reform in all fifty states, the District of Columbia and territories.
2. States should be encouraged to codify into law all required election practices, including requirements for the adequate training of official poll workers.
3. States should adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official poll workers among precincts, to ensure adequate and nondiscriminatory access. These standards should be based on set ratios of numbers of machines and poll workers per number of voters expected to turn out, and should be made available for public comment before being adopted.
4. States should adopt legislation to make clear and uniform the rules on voter registration.
5. The Democratic Party should monitor the processing of voter registrations by local election authorities on an ongoing basis to ensure the timely processing of registrations and changes, including both newly registered voters and voters who move within a jurisdiction or the state, and the Party should ask state Attorneys General to take action where necessary to force the timely updating of voter lists.
6. States should be urged to implement statewide voter lists in accordance with the Help America Vote Act ("HAVA"), the election reform law enacted by Congress in 2002 following the Florida debacle.
7. State and local jurisdictions should adopt clear and uniform rules on the use of, and the counting of, provisional ballots, and distribute them for public comment well in advance of each election day.
8. The Democratic Party should monitor the purging and updating of registered voter lists by local officials, and the Party should challenge, and ask state Attorneys General to challenge, unlawful purges and other improper list maintenance practices.
9. States should not adopt requirements that voters show identification at the polls, beyond those already required by federal law (requiring that identification be shown only by first time voters who did not show identification when registering.)
10. State Attorneys General and local authorities should vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.
11. Jurisdictions should be encouraged to use precinct-tabulated optical scan systems with a computer assisted device at each precinct, in preference to touch screen ("direct recording equipment" or "DRE") machines.

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12. Touch screen (DRE) machines should not be used until a reliable voter verifiable audit feature can be uniformly incorporated into these systems. In the event of a recount, the paper or other auditable record should be considered the official record.
13. Remaining punch card systems should be discontinued.
14. **States should ask state Attorneys General to challenge unfair or discriminatory distribution of equipment and resources** where necessary, and the Democratic Party should bring litigation as necessary.
15. Voting equipment vendors should be required to disclose their source code so that it can be examined by third parties. No voting machine should have wireless connections or be able to connect to the Internet.
16. Any equipment used by voters to vote or by officials to tabulate the votes should be used exclusively for that purpose. That is particularly important for tabulating/aggregating computers.
17. States should adopt "no excuse required" standards for absentee voting.
18. States should make it easier for college students to vote in the jurisdiction in which their school is located.
19. States should develop procedures to ensure that voting is facilitated, without compromising security or privacy, for all eligible voters living overseas.
20. **States should make voter suppression a criminal offense at the state level, in all states.**
21. **States should improve the training of poll workers.**
22. **States should expend significantly more resources in educating voters on where, when and how to vote.**  23. **Partisan officials who volunteer to work for a candidate should not oversee or administer any elections.**

John Ravitz, Executive Director, New York City Board of Elections

Process

If there is an allegation of fraud or intimidation, the commissioners can rule to act on it. For example, in 2004 there were allegations in Queens that people had registered to vote using the addresses of warehouses and stores. The Board sent out teams of investigators to look into this. The Board then developed a challenge list that was to be used at the polls if any of the suspect voters showed up to vote. If the allegation rises to a criminal level, the Board will refer it to the county district attorney. If a poll worker or election official is involved, the Board may conduct an internal investigation. That individual would be interviewed, and if there is validity to the claim, the Board would take action.

Incidences of Fraud and Intimidation

Mr. Ravitz says there have been **no complaints about voter intimidation since he has been at the Board**. There have been instances of over-aggressive poll workers, but nothing threatening. Voter fraud has also generally not been a problem.

**In 2004, the problem was monitors from the Department of Justice intimidating voters. They were not properly trained, and were doing things like going into the booth with voters.** The Board had to contact their Department supervisors to put a stop to it.

**Charges regarding "ballot security teams" have generally just been political posturing.**

The problem of people entering false information on voter registration forms is a problem. However, sometimes a name people allege is false actually turns out to be the voter's real name. Moreover, these types of acts do not involve anyone actually casting a fraudulent ballot.

With respect to the issue of voters being registered in both New York and Florida, the Board now compares its list with that of Florida and other places to address the problem. This will be less of an issue with the use of statewide voter registration databases, as information becomes easier to share. Despite the number of people who were on the voter registration lists of both jurisdictions, there was no one from those lists who voted twice.

**Most of the problems at the polls have to do with poll workers not doing what they are supposed to do, not any sort of malfeasance. This**

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indicates that **improved training is the most important measure** we can take.

There have been instances in which poll workers ask voters for identification when they shouldn't. However, the poll workers seem to do it when they cannot understand the name when the voter tells it to them. The Board has tried to train them that no matter what, the poll worker cannot ask for identification in order to get the person's name.

**Absentee ballot fraud has also not been a problem in New York City.** This is likely because **absentee ballots are counted last – eight days after election day.** This is so that they can be checked thoroughly and verified. This is a practice other jurisdictions might consider. **New York City has not had a problem with ex-felons voting or with ex-felons not knowing their voting rights.** The City has not had any problems in recent years with deceptive practices, such as flyers providing misinformation about voting procedures.

Recommendations

**Better poll worker training**

John Tanner, Director, Voting Section, Civil Rights Division, U.S. Department of Justice

Mr. Tanner would not give us any information about or data from the section's election complaint in-take phone logs; data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws; and would give us only a selected few samples of attorney-observer reports, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. He would not discuss in any manner any current investigations or cases the section is involved in. He also did not believe it was his position to offer us recommendations as to how his office, elections, or the voting process might be improved.

Authority and Process

The Voting Section, in contrast to the Public Integrity section as Craig Donsanto described it, typically looks only at systemic problems, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Federal voting laws only apply to state action, so the section only sues local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, systematic changes forced upon those jurisdictions have made it so now the section does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14<sup>th</sup> and 15<sup>th</sup> Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter of individuals or systemic. When deciding what to do with the complaint, the section errs on the side of referring it criminally because they do not want civil litigation to complicate a possible criminal case.

When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

**Often, lawsuits bring voluntary compliance.**

Voter Intimidation

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Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been an investigation into the abusive use of challengers.

Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

However, Mr. Tanner said the Department was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the voting section to become involved.

Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands of the states will be helpful because at this higher level of government you find a higher level of professionalism.

It is hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. However, the enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared, as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

The section is not filing as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore. Mr. Tanner said that race based problems are rare now.

NVRA has been effective in opening up the registration process. In terms of enforcement, Mr. Tanner said they do what they can when they have credible allegations. There is a big gap between complaints and what can be substantiated. Mr. Tanner stated that given the high quality of the attorneys now in the section, if they do not investigate it or bring action, that act complained of did not happen.

Recommendations

Mr. Tanner did not feel it was appropriate to make recommendations

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Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin

**Complaints of fraud and intimidation do not usually come to Kennedy's office.** Kennedy says that complainants usually take their allegations to the media first because they are trying to make a political point.

Election Incidents of Fraud

The investigations into the 2004 election uncovered some cases of double voting and voting by felons who did not know they were not eligible to vote, but found no concerted effort to commit fraud. There have been a couple of guilty pleas as a result, although not a number in the double digits. The task force and news reports initially referred to 100 cases of double voting and 200 cases of felon voting, but there were not nearly that many prosecutions. Further investigation since the task force investigation uncovered that in some instances there were mismarks by poll workers, fathers and sons mistaken for the same voter, and even a husband and wife marked as the same voter. The double votes that are believed to have occurred were a mixture of absentee and polling place votes. It is unclear how many of these cases were instances of voting in two different locations.

In discussing the case from 2000 in which a student claimed – falsely – that he had voted several times, Kennedy said that double voting can be done. The deterrent is that it's a felony, and that one person voting twice is not an effective way to influence an election. One would need to get a lot of people involved for it to work.

The task force set up to investigate the 2004 election found a small number of illegal votes but given the 7,000 alleged, it was a relatively small number. There was no pattern of fraud.

The one case Kennedy could recall of an organized effort to commit fraud was in the spring of 2003 or 2004. A community service agency had voters request that absentee ballots be sent to the agency instead of to the voters and some of those ballots were signed without the voters' knowledge. One person was convicted, the leader of the enterprise.

In Milwaukee, the main contention was that there were more ballots than voters. However, it was found that the 7,000 vote disparity was tied to poll worker error. The task force found that there was no concerted effort involved. Kennedy explained that there are many ways a ballot can get into a machine without a voter getting a number. These include a poll worker forgetting to give the voter one; someone does Election Day registration and fills out a registration form but does not get a number because the transaction all takes place at one table; and in Milwaukee, 20,000 voters who registered were not put on the list in time and as a short term solution the department sent the original registration forms to the polling places to be used instead of the list to provide proof of registration. This added another element of confusion that might have led to someone not getting a voter number.

The Republican Party used this original list and contracted with a private vendor to do a comparison with the U.S. postal list. They found initially that there were 5,000 bad addresses, and then later said there were 35,000 illegitimate addresses. When the party filed a complaint, the department told them they could force the voters on their list to cast a challenge ballot. On Election Day, the party used the list but found no one actually voting from those addresses. Kennedy suspects that the private vendor made significant errors when doing the comparison.

In terms of noncitizen voting, Kennedy said that there is a Russian community in Milwaukee that the Republican Party singles out every year but it doesn't go very far. Kennedy has not seen much in the way of allegations of noncitizen voting.

However, when applying for a driver's license, a noncitizen could register to vote. There is no process for checking citizenship at this point, and the statewide registration database will not address this. Kennedy is not aware of any cases of noncitizen voting as a result, but it might have happened.

Kennedy said that the biggest concern seemed to be suspicions raised when groups of people are brought into the polling site from group homes, usually homes for the disabled. There are allegations that these voters are being told how to vote.

Incidents of Voter Intimidation

In 2004, there was a lot of hype about challenges, but in Wisconsin, a challenger must articulate a basis under oath. This acts as a

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deterrent, but at the same time it creates the potential that someone might challenge everyone and create long lines, keeping people from voting. In 2004, the Republican Party could use its list of suspect addresses as a legitimate basis for challenges, so there is the potential for abuse. It is also hard to train poll workers on that process. In 2004, there were isolated cases of problems with challengers.

In 2002, a flyer was circulated only in Milwaukee claiming that you had vote by noon. This was taken as an intimidation tactic by the Democrats.

Reforms

Wisconsin has had difficulty with its database because 1) they have had a hard time getting a good product out of the vendor and 2) until now there was no registration record for one-quarter of the voters. Any jurisdiction with fewer than 5000 voters was not required to have a registration list.

In any case, once these performance issues are worked out, Kennedy does believe the statewide voter registration database will be very valuable. In particular, it will mean that people who move will not be on more than one list anymore. It should also address the double voting issue by identifying who is doing it, catching people who do it, and identifying where it could occur.

Recommendations

- Better trained poll workers
- Ensure good security procedures for the tabulation process and more transparency in the vote counting process
- Conduct post-election audits

Evelyn Stratton, Justice, Supreme Court of Ohio

The 2004 Election

Justice Stratton stated that usually in the period right before an election, filings die down due to the Ohio expedited procedures for electoral challenges. However, the 2004 election was unusual because there were motions and cases decided up to the day of the election. Justice Stratton believed that most of the allegations were knee-jerk reactions without any substance. For example, without any factual claims, suit was brought alleging that all voter challengers posed a threat to voters. Thematically, allegations were either everyday voting problems or "conspiracies" depending on where the complaint came from. The major election cases in 2004 revolved around Secretary of State Blackwell.

Justice Stratton made a point that the Ohio Supreme Court bent over backwards in the 2004 election to be fair to both sides. There was never any discussion about a ruling helping one political party more than the other.

Justice Stratton cited two cases that summarize and refute the 2004 complaints---819 NE 2d 1125 (Ohio 2004) and 105 Ohio St. 3d 458 (2004).

General Election Fraud Issues

Justice Stratton has seen very few fraud cases in Ohio. Most challenges are for technical statutory reasons. She remembered one instance where a man who assisted handicapped voters marked the ballot differently than the voter wanted. Criminal charges were brought against this man and the question that the Ohio Supreme Court had to decide was whether ballots could be opened and inspected to see how votes were cast.

Justice Stratton claimed she knew of isolated incidences of fictitious voter registration but these were not prosecuted. She has not seen any evidence of ballots being stuffed, dead people voting, etc.

Suggestions for Changes in Voting Procedures

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- The Ohio Supreme Court is very strict about latches---if a person sits on their rights too long, they loose the right to file suit. The **Ohio expedited procedures make election challenges run very smooth.** Justice Stratton does **not remember any suits brought on the day of the election.**
- **lower courts need to follow the rules for the expedited procedures.** Even given the anomalies with lower courts permitting late election challenges in 2004, the Ohio Supreme Court does not want to make a new rule unless this pattern repeats itself in 2008.
- **last minute challenges should not be permitted**
- **supports a non-partisan head of state elections.**

Tony Sirvello, Executive Director, International Association of Clerks, Recorders, Election Officials and Treasurers

Incidents of Election Fraud

Sirvello stated that **one problem with election crimes is that they are not high on the priority list of either district attorneys or grand juries.** Therefore, complaints of election crime very rarely are prosecuted or are indicted by the grand jury. In 1996 in Harris County, 14 people voted twice but the grand jury refused to indict. One woman voted twice, once during early voting and once on Election Day. She said she thought there were two elections. The jury believed her. Sirvello believes none of the people intentionally voted more than once. He said that he believes double voting is not as big of an issue as people make it out to be.

In 1986, it was found that there were 300 more ballots than voter signatures. It was clear that the elections officials stuffed the ballot boxes. The case was brought before a grand jury, but there was no indictment because all of the defendants were friends and relatives of each other and none would admit what had been done.

Sirvello stated that there have been isolated circumstances where a voter would show up at the poll and his name had already been signed and he had voted.

Finally, Sirvello indicated that some people who worked in Houston but did not live in Harris County were permitted to vote.

Specific Absentee Ballot/Vote By Mail Issues

Sirvello said that mail voting presents the largest problem. With mail voting there is too much opportunity to influence voters or to fraudulently request a ballot. If one applied for an absentee ballot, their name and address was made available to candidates and political consultants who would often send people to collect the ballot. Many did not want to give up the ballot but wanted to mail it personally. The result was to discourage voting.

In Texas, a person could only apply for an absentee ballot if over 65 years of age. Parties, candidates and consultants would get the list of voters over 65 and send them a professional mail piece telling them they could vote by mail and a ballot with everything filled out except the signature. Problems ensued -- for example, voters would print their names rather than sign them, and the ballot was rejected. In other cases, the elderly would give their absentee ballot to someone else.

If a person applied for an absentee ballot but then decided not to cast it but to vote in person, that person had to bring the non-voted absentee ballot to the poll and surrender it. If they did not they would not be permitted to vote at the polling place.

Incidents of Voter Intimidation

Sirvello only reported isolated cases of intimidation or suppression in Harris County. These mostly occurred in Presidential elections. Some people perceived intimidation when being told they were not eligible to vote under the law. Sirvello stated that the big issue in elections now is whether there should be a paper trail for touch screen voting.

Recommendations

- **District attorneys need to put more emphasis on election crime so people will not believe that it goes unpunished.**

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- There should be either a national holiday for Election Day or a day should be given off of work without counting as a vacation day so that better poll workers are available and there can be more public education on election administration procedures.

Harry Van Sickle, Commissioner of Elections, and Deputy Chief Counsel to the Secretary of State Larry Boyle, Pennsylvania

Fraud and Intimidation

Neither Van Sickle nor Boyle was aware of any fraud of any kind in the state of Pennsylvania over the last five years. They are not aware of the commission of any deceptive practices, such as flyers that intentionally misinform as to voting procedures. They also have never heard of any incidents of voter intimidation. With respect to the mayoral election of 2003, the local commission would know about that.

Since the Berks County case of 2003, where the Department of Justice found poll workers who treated Latino voters with hostility among other voting rights violations, the Secretary's office has brought together Eastern Pennsylvania election administrators and voting advocates to discuss the problems. As a result, other counties have voluntarily chosen to follow the guidance of the Berks County federal court order. Regarding the allegations of fraud that surrounded the voter identification debate, Mr. Boyle said was not aware of any instances of fraud involving identity. He believes this is because Pennsylvania has laws in place to prevent this. For example, in 2002 the state legislature passed an ID law that is stricter than HAVA's – it requires all first time voters to present identification. In addition, the SURE System – the state's statewide voter registration database – is a great anti-fraud mechanism. The system will be in place statewide in the May 2006 election.

In addition, the state took many steps before the 2004 election to make sure it would be smooth. They had attorneys in the counties to consult on problems as well as staff at the central office to take calls regarding problems. In addition, in 2004 the state used provisional ballots for the first time. This resolved many of the problems that used to occur on Election Day.

Mr. Boyle is not aware of any voter registration fraud. This is because when someone registers to vote, the administrator does a duplicate check. In addition, under new laws a person registering to vote must provide their drivers license or Social Security number which are verified through the Department of Motor Vehicles and the Social Security Administration. Therefore, it would be unlikely that someone would be able to register to vote falsely.

Process

Most problems are dealt with at the local level and do not come within the review of the Secretary of State's office. For instance, if there is a complaint of intimidation, this is generally dealt with by the county courts which are specially designated solely to election cases on Election Day. The Secretary does not keep track of these cases. Since the passage of NVRA and HAVA counties will increasingly call the office when problems arise.

Recommendations

Mr. Boyle suggested we review the recommendations of the Pennsylvania Election Reform Task Force which is on the Secretary's website. Many of those recommendations have been introduced in the legislature.

Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice

Questions

*How are Prosecution Decisions Made?*

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge

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**seems political, Donsanto will reject it.** Donsanto gives possible theories for investigation. **Donsanto and Noel Hillman will decide whether to farm out the case to an AUSA. Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed.** The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). **Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source.** Donsanto said he "knows it when he sees it." Donsanto will **only indict if he is confident of a conviction assuming the worst case scenario – a jury trial.**

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings easily because such defendants are likely to provide information about others involved.

**The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution.** The head of that division is John Tanner. There is a lot of cooperation between

Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?

Yes. Before, the department would leave it to the states. Now, **if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.**

Does it Matter if the Complaint Comes from a Member of a Racial Minority?

No. But if the question involves **racial animus, that has also always been an aggravating factor, making it more likely the Department will take it over**

What Kinds of Complaints Would Routinely Override Principles of Federalism?

Federalism is no longer big issue. **DOJ is permitted to prosecute whenever there is a candidate for federal office.**

Are There Too Few Prosecutions?

**DOJ can't prosecute everything.**

What Should Be Done to Improve the System?

- **The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons:**
  - **federal districts draw from a bigger and more diverse jury pool;**
  - **the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected;**
  - **DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them;**
  - **DOJ can use the grand jury process as a discovery technique and to test the strength of the case.**
- **In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to "fix" *McNally*, did not include voter fraud.**
- **As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s..**

Other Information

**The Department has held four symposia for DEOs and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative.**

007829

EAC SUMMARY OF EXPERT INTERVIEWS FOR  
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public. (Peg will be sending us the complete training materials used at those sessions. These are confidential and are the subject of FOIA litigation).

There are two types of attorneys in the division:

- prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and
- brain trust attorneys who analyze the facts, formulate theories, and draft legal documents.

Cases:

Donsanto provided us with three case lists: Open cases (still being investigated) as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006 and cases closed for lack of evidence as of January 13, 2006

If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

**Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.**

**Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought when there was a pattern or scheme to corrupt the process. Charges were not brought against individuals – those cases went un-prosecuted. This change in direction, focus, and level of aggression was by the decision of the Attorney General. The reason for the change was for deterrence purposes.**

**The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:**

- **Felon voters in Milwaukee.**
- **Alien voters in the Southern District of Florida.** FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.
- **Double voters in a variety of jurisdictions.**

**The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department.** Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

Sharon Priest, former Secretary of State, Arkansas

Process:

**When there is an allegation of election fraud or intimidation, the county clerk refers it to the local district attorney. Most often, the DA does not pursue the claim.** There is little that state administrators can do about this because in Arkansas, county clerks are partisanly elected and completely autonomous. Indeed, county clerks have total authority to determine who is an eligible voter.

Data:

**There is very little data collected in Arkansas on fraud and intimidation cases. Any information there might be stays at the county level.** This again is largely because the clerks have so much control and authority, and will not release information. **Any statewide data that does exist might be gotten from Susie Storms from the State Board of Elections.**

007830

EAC SUMMARY OF EXPERT INTERVIEWS FOR  
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

Most Common Problems

**The perception of fraud is much greater than the actual incidence of fraud.**

- The DMV does not implement NVRA in that it does not take the necessary steps when providing the voter registration forms and does not process them properly. This leads to both ineligible voters potentially getting on the voting rolls (e.g. noncitizens, who have come to get a drivers license, fill out a voter registration form having no intention of actually voting) and voter thinking they are registered to vote to find they are not on the list on Election Day. Also, some people think they are automatically registered if they have applied for a driver's license.
- Absentee ballot fraud is the most frequent form of election fraud.
- In Arkansas, it is suspected that politicians pay ministers to tell their congregations to vote for them
- In 2003, the State Board documented 400 complaints against the Pulaski County Clerk for engaging in what was at least borderline fraud, e.g. certain people not receiving their absentee ballots. The case went to a grand jury but no indictment was brought.
- Transportation of ballot boxes is often insecure making it very easy for insiders to tamper with the ballots or stuff the ballot boxes. Priest has not actually witnessed this happen, but believes it may have.
- Intimidation at the poll sites in court houses. Many voters are afraid of the county judges or county employees and therefore will not vote. They justifiably believe their ballots will be opened by these employees to see who they voted for, and if they voted against the county people, retribution might ensue.
- Undue challenges to minority language voters at the poll sites
- Paid registration collectors fill out phony names, but these individuals are caught before anyone is able to cast an ineligible ballot.

Suggested Reforms for Improvement:

- Nonpartisan election administration
- Increased prosecution of election crimes through greater resources to district attorneys. In addition, during election time, there should be an attorney in the DA's office who is designated to handle election prosecution.
- There should be greater centralization of the process, especially with respect to the statewide database. Arkansas has a "bottom up" system. This means the counties still control the list and there is insufficient information sharing. For example, if someone lives in one county but dies in another, the county in which the voter lived – and was registered to vote – will not be notified of the death.

007831

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Powers v. Donahue	Supreme Court of New York, Appellate Division, First Department	276 A.D.2d 157; 717 N.Y.S.2d 550; 2000 N.Y. App. Div. LEXIS 12644	December 5, 2000	Petitioner appealed an order of the supreme court, which denied his motion to direct the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to count only the absentee ballot listing correct candidates' names.	When the New York County Board of Elections learned some absentee ballots mailed to voters in one district listed the wrong candidates for state senator it sent a second set of absentee ballots to absentee voters informing them the first ballot was defective and requesting they use the second ballot. The board agreed if two ballots were received from the same voter, only the corrected ballot would be counted. Appellant candidate moved in support of the board's determination. Respondent candidate opposed the application, contending that only the first ballot received should have been canvassed. The trial court denied appellant's motion, ruling that pursuant to New York law, where two ballots were received from the same voter, only the ballot with the earlier date was to be accepted. The court found the local board officials should have resolved the dispute as they proposed. The order was modified and the motion granted to the extent of directing the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to accept only the corrected	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					ballot postmarked on or before November 7, 2000, and otherwise affirmed.			
Goodwin v. St. Thomas--St. John Bd. of Elections	Territorial Court of the Virgin Islands	43 V.I. 89; 2000 V.I. LEXIS 15	December 13, 2000	Plaintiff political candidate alleged that certain general election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.	Plaintiff alleged that defendants counted unlawful absentee ballots that lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result.	No	N/A	No

007833

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper. Request for declaratory and injunctive relief denied.			
Townson v. Stonicher	Supreme Court of Alabama	2005 Ala. LEXIS 214	December 9, 2005	The circuit court overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross-appealed. In the meantime, the trial court stayed enforcement of its judgment pending resolution of the appeal.	The voters and the incumbent all challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that at least 30 absentee voters who voted for the incumbent provided with their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat "cure" that defect by providing a proper form of identification at the trial of the election contest, because, under those	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					circumstances, it was difficult to conclude that those voters made an honest effort to comply with the law. Moreover, to count the votes of voters who failed to comply with the essential requirement of submitting proper identification with their absentee ballots had the effect of disenfranchising qualified electors who choose not to vote but rather than to make the effort to comply with the absentee-voting requirements. Affirmed.			
Gross v. Albany County Bd. of Elections	Supreme Court of New York, Appellate Division, Third Department	10 A.D.3d 476; 781 N.Y.S.2d 172; 2004 N.Y. App. Div. LEXIS 10360	August 23, 2004	Appellant candidates appealed from a judgment entered by the supreme court, which partially granted the candidates' petition challenging the method used by respondent Albany County Board of Elections for counting absentee applications and ballots for the office of Albany County	The candidates argued that the Board violated a federal court order regarding the election. The appellate court held that absentee ballots that were sent to voters for the special general election based solely on their applications for the general election were properly voided. The Board had no authority to issue the ballots without an absentee ballot application for the special general election. Two ballots were properly invalidated as the Board failed to retain the envelopes. Ballots were properly counted for voters who failed to identify their physician on their applications. A ballot was	No	N/A	No

EC8200

007835

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				Legislator, 26th and 29th Districts, in a special general election required by the federal courts.	properly counted where the Board failed to scrutinize the sufficiency of the reason for the application. A ballot containing two signatures was properly rejected. A ballot was properly rejected due to extraneous marks outside the voting square. A ballot was properly counted despite the failure of the election inspector to witness the voter's signature. A ballot was properly counted as the application stated the date of the voter's absence. A ballot was properly counted as the failure to date the application was cured by a time stamp. Affirmed.			
Erlandson v. Kiffmeyer	Supreme Court of Minnesota	659 N.W.2d 724; 2003 Minn. LEXIS 196	April 17, 2003	Petitioners, representing the Democratic--Farmer--Labor Party, brought an action against respondents, the Minnesota Secretary of State and the Hennepin County Auditor, seeking relief in regard to the election for United States Senator, following	The appellate court found that, while it may have seemed unfair to the replacement candidate to count votes for other candidates from regular absentee ballots on which the replacement candidate did not appear, those were properly cast ballots voting for a properly nominated candidate. Petitioners' request that the Minnesota supreme court order that votes for United States Senator cast on regular absentee ballots not be counted was denied. A key issue was Minn. Stat. § 204B.41 (2002), which provided, in--	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the death of Senator Wellstone. The issue concerned the right of absentee voters to obtain replacement ballots. Individuals intervened on behalf of the Republican Party. The instant court granted review.	part, that official supplemental ballots could not be mailed to absent voters to whom ballots were mailed before the official supplemental ballots were prepared. The supreme court held that, by treating similarly--situated voters differently, § 204B.41 violated equal protection guarantees and could not even survive rational basis review. For voters who cast their regular absentee ballots for Wellstone before the vacancy occurred, but were unable to go to their polling place on election day or pick up a replacement ballot by election day, the prohibition on mailing replacement ballots in § 204B.41 denied them the right to cast a meaningful vote for United States Senator. The petition of petitioners was denied in part, but granted with respect to mailing replacement ballots to all applicants for regular absentee ballots who requested a replacement ballot.			
People v. Deganutti	Appellate Court of Illinois, First District, Third Division	348 Ill. App. 3d 512; 810 N.E.2d 191; 2004 Ill.	May 12, 2004	Defendant appealed from a judgment of the circuit court, which convicted defendant on charges of unlawful	Defendant went to the voters' homes and obtained their signatures on absentee ballot request forms. Once the ballots were mailed to the voters, defendant returned to the homes. With voter one, defendant sat on the couch	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		App. LEXIS 518		observation of voting and on charges of absentee ballot violations in connection with the completion and mailing of the absentee ballots of two voters.	with the voter and instructed which numbers to punch on the ballot. With voter two, defendant provided a list a numbers and stood nearby as voter two completed the ballots. Defendant then looked at the ballot and had voter two re--punch a number that had not punched cleanly. Defendant then put the ballots in the mail for the voters. On appeal, she argued insufficient evidence to sustain her convictions. The court affirmed, holding that (1) the circumstantial evidence surrounding defendant's presence as the voters completed their ballots supported the unlawful observation convictions; (2) the fact that defendant knowingly took the voters ballots and mailed them, a violation of Illinois law supported her conviction, and (3) the fact that the statutes defendant was convicted under required only a knowing mental state rather than criminal intent did not violate substantive due process. Affirmed.			
Jacobs v. Seminole County Canvassing Bd.	Supreme Court	773 So. 2d 519; 2000 Fla. LEXIS	December 12, 2000	In an election contest, the First District court of appeal certified a	Prior to the general election, two political parties mailed preprinted requests for absentee ballots to registered voters in Seminole County.	No	N/A	No

007838

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		2404		trial court order to be of great public importance and to require immediate resolution by the supreme court. The trial court denied appellants' request to invalidate absentee ballot requests in Seminole County in the 2000 presidential election.	Forms mailed by one party failed to include either a space for the voter identification number or the preprinted number. Representatives from that party were allowed to add voter identification numbers to request forms after they were returned, and absentee ballots were sent to the persons named on the request forms. The supreme court affirmed the trial court's refusal to invalidate the ballot requests, and adopted the trial court's reasoning that the information required, which included the voter identification number, was directory rather than mandatory. The trial court properly found that the evidence did not support a finding of fraud, gross negligence, or intentional wrongdoing. Allowing one party to correct ballots did not constitute illegal disparate treatment because there was no need to correct the other party's forms. Affirmed.			
Gross v. Albany County Bd. of Elections	Court of Appeals of New York	3 N.Y.3d 251; 819 N.E.2d 197; 785 N.Y.S.2d 729;	October 14, 2004	Appellant candidates sought review from an order of the Appellate Division, which affirmed a trial court order	Due to a challenge to a redistricting plan, the Board was enjoined from conducting primary and general elections for certain county districts. A special primary election was directed, with a special general election to be	No	N/A	No

007839

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		2004 N.Y. LEXIS 2412		holding that absentee ballots from a special general election were not to be canvassed because respondent Albany County Board of Elections failed to follow the set procedure for those voters.	held "expeditiously thereafter." Absentee ballot requests for the first special election were based on prior requests, but new requests had to be made for the general election. However, the Board forwarded absentee ballots for that election as well, based on the prior requests. Candidates in two close races thereafter challenged those absentee ballots, as they violated the procedure that was to be followed. The trial court held that the ballots should not be canvassed, which decision was affirmed on appeal. On further review due to dissenting opinions, the court found that the ballots were in violation of the federal court order that directed the procedure to be followed, as well as in violation of New York election law. The court concluded that the Board's error was not technical, ministerial, or inconsequential because it was central to the substantive process, and the voters who used absentee ballots were not determined to be "duly qualified electors." Affirmed.			
In re Canvass of	Supreme Court of	577 Pa.	March 8,	A county elections	The absentee ballots at issue were	No	N/A	No

007840

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Absentee Ballots of Nov. 4, 2003 Gen. Election	Pennsylvania	231; 843 A.2d 1223; 2004 Pa. LEXIS 431	2004	board voided certain absentee ballots cast in the November 4, 2003, general election. The court of common pleas held that absentee ballots delivered by third persons were valid and should be counted. The commonwealth court affirmed the trial court's decision. The state supreme court granted allocatur. Appellants and appellees were certain candidates and voters.	hand-delivered to the county elections board by third persons on behalf of non-disabled voters. On appeal, the issue was whether non-disabled absentee voters could have third persons hand-deliver their ballots to the elections board where the board indicated that the practice was permitted. The state supreme court concluded that the "in person" delivery requirement was mandatory, and that absentee ballots delivered in violation of the provision were invalid, notwithstanding the board's erroneous instructions to the contrary. Under the statute's plain meaning, a non-disabled absentee voter had two choices: send the ballot by mail, or deliver it in person. Third-person hand-delivery of absentee ballots was not permitted. To ignore the law's clear instructions regarding in-person delivery would undermine the statute's very purpose as a safeguard against fraud. The state supreme court concluded that its precedent was clear, and it could not simply ignore substantive provisions of the Pennsylvania Election Code. The judgment of the Commonwealth Court was reversed in so far as it held that			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					certain absentee ballots delivered on behalf of non--disabled absentee voters were valid.			
In re Canvass of Absentee Ballots of November 4, 2003	Commonwealth Court of Pennsylvania	839 A.2d 451; 2003 Pa. Commw. LEXIS 963	December 22, 2003	The Allegheny County Elections Board did not allow 74 challenged third-party hand--delivered absentee ballots to be counted in the statewide general election. The court of common pleas of Allegheny County reversed the Board's decision and allowed the 74 ballots to be counted. Appellant objecting candidates appealed the trial court's order.	On appeal, the issue was whether non-disabled voters who voted by absentee ballots and had those ballots delivered by third parties to county election boards could have their ballots counted in the statewide general election. First, the appellate court concluded that political bodies had standing to appeal. Also, the trial court did not err by counting the 74 ballots because absentee voters could not be held responsible for following the statutory requirements of Pennsylvania election law where the Board knowingly failed to abide by the statutory language regarding the delivery of absentee ballots, changed its policy to require voters to abide by the language, and then changed its policy back to its original stance that voters did not have to abide by the statutory language, thereby misleading absentee voters regarding delivery requirements. Under the circumstances, it was more important to protect the interest of the voters by not disenfranchising them	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					than to adhere to the strict language of the statute. However, one ballot was not counted because it was not delivered to the Board. Affirmed with the exception that one voter's ballot was stricken.			
United States v. Pennsylvania	United States District Court for the Middle District of Pennsylvania	2004 U.S. Dist. LEXIS 21167	October 20, 2004	Plaintiff United States sued defendant Commonwealth of Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of	The testimony of the two witnesses offered by the United States did not support its contention that voters protected by the Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern regarding their ability or right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of	No	N/A	No

007843

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				candidates so late in the election year.	UOCAVA voters to cast their ballots. Moreover, Pennsylvania had adduced substantial evidence that the requested injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs. Motion for injunctive relief denied.			
Hoblock v. Albany County Bd. of Elections	United States District Court for the Northern District of New York	341 F. Supp. 2d 169; 2004 U.S. Dist. LEXIS 21326	October 25, 2004	Plaintiffs, candidates and voters, sued defendant, the Albany County, New York, Board of Elections, under § 1983, claiming that the Board violated plaintiffs' Fourteenth Amendment rights by refusing to tally the voters' absentee ballots. Plaintiffs moved for a preliminary injunction.	An election for members of the Albany County Legislature had been enjoined, and special primary and general elections were ordered. The order stated that the process for obtaining and counting absentee ballots for the general election would follow New York election law, which required voters to request absentee ballots. However, the Board issued absentee ballots for the general election to all persons who had applied for an absentee ballot for the cancelled election. The voters used absentee ballots to vote; their ballots were later invalidated. A state court determined that automatically sending absentee ballots to those who had not filed an application violated the constitution of	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					New York. The district court found that the candidates' claims could have been asserted in state court and were barred by res judicata, but the voters were not parties to the state court action. The candidates were not entitled to joinder and had not filed a motion to intervene. The voters established a likelihood of success on the merits, as the Board effectively took away their right to vote by issuing absentee ballots and then refusing to count them. The voters' claims involved more than just an "unintended irregularity." The candidates' claims were dismissed, and their request for joinder or to intervene was denied. Plaintiffs' motion for a preliminary injunction preventing the Board from certifying winners of the election was granted.			
Griffin v. Roupas	United States Court of Appeals for the Seventh Circuit	385 F.3d 1128; 2004 U.S. App. LEXIS 21476	October 15, 2004	In a suit brought by plaintiff working mothers against defendants, members of the Illinois State Board of Elections, alleging that the United States	The mothers contended that, because it was a hardship for them to vote in person on election day, the U.S. Constitution required Illinois to allow them to vote by absentee ballot. The district court dismissed the mothers' complaint. On appeal, the court held that the district court's ruling was	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				Constitution required Illinois to allow them to vote by absentee ballot, the mothers appealed from a decision of the United States District Court for the Northern District of Illinois, Eastern Division, which dismissed their complaint for failure to state a claim.	correct, because, although it was possible that the problems created by absentee voting might be outweighed by the harm to voters who would lose their vote if they were unable to vote by absentee ballot, the striking of the balance between discouraging fraud and encouraging voter turnout was a legislative judgment with which the court would not interfere unless strongly convinced that such judgment was grossly awry. The court further held that Illinois law did not deny the mothers equal protection of the laws, because the hardships that prevented voting in person did not bear more heavily on working mothers than other classes in the community. Finally, the court held that, although the length and complexity of the Illinois ballot supported an argument for allowing people to vote by mail, such argument had nothing to do with the problems faced by working mothers. It applied to everyone. Affirmed.			
Reitz v. Rendell	United States District Court for the Middle District of	2004 U.S. Dist. LEXIS	October 29, 2004	Plaintiff service members filed an action against defendant state	The court issued an order to assure that service members and other similarly situated service members who were protected by the UOCAVA would not	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	Pennsylvania	21813		officials under the Uniformed and Overseas Citizens Absentee Voting Act, alleging that they and similarly situated service members would be disenfranchised because they did not receive their absentee ballots in time. The parties entered into a voluntary agreement and submitted it to the court for approval.	be disenfranchised. The court ordered the Secretary of the Commonwealth of Pennsylvania to take all reasonable steps necessary to direct the county boards of elections to accept as timely received absentee ballots cast by service members and other overseas voters as defined by UOCAVA, so long as the ballots were received by November 10, 2004. The ballots were to be considered solely for purposes of the federal offices that were included on the ballots. The court held that the ballot needed to be cast no later than November 2, 2004 to be counted. The court did not make any findings of liability against the Governor or the Secretary. The court entered an order, pursuant to a stipulation between the parties, that granted injunctive relief to the service members.			
Bush v. Hillsborough County Canvassing Bd.	United States District Court for the Northern District of Florida	123 F. Supp. 2d 1305; 2000 U.S. Dist. LEXIS 19265	December 8, 2000	The matter came before the court on plaintiffs' complaint for declaratory and injunctive relief alleging that defendant county canvassing boards	Plaintiff presidential and vice--presidential candidates and state political party contended that defendant county canvassing boards rejected overseas absentee state ballots and federal write--in ballots based on criteria inconsistent with the Uniformed and Overseas Citizens	No	N/A	No

007847

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>rejected overseas absentee state ballots and federal write--in ballots based on criteria inconsistent with federal law, and requesting that the ballots be declared valid and that they should be counted.</p>	<p>Absentee Voting Act. Because the state accepted overseas absentee state ballots and federal write--in ballots up to 10 days after the election, the State needed to access that the ballot in fact came from overseas. However, federal law provided the method to establish that fact by requiring the overseas absentee voter to sign an oath that the ballot was mailed from outside the United States and requiring the state election officials to examine the voter's declarations. The court further noted that federal law required the user of a federal write--in ballot to timely apply for a regular state absentee ballot, not that the state receive the application, and that again federal law, by requiring the voter using a federal write--in ballot to swear that he or she had made timely application, had provided the proper method of proof. Plaintiffs withdrew as moot their request for injunctive relief and the court granted in part and denied in part plaintiffs' request for declaratory relief, and declared valid all federal write--in ballots that were signed pursuant to the oath provided therein but rejected solely because the ballot envelope did</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					not have an APO, FPO, or foreign postmark, or solely because there was no record of an application for a state absentee ballot.			
Kolb v. Casella	Supreme Court of New York, Appellate Division, Fourth Department	270 A.D.2d 964; 705 N.Y.S.2d 746; 2000 N.Y. App. Div. LEXIS 3483	March 17, 2000	Both petitioner and respondent appealed from order of supreme court, determining which absentee and other paper ballots would be counted in a special legislative election.	Both petitioner and respondent, presumably representing different candidates, challenged the validity of particular paper ballots, mostly absentee, in a special legislative election. The court affirmed most of the trial court's findings, but modified its order to invalidate ballots improperly marked outside the voting square---ballots where the signature on the envelope differed substantially from the voter registration card signature----and ballots where voters neglected to supply statutorily required information on the envelopes. However, the court, seeking to avoid disenfranchising voters where permissible, held that ballots were not invalid where applications substantially complied with statute, there was no objection to the ballots themselves, and there was no evidence of fraud. Where absentee ballot envelopes contained extra ballots, the ballots were to be placed in a ballot	No	N/A	No

007849

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
					box so that procedures applicable when excess ballots are placed in a ballot box could be followed. Order modified.			
People v. Woods	Court of Appeals of Michigan	241 Mich. App. 545; 616 N.W.2d 211; 2000 Mich. App. LEXIS 156	June 27, 2000	Defendant filed an interlocutory appeal of the decision by the circuit court, which denied defendant's request for a jury instruction on entrapment by estoppel, but stayed the proceedings to allow defendant to pursue the interlocutory appeal, in a criminal action alleging violations of election laws.	Defendant distributed and collected absentee ballots in an election. Because both defendant and his brother were candidates on the ballot, defendant's assistance was illegal under Michigan law. Bound over for trial on election fraud charges, defendant requested a jury instruction on entrapment by estoppel, which was denied. On interlocutory appeal, the appellate court reversed and remanded for an entrapment hearing, holding that defendant should be given the opportunity to present evidence that he unwittingly committed the unlawful acts in reasonable reliance upon the word of the township clerk. The necessary elements of the entrapment defense were: (1) a government official (2) told the defendant that certain criminal conduct was legal; (3) the defendant actually relied on the official's statements; (4) the defendant's reliance was in good faith and reasonable in light of the official's	No	N/A	No

007850

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					identity, the point of law represented, and the substance of the official's statement; and (5) the prosecution would be so unfair as to violate the defendant's right to due process. Denial of jury instruction was reversed because the trial court did not hold an entrapment hearing; remanded for an entrapment hearing where defendant could present elements of the entrapment by estoppel defense.			
Harris v. Florida Elections Canvassing Comm'n	United States District Court for the Northern District of Florida	122 F. Supp. 2d 1317; 2000 U.S. Dist. LEXIS 17875	December 9, 2000	Plaintiffs challenged the counting of overseas absentee ballots received after 7 p.m. on election day, alleging the ballots violated Florida law.	The court found Congress did not intend 3 U.S.C.S. § 1 to impose irrational scheduling rules on state and local canvassing officials, and did not intend to disenfranchise overseas voters. The court held the state statute was required to yield to the Florida Administrative Code, which required the 10-day extension in the receipt of overseas absentee ballots in federal elections because the rule was promulgated to satisfy a consent decree entered by the state in 1982.	No	N/A	No
Weldon v. Berks County Dep't of Election Servs.	United States District Court for the Eastern District of Pennsylvania	2004 U.S. Dist. LEXIS 21948	November 1, 2004	Plaintiffs, a congressman and a state representative, filed a motion seeking a	The congressman and representative sought to have the absentee ballots at issue set aside until a hearing could be held to determine whether any of the straining order denied. CASE	No	N/A	No

007851

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>preliminary injunction or temporary restraining order that would prohibit defendant county department of election services from delivering to local election districts absentee ballots received from any state, county, or city correctional facility.</p>	<p>SUMMARY: PROCEDURAL POSTURE: Plaintiffs, a congressman and a state representative, filed a motion seeking a preliminary injunction or temporary restraining order that would prohibit defendant county department of election services from delivering to local election districts absentee ballots received from any state, county, or city correctional facility as provided in Pa. Stat. Ann. tit. 25, § 3416.6 and Pa. Stat. Ann. tit. 25, § 3416.8. OVERVIEW: The congressman and representative sought to have the absentee ballots at issue set aside until a hearing could be held to determine whether any of the ballots were delivered to the county board of elections by a third party in violation of Pennsylvania law, whether any of the ballots were submitted by convicted incarcerated felons in violation of Pennsylvania law, and whether any of the ballots were submitted by qualified voters who were improperly assisted without the proper declaration required by Pennsylvania law. The court concluded that an ex parte temporary restraining order was not warranted because there</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					were potential jurisdictional issues, substantial questions concerning the alleged violations, and the complaint did not allege that the department acted or threatened to act in an unlawful manner. The court denied the ex parte motion for a temporary restraining order. The court set a hearing on the motion for preliminary injunction.			
Qualkinbush v. Skubisz	Court of Appeals of Illinois, First District	822 N.E.2d 38; 2004 Ill. App. LEXIS 1546	December 28, 2004	Respondent appealed from an order of the circuit court certifying mayoral election results for a city in which the court declared petitioner mayor.	Respondent first claimed the trial court erred in denying his motion to dismiss with respect to 38 votes the Election Code was preempted by and violated the Voting Rights Act and the Americans with Disabilities Act of 1990 since it restricted the individuals with whom an absentee voter could entrust their ballot for mailing. The appeals court found the trial court did not err in denying the motion to dismiss, as Illinois election law prevented a candidate or his or her agent from asserting undue influence upon a disabled voter and from manipulating that voter into voting for the candidate or the agent's candidate, and was designed to protect the rights of disabled voters. Respondent had not established that the federal legislature	No	N/A	No

007853

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					intended to preempt the rights of state legislatures to restrict absentee voting, and, particularly, who could return absentee ballots. The Election Code did not violate equal protection principles, as the burden placed upon absentee voters by the restriction on who could mail an absentee ballot was slight and nondiscriminatory and substantially contributed to the integrity of the election process. Affirmed.			
Panio v. Sunderland	Supreme Court of New York, Appellate Division, Second Department	14 A.D.3d 627; 790 N.Y.S.2d 136; 2005 N.Y. App. Div. LEXIS 3433	January 25, 2005	In proceedings filed pursuant to New York election law to determine the validity of certain absentee and affidavit ballots tendered for the office of 35th District Senator, appellants, a chairperson of the county Republican committee and the Republican candidate, both sought review of an	The question presented was whether the county election board should count the six categories of ballots that were in dispute. After a review of the evidence presented, the appeals court modified the trial court's order by: (1) deleting an order directing the county elections board (board) to count 160 affidavit ballots tendered by voters who appeared at the correct polling place but the wrong election district, as there were meaningful distinctions between those voters who went to the wrong polling place and those voters who went to the correct polling place but the wrong election district; (2) directing that the board not count 10	No	N/A	No

007854

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				order by the supreme court to count or not count certain ballots. Respondent Democratic candidate cross-- appealed.	affidavit ballots tendered in the wrong election district because of a map error, as there was no evidence that the voters in this category relied on the maps when they went to the wrong election districts; and (3) directing the board to count 45 absentee ballots tendered by poll workers, as it appeared that the workers substantially complied with the statute by providing a written statement that was the functional equivalent of an application for a special ballot. Order modified and judgment affirmed.			
Pierce v. Allegheny County Bd. of Elections	United States District Court for the Western District of Pennsylvania	324 F. Supp. 2d 684; 2003 U.S. Dist. LEXIS 25569	November 13, 2003	Plaintiff voters sought to enjoin defendant election board from allowing three different procedures for third--party absentee ballot delivery, require the set aside of all absentee third--party delivered ballots in connection with the November 2003 election, prohibit those ballots from	Intervenor political committees also moved to dismiss for lack of standing, lack of subject matter jurisdiction, and failure to state a claim, as well as abstention. Inter alia, the court found that abstention was appropriate under the Pullman doctrine because: (1) construction of Pennsylvania election law was not clear regarding whether the absentee ballot provision requiring hand--delivery to be "in person" was mandatory or directory; (2) the construction of the provision by state courts as mandatory or directory could obviate the need to determine whether	No	N/A	No

007855

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
				being delivered to local election districts after having been commingled with other absentee ballots, and convert a temporary restraining order to an injunction.	there had been a Fourteenth Amendment equal protection violation; and (3) erroneous construction of the provision could disrupt very important state voting rights policies. However, the court had a continuing duty to consider the motion for temporary restraining order/preliminary injunction despite abstention. The court issued a limited preliminary injunction whereby the 937 hand-delivered absentee ballots at issue were set aside as "challenged" ballots subject to the election code challenge procedure. Any equal protection issues could be heard in state court by virtue of the state court's concurrent jurisdiction.			
Friedman v. Snipes	United States District Court for the Southern District of Florida	345 F. Supp. 2d 1356; 2004 U.S. Dist. LEXIS 23739	November 9, 2004	Plaintiff registered voters sued defendant state and county election officials under § 1983 for alleged violations of their rights under 42 U.S.C.S. § 1971(a)(2)(B) of the Civil Rights Act, and	The voters claimed they timely requested absentee ballots but (1) never received the requested ballot or (2) received a ballot when it was too late for them to submit the absentee ballot. The court held that 42 U.S.C.S. § 1971(a)(2)(B) was not intended to apply to the counting of ballots by those already deemed qualified to vote. The plain meaning of § 1971(a)(2)(B) did not support the voters' claim that it	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the First and Fourteenth Amendments to the United States Constitution. The voters moved for a temporary restraining order (TRO) and/or preliminary injunction. The court granted the TRO and held a hearing on the preliminary injunction.	should cover an error or omission on any record or paper or any error or omission in the treatment, handling, or counting of any record or paper. Further, because Florida election law only related to the mechanics of the electoral process, the correct standard to be applied here was whether Florida's important regulatory interests justified the restrictions imposed on their First and Fourteenth Amendment rights. The State's interests in ensuring a fair and honest election and counting votes within a reasonable time justified the light imposition on voting rights. The deadline for returning ballots did not disenfranchise a class of voters. Rather, it imposed a time deadline by which voters had to return their votes. So there was no equal protection violation. Preliminary injunction denied.			
Johnson v. Bush	United States District Court for the Southern District of Florida	214 F. Supp. 2d 1333; 2002 U.S. Dist. LEXIS	July 18, 2002	Plaintiff felons sued defendant state officials for alleged violations of their constitutional rights. The officials moved and the felons cross-	The felons had all successfully completed their terms of incarceration and/or probation, but their civil rights to register and vote had not been restored. They alleged that Florida's disenfranchisement law violated their rights under First, Fourteenth,	No	N/A	No

007857

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis, (if of Note)	Other Notes	Should the Case be Researched Further
		14782		moved for summary judgment.	Fifteenth, and Twenty-Fourth Amendments to the United States Constitution, as well as § 1983 and §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on minorities, the cause was racially neutral. Finally, requiring the felons to pay their victim restitution before their rights would be restored did not constitute an improper poll tax or wealth qualification. The court granted the officials' motion for summary judgment and implicitly denied the felons' motion. Thus, the court dismissed the lawsuit with prejudice.			
Farrakhan v.	United States	2000	December	Plaintiffs, convicted	The felons alleged that Washington's	No	N/A	No

007858

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Locke	District Court for the Eastern District of Washington	U.S. Dist. LEXIS 22212	1, 2000	felons who were also racial minorities, sued defendants for alleged violations of the Voting Rights Act. The parties filed cross-motions for summary judgment.	felon disenfranchisement and restoration of civil rights schemes, premised upon Wash. Const. art. VI § 3, resulted in the denial of the right to vote to racial minorities in violation of the VRA. They argued that race bias in, or the discriminatory effect of, the criminal justice system resulted in a disproportionate number of racial minorities being disenfranchised following felony convictions. The court concluded that Washington's felon disenfranchisement provision disenfranchised a disproportionate number of minorities; as a result, minorities were under-represented in Washington's political process. The Rooker-Feldman doctrine barred the felons from bringing any as-applied challenges, and even if it did not bar such claims, there was no evidence that the felons' individual convictions were born of discrimination in the criminal justice system. However, the felons' facial challenge also failed. The remedy they sought would create a new constitutional problem, allowing disenfranchisement only of white felons. Further, the felons did not establish a causal connection between			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					the disenfranchisement provision and the prohibited result. The court granted defendants' motion and denied the felons' motion for summary judgment.			
Farrakhan v. Washington	United States Court of Appeals for the Ninth Circuit	338 F.3d 1009; 2003 U.S. App. LEXIS 14810	July 25, 2003	Plaintiff inmates sued defendant state officials, claiming that Washington state's felon disenfranchisement scheme constitutes improper race--based vote denial in violation of § 2 of the Voting Rights Act. The United States District Court for the Eastern District of Washington granted of summary judgment dismissing the inmates' claims. The inmates appealed.	Upon conviction of infamous crimes in the state, (that is, crimes punishable by death or imprisonment in a state correctional facility), the inmates were disenfranchised. The inmates claimed that the disenfranchisement scheme violated § 2 because the criminal justice system was biased against minorities, causing a disproportionate minority representation among those being disenfranchised. The appellate court held, inter alia, that the district court erred in failing to consider evidence of racial bias in the state's criminal justice system in determining whether the state's felon disenfranchisement laws resulted in denial of the right to vote on account of race. Instead of applying its novel "by itself" causation standard, the district court should have applied a totality of the circumstances test that included analysis of the inmates' compelling evidence of racial bias in Washington's criminal justice system.	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					However, the inmates lacked standing to challenge the restoration scheme because they presented no evidence of their eligibility, much less even allege that they were eligible for restoration, and had not attempted to have their civil rights restored. The court affirmed as to the eligibility claim but reversed and remanded for further proceedings to the bias in the criminal justice system claim.			
Muntaqim v. Coombe	United States Court of Appeals for the Second Circuit	366 F.3d 102; 2004 U.S. App. LEXIS 8077	April 23, 2004	Plaintiff inmate appealed a judgment of the United States District Court for the Northern District of New York, which granted summary judgment in favor of defendants in the inmate's action alleging violation of § 2 of the Voting Rights Act of 1965.	At issue was whether the VRA could be applied to N.Y. Elec. Law § 5--106, which disenfranchised currently incarcerated felons and parolees. The instant court concluded that the Voting Rights Act did not apply to the New York law. Applying the Act to state law would alter the traditional balance of power between the states and the federal government. The court was not convinced that there was a congruence and proportionality between the injury to be prevented or remedied (i.e., the use of vote denial and dilution schemes to avoid the strictures of the VRA), and the means adopted to that end (i.e., prohibition of state felon disenfranchisement law that resulted in	No	N/A	No

007361

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					vote denial or dilution but were not enacted with a discriminatory purpose). Further, there was no clear statement from Congress that the Act applied to state felon disenfranchisement statutes. Inter alia, defendants were entitled to qualified immunity as to claim asserted against them in their personal capacities, and to Eleventh Amendment immunity to the extent the inmate sought damages against defendants in their official capacities. The district court's judgment was affirmed.			
Johnson v. Governor of Fla.	United States Court of Appeals for the Eleventh Circuit	353 F.3d 1287; 2003 U.S. App. LEXIS 25859	December 19, 2003	Plaintiffs, ex--felon citizens of Florida, on their own right and on behalf of others, sought review of a decision of the United States District Court for the Southern District of Florida, which granted summary judgment to defendants, members of the Florida Clemency Board in	The citizens alleged that Fla. Const. art. VI, § 4 (1968) was racially discriminatory and violated their constitutional rights. The citizens also alleged violations of the Voting Rights Act. The court of appeals initially examined the history of Fla. Const. art. VI, § 4 (1968) and determined that the citizens had presented evidence that historically the disenfranchisement provisions were motivated by a discriminatory animus. The citizens had met their initial burden of showing that race was a substantial motivating factor. The state was then required to	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				their official capacity. The citizens challenged the validity of the Florida felon disenfranchisement laws.	show that the current disenfranchisement provisions would have been enacted absent the impermissible discriminatory intent. Because the state had not met its burden, summary judgment should not have been granted. The court of appeals found that the claim under the Voting Rights Act, also needed to be remanded for further proceedings. Under a totality of the circumstances, the district court needed to analyze whether intentional racial discrimination was behind the Florida disenfranchisement provisions. The court affirmed the district court's decision to grant summary judgment on the citizens' poll tax claim. The court reversed the district court's decision to grant summary judgment to the Board on the claims under the equal protection clause and for violation of federal voting laws and remanded the matter to the district court for further proceedings.			
Fischer v. Governor	Supreme Court of New Hampshire	145 N.H. 28; 749 A.2d 321;	March 24, 2000	Appellant State of New Hampshire challenged a ruling of the superior court	Appellee was incarcerated at the New Hampshire State Prison on felony convictions. When he requested an absentee ballot to vote from a city	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
		2000 N.H. LEXIS 16		that the felon disenfranchisement statutes violate N.H. Const. pt. I, Art. 11.	<p>clerk, the request was denied. The clerk sent him a copy of N.H. Rev. Stat. Ann. § 607(A)(2) (1986), which prohibits a felon from voting "from the time of his sentence until his final discharge." The trial court declared the disenfranchisement statutes unconstitutional and ordered local election officials to allow the plaintiff to vote. Appellant State of New Hampshire challenged this ruling. The central issue was whether the felon disenfranchisement statutes violated N.H. Const. pt. I, art. 11. After a review of the article, its constitutional history, and legislation pertinent to the right of felons to vote, the court concluded that the legislature retained the authority under the article to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority, and reversed. Judgment reversed because the court concluded that the legislature retained its authority under the New Hampshire Constitution to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative</p>			

007864

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Johnson v. Governor of Fla.	United States Court of Appeals for the Eleventh Circuit	405 F.3d 1214; 2005 U.S. App. LEXIS 5945	April 12, 2005	Plaintiff individuals sued defendant members of Florida Clemency Board, arguing that Florida's felon disenfranchisement law, Fla. Const. art. VI, § 4 (1968), violated the Equal Protection Clause and the Voting Rights Act. The United States District Court for the Southern District of Florida granted the members summary judgment. A divided appellate panel reversed. The panel opinion was vacated and a rehearing en banc was granted.	authority. The individuals argued that the racial animus motivating the adoption of Florida's disenfranchisement laws in 1868 remained legally operative despite the reenactment of Fla. Const. art. VI, § 4 in 1968. The subsequent reenactment eliminated any discriminatory taint from the law as originally enacted because the provision narrowed the class of disenfranchised individuals and was amended through a deliberative process. Moreover, there was no allegation of racial discrimination at the time of the reenactment. Thus, the disenfranchisement provision was not a violation of the Equal Protection Clause and the district court properly granted the members summary judgment on that claim. The argument that the Voting Rights Act applied to Florida's disenfranchisement provision was rejected because it raised grave constitutional concerns, i.e., prohibiting a practice that the Fourteenth Amendment permitted the state to maintain. In addition, the legislative history indicated that	No	N/A	No

007865

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Congress never intended the Voting Rights Act to reach felon disenfranchisement provisions. Thus, the district court properly granted the members summary judgment on the Voting Rights Act claim. The motion for summary judgment in favor of the members was granted.			
Mixon v. Commonwealth	Commonwealth Court of Pennsylvania	759 A.2d 442; 2000 Pa. Commw. LEXIS 534	September 18, 2000	Respondents filed objections to petitioners' complaint seeking declaratory relief as to the unconstitutionality of the Pennsylvania Election Code, 25 Pa. Cons. Stat. §§ 2600 -- 3591, and the Pennsylvania Voter Registration Act, 25 Pa. Cons. Stat. §§ 961.101--961.5109, regarding felon voting rights.	Petitioner convicted felons were presently or had formerly been confined in state prison. Petitioner elector was currently registered to vote in respondent state. Petitioners filed a complaint against respondent state seeking declaratory relief challenging as unconstitutional, state election and voting laws that excluded confined felons from the definition of qualified absentee electors and that barred a felon who had been released from a penal institution for less than five years from registering to vote. Respondents filed objections to petitioners' complaint. The court sustained respondents' objection that incarcerated felons were not unconstitutionally deprived of qualified absentee elector status because respondent state had broad power to determine the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>conditions under which suffrage could be exercised. However, petitioner elector had no standing and the court overruled objection as to deprivation of ex--felon voting rights. The court sustained respondents' objection since incarcerated felons were not unconstitutionally deprived of qualified absentee elector status and petitioner elector had no standing, but objection that ex--incarcerated felons' voting rights were deprived was overruled since status penalized them.</p>			
Rosello v. Calderon	United States District Court for the District of Puerto Rico	2004 U.S. Dist. LEXIS 27216	November 30, 2004	Plaintiff voters filed a § 1983 action against defendant government officials alleging violations the Due Process and Equal Protection Clauses of the U.S. Const. amend. XIV, resulting from the invalidity of absentee and split ballots in a gubernatorial election.	The voters' § 1983 action against government officials alleged that absentee ballots for a gubernatorial election were untimely mailed and that split votes, which registered two votes for the same office, were null. The court asserted jurisdiction over the disparate treatment claims, which arose under the U.S. Constitution. The court declined to exercise discretionary abstention because the case was not merely a facial attack on the constitutionality of a statute, but was mainly an applied challenge, requiring a hearing in order to develop the record, and because equal protection	No	N/A	No

007867

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the case be Researched further
					and due process were secured under the state and federal constitutions. The court held that the voters had a fundamental due process right created by Puerto Rico Election Law and suffered an equal protection violation in further violation of the U.S. Const. amend. I right to vote, thereby creating their total disenfranchisement. The court held that the evidence created an inference that the split ballots were not uniformly treated and that it was required to examine a mixed question of fact and constitutional law pursuant to federal guidelines to determine whether potential over votes were invalid. The court asserted jurisdiction over the voters' claims.			
Woodruff v. Wyoming	United States Court of Appeals for the Tenth Circuit	49 Fed. Appx. 199; 2002 U.S. App. LEXIS 21060	October 7, 2002	Plaintiffs, pro se inmates, appealed from an order of the United States District Court for the District of Wyoming, dismissing their complaint brought under § 1983, challenging Wyo. Stat. Ann. § 6--10--	The inmates argued that the statute violated their Eighth Amendment right and their State constitutional right to be free from cruel and unusual punishment, their equal protection rights under the Fourteenth Amendment and State Constitution, and their federal and state rights to due process. One inmate had not paid the appellate filing fee or filed a motion to proceed on appeal without prepayment	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				106, which denied them, as convicted felons, the right to vote. The district court dismissed the action for failure to state a claim upon which relief could be granted and as frivolous.	of costs or fees, and his appeal was dismissed. The court found that U.S. Const. amend. XIV, § 2 had long been held to exclude felons from the right to vote. It could scarcely be unreasonable for a state to decide that perpetrators of serious crimes should not take part in electing the legislators who made the laws, the executives who enforced them, the prosecutors who tried the cases, or the judges who heard their cases. The court also found the dismissed suit constituted a "strike" under 28 U.S.C.S. § 1915(g), although the suit did not challenge prison conditions per se. One inmate's appeal was dismissed; the judgment dismissing the other's complaint was affirmed.			
N.J. State Conf.-NAACP v. Harvey	Superior Court of New Jersey, Appellate Division	381 N.J. Super. 155; 885 A.2d 445; 2005 N.J. Super. LEXIS 316	November 2, 2005	The Superior Court of New Jersey, Chancery Division, Union County, dismissed a complaint filed by plaintiff interested parties to invalidate N.J. Stat. Ann. § 19:4--1(8) on the	The statute at issue prohibited all people on parole or probation for indictable offenses from voting. The interested parties alleged that the criminal justice system in New Jersey discriminated against African-Americans and Hispanics, thereby disproportionately increasing their population among parolees and probationers and diluting their political	No	N/A	No

007869

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				ground that it denied African--Americans and Hispanics equal protection of the law. Defendant, the New Jersey Attorney General, moved to dismiss the complaint for failure to state a claim, and said motion was granted. The interested parties then appealed.	power. As a result, the alleged that enforcement of the statute resulted in a denial of equal protection under the state Constitution. The appeals court disagreed. N.J. Const. art. II authorized the New Jersey Legislature to disenfranchise persons convicted of certain crimes from voting. Moreover, those convicts could not vote unless pardoned or unless otherwise restored by law to the right of suffrage. The statute also limited the period of disenfranchisement during a defendant's actual service on parole or probation. Thus, it clearly complied with this specific constitutional mandate. The judgment was affirmed.			
King v. City of Boston	United States District Court for the District of Massachusetts	2004 U.S. Dist. LEXIS 8421	May 13, 2004	Plaintiff inmate filed a motion for summary judgment in his action challenging the constitutionality of Mass. Gen. Laws ch. 51, § 1, which excluded incarcerated felons from voting while they were	The inmate was convicted of a felony and incarcerated. His application for an absentee ballot was denied on the ground that he was not qualified to register and vote under Mass. Gen. Laws ch. 51, § 1. The inmate argued that the statute was unconstitutional as it applied to him because it amounted to additional punishment for crimes he committed before the statute's enactment and thus violated his due process rights and the prohibition	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				imprisoned.	against ex post facto laws and bills of attainder. The court held that the statute was regulatory and not punitive because rational choices were implicated in the statute's disenfranchisement of persons under guardianship, persons disqualified because of corrupt elections practices, persons under 18 years of age, as well as incarcerated felons. Specifically, incarcerated felons were disqualified during the period of their imprisonment when it would be difficult to identify their address and ensure the accuracy of their ballots. Therefore, the court concluded that Mass. Gen. Laws ch. 51, § 1 did not violate the inmate's constitutional rights. The court found the statute at issue to be constitutional and denied the inmate's motion for summary judgment.			
Southwest Voter Registration Educ. Project v. Shelley	United States District Court for the Central District of California	278 F. Supp. 2d 1131; 2003 U.S. Dist. LEXIS	August 15, 2003	Plaintiffs, several groups, brought suit alleging that the proposed use of "punch-card" balloting machines in the California	Plaintiffs claimed voters using punch-card machines would have a comparatively lesser chance of having their votes counted in violation of the Equal Protection Clause and the counties employing punch--card systems had greater minority	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		14413		election would violate the United States Constitution and Voting Rights Act. Plaintiffs moved for an order delaying that election, scheduled for October 7, 2003, until such time as it could be conducted without use of punch--card machines.	populations thereby disproportionately disenfranchising and/or diluting the votes on the basis of race, in violation of § 2 of the Voting Rights Act. While the court did not need to decide the res judicata issue at this juncture, there was ample reason to believe that plaintiffs would have had a difficult time overcoming it as they were seeking to establish the same constitutional violations alleged in prior litigation, but to secure an additional remedy. Plaintiffs failed to prove a likelihood of success on the merits with regard to both of their claims. Even if plaintiffs could show disparate treatment, such would not have amounted to illegal or unconstitutional treatment. The balance of hardships weighed heavily in favor of allowing the election to proceed. The public interests in avoiding wholesale disenfranchisement, and/or not plunging the State into a constitutional crisis, weighed heavily against enjoining the election. Plaintiffs' motion for preliminary injunction (consolidated with plaintiffs' ex parte application for temporary restraining			

007872

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					order) was denied.			
Igartua—de la Rosa v. United States	United States Court of Appeals for the First Circuit	417 F.3d 145; 2005 U.S. App. LEXIS 15944	August 3, 2005	Plaintiff, a U.S. citizen residing in Puerto Rico, appealed from an order of the United States District Court for the District of Puerto Rico, that rejected his claim that he was deprived of the constitutional right to vote for President and Vice President of the United States, and was also violative of three treaty obligations of the United States.	The putative voter had brought the same claims twice before. The court pointed out that U.S. law granted to the citizens of states the right to vote for the slate of electors to represent that state. Although modern ballots omitted the names of the electors and listed only the candidates, and in form it appeared that the citizens were voting for President and Vice President directly, they were not, but were voting for electors. Puerto Rico was not a state, and had not been enfranchised as the District of Columbia had by the 23rd Amendment. The franchise for choosing electors was confined to "states" by the Constitution. The court declined to turn to foreign or treaty law as a source to reverse the political will of the country. The judgment of the district court was affirmed.	No	N/A	No
United States v. Rogelio Mejorada-Lopez	Alaska	05-CR-074	December 5, 2005	Mejorada-Lopez, a Mexican citizen, completed several voter registration applications to register to vote in Alaska and voted in		No	N/A	No

007873

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the 2000, 2002, and 2004 general elections. He was charged with three counts of voting by a non-citizen in violation of 18 U.S.C. section 611 and pled guilty. Mejorada-Lopez was sentenced to probation for one year.				
United States v. Shah	Colorado	1:04-CR-00458	March 1, 2005	Shah was indicted on two counts of providing false information concerning United States citizenship in order to register to vote in violation of 18 U.S.C. section 911 and 1015(f). Shah was convicted on both counts.		No	N/A	No
United States v. Mohsin Ali	Northern Florida	4:05-CR-47	January 17, 2006	A misdemeanor was filed against Ali charging him with voting by a non-		No	N/A	Yes-need information on the outcome of

007874

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				citizen of 18 U.S.C. section 611. Trial was set for January 17, 2006				the trial.
United States v. Chaudhary	Northern Florida	4:04-CR-00059	May 18, 2005	Chaudhary was indicted for misuse of a social security number in violation of 42 U.S.C. section 408 and for making a false claim of United States citizenship on a 2002 driver's license application in violation of 18 U.S.C. section 911. A superceding indictment was returned, charging Chaudhary with falsely claiming United States citizenship on a driver's license application and on the accompanying voter registration application. He was convicted of the false		No	N/A	No

007875

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				citizenship claim on his voter registration application.				
United States v. Velasquez	Southern Florida	1:03-CR-20233	September 9, 2003	Velasquez, a former 1996 and 1998 candidate for the Florida legislature, was indicted on charges of misrepresenting United States citizenship in connection with voting and for making false statements to the Immigration and Naturalization Service, in violation of 18 U.S.C. section 911, 1015(f) and 1001. Velasquez was convicted on two counts of making false statements on his naturalization application to the INS concerning his voting history.		No	N/A	No

007876

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
United States v. McKenzie; United States v. Francois; United States v. Exavier; United States v. Lloyd Palmer; United States v. Velrine Palmer; United states v. Shivdayal; United States v. Rickman; United States v. Knight; United States v. Sweeting; United States v. Lubin; United States v. Bennett; United States v. O'Neil; United States v. Torres-Perez; United States v. Phillip; United States v. Bain Knight	Southern Florida	0:04-CR-60160; 1:04-CR-20488; 0:04-CR-60161; 0:04-CR-60159; 0:04-CR-60162; 0:04-CR-60164; 1:04-CR-20491; 1:04-CR-20490; 1:04-CR-20489; 0:04-CR-60163; 1:04-CR-14048; 0:04-CR-60165; 2:04-CR-14046; 9:04-CR-80103; 2:04-CR-14047	July 15, 2004	Fifteen non-citizens were charged with voting in various elections beginning in 1998 in violation of 18 U.S.C. section 611. Four of the defendants were also charged with making false citizenship claims in violation of 18 U.S.C. sections 911 or 1015(f). Ten defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government.		No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
United States v. Brooks	Southern Illinois	3:03-CR-30201	February 12, 2004	East St. Louis election official Leander Brooks was indicted for submitting fraudulent ballots in the 2002 general election in violation of 42 U.S.C. section 1973i(c), 1973i(e), 1973gg-10(2)(B), and 18 U.S.C. sections 241 and 371. Brooks pled guilty to all charges.		No	N/A	No
United States v. Scott; United States v. Nichols; United States v. Terrance Stith; United States v. Sandra Stith; United States v. Powell, et al.	Southern Illinois	3:05-CR-30040; 3:05-CR-30041; 3:05-CR-30042; 3:05-CR-30043; 3:05-CR-30044	June 29, 2005	Four Democrat precinct committeemen in East St. Louis were charged with vote buying on the 2004 general election in violation of 42 U.S.C. section 1973i(c). All four pled guilty. Also indicted were four additional Democrat committeemen.		No	N/A	No

007878

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the case be Researched further
				<p>Charles Powell, Jr., Jesse Lewis, Sheila Thomas, Kelvin Ellis, and one precinct worker, Yvette Johnson, on conspiracy and vote buying charges in violation of 18 U.S.C. section 371 and 42 U.S.C. section 1973i(c). All five defendants were convicted. Kelvin Ellis also pled guilty to one count of 18 U.S.C. section 1512(c)(2) relative to a scheme to kill one of the trial witnesses and two counts of 18 U.S.C. section 1503 relative to directing two other witnesses to refuse to testify before the grand jury.</p>				
United States v. McIntosh	Kansas	2:04-CR-20142	December 20, 2004	A felony information was filed against		No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>lawyer Leslie McIntosh for voting in both Wyandotte County, Kansas and Jackson County, Missouri, in the general elections of 2000 and 2002 in violation of 42 U.S.C. section 1973i(e). A superseding misdemeanor information was filed, charging McIntosh with causing the deprivation of constitutional rights in violation of 18 U.S.C. section 242, to which the defendant pled guilty.</p>				
<p>United States v. Conley; United States v. Slone; United States v. Madden; United</p>	<p>Eastern Kentucky</p>	<p>7:03-CR-00013; 7:03-CR-00014; 7:03-CR-</p>	<p>March 28, 2003 and April 24, 2003</p>	<p>Ten people were indicted on vote buying charges in connection with the 1998 primary</p>		<p>No</p>	<p>N/A</p>	<p>No</p>

007880

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
States v. Slone et al.; United States v. Calhoun; United States v. Johnson; United States v. Newsome, et al.		00015; 7:03-CR-00016; 7:03-CR-00017; 7:03-CR-00018; 7:03-CR-00019		election in Knott County, Kentucky, in violation of 42 U.S.C. section 1973i(c). Five of the defendants pled guilty, two were convicted, and three were acquitted.				
United States v. Hays, et al.	Eastern Kentucky	7:03-CR-00011	March 7, 2003	Ten defendants were indicted for conspiracy and vote buying for a local judge in Pike County, Kentucky, in the 2002 general election, in violation of 42 U.S.C. section 1973i(c) and 18 U.S.C. section 371. Five defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government.		No	N/A	No

007881

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
United States v. Turner, et al.	Eastern Kentucky	3:05-CR-00002	May 5, 2005	Three defendants were indicted for vote buying and mail fraud in connection with the 2000 elections in Knott, Letcher, Floyd, and Breathitt Counties, Kentucky, in violation of 42 U.S.C. section 1973i(c) and 18 U.S.C. section 341.		No	N/A	Yes-need update on case status.
United States v. Braud	Middle Louisiana	3:03-CR-00019	May 2, 2003	Tyrell Mathews Braud was indicted on three counts of making false declarations to a grand jury in connection with his 2002 fabrication of eleven voter registration applications, in violation of 18 U.S.C. section 1623. Braud pled guilty on all counts.		No	N/A	No
United States v.	Western	6:03-CR-	April 12,	St. Martinsville City		No	N/A	No

007882

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Thibodeaux	Louisiana	60055	2005	Councilwoman Pamela C. Thibodeaux was indicted on two counts of conspiring to submit false voter registration information, in violation of 18 U.S.C. section 371 and 42 U.S.C. section 1973i(c). She pled guilty to both charges.				
United States v. Scherzer; United States v. Goodrich; United States v. Jones; United States v. Martin	Western Missouri	4:04-CR-00401; 4:04-CR-00402; 4:05-CR-00257; 4:05-CR-00258	January 7, 2005; March 28, 2005; September 8, 2005; October 13, 2005	Two misdemeanor informations were filed charging Lorraine Goodrich and James Scherzer, Kansas residents who voted in the 2000 and 2002 general elections on both Johnson County, Kansas and in Kansas City, Missouri. The informations charged deprivation of a		No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				constitutional right by causing spurious ballots, in violation of 18 U.S.C. sections 242 and 2. Both pled guilty. Additionally, similar misdemeanor informations were filed against Tammy J. Martin, who voted in both Independence and Kansas City, Missouri in the 2004 general election and Brandon E. Jones, who voted both in Raytown and Kansas City, Missouri in the 2004 general election. Both pled guilty.				
United States v. Raymond; United States v. McGee; United States v. Tobin; United States v. Hansen	New Hampshire	04-CR-00141; 04-CR-00146; 04-CR-00216; 04-CR-00054	December 15, 2005	Two informations were filed charging Allen Raymond, former president of a Virginia-based political consulting firm called GOP Marketplace, and		No	N/A	No

007884

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>Charles McGee, former executive director of the New Hampshire State Republican Committee, with conspiracy to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. section 371 and 47 U.S.C. section 223. The charges stem from a scheme to block the phone lines used by two Manchester organizations to arrange drives to the polls during the 2002 general election. Both pled guilty. James Tobin, former New England Regional Director of the Republican National Committee, was indicted on charges of conspiring</p>				

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. section 371 and 47 U.S.C. section 223. An information was filed charging Shaun Hansen, the principal of an Idaho telemarketing firm called MILO Enterprises which placed the harassing calls, with conspiracy and aiding and abetting telephone harassment, in violation of 18 U.S.C. section 371 and 2 and 47 U.S.C. section 223. The information against Hansen was dismissed upon motion of the government. A superseding</p>				

007886

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>indictment was returned against Tobin charging conspiracy to impede the constitutional right to vote for federal candidates, in violation of 18 U.S.C. section 241 and conspiracy to make harassing telephone calls in violation of 47 U.S.C. section 223. Tobin was convicted of one count of conspiracy to commit telephone harassment and one count of aiding and abetting of telephone harassment.</p>				
United States v. Workman	Western North Carolina	1:03-CR-00038	June 30, 2003	<p>A ten-count indictment was returned charging Joshua Workman, a Canadian citizen, with voting and related offenses in</p>		No	N/A	No

007857

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the 200 and 2002 primary and general elections in Avery County, North Carolina, in violation of 18 U.S.C. sections 611, 911, 1001, and 1015(f). Workman pled guilty to providing false information to election officials and to a federal agency.				
United States v. Shatley, et al.	Western North Carolina	5:03-CR-00035	May 14, 2004	A nine-count indictment was returned charging Wayne Shatley, Anita Moore, Valerie Moore, Carlos "Sunshine" Hood and Ross "Toogie" Banner with conspiracy and vote buying in the Caldwell County 2002 general election, in violation of 42 U.S.C. section 1973i(c) and 18		No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				U.S.C. section 371. Anita and Valerie Moore pled guilty. Shatley, Hood, and Banner were all convicted.				
United States v. Vargas	South Dakota	05-CR-50085	December 22, 2005	An indictment was filed against Rudolph Vargas, for voting more than once at Pine Ridge in the 2002 general election in violation of 42 U.S.C. section 1973i(e). Vargas pled guilty.		No	N/A	No
United States v. Wells; United States v. Mendez; United States v. Porter; United States v. Hrutkay; United States v. Porter; United States v. Stapleton; United States v. Thomas E. Esposito; United	Southern West Virginia	02-CR-00234; 2:04-CR-00101; 2:04-CR-00145; 2:04-CR-00149; 2:04-CR-00173; 2:05-CR-00002; 05-CR-	July 22, 2003; July 19, 2004; December 7, 2004; January 7, 2005; March 21, 2005; October 11, 2005; December 13, 2005	Danny Ray Wells, Logan County, West Virginia, magistrate, was indicted and charged with violating 18 U.S.C. section 1962. Wells was found guilty. A felony indictment was filed against Logan County sheriff Johnny Mendez for conspiracy to		No	N/A	No

007889

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
States v. Nagy; United States v. Adkins; United States v. Harvey		00019; 05-CR-00148; 05-CR-00161		defraud the United States in violation 18 U.S.C section 371. Mendez pled guilty. An information was filed charging former Logan County police chief Alyin Ray Porter, Jr., with making expenditures to influence voting in violation of 18 U.S.C. section 597. Porter pled guilty. Logan County attorney Mark Oliver Hrutkay was charged by information with mail fraud in violation of 18 U.S.C. section 1341. Hrutkay pled guilty. Earnest Stapleton, commander of the local VFW, was charged by information with mail fraud. He pled guilty. An information was filed				

007890

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>charging Thomas E. Esposito, a former mayor of the City of Logan, with concealing the commission of a felony, in violation of 18 U.S.C. section 4. Esposito pled guilty. John Wesley Nagy, Logan County Court marshal, pled guilty to making false statements to a federal agent, a violation of 18 U.S.C. section 1001. An information charging Glen Dale Adkins, county clerk of Logan County, with accepting payment for voting, in violation of 18 U.S.C. section 1973i(c). Adkins pled guilty. Perry French Harvey, Jr., a retired UMW official, pled guilty</p>				

007891

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				to involvement in a conspiracy to buy votes.				
United States v. Adkins, et al.	Southern West Virginia	2:04-CR-00162	December 28 & 30, 2005	Jackie Adkins was indicted for vote buying in Lincoln County, West Virginia, in violation of 42 U.S.C. section 1973i(c). A superceding indictment added Wandell "Rocky" Adkins to the indictment and charged both defendants with conspiracy to buy votes in violation of 18 U.S.C. section 371 and vote buying. A second superseding indictment was returned which added three additional defendants, Gegory Brent Stowers,		No	N/A	No

007892

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>Clifford Odell "Groundhog" Vance, and Toney "Zeke" Dingess, to the conspiracy and vote buying indictment. Charges were later dismissed against Jackie Adkins. A third superseding indictment was returned adding two additional defendants, Jerry Allen Weaver and Ralph Dale Adkins. A superseding information was filed charging Vance with expenditures to influence voting, in violation of 18 U.S.C. section 597. Vance pled guilty. Superseding informations were filed against Stowers and Dingess for expenditures to influence voting, in</p>				

007893

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				violation of 18 U.S.C. section 597. Both defendants pled guilty. Weaver also pled guilty. Superseding informations were filed against Ralph and Wandell Adkins for expenditures to influence voting, in violation of 18 U.S.C. section 597. Both defendants pled guilty.				
United States v. Davis; United States v. Byas; United States v. Ocasio; United States v. Prude; United States v. Sanders; United States v. Alicea; United States v. Brooks; United States v. Hamilton; United States v.	Eastern Wisconsin	2:05-MJ-00454; 2:05-MJ-00455; 2:05-CR-00161; 2:05-CR-00162; 2:05-CR-00163; 2:05-CR-00168; 2:05-CR-00170;	September 16, 2005; September 21, 2005; October 5, 2005; October 26, 2005; October 31, 2005; November 10, 2005	Criminal complaints were issued against Brian L. Davis and Theresa J. Byas charging them with double voting, in violation of 42 U.S.C. section 1973i(e). Indictments were filed against convicted felons Milo R. Ocasio and Kimberly Prude, charging them with		No	N/A	Need updated status on Gooden and the Anderson, Cox, Edwards, and Little cases.

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Little; United States v. Swift; United States v. Anderson; United States v. Cox; United States v. Edwards; United States v. Gooden		2:05-CR-00171; 2:05-CR-00172; 2:05-CR-00177; 2:05-CR-00207; 2:05-CR-00209; 2:05-CR-00211; 2:05-CR-00212		falsely certifying that they were eligible to vote, in violation of 42 U.S.C. section 1973gg-10(2)(B), and against Enrique C. Sanders, charging him with multiple voting, in violation of 42 U.S.C. section 1973i(e). Five more indictments were later returned charging Cynthia C. Alicea with multiple voting in violation of 42 U.S.C. section 1973i(e) and convicted felons Deshawn B. Brooks, Alexander T. Hamilton, Derek G. Little, and Eric L. Swift with falsely certifying that they were eligible to vote in violation of 42 U.S.C. section 1973gg-10(2)(B). Indictments were				

007895

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>filed against Davis and Byas charging them with double voting. Four more indictments were returned charging convicted felons Ethel M. Anderson, Jiyto L. Cox, Correan F. Edwards, and Joseph J. Gooden with falsely certifying that they were eligible to vote. Ocasio and Hamilton pled guilty. Prude was found guilty. A mistrial was declared in the Sanders case. Brooks was acquitted. Byas signed a plea agreement agreeing to plead to a misdemeanor 18 U.S.C. section 242 charge. Swift moved to change his plea. Davis was found incompetent to stand</p>				

007896

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
				trial so the government dismissed the case. Gooden is a fugitive. Alicea was acquitted. Four cases are pending ---Anderson, Cox, Edwards, and Little.				
Am. Ass'n of People with Disabilities v. Shelley	United States District Court for the Central District of California	324 F. Supp. 2d 1120; 2004 U.S. Dist. LEXIS 12587	July 6, 2004	Plaintiffs, disabled voters and organizations representing those voters, sought to enjoin the directives of defendant California Secretary of State, which decertified and withdrew approval of the use of certain direct recording electronic voting systems. One voter applied for a temporary restraining order, or, in the alternative, a preliminary	The voters urged the invalidation of the Secretary's directives because, allegedly, their effect was to deprive the voters of the opportunity to vote using touch--screen technology. Although it was not disputed that some disabled persons would be unable to vote independently and in private without the use of DREs, it was clear that they would not be deprived of their fundamental right to vote. The Americans with Disabilities Act did not require accommodation that would enable disabled persons to vote in a manner that was comparable in every way with the voting rights enjoyed by persons without disabilities. Rather, it mandated that voting programs be made accessible. Defendant's decision to suspend the use of DREs pending	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (If of Note)	Other Notes	Should the Case be Researched Further
				injunction.	improvement in their reliability and security of the devices was a rational one, designed to protect the voting rights of the state's citizens. The evidence did not support the conclusion that the elimination of the DREs would have a discriminatory effect on the visually or manually impaired. Thus, the voters showed little likelihood of success on the merits. The individual's request for a temporary restraining order, or, in the alternative, a preliminary injunction, was denied.			
Am. Ass'n of People with Disabilities v. Hood	United States District Court for the Middle District of Florida	310 F. Supp. 2d 1226; 2004 U.S. Dist. LEXIS 5615	March 24, 2004	Plaintiffs, disabled voters, and a national organization, sued defendants, the Florida Secretary of State, the Director of the Division of Elections of the Florida Department of State, and a county supervisor of elections, under Title II of the Americans With Disabilities Act and Section 504 of	The voters were visually or manually impaired. The optical scan voting system purchased by the county at issue was not readily accessible to visually or manually impaired voters. The voters were unable to vote using the system without third-party assistance. If it was feasible for the county to purchase a readily accessible system, then the voters' rights under the ADA and the RA were violated. The court found that the manually impaired voter's rights were violated. To the extent "jelly switches" and "sip and puff" devices needed to be	No	N/A	No

007893

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>the Rehabilitation Act of 1973. Summary judgment was granted for the Secretary and the Director as to visually impaired voters.</p>	<p>attached to a touch screen machine for it to be accessible, it was not feasible for the supervisor to provide such a system, since no such system had been certified at the time of the county's purchase. 28 C.F.R. § 35.160 did not require that visually or manually impaired voters be able to vote in the same or similar manner as non--disabled voters. Visually and manually impaired voters had to be afforded an equal opportunity to participate in and enjoy the benefits of voting. The voters' "generic" discrimination claim was coterminous with their claim under 28 C.F.R. § 35.151. A declaratory judgment was entered against the supervisor to the extent another voting system would have permitted unassisted voting. The supervisor was directed to have some voting machines permitting visually impaired voters to vote alone. The supervisor was directed to procure another system if the county's system was not certified and/or did not permit mouth stick voting. The Secretary and Director were granted judgment against the voters.</p>			

007899

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Troiano v. Lepore	United States District Court for the Southern District of Florida	2003 U.S. Dist. LEXIS 25850	November 3, 2003	Plaintiffs, disabled voters, sued defendant a state county supervisor of elections alleging discrimination pursuant to the Americans With Disability Act, 42 U.S.C.S. § 12132 et seq., § 504 of the Rehabilitation Act, 29 U.S.C.S. § 794 et seq., and declaratory relief for the discrimination. Both sides moved for summary judgment.	The complaint alleged that after the 2000 elections Palm Beach County purchased a certain number of sophisticated voting machines called the "Sequoia." According to the voters, even though such accessible machines were available, the supervisor decided not to place such accessible machines in each precinct because it would slow things down too much. The court found that the voters lacked standing because they failed to show that they had suffered an injury in fact. The voters also failed to show a likely threat of a future injury because there was no reasonable grounds to believe that the audio components of the voting machines would not be provided in the future. The voters also failed to state an injury that could be redressed by a favorable decision, because the supervisor was already using the Sequoia machines and had already trained poll workers on the use of the machines. Finally, the action was moot because the Sequoia machines had been provided and there was no reasonable expectation that the machines would not have audio components available in the future.	No	N/A	No

007900

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					The supervisor's motion for summary judgment was granted. The voters' motion for summary judgment was denied.			
Troiano v. Supervisor of Elections	United States Court of Appeals for the Eleventh Circuit	382 F.3d 1276; 2004 U.S. App. LEXIS 18497	September 1, 2004	Plaintiff visually impaired registered voters sued defendant county election supervisor, alleging that the failure to make available audio components in voting booths to assist persons who were blind or visually impaired violated state and federal law. The United States District Court for the Southern District of Florida entered summary judgment in favor of the election supervisor. The voters appealed.	The district court granted the election supervisor summary judgment on the grounds that the voters did not have standing to assert their claims and the claims were moot. The appellate court agreed that the case was moot because the election supervisor had furnished the requested audio components and those components were to be available in all of the county's voting precincts in upcoming elections. Specifically, the election supervisor had ceased the allegedly illegal practice of limiting access to the audio components prior to receiving notice of the litigation. Moreover, since making the decision to use audio components in every election, the election supervisor had consistently followed that policy and taken actions to implement it even prior to the litigation. Thus, the appellate court could discern no hint that she had any intention of removing the accessible voting machines in the future. Therefore, the voters' claims	No	N/A	No

007901

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					were moot, and the district court's dismissal was affirmed for lack of subject matter jurisdiction. The decision was affirmed.			
Am. Ass'n of People with Disabilities v. Smith	United States District Court for the Middle District of Florida	227 F. Supp. 2d 1276; 2002 U.S. Dist. LEXIS 21373	October 16, 2002	Plaintiff organization of people with disabilities and certain visually and manually impaired voters filed an action against defendant state and local election officials and members of a city council, claiming violation of the Americans with Disabilities Act, 42 U.S.C.S. § 12101 et seq., and the Rehabilitation Act of 1973, and Fla. Const. art. VI, § 1. Defendants filed motions to dismiss.	Individual plaintiffs were unable to vote unassisted with the equipment currently used in the county or the equipment the county had recently purchased. In order to vote, the impaired individuals relied on the assistance of third parties. The court held that it could not say that plaintiffs would be unable to prove any state of facts that would satisfy the ripeness and standing requirements. The issue of whether several Florida statutory sections were violative of the Florida Constitution were so intertwined with the federal claims that to decline supplemental jurisdiction be an abuse of discretion. Those statutes which provided for assistance in voting did not violate Fla. Const. art. VI, § 1. Because plaintiffs may be able to prove that visually and manually impaired voters were being denied meaningful access to the service, program, or activity, the court could not say with certainty that they would	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					<p>not be entitled to relief under any state of facts which could be proved in support of their claims. Defendant council members were entitled to absolute legislative immunity. The state officials' motion to dismiss was granted in part such that the counts were dismissed with prejudice to the extent plaintiffs asserted that they had been excluded from or denied the benefits of a program of direct and secret voting and in part was dismissed with leave to amend. The local officials motion to dismiss was granted in part such that all counts against the city council members were dismissed.</p>			
<p>Jenkins v. Williamson-Butler</p>	<p>Court of Appeal of Louisiana, Fourth Circuit</p>	<p>883 So. 2d 537; 2004 La. App. LEXIS 2433</p>	<p>October 8, 2004</p>	<p>Petitioner, a candidate for a parish juvenile court judgeship, failed to qualify for a runoff election. She filed suit against defendant, the clerk of criminal court for the parish seeking a new election, based on grounds of substantial</p>	<p>The trial court found that the voting machines were not put into service until two, four, and, in many instances, eight hours after the statutorily mandated starting hour which constituted serious irregularities so as to deprive voters from freely expressing their will. It was impossible to determine the number of voters that were affected by the late start up or late arrival of voting machines, making it impossible to determine the result. The appellate court agreed that the</p>	<p>No</p>	<p>N/A</p>	<p>No</p>

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				irregularities. The district court ruled in favor of the candidate and ordered the holding of a restricted citywide election. The clerk appealed.	irregularities were so serious that the trial court's voiding the election and calling a new election was the proper remedy. Judgment affirmed.			
Hester v. McKeithen	Court of Appeal of Louisiana, Fourth Circuit	882 So. 2d 1291; 2004 La. App. LEXIS 2429	October 8, 2004	Petitioner, school board candidate, filed suit against defendants, Louisiana Secretary of State and district court clerk, contesting the school board election results. The trial court rendered judgment against the candidate, finding no basis for the election to be declared void. The candidate appealed.	The candidate argued that the trial court erred in not setting aside the election, even after acknowledging in its reasons for judgment numerous irregularities with the election process. The appellate court ruled that had the irregularities not occurred the outcome would have been exactly the same. Judgment affirmed.	No	N/A	No
In re Election Contest of Democratic Primary Election	Supreme Court of Ohio	88 Ohio St. 3d 258; 2000	March 29, 2000	Appellant sought review of the judgment of the court of common	Appellant contended that an election irregularity occurred when the board failed to meet and act by majority vote on another candidate's withdrawal,	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Held May 4, 1999		Ohio 325; 725 N.E.2d 271; 2000 Ohio LEXIS 607		pleas denying his election contest challenging an opponent's nomination for election irregularity.	instead permitting its employees to make decisions. Appellant had to prove by clear and convincing evidence that one or more election irregularities occurred and it affected enough votes to change or make uncertain the result of the election. Judgment affirmed. The appellant did not establish election irregularity by the board's actions on the candidate's withdrawal, the board acted diligently and exercised its discretion in keeping the candidate's name on the ballot and notifying electors of his withdrawal.			
In re Election Contest As to Watertown Special Referendum Election	Supreme Court of South Dakota	2001 SD 62; 628 N.W.2d 336; 2001 S.D. LEXIS 66	May 23, 2001	Appellant sought review of the judgment of the circuit court declaring a local election valid and declining to order a new election.	The burden was on appellants to show not only that voting irregularities occurred, but also show that those irregularities were so egregious that the will of the voters was suppressed. Appellants did not meet their burden, as mere inconvenience or delay in voting was not enough to overturn the election. Judgment affirmed.	No	N/A	No
Jones v. Jessup	Supreme Court of Georgia	279 Ga. 531; 615 S.E.2d 529; 2005 Ga. LEXIS	June 30, 2005	Defendant incumbent appealed a judgment by the trial court that invalidated an election for the	After the candidate lost the sheriff's election to the incumbent, he contested the election, asserting that there were sufficient irregularities to place in doubt the election results. The state supreme court held that the candidate	No	N/A	No

007905

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		447		position of sheriff and ordered that a new election be held based on plaintiff candidate's election contest.	failed to prove substantial error in the votes cast by the witnesses adduced at the hearing who voted at the election. Although the candidate's evidence reflected the presence of some irregularities, not every irregularity invalidated the vote. The absentee ballots were only to be rejected where the electors failed to furnish required information. Because the ballots cast by the witnesses substantially complied with all of the essential requirements of the form, the trial court erred by finding that they should not have been considered. The candidate failed to establish substantial error in the votes. Judgment reversed.			
Toliver v. Thompson	Supreme Court of Oklahoma	2000 OK 98; 17 P.3d 464; 2000 Okla. LEXIS 101	December 21, 2000	Petitioner challenged an order of the district court denying his motion to compel a recount of votes from an election.	The court held a recount of votes cast in an election could occur when the ballots had been preserved in the manner prescribed by statute. The trial court noted when the ballots had not been preserved in such a manner, no recount would be conducted. The court further noted a petition alleging irregularities in an election could be based upon an allegation that it was impossible to determine with mathematical certainty which	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					candidate was entitled to be issued a certificate of election. The Oklahoma supreme court held petitioner failed to show that the actual votes counted in the election were tainted with irregularity, and similarly failed to show a statutory right to a new election based upon a failure to preserve the ballots. Judgment affirmed.			
Adkins v. Huckabay	Supreme Court of Louisiana	755 So. 2d 206; 2000 La. LEXIS 504	February 25, 2000	Plaintiff candidate challenged judgment of court of appeal, second circuit, which reversed the lower court's judgment and declared defendant candidate winner of a runoff election for sheriff.	The issue presented for the appellate court's determination was whether the absentee voting irregularities plaintiff candidate complained of rendered it impossible to determine the outcome of the election for sheriff. The Louisiana supreme court concluded that the lower court had applied the correct standard, substantial compliance, to the election irregularities, but had erred in its application by concluding that the contested absentee ballots substantially complied with the statutory requirements. The supreme court found that in applying substantial compliance to five of the ballot irregularities, the trial court correctly vacated the general election and set it aside because those absentee ballots should have been disqualified. Because of the	No	N/A	No

007907

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					constitutional guarantee to secrecy of the ballot and the fact that the margin of victory in the runoff election was three votes, it was impossible to determine the result of the runoff election. Thus, the supreme court ordered a new general election. Judgment of the court of appeals reversed.			
In re Gray-- Sadler	Supreme Court of New Jersey	164 N.J. 468; 753 A.2d 1101; 2000 N.J. LEXIS 668	June 30, 2000	Appellants, write--in candidates for the offices of mayor and borough council, appealed the judgment of the superior court, appellate division reversing the trial court's decision to set aside the election results for those offices due to irregularities related to the write--in instructions and defective voting machines.	The New Jersey supreme court held that the votes that were rejected by election officials did not result from the voters' own errors, but from the election officials' noncompliance with statutory requirements. In other words, the voters were provided with patently inadequate instructions and defective voting machines. Moreover, appellants met the statutory requirement for successfully contesting the election results by showing that enough qualified voters were denied the right to cast write--in votes as to affect the outcome of the election. Judgment reversed and the state trial court's decision reinstated.	No	N/A	No
Goodwin v. St. Thomas--St.	Territorial Court of the Virgin	43 V.I. 89; 2000	December 13, 2000	Plaintiff political candidate alleged	Plaintiff alleged that defendants counted unlawful absentee ballots that	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
John Bd. of Elections	Islands	V.I. LEXIS 15		that certain general election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.	lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The territorial court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper.			

007909

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Johnson v. Lopez--Torres	Supreme Court of New York, Appellate Division, Second Department	2005 NY Slip Op 7825; 2005 N.Y. App. Div. LEXIS 11276	October 21, 2005	In a proceeding for a re--canvass of certain affidavit ballots cast in the Democratic Party primary election for the public office of surrogate, the supreme court denied appellant candidate's petition requesting the same and declared appellee opponent the winner of that election.	Finding that the candidate had waived her right to challenge the affidavit ballots and had not sufficiently established her claim of irregularities to warrant a hearing, the trial court denied her petition and declared the opponent the winner of the primary. However, on appeal, the appellate division held that no waiver occurred. Moreover, because hundreds of apparently otherwise eligible voters failed to fill in their party enrollment and/or prior address, it could be reasonably inferred that these voters were misled thereby into omitting the required information. Finally, the candidate failed to make a sufficient showing of voting irregularities in the machine vote to require a hearing on that issue. Judgment reversed.			
Ex parte Avery	Supreme Court of Alabama	843 So. 2d 137; 2002 Ala. LEXIS 239	August 23, 2002	Petitioner probate judge moved for a writ of mandamus directing a circuit judge to vacate his order requiring the probate judge to transfer all election materials to the	The issuance of a writ of mandamus was appropriate. The district attorney had a right to the election materials because he was conducting a criminal investigation of the last election. Furthermore, the circuit judge had no jurisdiction or authority to issue an order directing that the election materials be given to the clerk. The	No	N/A	No

007910

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				circuit clerk and holding him in contempt for failing to do so. The probate judge also requested that said material be turned over to the district attorney, pursuant to an outstanding subpoena.	district attorney received several claims of irregularities in the election, some of which could constitute voter fraud. Petition granted and writ issued.			
Harpole v. Kemper County Democratic Exec. Comm.	Supreme Court of Mississippi	908 So. 2d 129; 2005 Miss. LEXIS 463	August 4, 2005	After his loss in a primary election for the office of sheriff, appellant candidate sued appellees, a political party's executive committee and the incumbent sheriff, alleging irregularities in the election. The circuit court dismissed the candidate's petition for judicial review with prejudice. He appealed.	The candidate alleged the sheriff had his deputies transport prisoners to the polls, felons voted, and the absentee voter law was breached. The committee agreed with the last contention and threw out the absentee ballots (seven percent of votes cast); after a recount, the sheriff still prevailed. The trial court dismissed the case due to alleged defects in the petition; in the alternative, it held that the candidate failed to sufficiently allege violations and irregularities in the election. The supreme court held that the petition was not defective. Disqualification of seven percent of the total votes was not substantial enough so as to cause the will of the voters to	No	N/A	No

007911

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					be impossible to discern and to warrant a special election, and there were not enough illegal votes cast for the sheriff to change the outcome. A blanket allegation implying that the sheriff had deputies transport prisoners to the polls was not supported by credible evidence. Judgment affirmed.			
United States v. Madden	United States Court of Appeals for the Sixth Circuit	403 F.3d 347; 2005 U.S. App. LEXIS 5326	April 4, 2005	Defendant appealed his conviction for violating the federal vote-buying statute. He also appealed the sentence imposed by the United States District Court for the Eastern District of Kentucky at Pikeville. The district court applied the U.S. Sentencing Guidelines Manual (Guidelines) § 3B1.1(c) supervisory--role enhancement and increased defendant's base offense level by two	Defendant paid three people to vote for a local candidate in a primary election. The same ballot contained candidates for the U.S. Senate. While he waived his right to appeal his conviction, he nonetheless asserted two arguments in seeking to avoid the waiver. He first posited that the vote buying statute prohibited only buying votes for federal candidates---a prohibition not violated by his conduct. In the alternative, he stated if the statute did criminalize buying votes for state or local candidates, then the statute was unconstitutional. Both arguments failed. Defendant argued that applying the supervisory--role enhancement constituted impermissible double counting because the supervision he exercised was no more than necessary to establish a vote--buying offense.	No	N/A	No

Margaret Sims/EAC/GOV  
06/27/2006 12:12 PM

To Jeannie Layson/EAC/GOV@EAC  
cc twilkey@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC  
bcc  
Subject U.S. News & World Report

Jeannie

We suspect that someone from the Voting Fraud-Voter Intimidation Project Working Group has been talking to reporters, tipping them off about what we are finding in our preliminary study, and referring them to our consultants (although the information could have come from anyone on the EAC boards, too). Apparently, the U.S. News & World Report reporter who contacted me also contacted both consultants working on the project.

Based on my recommendation, Tova Wang and, possibly, Job Serebrov, who are on EAC personal services contracts for our voting fraud and voter intimidation research, will seek further clarification from you about what they can and cannot say to reporters and in public fora about vote fraud and voter intimidation and about EAC's research. I have previously advised Tova and Job not to discuss the work they are doing for us as this is EAC research, the Commissioners have not yet received and accepted the final report, and the Commission has not approved their speaking about the EAC research.

Tova plans to call you tomorrow (Tuesday, June 27) about the issue. In addition to the reporter's inquiry, she has been invited to speak on the subject at the summer conference of the National Association of State Legislatures. She has plenty of knowledge of the subject in her own right (apart from our study), but is having trouble differentiating between her own work and the work she is doing for us. Please, just let me know what you advise her to do.

--- Peggy

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				accommodate defendant's medical needs. Defendant appealed his conviction and sentence.	appellate court found that the vote buying statute applied to all elections in which a federal candidate was on the ballot, and the government need not prove that defendant intended to affect the federal component of the election by his corrupt practices. The facts admitted by defendant at his guilty-plea hearing established all of the essential elements of an offense. The Elections Clause and the Necessary and Proper Clause combined to provide Congress with the power to regulate mixed federal and state elections even when federal candidates were running unopposed. There was no error in the district court's decision on departure under U.S. Sentencing Guidelines Manual § 5H1.4. Defendant's conviction and sentence were affirmed.			
United States v. Smith	United States Court of Appeals for the Sixth Circuit	139 Fed. Appx. 681; 2005 U.S. App. LEXIS 14855	July 18, 2005	Defendants were convicted of vote buying and conspiracy to buy votes. The United States District Court for the Eastern District of Kentucky entered judgment on	One of the defendants was a state representative who decided to run for an elected position. Defendants worked together and with others to buy votes. During defendants' trial, in addition to testimony regarding vote buying, evidence was introduced that two witnesses had been threatened. The appellate court found that defendants	No	N/A	No

007914

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the jury verdict and sentenced defendants. Defendants appealed.	failed to show evidence of prejudice with regard to denial of the motion for severance. Threat evidence was not excludable under Fed. R. Evid. 404(b) because it was admissible to show consciousness of guilt without any inference as to the character of defendants. Admission of witnesses' testimony was proper because each witness testified that he or she was approached by a member of the conspiracy and offered money for his or her vote. The remaining incarcerated defendant's challenges to his sentence had merit because individuals who sold their votes were not "victims" for the purposes of U.S. Sentencing Guidelines Manual § 3 A1.1. Furthermore, application of U.S. Sentencing Guidelines Manual § 3B1.1(b) violated defendant's Sixth Amendment rights because it was based on facts that defendant did not admit or prove to the jury beyond a reasonable doubt. Defendants' convictions were affirmed. The remaining incarcerated defendant's sentence was vacated and his case was remanded for resentencing in accordance with Booker.			

007915

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Nugent v. Phelps	Court of Appeal of Louisiana, Second Circuit	816 So. 2d 349; 2002 La. App. LEXIS 1138	April 23, 2002	Plaintiff incumbent police chief sued defendant challenger, the winning candidate, to have the election nullified and a new election held based on numerous irregularities and unlawful activities by the challenger and his supporters. The challenger won the election by a margin of four votes. At the end of the incumbent's case, the district court for the dismissed his suit. The incumbent appealed.	The incumbent argued that: (1) the number of persons who were bribed for their votes by the challenger's worker was sufficient to change the outcome of the election; (2) the trial judge failed to inform potential witnesses that they could be given immunity from prosecution for bribery of voters if they came forth with truthful testimony; (3) the votes of three of his ardent supporters should have been counted because they were incarcerated for the sole purpose of keeping them from campaigning and voting; and (4) the district attorney, a strong supporter of the challenger, abused his power when he subpoenaed the incumbent to appear before the grand jury a week preceding the election. The appellate court held no more than two votes would be subtracted, a difference that would be insufficient to change the election result or make it impossible to determine. The appellate court found the trial judge read the immunity portion of the statute to the potential witnesses. The appellate court found the arrests of the three supporters were the result of grand jury indictments, and there was no manifest error in	No	N/A	No

007916

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					holding that the incumbent failed to prove a scheme by the district attorney. The judgment of the trial court was affirmed.			
Eason v. State	Court of Appeals of Mississippi	2005 Miss. App. LEXIS 1017	December 13, 2005	Defendant appealed a decision of circuit court convicting him of one count of conspiracy to commit voter fraud and eight counts of voter fraud.	Defendant was helping with his cousin's campaign in a run-off election for county supervisor. Together, they drove around town, picking up various people who were either at congregating spots or their homes. Defendant would drive the voters to the clerk's office where they would vote by absentee ballot and defendant would give them beer or money. Defendant claimed he was entitled to a mistrial because the prosecutor advanced an impermissible "sending the message" argument. The court held that it was precluded from reviewing the entire context in which the argument arose because, while the prosecutor's closing argument was in the record, the defense counsel's closing argument was not. Also, because the prosecutor's statement was incomplete due to defense counsel's objection, the court could not say that the statement made it impossible for defendant to receive a fair trial. Furthermore, the trial judge did not	No	N/A	No

007917

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					abuse his discretion when he did not allow defendant to ask the individual whether she wanted to see defendant go to prison because the individual's potential bias was shown by the individual's testimony that she expected the prosecution to recommend her sentence. The court affirmed defendant's conviction.			
United States v. Turner	United States District Court for the Eastern District of Kentucky	2005 U.S. Dist. LEXIS 31709	November 30, 2005	Defendants were charged with committing mail fraud and conspiracy to commit mail fraud and vote-buying. First defendant filed a motion to recuse. Second defendant's motion to join the motion to recuse was granted. First defendant moved to compel the Government to grant testimonial use immunity to second defendant and moved to sever	Defendants argued that recusal was mandated by 28 U.S.C.S. § 455(a) and (b)(1). The court found no merit in defendants' arguments. The fact that the judge's husband was the commissioner of the Kentucky Department of Environmental Protection, a position to which he was appointed by the Republican Governor, was not relevant. The judge's husband was neither a party nor a witness. The court further concluded that no reasonable person could find that the judge's spouse had any direct interest in the instant action. As for issue of money donated by the judge's husband to Republican opponents of first defendant, the court could not discern any reason why such facts warranted recusal. First defendant asserted that	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				defendants.	second defendant should have been granted use immunity based on a belief that second defendant would testify that first defendant did not agree to, possess knowledge of, engage in, or otherwise participate in any of the illegal activity alleged in the indictment. The court found the summary of expected testimony to be too general to grant immunity. In addition, it was far from clear whether the court had the power to grant testimonial use immunity to second defendant. Defendants' motion to recuse was denied. First defendant's motions to compel and to sever were denied.			
Ways v. Shively	Supreme Court of Nebraska	264 Neb. 250; 646 N.W.2d 621; 2002 Neb. LEXIS 158	July 5, 2002	Appellant felon filed a writ of mandamus, which sought to compel appellee Election Commissioner of Lancaster County, Nebraska, to permit him to register to vote. The District Court for Lancaster County denied the	The felon was discharged from the Nebraska State Penitentiary in June 1998 after completing his sentences for the crimes of pandering, carrying a concealed weapon and attempting to possess a controlled substance. The commissioner asserted that as a result of the felon's conviction, the sentence for which had neither been reversed nor annulled, he had lost his right to vote. The commissioner contended that the only method by which the felon's	No	N/A	No

007919

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				felon's petition for writ of mandamus and dismissed the petition. The felon appealed.	right to vote could be restored was through a warrant of discharge issued by the Nebraska Board of Pardons---a warrant of discharge had not been issued. The supreme court ruled that the certificate of discharge issued to the felon upon his release did not restore his right to vote. The supreme court ruled that as a matter of law, the specific right to vote was not restored to the felon upon his discharge from incarceration at the completion of his sentences. The judgment was affirmed.			
Fischer v. Governor	Supreme Court of New Hampshire	145 N.H. 28; 749 A.2d 321; 2000 N.H. LEXIS 16	March 24, 2000	Appellant State of New Hampshire challenged a ruling of the superior court that the felon disenfranchisement statutes violate N.H. Const. pt. I, Art. 11.	Appellee was incarcerated at the New Hampshire State Prison on felony convictions. When he requested an absentee ballot to vote from a city clerk, the request was denied. The clerk sent him a copy of N.H. Rev. Stat. Ann. § 607(A)(2) (1986), which prohibits a felon from voting "from the time of his sentence until his final discharge." The trial court declared the disenfranchisement statutes unconstitutional and ordered local election officials to allow the plaintiff to vote. Appellant State of New Hampshire challenged this ruling. The central issue was whether the felon	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					disenfranchisement statutes violated N.H. Const. pt. I, art. 11. After a review of the article, its constitutional history, and legislation pertinent to the right of felons to vote, the court concluded that the legislature retained the authority under the article to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority, and reversed. Judgment reversed because the court concluded that the legislature retained its authority under the New Hampshire Constitution to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority.			
Mixon v. Commonwealth	Commonwealth Court of Pennsylvania	759 A.2d 442; 2000 Pa. Commw. LEXIS 534	September 18, 2000	Respondents filed objections to petitioners' complaint seeking declaratory relief as to the unconstitutionality of the Pennsylvania Election Code, 25 Pa. Cons. Stat. §§	Petitioner convicted felons were presently or had formerly been confined in state prison. Petitioner elector was currently registered to vote in respondent state. Petitioners filed a complaint against respondent state seeking declaratory relief challenging as unconstitutional, state election and voting laws that excluded confined felons from the definition of qualified	No	N/A	No

007921

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				2600 -- 3591, and the Pennsylvania Voter Registration Act, 25 Pa. Cons. Stat. §§ 961.101--961.5109, regarding felon voting rights.	absentee electors and that barred a felon who had been released from a penal institution for less than five years from registering to vote. Respondents filed objections to petitioners' complaint. The court sustained respondents' objection that incarcerated felons were not unconstitutionally deprived of qualified absentee elector status because respondent state had broad power to determine the conditions under which suffrage could be exercised. However, petitioner elector had no standing and the court overruled objection as to deprivation of ex--felon voting rights. The court sustained respondents' objection since incarcerated felons were not unconstitutionally deprived of qualified absentee elector status and petitioner elector had no standing, but objection that ex--incarcerated felons' voting rights were deprived was overruled since status penalized them.			
NAACP Philadelphia Branch v. Ridge	United States District Court for the Eastern District of Pennsylvania	2000 U.S. Dist. LEXIS 11520	August 14, 2000	Plaintiffs moved for a preliminary injunction, which the parties agreed to consolidate with the	Plaintiffs, ex--felon, unincorporated association, and others, filed a civil rights suit against defendant state and local officials, contending that the Pennsylvania Voter Registration Act,	No	N/A	No

007922

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if Of Note)	Other Notes	Should the Case be Researched Further
				merits determination for a permanent injunction, in plaintiffs' civil rights suit contending that the Pennsylvania Voter Registration Act, offended the Equal Protection Clause of U.S. Const. amend. XIV.	violated the Equal Protection Clause by prohibiting some ex--felons from voting during the five year period following their release from prison, while permitting other ex--felons to vote. Plaintiffs conceded that one plaintiff lacked standing, and the court assumed the remaining plaintiffs had standing. The court found that all that all three of the special circumstances necessary to invoke the Pullman doctrine were present in the case, but found that abstention was not appropriate under the circumstances since it did not agree with plaintiffs' contention that the time constraints caused by the upcoming election meant that the option of pursuing their claims in state court did not offer plaintiffs an adequate remedy. Plaintiff's motion for permanent injunction denied; the court abstained from deciding merits of plaintiffs' claims under the Pullman doctrine because all three of the special circumstances necessary to invoke the doctrine were present in the case; all further proceedings stayed until further order.			
Farrakhan v.	United States	2000	December	Plaintiffs, convicted	The felons alleged that Washington's	No	N/A	No

007923

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Locke	District Court for the Eastern District of Washington	U.S. Dist. LEXIS 22212	1, 2000	felons who were also racial minorities, sued defendants for alleged violations of the Voting Rights Act. The parties filed cross-motions for summary judgment.	felon disenfranchisement and restoration of civil rights schemes, premised upon Wash. Const. art. VI § 3, resulted in the denial of the right to vote to racial minorities in violation of the VRA. They argued that race bias in, or the discriminatory effect of, the criminal justice system resulted in a disproportionate number of racial minorities being disenfranchised following felony convictions. The court concluded that Washington's felon disenfranchisement provision disenfranchised a disproportionate number of minorities; as a result, minorities were under-represented in Washington's political process. The Rooker-Feldman doctrine barred the felons from bringing any as-applied challenges, and even if it did not bar such claims, there was no evidence that the felons' individual convictions were born of discrimination in the criminal justice system. However, the felons' facial challenge also failed. The remedy they sought would create a new constitutional problem, allowing disenfranchisement only of white felons. Further, the felons did not establish a causal connection between			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					the disenfranchisement provision and the prohibited result. The court granted defendants' motion and denied the felons' motion for summary judgment.			
Johnson v. Bush	United States District Court for the Southern District of Florida	214 F. Supp. 2d 1333; 2002 U.S. Dist. LEXIS 14782	July 18, 2002	Plaintiff felons sued defendant state officials for alleged violations of their constitutional rights. The officials moved and the felons cross-moved for summary judgment.	The felons had all successfully completed their terms of incarceration and/or probation, but their civil rights to register and vote had not been restored. They alleged that Florida's disenfranchisement law violated their rights under First, Fourteenth, Fifteenth, and Twenty-Fourth Amendments to the United States Constitution, as well as § 1983 and §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on minorities, the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					cause was racially neutral. Finally, requiring the felons to pay their victim restitution before their rights would be restored did not constitute an improper poll tax or wealth qualification. The court granted the officials' motion for summary judgment and implicitly denied the felons' motion. Thus, the court dismissed the lawsuit with prejudice.			
King v. City of Boston	United States District Court for the District of Massachusetts	2004 U.S. Dist. LEXIS 8421	May 13, 2004	Plaintiff inmate filed a motion for summary judgment in his action challenging the constitutionality of Mass. Gen. Laws ch. 51, § 1, which excluded incarcerated felons from voting while they were imprisoned.	The inmate was convicted of a felony and incarcerated. His application for an absentee ballot was denied on the ground that he was not qualified to register and vote under Mass. Gen. Laws ch. 51, § 1. The inmate argued that the statute was unconstitutional as it applied to him because it amounted to additional punishment for crimes he committed before the statute's enactment and thus violated his due process rights and the prohibition against ex post facto laws and bills of attainder. The court held that the statute was regulatory and not punitive because rational choices were implicated in the statute's disenfranchisement of persons under guardianship, persons disqualified	No	N/A	No

007926

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					because of corrupt elections practices, persons under 18 years of age, as well as incarcerated felons. Specifically, incarcerated felons were disqualified during the period of their imprisonment when it would be difficult to identify their address and ensure the accuracy of their ballots. Therefore, the court concluded that Mass. Gen. Laws ch. 51, § 1 did not violate the inmate's constitutional rights. The court found the statute at issue to be constitutional and denied the inmate's motion for summary judgment.			
Hayden v. Pataki	United States District Court for the Southern District of New York	2004 U.S. Dist. LEXIS 10863	June 14, 2004	In a 42 U.S.C.S. § 1983 action filed by plaintiffs, black and latino convicted felons, alleging that N.Y. Const. art. II, § 3 and N.Y. Elec. Law § 5--106(2) were unconstitutional, defendants, New York's governor and the chairperson of the board of elections, moved for	The felons sued defendants, alleging that N.Y. Const. art. II, § 3 and N.Y. Elec. Law § 5--106(2) unlawfully denied suffrage to incarcerated and paroled felons on account of their race. The court granted defendants' motion for judgment on the pleadings on the felons' claims under U.S. Const. amend. XIV, XV because their factual allegations were insufficient from which to draw an inference that the challenged provisions or their predecessors were enacted with discriminatory intent, and because denying suffrage to those who received	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				judgment on the pleadings under Fed. R. Civ. P. 12(c).	more severe punishments, such as a term of incarceration, and not to those who received a lesser punishment, such as probation, was not arbitrary. The felons' claims under 42 U.S.C.S. § 1973 were dismissed because § 1973 could not be used to challenge the legality of N.Y. Elec. Law § 5--106. Defendants' motion was granted as to the felons' claims under 42 U.S.C.S. § 1971 because § 1971 did not provide for a private right of action, and because the felons were not "otherwise qualified to vote." The court also granted defendants' motion on the felons' U.S. Const. amend. I claim because it did not guarantee a felon the right to vote. Defendants' motion for judgment on the pleadings was granted in the felons' § 1983 action.			
Farrakhan v. Washington	United States Court for Appeals for the Ninth Circuit	338 F.3d 1009; 2003 U.S. App. LEXIS 14810	July 25, 2003	Plaintiff inmates sued defendant state officials, claiming that Washington state's felon disenfranchisement scheme constitutes improper race--based vote denial in	Upon conviction of infamous crimes in the state, (that is, crimes punishable by death or imprisonment in a state correctional facility), the inmates were disenfranchised. The inmates claimed that the disenfranchisement scheme violated § 2 because the criminal justice system was biased against minorities, causing a disproportionate	No	N/A	No

007928

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				violation of § 2 of the Voting Rights Act. The United States District Court for the Eastern District of Washington granted summary judgment dismissing the inmates' claims. The inmates appealed.	minority representation among those being disenfranchised. The appellate court held, inter alia, that the district court erred in failing to consider evidence of racial bias in the state's criminal justice system in determining whether the state's felon disenfranchisement laws resulted in denial of the right to vote on account of race. Instead of applying its novel "by itself" causation standard, the district court should have applied a totality of the circumstances test that included analysis of the inmates' compelling evidence of racial bias in Washington's criminal justice system. However, the inmates lacked standing to challenge the restoration scheme because they presented no evidence of their eligibility, much less even allege that they were eligible for restoration, and had not attempted to have their civil rights restored. The court affirmed as to the eligibility claim but reversed and remanded for further proceedings to the bias in the criminal justice system claim.			
In re Phillips	Supreme Court of Virginia	265 Va. 81; 574	January 10, 2003	The circuit court, entered a judgment	More than five years earlier, the former felon was convicted of the felony of	No	N/A	No

007929

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
		S.E.2d 270; 2003 Va. LEXIS 10		in which it declined to consider petitioner former felon's petition for approval of her request to seek restoration of her eligibility to register to vote. The former felon appealed.	making a false written statement incident to a firearm purchase. She then petitioned the trial court asking it to approve her request to seek restoration of her eligibility to register to vote. Her request was based on Va. Code Ann. § 53.1--231.2, allowing persons convicted of non--violent felonies to petition a trial court for approval of a request to seek restoration of voting rights. The trial court declined. It found that Va. Code Ann. § 53.1--231.2 violated constitutional separation of powers principles since it gave the trial court powers belonging to the governor. It also found that even if the statute was constitutional, it was fundamentally flawed for not providing notice to respondent Commonwealth regarding a petition. After the petition was denied, the state supreme court found the separation of powers principles were not violated since the statute only allowed the trial court to determine if an applicant met the requirements to have voting eligibility restored. It also found the statute was not fundamentally flawed since the Commonwealth was not an interested			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					party entitled to notice. OUTCOME: The judgment was reversed and the case was remanded for further proceedings.			
Howard v. Gilmore	United States Court of Appeals for the Fourth Circuit	2000 U.S. App. LEXIS 2680	February 23, 2000	Appellant challenged the United States District Court for the Eastern District of Virginia's order summarily dismissing his complaint, related to his inability to vote as a convicted felon, for failure to state a claim upon which relief can be granted.	Appellant was disenfranchised by the Commonwealth of Virginia following his felony conviction. He challenged that decision by suing the Commonwealth under the U.S. Const. amends. I, XIV, XV, XIX, and XXIV, and under the Voting Rights Act of 1965. The lower court summarily dismissed his complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. Appellant challenged. The court found U.S. Const. amend. I created no private right of action for seeking reinstatement of previously canceled voting rights, U.S. Const. amends. XIV, XV, XIX, and the VRA required either gender or race discrimination, neither of which appellant asserted, and the U.S. Const. amend. XXIV, while prohibiting the imposition of poll taxes, did not prohibit the imposition of a \$10 fee for reinstatement of appellant's civil rights, including the right to vote. Consequently, appellant failed to state a claim. The court affirmed, finding	No	N/A	No

007931

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					that none of the constitutional provisions appellant relied on were properly pled because appellant failed to assert that either his race or gender were involved in the decisions to deny him the vote. Conditioning reestablishment of his civil rights on a \$10 fee was not unconstitutional.			
Johnson v. Governor of Fla.	United States Court of Appeals for the Eleventh Circuit	353 F.3d 1287; 2003 U.S. App. LEXIS 25859	December 19, 2003	Plaintiffs, ex--felon citizens of Florida, on their own right and on behalf of others, sought review of a decision of the United States District Court for the Southern District of Florida, which granted summary judgment to defendants, members of the Florida Clemency Board in their official capacity. The citizens challenged the validity of the Florida felon disenfranchisement	The citizens alleged that Fla. Const. art. VI, § 4 (1968) was racially discriminatory and violated their constitutional rights. The citizens also alleged violations of the Voting Rights Act. The court initially examined the history of Fla. Const. art. VI, § 4 (1968) and determined that the citizens had presented evidence that historically the disenfranchisement provisions were motivated by a discriminatory animus. The citizens had met their initial burden of showing that race was a substantial motivating factor. The state was then required to show that the current disenfranchisement provisions would have been enacted absent the impermissible discriminatory intent. Because the state had not met its burden, summary judgment should not have been granted. The court found	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				laws.	that the claim under the Voting Rights Act, also needed to be remanded for further proceedings. Under a totality of the circumstances, the district court needed to analyze whether intentional racial discrimination was behind the Florida disenfranchisement provisions, in violation of the Voting Rights Act. The court affirmed the district court's decision to grant summary judgment on the citizens' poll tax claim. The court reversed the district court's decision to grant summary judgment to the Board on the claims under the equal protection clause and for violation of federal voting laws and remanded the matter to the district court for further proceedings.			
State v. Black	Court of Appeals of Tennessee	2002 Tenn. App. LEXIS 696	September 26, 2002	In 1997, petitioner was convicted of forgery and sentenced to the penitentiary for two years, but was immediately placed on probation. He subsequently petitioned the circuit court for restoration	The appellate court's original opinion found that petitioner had not lost his right to hold public office because Tennessee law removed that right only from convicted felons who were "sentenced to the penitentiary." The trial court's amended judgment made it clear that petitioner was in fact sentenced to the penitentiary. Based upon this correction to the record, the appellate court found that petitioner's	No	N/A	No

007933

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>of citizenship. The trial court restored his citizenship rights. The State appealed. The appellate court issued its opinion, but granted the State's motions to supplement the record and to rehear its decision.</p>	<p>sentence to the penitentiary resulted in the forfeiture of his right to seek and hold public office by operation of Tenn. Code Ann. § 40-20--114. However, the appellate court concluded that this new information did not requires a different outcome on the merits of the issue of restoration of his citizenship rights, including the right to seek and hold public office. The appellate court adhered to its conclusion that the statutory presumption in favor of the restoration was not overcome by a showing, by a preponderance of the evidence, of good cause to deny the petition for restoration of citizenship rights. The appellate court affirmed the restoration of petitioner's right to vote and reversed the denial of his right to seek and hold public office. His full rights of citizenship were restored.</p>			
Johnson v. Governor of Fla.	United States Court of Appeals for the Eleventh Circuit	405 F.3d 1214; 2005 U.S. App. LEXIS 5945	April 12, 2005	Plaintiff individuals sued defendant members of Florida Clemency Board, arguing that Florida's felon disenfranchisement	The individuals argued that the racial animus motivating the adoption of Florida's disenfranchisement laws in 1868 remained legally operative despite the reenactment of Fla. Const. art. VI, § 4 in 1968. The subsequent reenactment eliminated any	No	N/A	No

007934

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>law, Fla. Const. art. VI, § 4 (1968), violated the Equal Protection Clause and 42 U.S.C.S. § 1973. The United States District Court for the Southern District of Florida granted the members summary judgment. A divided appellate panel reversed. The panel opinion was vacated and a rehearing en banc was granted.</p>	<p>discriminatory taint from the law as originally enacted because the provision narrowed the class of disenfranchised individuals and was amended through a deliberative process. Moreover, there was no allegation of racial discrimination at the time of the reenactment. Thus, the disenfranchisement provision was not a violation of the Equal Protection Clause and the district court properly granted the members summary judgment on that claim. The argument that 42 U.S.C.S. § 1973 applied to Florida's disenfranchisement provision was rejected because it raised grave constitutional concerns, i.e., prohibiting a practice that the Fourteenth Amendment permitted the state to maintain. In addition, the legislative history indicated that Congress never intended the Voting Rights Act to reach felon disenfranchisement provisions. Thus, the district court properly granted the members summary judgment on the Voting Rights Act claim. The motion for summary judgment in favor of the members was granted.</p>			

007935

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Hileman v. McGinness	Appellate Court of Illinois, Fifth District	316 Ill. App. 3d 868; 739 N.E.2d 81; 2000 Ill. App. LEXIS 845	October 25, 2000	Appellant challenged the circuit court's declaration that the result of a primary election for county circuit clerk was void.	In a primary election for county circuit clerk, the parties agreed that 681 absentee ballots were presumed invalid. The ballots had been commingled with the valid ballots. There were no markings or indications on the ballots which would have allowed them to be segregated from other ballots cast. Because the ballots could not have been segregated, apportionment was the appropriate remedy if no fraud was involved. If fraud was involved, the election would have had to have been voided and a new election held. Because the trial court did not hold an evidentiary hearing on the fraud allegations, and did not determine whether fraud was in issue, the case was remanded for a determination as to whether fraud was evident in the electoral process. Judgment reversed and remanded.	No	N/A	No
Eason v. State	Court of Appeals of Mississippi	2005 Miss. App. LEXIS 1017	December 13, 2005	Defendant appealed a decision of the circuit court convicting him of one count of conspiracy to commit voter fraud	Defendant was helping with his cousin's campaign in a run-off election for county supervisor. Together, they drove around town, picking up various people who were either at congregating spots or their homes. Defendant would drive the	No	N/A	No

007936

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				and eight counts of voter fraud.	voters to the clerk's office where they would vote by absentee ballot and defendant would give them beer or money. Defendant claimed he was entitled to a mistrial because the prosecutor advanced an impermissible "sending the message" argument. The court held that it was precluded from reviewing the entire context in which the argument arose because, while the prosecutor's closing argument was in the record, the defense counsel's closing argument was not. Also, because the prosecutor's statement was incomplete due to defense counsel's objection, the court could not say that the statement made it impossible for defendant to receive a fair trial. Judgment affirmed.			
Wilson v. Commonwealth	Court of Appeals of Virginia	2000 Va. App. LEXIS 322	May 2, 2000	Defendant appealed the judgment of the circuit court which convicted her of election fraud.	At trial, the Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter registration form that she was living at a residence in the 51st House District. The evidence included records showing electricity and water usage, records from the Department of Motor	No	N/A	No

007937

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Vehicles and school records. Thus, the evidence was sufficient to support the jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed in order for her to be a candidate for office in the primary in question. Judgment affirmed.			
Townson v. Stonicher	Supreme Court of Alabama	2005 Ala. LEXIS 214	December 9, 2005	The circuit court overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross-appealed. In the meantime, the trial court stayed enforcement of its judgment pending resolution of the appeal.	The voters and the incumbent all challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that at least 30 absentee voters who voted for the incumbent provided with their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat "cure" that defect by providing a proper form of identification at the trial of the election contest, because, under those	No	N/A	No

007938

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>circumstances, it was difficult to conclude that those voters made an honest effort to comply with the law. Moreover, to count the votes of voters who failed to comply with the essential requirement of submitting proper identification with their absentee ballots had the effect of disenfranchising qualified electors who choose not to vote but rather than to make the effort to comply with the absentee--voting requirements. The judgment declaring the incumbent's opponent the winner was affirmed. The judgment counting the challenged votes in the final tally of votes was reversed, and said votes were subtracted from the incumbents total, and the stay was vacated. All other arguments were rendered moot as a result.</p>			
ACLU of Minn. v. Kiffmeyer	United States District Court for the District of Minnesota	2004 U.S. Dist. LEXIS 22996	October 29, 2004	Plaintiffs, voters and associations, filed for a temporary restraining order pursuant to Fed. R. Civ. P. 65, against defendant, Minnesota Secretary	Plaintiffs argued that Minn. Stat. § 201.061 was inconsistent with the Help America Vote Act because it did not authorize the voter to complete registration either by a "current and valid photo identification" or by use of a current utility bill, bank statement, government check, paycheck, or other	No	N/A	No

007839

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				of State, concerning voter registration.	government document that showed the name and address of the individual. The Secretary advised the court that there were less than 600 voters who attempted to register by mail but whose registrations were deemed incomplete. The court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic tribal identification card by American Indians who do not reside on their tribal reservations. Also, the court found that plaintiffs demonstrated that they were likely to succeed on their claims that Minn. R. 8200.5100, violated the Equal Protection Clause of the United States Constitution. A temporary restraining order was entered.			
League of Women Voters v. Blackwell	United States District Court for the Northern District of Ohio	340 F. Supp. 2d 823; 2004	October 20, 2004	Plaintiff organizations filed suit against defendant, Ohio's	The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide	No	N/A	No

007940

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
		U.S. Dist. LEXIS 20926		Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote Act. The Secretary filed a motion to dismiss.	documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the last four digits of his social security number. If he did not know either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive, even if the cost, in terms of uncounted ballots, was regrettable. The court granted the Secretary's motion to dismiss.			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
New York v. County of Del.	United States District Court for the Northern District of New York	82 F. Supp. 2d 12; 2000 U.S. Dist. LEXIS 1398	February 8, 2000	Plaintiffs brought a claim in the district court under the Americans With Disabilities Act and filed a motion for a preliminary injunction and motion for leave to amend their complaint, and defendants were ordered to show cause why a preliminary injunction should not be issued.	In their complaint plaintiffs alleged that defendants violated the ADA by making the voting locations inaccessible to disabled persons and asked for a preliminary injunction requiring defendants to come into compliance before the next election. The court found that defendants were the correct parties, because pursuant to New York election law defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, due to the alleged facts, the court found plaintiffs would likely succeed on the merits. Consequently, the court granted plaintiffs' motion for a preliminary injunction. The court granted plaintiffs' motion for a preliminary injunction and granted plaintiffs' motion for leave to amend their complaint.	No	N/A	No
New York v. County of Schoharie	United States District Court for the Northern	82 F. Supp. 2d 19; 2000	February 8, 2000	Plaintiffs brought a claim in the district court under the	In their complaint, plaintiffs alleged defendants violated the ADA by allowing voting locations to be	No	N/A	No

007942

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	District of New York	U.S. Dist. LEXIS 1399		Americans With Disabilities Act and filed a motion for a preliminary injunction and a motion for leave to amend their complaint, and defendants were ordered to show cause why a preliminary injunction should not be issued.	inaccessible for disabled persons and asked for a preliminary injunction requiring defendants to come into compliance before the next election. The court found that defendants were the correct party, because pursuant to New York election law, defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, the court found that plaintiffs would likely succeed on the merits of their case. Consequently, the court granted plaintiffs' motion for a preliminary injunction. The court granted plaintiffs' motion for a preliminary injunction because plaintiffs showed irreparable harm and proved likely success on the merits and granted plaintiff's motion for leave to amend the complaint.			
Westchester Disabled on the Move, Inc. v. County of	United States District Court for the Southern District of New	346 F. Supp. 2d 473; 2004	October 22, 2004	Plaintiffs sued defendant county, county board of elections, and	The inability to vote at assigned locations on election day constituted irreparable harm. However, plaintiffs could not show a likelihood of success	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Westchester	York	U.S. Dist. LEXIS 24203		election officials pursuant to 42 U.S.C.S. §§ 12131--12134, N.Y. Exec. Law § 296, and N.Y. Elec. Law § 4--1--4. Plaintiffs moved for a preliminary injunction, requesting (among other things) that the court order defendants to modify the polling places in the county so that they were accessible to disabled voters on election day. Defendants moved to dismiss.	on the merits because the currently named defendants could not provide complete relief sought by plaintiffs. Although the county board of elections was empowered to select an alternative polling place should it determine that a polling place designated by a municipality was "unsuitable or unsafe," it was entirely unclear that its power to merely designate suitable polling places would be adequate to ensure that all polling places used in the upcoming election actually conformed with the Americans with Disabilities Act. Substantial changes and modifications to existing facilities would have to be made, and such changes would be difficult, if not impossible, to make without the cooperation of municipalities. Further, the court could order defendants to approve voting machines that conformed to the ADA were they to be purchased and submitted for county approval, but the court could not order them to purchase them for the voting districts in the county. A judgment issued in the absence of the municipalities would be inadequate. Plaintiffs' motion for preliminary			

007944

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					injunction was denied, and defendants' motion to dismiss was granted.			
Nat'l Org. on Disability v. Tartaglione	United States District Court for the Eastern District of Pennsylvania	2001 U.S. Dist. LEXIS 16731	October 11, 2001	Plaintiffs, disabled voters and special interest organizations, sued defendants, city commissioners, under the Americans with Disabilities Act and § 504 of the Rehabilitation Act of 1973, and regulations under both statutes, regarding election practices. The commissioners moved to dismiss for failure (1) to state a cause of action and (2) to join an indispensable party.	The voters were visually impaired or wheelchair bound. They challenged the commissioners' failure to provide talking voting machines and wheelchair accessible voting places. They claimed discrimination in the process of voting because they were not afforded the same opportunity to participate in the voting process as non-disabled voters, and assisted voting and voting by alternative ballot were substantially different from, more burdensome than, and more intrusive than the voting process utilized by non-disabled voters. The court found that the complaint stated causes of actions under the ADA, the Rehabilitation Act, and 28 C.F.R. §§ 35.151 and 35.130. The court found that the voters and organizations had standing to raise their claims. The organizations had standing through the voters' standing or because they used significant resources challenging the commissioners' conduct. The plaintiffs failed to join the state official who would need to approve any talking	No	N/A	Yes-see if the case was refiled

007945

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					voting machine as a party. As the court could not afford complete relief to the visually impaired voters in that party's absence, it granted the motion to dismiss under Fed. R. Civ. P. 12(b)(7) without prejudice. The court granted the commissioners' motion to dismiss in part, and denied it in part. The court granted the motion to dismiss the claims of the visually impaired voters for failure to join an indispensable party, without prejudice, and with leave to amend the complaint.			
TENNESSEE, Petitioner v. GEORGE LANE et al.	United States Supreme Court	541 U.S. 509; 124 S. Ct. 1978; 158 L. Ed. 2d 820; 2004 U.S. LEXIS 3386	May 17, 2004	Respondent paraplegics sued petitioner State of Tennessee, alleging that the State failed to provide reasonable access to court facilities in violation of Title II of the Americans with Disabilities Act of 1990. Upon the grant of a writ of certiorari, the State appealed the judgment of the	The state contended that the abrogation of state sovereign immunity in Title II of the ADA exceeded congressional authority under U.S. Const. amend XIV, § 5, to enforce substantive constitutional guarantees. The United States Supreme Court held, however, that Title II, as it applied to the class of cases implicating the fundamental right of access to the courts, constituted a valid exercise of Congress's authority. Title II was responsive to evidence of pervasive unequal treatment of persons with disabilities in the administration of state services and programs, and such disability discrimination was thus	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				United States Court of Appeals for the Sixth Circuit which denied the State's claim of sovereign immunity.	an appropriate subject for prophylactic legislation. Regardless of whether the State could be subjected to liability for failing to provide access to other facilities or services, the fundamental right of access to the courts warranted the limited requirement that the State reasonably accommodate disabled persons to provide such access. Title II was thus a reasonable prophylactic measure, reasonably targeted to a legitimate end. The judgment denying the State's claim of sovereign immunity was affirmed.			
Bell v. Marinko	United States Court of Appeals for the Sixth Circuit	367 F.3d 588; 2004 U.S. App. LEXIS 8330	April 28, 2004	Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19-3509.21 violated the National Voter Registration Act, and the Equal Protection Clause of the Fourteenth Amendment. The United States	The voters asserted that § 3503.02--- which stated that the place where the family of a married man or woman resided was considered to be his or her place of residence---violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place. The National Voter Registration Act did not bar the Board's continuing	No	N/A	No

007947

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.	consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code Ann. § 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed.			
Wilson v. Commonwealth	Court of Appeals of Virginia	2000 Va. App. LEXIS 322	May 2, 2000	Defendant appealed the judgment of the circuit court which convicted her of election fraud.	On appeal, defendant argued that the evidence was insufficient to support her conviction because it failed to prove that she made a willfully false statement on her voter registration form and, even if the evidence did prove that she made such a statement, it did not prove that the voter registration form was the form required by Title 24.2. At trial, the Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					<p>registration form that she was living at a residence in the 51st House District. The evidence included records showing electricity and water usage, records from the Department of Motor Vehicles and school records. Thus, the evidence was sufficient to support the jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed by Title 24.2 in order for her to be a candidate for office in the primary in question. Judgment of conviction affirmed. Evidence, including records showing electricity and water usage, records from the Department of Motor Vehicles and school records, was sufficient to support jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed in order for her to be a candidate for office in the primary in question.</p>			
ACLU of Minn. v. Kiffmeyer	United States District Court for the District of Minnesota	2004 U.S. Dist. LEXIS 22996	October 29, 2004	Plaintiffs, voters and associations, filed for a temporary restraining order pursuant to Fed. R. Civ. P. 65, against	Plaintiffs argued that Minn. Stat. § 201.061 was inconsistent with the Help America Vote Act because it did not authorize the voter to complete registration either by a "current and valid photo identification" or by use of	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				defendant, Minnesota Secretary of State, concerning voter registration.	a current utility bill, bank statement, government check, paycheck, or other government document that showed the name and address of the individual. The Secretary advised the court that there were less than 600 voters who attempted to register by mail but whose registrations were deemed incomplete. The court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic tribal identification card by American Indians who do not reside on their tribal reservations. Also, the court found that plaintiffs demonstrated that they were likely to succeed on their claims that Minn. R. 8200.5100, violated the Equal Protection Clause of the United States Constitution. A temporary restraining order was entered.			
Kallson v. United States	United States District Court for	356 F. Supp. 2d	February 16, 2005	Defendant Federal Election	The individual claimed that his vote was diluted because the NVRA	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
FEC	the Southern District of New York	371; 2005 U.S. Dist. LEXIS 2279		Commission filed a motion to dismiss for lack of subject matter jurisdiction plaintiff individual's action, which sought a declaration that the National Voter Registration Act was unconstitutional on the theories that its enactment was not within the enumerated powers of the federal government and that it violated Article II of the United States Constitution.	resulted in more people registering to vote than otherwise would have been the case. The court held that the individual lacked standing to bring the action. Because New York was not obliged to adhere to the requirements of the NVRA, the individual did not allege any concrete harm. If New York simply adopted election day registration for elections for federal office, it would have been entirely free of the NVRA just as were five other states. Even if the individual's vote were diluted, and even if such an injury in other circumstances might have sufficed for standing, any dilution that he suffered was the result of New York's decision to maintain a voter registration system that brought it under the NVRA, not the NVRA itself. The court granted the motion to dismiss for lack of subject matter jurisdiction.			
Peace & Freedom Party v. Shelley	California Court of Appeal, Third Appellate District	114 Cal. App. 4th 1237; 8 Cal. Rptr. 3d 497; 2004 Cal.	January 15, 2004	Plaintiff political party appealed a judgment from the superior court which denied the party's petition for writ of	The trial court ruled that inactive voters were excluded from the primary election calculation. The court of appeals affirmed, observing that although the election had already taken place, the issue was likely to recur and	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		App. LEXIS 42		mandate to compel defendant, the California Secretary of State, to include voters listed in the inactive file of registered voters in calculating whether the party qualified to participate in a primary election.	was a matter of continuing public interest and importance; hence, a decision on the merits was proper, although the case was technically moot. The law clearly excluded inactive voters from the calculation. The statutory scheme did not violate the inactive voters' constitutional right of association because it was reasonably designed to ensure that all parties on the ballot had a significant modicum of support from eligible voters. Information in the inactive file was unreliable and often duplicative of information in the active file. Moreover, there was no violation of the National Voter Registration Act because voters listed as inactive were not prevented from voting. Although the Act prohibited removal of voters from the official voting list absent certain conditions, inactive voters in California could correct the record and vote. Affirmed.			
McKay v. Thompson	United States Court of Appeals for the Sixth Circuit	226 F.3d 752; 2000 U.S. App.	September 18, 2000	Plaintiff challenged order of United States District Court for Eastern District of Tennessee at	The trial court had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		LEXIS 23387		Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.	plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous caselaw, and could be challenged in state court. The requirement did not violate the Privacy Act because it was grand fathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. Plaintiff could not enforce § 1971 as it was enforceable only by the United States Attorney General. The trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims. Although the trial court arguably erred in denying certification of the case to the USAG under 28 U.S.C.S. § 2403(a), plaintiff suffered no harm from the technical violation. Order affirmed because requirement that voters disclose social security numbers as precondition to voter registration did not violate Privacy Act of 1974 or National Voter			

007953

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Registration Act and trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims.			
Lucas County Democratic Party v. Blackwell	United States District Court for the Northern District of Ohio	341 F. Supp. 2d 861; 2004 U.S. Dist. LEXIS 21416	October 21, 2004	Plaintiff organizations brought an action challenging a memorandum issued by defendant, Ohio's Secretary of State, in December 2003. The organizations claimed that the memorandum contravened provisions of the Help America Vote Act and the National Voter Registration Act. The organizations moved for a preliminary injunction.	The case involved a box on Ohio's voter registration form that required a prospective voter who registered in person to supply an Ohio driver's license number or the last four digits of their Social Security number. In his memorandum, the Secretary informed all Ohio County Boards of Elections that, if a person left the box blank, the Boards were not to process the registration forms. The organizations did not file their suit until 18 days before the national election. The court found that there was not enough time before the election to develop the evidentiary record necessary to determine if the organizations were likely to succeed on the merits of their claim. Denying the organizations' motion would have caused them to suffer no irreparable harm. There was no appropriate remedy available to the organizations at the time. The likelihood that the organizations could	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					have shown irreparable harm was, in any event, slight in view of the fact that they waited so long before filing suit. Moreover, it would have been entirely improper for the court to order the Boards to re--open in--person registration until election day. The public interest would have been ill--served by an injunction. The motion for a preliminary injunction was denied sua sponte.			
Nat'l Coalition for Students with Disabilities Educ. & Legal Def. Fund v. Scales	United States District Court for the District of Maryland	150 F. Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528	July 5, 2001	Plaintiff, national organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss the first amended complaint, or in the	Defendants alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged sufficient facts to confer standing under the NVRA, such allegations	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				alternative for summary judgment.	were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter registration services at the initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended complaint was granted as to the § 1983 claim and denied as to plaintiff's claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion for summary judgment was denied.			
People v. Disimone	Court of Appeals of Michigan	251 Mich. App. 605; 650 N.W.2d 436; 2002 Mich. App.	July 11, 2002	Defendant was charged with attempting to vote more than once in the 2000 general election. The circuit court granted defendant's motion that the State had to	Defendant was registered in the Colfax township for the 2000 general election. After presenting what appeared to be a valid voter's registration card, defendant proceeded to vote in the Grant township. Defendant had voted in the Colfax township earlier in the day. Defendant moved the court to issue an order that the State had to find	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		LEXIS 826		prove specific intent. The State appealed.	that he had a specific intent to vote twice in order to be convicted. The appellate court reversed the circuit court judgment and held that under the rules of statutory construction, the fact that the legislature had specifically omitted certain trigger words such as "knowingly," "willingly," "purposefully," or "intentionally" it was unlikely that the legislature had intended for this to be a specific intent crime. The court also rejected the defendant's argument that phrases such as "offer to vote" and "attempt to vote" should be construed as synonymous terms, as when words with similar meanings were used in the same statute, it was presumed that the legislature intended to distinguish between the terms. The order of the circuit court was reversed.			
Diaz v. Hood	United States District Court for the Southern District of Florida	342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445	October 26, 2004	Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general	The putative voters sought injunctive relief requiring the election officials to register them to vote. The court first noted that the unions lacked even representative standing, because they failed to show that one of their members could have brought the case in their own behalf. The individual	No	N/A	No

007957

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>election. They alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials moved to dismiss the complaint for lack of standing and failure to state a claim.</p>	<p>putative voters raised separate issues: the first had failed to verify her mental capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. The motions to dismiss the complaint were granted without prejudice.</p>			
Charles H. Wesley Educ.	United States District Court for	324 F. Supp. 2d	July 1, 2004	Plaintiffs, a voter, fraternity members,	The organization participated in numerous non-partisan voter	No	N/A	No

007958

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Found., Inc. v. Cox	the Northern District of Georgia	1358; 2004 U.S. Dist. LEXIS 12120		and an organization, sought an injunction ordering defendant, the Georgia Secretary of State, to process the voter registration application forms that they mailed in following a voter registration drive. They contended that by refusing to process the forms defendants violated the National Voter Registration Act and U.S. Const. amends. I, XIV, and XV.	registration drives primarily designed to increase the voting strength of African--Americans. Following one such drive, the fraternity members mailed in over 60 registration forms, including one for the voter who had moved within state since the last election. The Georgia Secretary of State's office refused to process them because they were not mailed individually and neither a registrar, deputy registrar, or an otherwise authorized person had collected the applications as required under state law. The court held that plaintiffs had standing to bring the action. The court held that because the applications were received in accordance with the mandates of the NVRA, the State of Georgia was not free to reject them. The court found that: plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Plaintiffs' motion for a preliminary injunction			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					was granted. Defendants were ordered to process the applications received from the organization to determine whether those registrants were qualified to vote. Furthermore, defendants were enjoined from rejecting any voter registration application on the grounds that it was mailed as part of a "bundle" or that it was collected by someone not authorized or any other reason contrary to the NVRA.			
Moseley v. Price	United States District Court for the Eastern District of Virginia	300 F. Supp. 2d 389; 2004 U.S. Dist. LEXIS 850	January 22, 2004	Plaintiff alleged, that defendants' actions in investigating his voter registration application constituted a change in voting procedures requiring § 5 preclearance under the Voting Rights Act, which preclearance was never sought or received. Plaintiff claimed he withdrew from the race for Commonwealth	The court concluded that plaintiff's claim under the Voting Rights Act lacked merit. Plaintiff did not allege, as required, that any defendants implemented a new, uncleared voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting. Here, the existing practice or procedure in effect in the event a mailed registration card was returned was to "resend the voter card, if address verified as correct." This was what precisely occurred. Plaintiff inferred, however, that the existing voting rule or practice was to resend the voter card "with no adverse consequences" and that the county's	No	N/A	No

007960

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				Attorney because of the investigation. Defendants moved to dismiss the complaint.	initiation of an investigation constituted the implementation of a change that had not been pre-cleared. The court found the inference wholly unwarranted because nothing in the written procedure invited or justified such an inference. The court opined that common sense and state law invited a different inference, namely that while a returned card had to be resent if the address was verified as correct, any allegation of fraud could be investigated. Therefore, there was no new procedure for which preclearance was required. The court dismissed plaintiff's federal claims. The court dismissed the state law claims without prejudice.			
Thompson v. Karben	Supreme Court of New York, Appellate Division, Second Department	295 A.D.2d 438; 743 N.Y.S.2d 175; 2002 N.Y. App. Div. LEXIS 6101	June 10, 2002	Respondents filed a motion seeking the cancellation of appellant's voter registration and political party enrollment on the ground that appellant was unlawfully registered to vote in	Respondents alleged that appellant was unlawfully registered to vote from an address at which he did not reside and that he should have voted from the address that he claimed as his residence. The appellate court held that respondents adduced insufficient proof to support the conclusion that appellant did not reside at the subject address. On the other hand, appellant submitted copies of his 2002 vehicle registration,	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				a particular district. The Supreme Court, Rockland County, New York, ordered the cancellation of appellant's voter registration and party enrollment. Appellant challenged the trial court's order.	2000 and 2001 federal income tax returns, 2002 property tax bill, a May 2001 paycheck stub, and 2000 and 2001 retirement account statements all showing the subject address. Appellant also testified that he was a signatory on the mortgage of the subject address and that he kept personal belongings at that address. Respondents did not sustain their evidentiary burden. The judgment of the trial court was reversed.			
Nat'l Coalition v. Taft	United States District Court for the Southern District of Ohio	2002 U.S. Dist. LEXIS 22376	August 2, 2002	Plaintiffs, a nonprofit public interest group and certain individuals, sued defendants, certain state and university officials, alleging that they violated the National Voter Registration Act in failing to designate the disability services offices at state public colleges and universities as voter registration sites.	The court found that the disability services offices at issue were subject to the NVRA because the term "office" included a subdivision of a government department or institution and the disability offices at issue were places where citizens regularly went for service and assistance. Moreover, the Ohio Secretary of State had an obligation under the NVRA to designate the disability services offices as voter registration sites because nothing in the law superceded the NVRA's requirement that the responsible state official designate disability services offices as voter registration sites. Moreover, under	No	N/A	No

007962

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				The group and individuals moved for a preliminary injunction.	Ohio Rev. Code Ann. § 3501.05(R), the Secretary of State's duties expressly included ensuring compliance with the NVRA. The case was not moot even though the Secretary of State had taken steps to ensure compliance with the NVRA given his position to his obligation under the law. The court granted declaratory judgment in favor of the nonprofit organization and the individuals. The motion for a preliminary injunction was granted in part and the Secretary of State was ordered to notify disabled students who had used the designated disability services offices prior to the opening day of the upcoming semester or who had pre-registered for the upcoming semester as to voter registration availability.			
Lawson v. Shelby County	United States Court of Appeals for the Sixth Circuit	211 F.3d 331; 2000 U.S. App. LEXIS 8634	May 3, 2000	Plaintiffs who were denied the right to vote when they refused to disclose their social security numbers, appealed a judgment of the United States	Plaintiffs attempted to register to vote in October, and to vote in November, but were denied because they refused to disclose their social security numbers. A year after the election date they filed suit alleging denial of constitutional rights, privileges and immunities, the Privacy Act of 1974	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				District Court for the Western District of Tennessee at Memphis dismissing their amended complaint for failure to state claims barred by U.S. Const. amend. XI.	and § 1983. The district court dismissed, finding the claims were barred by U.S. Const. amend. XI, and the one year statute of limitations. The appeals court reversed, holding the district court erred in dismissing the suit because U.S. Const. amend. XI immunity did not apply to suits brought by a private party under the Ex Parte Young exception. Any damages claim not ancillary to injunctive relief was barred. The court also held the statute of limitations ran from the date plaintiffs were denied the opportunity to vote, not register, and their claim was thus timely. Reversed and remanded to district court to order such relief as will allow plaintiffs to vote and other prospective injunctive relief against county and state officials; declaratory relief and attorneys' fees ancillary to the prospective injunctive relief, all permitted under the Young exception to sovereign immunity, to be fashioned.			
Curtis v. Smith	United States District Court for the Eastern District of Texas	145 F. Supp. 2d 814; 2001	June 4, 2001	Plaintiffs, representatives of several thousand retired persons who	Before a general election, three persons brought an action alleging the Escapees were not bona fide residents of the county, and sought to have their	No	N/A	No

007964

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		U.S. Dist. LEXIS 8544		called themselves the "Escapees," and who spent a large part of their lives traveling about the United States in recreational vehicles, but were registered to vote in the county, moved for preliminary injunction seeking to enjoin a Texas state court proceeding under the All Writs Act.	names expunged from the rolls of qualified voters. The plaintiffs brought suit in federal district court. The court issued a preliminary injunction forbidding county officials from attempting to purge the voting. Commissioner contested the results of the election, alleging Escapees' votes should be disallowed. Plaintiffs brought present case assertedly to prevent the same issue from being relitigated. The court held, however, the issues were different, since, unlike the case in the first proceeding, there was notice and an opportunity to be heard. Further, unlike the first proceeding, the plaintiff in the state court action did not seek to change the prerequisites for voting registration in the county, but instead challenged the actual residency of some members of the Escapees, and such challenge properly belonged in the state court. The court further held that an election contest under state law was the correct vehicle to contest the registration of Escapees. The court dissolved the temporary restraining order it had previously entered and denied plaintiffs' motion for preliminary			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					injunction of the state court proceeding.			
Pepper v. Darnell	United States Court of Appeals for the Sixth Circuit	24 Fed. Appx. 460; 2001 U.S. App. LEXIS 26618	December 10, 2001	Plaintiff individual appealed from a judgment of the district court, in an action against defendant state officials seeking relief under § 1983 and the National Voter Registration Act, for their alleged refusal to permit individual to register to vote. Officials had moved for dismissal or for summary judgment, and the district court granted the motion.	Individual argued on appeal that the district court erred in finding that the registration forms used by the state did not violate the NVRA and in failing to certify a class represented by individual. Individual lived in his automobile and received mail at a rented box. Officials refused to validate individual's attempt to register to vote by mail. Tennessee state law forbade accepting a rented mail box as the address of the potential voter. Individual insisted that his automobile registration provided sufficient proof of residency under the NVRA. The court upheld the legality of state's requirement that one registering to vote provide a specific location as an address, regardless of the transient lifestyle of the potential voter, finding state's procedure faithfully mirrored the requirements of the NVRA as codified in the Code of Federal Regulations. The court also held that the refusal to certify individual as the representative of a class for purposes of this litigation was not an abuse of	No	N/A	No

007966

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					discretion; in this case, no representative party was available as the indigent individual, acting in his own behalf, was clearly unable to represent fairly the class. The district court's judgment was affirmed.			
Miller v. Blackwell	United States District Court for the Southern District of Ohio	348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894	October 27, 2004	Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion for a temporary restraining order (TRO). Two individuals filed a motion to intervene as defendants.	Plaintiffs alleged that the timing and manner in which defendants intended to hold hearings regarding pre-election challenges to their voter registration violated both the Act and the Due Process Clause. The individuals, who filed pre-election voter eligibility challenges, filed a motion to intervene. The court held that it would grant the motion to intervene because the individuals had a substantial legal interest in the subject matter of the action and time constraints would not permit them to bring separate actions to protect their rights. The court further held that it would grant plaintiffs' motion for a TRO because plaintiffs made sufficient allegations in their complaint to establish standing and because all four factors to consider in issuing a TRO weighed heavily in favor of doing so. The court found that plaintiffs	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					demonstrated a likelihood of success on the merits because they made a strong showing that defendants' intended actions regarding pre-election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the other factors to consider in granting a TRO automatically weighed in plaintiffs' favor. The court granted plaintiffs' motion for a TRO. The court also granted the individuals' motion to intervene.			
Miller v. Blackwell	United States District Court for the southern District of Ohio	348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894	October 27, 2004	Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion	Plaintiffs alleged that the timing and manner in which defendants intended to hold hearings regarding pre-election challenges to their voter registration violated both the Act and the Due Process Clause. The individuals, who filed pre-election voter eligibility challenges, filed a motion to intervene. The court held that it would grant the motion to intervene because the individuals had a substantial legal interest in the subject matter of the action and time constraints would not permit them to bring separate actions to protect their	No	N/A	No

007968

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				for a temporary restraining order. Two individuals filed a motion to intervene as defendants.	rights. The court further held that it would grant plaintiffs' motion for a TRO because plaintiffs made sufficient allegations in their complaint to establish standing and because all four factors to consider in issuing a TRO weighed heavily in favor of doing so. The court found that plaintiffs demonstrated a likelihood of success on the merits because they made a strong showing that defendants' intended actions regarding pre-election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the other factors to consider in granting a TRO automatically weighed in plaintiffs' favor. The court granted plaintiffs' motion for a TRO. The court also granted the individuals' motion to intervene.			
Spencer v. Blackwell	United States District Court for the Southern District of Ohio	347 F. Supp. 2d 528; 2004 U.S. Dist. LEXIS	November 1, 2004	Plaintiff voters filed a motion for temporary restraining order and preliminary injunction seeking to restrain defendant	The voters alleged that defendants had combined to implement a voter challenge system at the polls that discriminated against African-American voters. Each precinct was run by its election judges but Ohio law also allowed challengers to be	No	N/A	No

007969

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		22062		election officials and intervenor State of Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from being allowed at the polls.	physically present in the polling places in order to challenge voters' eligibility to vote. The court held that the injury asserted, that allowing challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos, delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. Because the voters had shown a substantial likelihood of success on the merits on the ground that the application of Ohio's statute allowing challengers at polling places was			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>unconstitutional and the other factors governing the issuance of an injunction weighed in their favor, the court enjoined all defendants from allowing any challengers other than election judges and other electors into the polling places throughout the state on Election Day.</p>			
Charfauros v. Bd. of Elections	United States Court of Appeals for the Ninth Circuit	2001 U.S. App. LEXIS 15083	May 10, 2001	<p>Defendants, board of elections and related individuals, appealed from an order of the Supreme Court of the Commonwealth of the Northern Mariana Islands reversing a lower court's grant of summary judgment in favor of defendants on the ground of qualified immunity.</p>	<p>Plaintiffs, disqualified voters, claimed that individual members of the Commonwealth of the Northern Mariana Islands Board of Elections violated § 1983 by administering pre-election day voter challenge procedures which precluded a certain class of voters, including plaintiffs, from voting in a 1995 election. The CNMI Supreme Court reversed a lower court's grant of summary judgment and defendants appealed. The court of appeals held that the Board's pre-election day procedures violated the plaintiffs' fundamental right to vote. The federal court reasoned that the right to vote was clearly established at the time of the election, and that a reasonable Board would have known that that treating voters differently based on their political party would</p>	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>violate the Equal Protection Clause. Further the court added that the allegations of the complaint were sufficient to support liability of the Board members in their individual capacities. Finally, the composition of the CNMI Supreme Court's Special Judge panel did not violate the Board's right to due process of law. The decision of Commonwealth of the Northern Mariana Islands Supreme Court was affirmed where defendants' pre-election day voter challenge procedures violated plaintiffs' fundamental right to vote.</p>			
Wit v. Berman	United States Court of Appeals for the Second Circuit	306 F.3d 1256; 2002 U.S. App. LEXIS 21301	October 11, 2002	Appellant voters who established residences in two separate cities sued appellees, state and city election officials, alleging that provisions of the New York State Election Law unconstitutionally prevented the voters from voting in local elections in both	Under state election laws, the voters could only vote in districts in which they resided, and residence was limited to one place. The voters contended that, since they had two lawful residences, they were denied constitutional equal protection by the statutory restriction against voting in the local elections of both of the places of their residences. The appellate court held, however, that no constitutional violation was shown since the provisions of the New York State Election Law imposed only reasonable,	No	N/A	No

007972

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				cities where they resided. The voters appealed the order of the United States District Court for the Southern District of New York which granted appellees' motion to dismiss the complaint.	nondiscriminatory restrictions which advanced important state regulatory interests. While the voters may have interests in electoral outcomes in both cities, any rule permitting voting based on such interests would be unmanageable and subject to potential abuse. Further, basing voter eligibility on domicile, which was always over-- or under--inclusive, nonetheless had enormous practical advantages, and the voters offered no workable standard to replace the domicile test. Finally, allowing the voters to choose which of their residences was their domicile for voting purposes could not be deemed discriminatory. Affirmed.			
Curtis v. Smith	United States District Court for the Eastern District of Texas	121 F. Supp. 2d 1054; 2000 U.S. Dist. LEXIS 17987	November 3, 2000	Plaintiffs sought a preliminary injunction to prohibit defendant tax assessor-collector from mailing confirmation letters to approximately 9,000 persons who were registered voters in Polk	Plaintiffs sought to prohibit defendant from mailing confirmation letters to approximately 9,000 persons, self-styled "escapees" who traveled a major portion of each year in recreational vehicles, all of whom were registered to vote in Polk County, Texas. In accordance with Texas law, three resident voters filed affidavits challenging the escapees' residency. These affidavits triggered defendant's action in sending confirmation notices	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				County, Texas.	to the escapees. The court determined, first, that because of the potential for discrimination, defendant's action required preclearance in accordance with § 5 of the Voting Rights Act and, second, that such preclearance had not been sought or obtained. Accordingly, the court issued a preliminary injunction prohibiting defendant from pursuing the confirmation of residency of the escapees, or any similarly situated group, under the Texas Election Code until the process had been submitted for preclearance in accordance with § 5. The action was taken to ensure that no discriminatory potential existed in the use of such process in the upcoming presidential election or future election. Motion for preliminary injunction was granted, and defendant was enjoined from pursuing confirmation of residency of the 9,000 "escapees," or any similarly situated group, under the Texas Election Code, until the process had been submitted for preclearance under § 5 of the Voting Rights Act.			
Peace & Freedom Party	Court of Appeal of California,	114 Cal. App. 4th	January 15, 2004	Plaintiff political party appealed a	The trial court ruled that inactive voters were excluded from the primary	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
v. Shelley	Third Appellate District	1237; 8 Cal. Rptr. 3d 497; 2004 Cal. App. LEXIS 42		judgment from the superior court which denied the party's petition for writ of mandate to compel defendant, the California Secretary of State, to include voters listed in the inactive file of registered voters in calculating whether the party qualified to participate in a primary election.	election. The court of appeals affirmed, observing that although the election had already taken place, the issue was likely to recur and was a matter of continuing public interest and importance; hence, a decision on the merits was proper, although the case was technically moot. The law clearly excluded inactive voters from the calculation. The statutory scheme did not violate the inactive voters' constitutional right of association because it was reasonably designed to ensure that all parties on the ballot had a significant modicum of support from eligible voters. Information in the inactive file was unreliable and often duplicative of information in the active file. Moreover, there was no violation of the National Voter Registration Act because voters listed as inactive were not prevented from voting. Although the Act prohibited removal of voters from the official voting list absent certain conditions, inactive voters in California could correct the record and vote as provided the Act. The court affirmed the denial of a writ of mandate.			

007975

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Bell v. Marinko	United States District Court for the Northern District of Ohio	235 F. Supp. 2d 772; 2002 U.S. Dist. LEXIS 21753	October 22, 2002	Plaintiff voters sued defendants, a county board of elections, a state secretary of state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.	The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather than permanent residents of the county. The voters claimed that the board hearings did not afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and resolve that challenge, did not	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					contravene the MVA. Defendants' motions for summary judgment were granted as to all claims with prejudice, except the voters' state-law claim, which was dismissed for want of jurisdiction, without prejudice.			
Charles H. Wesley Educ. Found., Inc. v. Cox	United States Court of Appeals for the Eleventh Circuit	408 F.3d 1349; 2005 U.S. App. LEXIS 8320	May 12, 2005	Plaintiffs, a charitable foundation, four volunteers, and a registered voter, filed a suit against defendant state officials alleging violations of the National Voter Registration Act and the Voting Rights Act. The officials appealed after the United States District Court for the Northern District of Georgia issued a preliminary injunction enjoining them from rejecting voter registrations submitted by the	The foundation conducted a voter registration drive; it placed the completed applications in a single envelope and mailed them to the Georgia Secretary of State for processing. Included in the batch was the voter's change of address form. Plaintiffs filed the suit after they were notified that the applications had been rejected pursuant to Georgia law, which allegedly restricted who could collect voter registration forms. Plaintiffs contended that the officials had violated the NVRA, the VRA, and U.S. Const. amends. I, XIV, XV. The officials argued that plaintiffs lacked standing and that the district court had erred in issuing the preliminary injunction. The court found no error. Plaintiffs had sufficiently alleged injuries under the NVRA, arising out of the rejection of the voter registration forms; the allegations in the complaint	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				foundation.	sufficiently showed an injury--in--fact that was fairly traceable to the officials' conduct. The injunction was properly issued. There was a substantial likelihood that plaintiffs would prevail as to their claims; it served the public interest to protect plaintiffs' franchise--related rights. The court affirmed the preliminary injunction order entered by the district court.			
McKay v. Thompson	United States Court of Appeals for the Sixth Circuit	226 F.3d 752; 2000 U.S. App. LEXIS 23387	September 18, 2000	Plaintiff challenged order of United States District Court for Eastern District of Tennessee at Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.	The trial court had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous case law, and could be challenged in state court. The requirement did not violate the Privacy Act of 1974, because it was grandfathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. The trial	No	N/A	No

007978

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims. Order affirmed because requirement that voters disclose social security numbers as precondition to voter registration did not violate Privacy Act of 1974 or National Voter Registration Act and trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims.			
Nat'l Coalition for Students with Disabilities Educ. & Legal Def. Fund v. Scales	United States District Court for the Southern District of Maryland	150 F. Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528	July 5, 2001	Plaintiff, national organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss	Defendants alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged	No	N/A	No

007979

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the first amended complaint, or in the alternative for summary judgment.	sufficient facts to confer standing under the NVRA, such allegations were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter registration services at the initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended complaint was granted as to the § 1983 claim and denied as to plaintiff's claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion for summary judgment was denied.			
Cunningham v. Chi. Bd. of Election Comm'rs	United States District Court for the Northern District of Illinois	2003 U.S. Dist. LEXIS 2528	February 24, 2003	Plaintiffs, who alleged that they were duly registered voters, six of whom had signed nominating petitions for one candidate	Plaintiffs argued that objections to their signatures were improperly sustained by defendants, the city board of election commissioners. Plaintiff's argued that they were registered voters whose names appeared in an inactive file and whose signatures were	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				and two of whom signed nominating petitions for another candidate. They first asked for a preliminary injunction of the municipal election scheduled for the following Tuesday and suggested, alternatively, that the election for City Clerk and for 4th Ward Alderman be enjoined.	therefore, and improperly, excluded. The court ruled that by characterizing the claim as plaintiffs did, they sought to enjoin an election because their signatures were not counted, even though their preferred candidates were otherwise precluded from appearing on the ballot. Without regard to their likelihood of obtaining any relief, plaintiffs failed to demonstrate that they would be irreparably harmed if an injunction did not issue; the threatened injury to defendants, responsible as they were for the conduct of the municipal election, far outweighed any threatened injury to plaintiffs; and the granting of a preliminary injunction would greatly disserve the public interest. Plaintiffs' petition for preliminary relief was denied.			
Diaz v. Hood	United States District Court for the Southern District of Florida	342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445	October 26, 2004	Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general election. They	The putative voters sought injunctive relief requiring the election officials to register them to vote. The court first noted that the unions lacked even representative standing, because they failed to show that one of their members could have brought the case in their own behalf. The individual putative voters raised separate issues:	No	N/A	No

007981

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials moved to dismiss the complaint for lack of standing and failure to state a claim.	the first had failed to verify her mental capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. Motion to dismiss without prejudice granted.			
Bell v. Marinko	United States District Court for the Northern District of Ohio	235 F. Supp. 2d 772; 2002	October 22, 2002	Plaintiff voters sued defendants, a county board of elections, a state secretary of	The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather	No	N/A	No

007932

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		U.S. Dist. LEXIS 21753		state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.	than permanent residents of the county. The voters claimed that the board hearings did not afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and resolve that challenge, did not contravene the MVA. Defendants' motions for summary judgment were granted as to all claims with prejudice, except the voters' state-law claim,			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					which was dismissed for want of jurisdiction, without prejudice.			
Bell v. Marinko	United States Court of Appeals for the Sixth Circuit	367 F.3d 588; 2004 U.S. App. LEXIS 8330	April 28, 2004	Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19--3509.21 violated the National Voter Registration Act, and the Equal Protection Clause of the Fourteenth Amendment. The United States District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.	The voters contested the challenges to their registration brought under Ohio Code Rev. Ann. § 3505.19 based on Ohio Rev. Code Ann. § 3503.02. Specifically, the voters asserted that § 3503.02----which stated that the place where the family of a married man or woman resided was considered to be his or her place of residence----violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place. The National Voter Registration Act did not bar the Board's continuing consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Ann. § 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed.			
Hileman v. McGinness	Court of Appeals of Illinois, Fifth District	316 Ill. App. 3d 868; 739 N.E.2d 81; 2000 Ill. App. LEXIS 845	October 25, 2000	Appellant challenged the circuit court declaration that that the result of a primary election for county circuit clerk was void.	In a primary election for county circuit clerk, the parties agreed that 681 absentee ballots were presumed invalid. The ballots had been commingled with the valid ballots. There were no markings or indications on the ballots which would have allowed them to be segregated from other ballots cast. Because the ballots could not have been segregated, apportionment was the appropriate remedy if no fraud was involved. If fraud was involved, the election would have had to have been voided and a new election held. Because the trial court did not hold an evidentiary hearing on the fraud allegations, and did not determine whether fraud was in issue, the case was remanded for a determination as to whether fraud was evident in the electoral process. The court reversed the declaration of the	No	N/A	No

007985

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					trial court, holding that a determination as to whether fraud was involved in the election was necessary to a determination of whether or not a new election was required.			
DeFabio v. Gummersheimer	Supreme Court of Illinois	192 Ill. 2d 63; 733 N.E.2d 1241; 2000 Ill. LEXIS 993	July 6, 2000	Appellant challenged the judgment of the appellate court, which affirmed the trial court's decision granting appellee's summary judgment motion in action brought by appellee to contest the results of the election for the position of county coroner in Monroe County.	Appellee filed a petition for election contest, alleging that the official results of the Monroe County coroners election were invalid because none of the 524 ballots cast in Monroe County's second precinct were initialed by an election judge, in violation of Illinois law. The trial court granted appellee's motion for summary judgment, and the appellate court affirmed the judgment. The Illinois supreme court affirmed, noting that statutes requiring election judges to initial election ballots were mandatory, and uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or corruption. Thus, the supreme court held that the trial court properly invalidated all of the ballots cast in Monroe County's second precinct. The court reasoned that none of the ballots contained the requisite initialing, and neither party argued that any of the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					uninitialed ballots could have been distinguished or identified as absentee ballots. The supreme court affirmed the judgment because the Illinois statute requiring election judges to initial election ballots was mandatory, and uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or corruption. Additionally, none of the ballots in Monroe County's second precinct contained the requisite initialing.			
Gilmore v. Amityville Union Free Sch. Dist.	United States District Court for the Eastern District of New York	305 F. Supp. 2d 271; 2004 U.S. Dist. LEXIS 3116	March 2, 2004	Plaintiffs, two school board candidates, filed a class action complaint against defendants, a school district, the board president, and other district agents or employees, challenging a school board election. Defendants moved to dismiss.	During the election, a voting machine malfunctioned, resulting in votes being cast on lines that were blank on the ballot. The board president devised a plan for counting the machine votes by moving each tally up one line. The two candidates, who were African American, alleged that the president's plan eliminated any possibility that an African American would be elected. The court found that the candidates failed to state a claim under § 1983 because they could not show that defendants' actions were done or approved by a person with final policymaking authority, nor was there	No	N/A	No

007987

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					a showing of intentional or purposeful discrimination on defendants' part. The vote-counting method applied equally to all candidates. The candidates' claims under § 2000a and 2000c-8 failed because schools were not places of public accommodation, as required under § 2000a, and § 2000c-8 applied to school segregation. Their claim under § 1971 of deprivation of voting rights failed because § 1971 did not provide for a private right of action. The court declined to exercise supplemental jurisdiction over various state law claims. Defendants' motion to dismiss was granted with respect to the candidates' federal claims; the state law claims were dismissed without prejudice.			
State ex rel. Mackey v. Blackwell	Supreme Court of Ohio	106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005	September 28, 2005	Appellants, a political group and county electors who voted by provisional ballot, sought review of a judgment from the court of appeals, which dismissed appellants' complaint, seeking a	The Secretary of State issued a directive to all Ohio county boards of elections, which specified that a signed affirmation statement was necessary for the counting of a provisional ballot in a presidential election. During the election, over 24,400 provisional ballots were cast in one county. The electors' provisional ballots were not counted. They, together with a political	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		Ohio LEXIS 2074		writ of mandamus to prevent appellees, the Ohio Secretary of State, a county board of elections, and the board's director, from disenfranchisement of provisional ballot voters.	activist group, brought the mandamus action to compel appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted constitutional and statutory law was relied on in support of the complaint. The court dismissed the complaint, finding that no clear legal right was established under Ohio law and the federal claims could be adequately raised in an action under § 1983. On appeal, the Ohio supreme court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election--contest actions were the exclusive remedy to challenge election results. An adequate remedy existed under § 1983 to raise the federal--law claims. Affirmed.			
Touchston v. McDermott	United States District Court for the Middle District of Florida	120 F. Supp. 2d 1055; 2000 U.S. Dist. LEXIS	November 14, 2000	In action in which plaintiffs, registered voters in Brevard County, Florida, filed suit against defendants, members of several	In their complaint, plaintiffs challenged the constitutionality of § 102.166(4), asserting that the statute violated their rights under the Equal Protection and Due Process Clauses of U.S. Const. amend. XIV. Based on these claims, plaintiffs sought an order	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		20091		County Canvassing Boards and the Secretary of the Florida Department of State, challenging the constitutionality of Fla. Stat. Ann. § 102.166(4) (2000), before the court was plaintiffs' emergency motion for temporary restraining order and/or preliminary injunction.	from the court stopping the manual recount of votes. The court found that plaintiffs had failed to set forth a valid basis for intervention by federal courts. They had not alleged that the Florida law was discriminatory, that citizens were being deprived of the right to vote, or that there had been fraudulent interference with the vote. Moreover, plaintiffs had not established a likelihood of success on the merits of their claims. Plaintiffs' motion for temporary restraining order and/or preliminary injunction denied; plaintiffs had not alleged that the Florida law was discriminatory, that citizens were being deprived of the right to vote, or that there had been fraudulent interference with the vote.			
Siegel v. LePore	United States District Court for the Southern District of Florida	120 F. Supp. 2d 1041; 2000 U.S. Dist. LEXIS 16333	November 13, 2000	Plaintiffs, individual Florida voters and Republican Party presidential and vice-presidential candidates, moved for a temporary restraining order and preliminary injunction to enjoin	The court addressed who should consider plaintiffs' serious arguments that manual recounts would diminish the accuracy of vote counts due to ballot degradation and the exercise of discretion in determining voter intent. The court ruled that intervention by a federal district court, particularly on a preliminary basis, was inappropriate. A federal court should not interfere	No	N/A	No

007390

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				defendants, canvassing board members from four Florida counties, from proceeding with manual recounts of election ballots.	except where there was an immediate need to correct a constitutional violation. Plaintiffs neither demonstrated a clear deprivation of a constitutional injury or a fundamental unfairness in Florida's manual recount provision. The recount provision was reasonable and non-discriminatory on its face and resided within the state's broad control over presidential election procedures. Plaintiffs failed to show that manual recounts were so unreliable as to constitute a constitutional injury, that plaintiffs' alleged injuries were irreparable, or that they lacked an adequate state court remedy. Injunctive relief denied because plaintiffs demonstrated neither clear deprivation of constitutional injury or fundamental unfairness in Florida's manual recount provision to justify federal court interference in state election procedures.			
Gore v. Harris	Supreme Court of Florida	773 So. 2d 524; 2000 Fla. LEXIS 2474	December 22, 2000	In a contest to results of the 2000 presidential election in Florida, the United States Supreme Court	The state supreme court had ordered the trial court to conduct a manual recount of 9000 contested Miami--Dade County ballots, and also held that uncounted "undervotes" in all Florida counties were to be manually counted.	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				reversed and remanded a Florida Supreme Court decision that had ordered a manual recount of certain ballots.	The trial court was ordered to use the standard that a vote was "legal" if there was a clear indication of the intent of the voter. The United States Supreme Court released an opinion on December 12, 2000, which held that such a standard violated equal protection rights because it lacked specific standards to ensure equal application, and also mandated that any manual recount would have to have been completed by December 12, 2000. On remand, the state supreme court found that it was impossible under that time frame to adopt adequate standards and make necessary evaluations of vote tabulation equipment. Also, development of a specific, uniform standard for manual recounts was best left to the legislature. Because adequate standards for a manual recount could not be developed by the deadline set by the United States Supreme Court, appellants were afforded no relief.			
Goodwin v. St. Thomas--St. John Bd. of	Territorial Court of the Virgin Islands	43 V.I. 89; 2000 V.I.	December 13, 2000	Plaintiff political candidate alleged that certain general	Plaintiff alleged that defendants counted unlawful absentee ballots that lacked postmarks, were not signed or	No	N/A	No

007992

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Elections		LEXIS 15		election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.	notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper. Plaintiff's request for declaratory and injunctive			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					relief was denied. Invalidation of absentee ballots was not required since the irregularities asserted by plaintiff involved ballots which were in fact valid, were not tabulated by defendants, or were insufficient to change the outcome of the election.			
Shannon v. Jacobowitz	United States Court of Appeals for the Second Circuit	394 F.3d 90; 2005 U.S. App. LEXIS 259	January 7, 2005	Plaintiffs, voters and an incumbent candidate, sued defendants, a challenger candidate, a county board of election, and commissioners, pursuant to § 1983 alleging violation of the Due Process Clause of the Fourteenth Amendment. The United States District Court for the Northern District of New York granted summary judgment in favor of plaintiffs. Defendants appealed.	Local election inspectors noticed a problem with a voting machine. Plaintiffs asserted that their votes were not counted due to the machine malfunction. Rather than pursue the state remedy of quo warranto, by requesting that New York's Attorney General investigate the machine malfunction and challenge the election results in state court, plaintiffs filed their complaint in federal court. The court of appeals found that United States Supreme Court jurisprudence required intentional conduct by state actors as a prerequisite for a due process violation. Neither side alleged that local officials acted intentionally or in a discriminatory manner with regard to the vote miscount. Both sides conceded that the recorded results were likely due to an unforeseen malfunction with the voting machine.	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Because no conduct was alleged that would indicate an intentional deprivation of the right to vote, there was no cognizable federal due process claim. The proper remedy was to assert a quo warranto action to challenge the outcome of a general election based on an alleged voting machine malfunction. The district court's grant of summary judgment was reversed and its injunctions were vacated. The case was remanded for further proceedings consistent with this opinion.			
GEORGE W. BUSH v. PALM BEACH COUNTY CANVASSING BOARD, ET AL.	United States Supreme Court	531 U.S. 70; 121 S. Ct. 471; 148 L. Ed. 2d 366; 2000 U.S. LEXIS 8087	December 4, 2000	Appellant Republican presidential candidate's petition for writ of certiorari to the Florida supreme court was granted in a case involving interpretations of Fla. Stat. Ann. §§ 102.111, 102.112, in proceedings brought by appellees Democratic	The Supreme Court vacated the state court's judgment, finding that the state court opinion could be read to indicate that it construed the Florida Election Code without regard to the extent to which the Florida Constitution could, consistent with U.S. Const. art. II, § 1, cl. 2, circumscribe the legislative power. The judgment of the Florida Supreme Court was vacated and remanded for further proceedings. The court stated the judgment was unclear as to the extent to which the state court saw the Florida constitution as circumscribing the legislature's	No	N/A	No

007995

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>presidential candidate, county canvassing boards, and Florida Democratic Party regarding authority of the boards and respondent Florida Secretary of State as to manual recounts of ballots and deadlines.</p>	<p>authority under Article II of the United States Constitution, and as to the consideration given the federal statute regarding state electors.</p>			
<p>Touchston v. McDermott</p>	<p>United States Court of Appeals for the Eleventh Circuit</p>	<p>234 F.3d 1130; 2000 U.S. App. LEXIS 29366</p>	<p>November 17, 2000</p>	<p>Plaintiff voters appealed from judgment of the United States District Court for the Middle District of Florida, which denied their emergency motion for an injunction pending appeal against defendant county election officials. Plaintiffs sought to enjoin defendants from conducting manual</p>	<p>Plaintiff voters sought an emergency injunction pending appeal to enjoin defendant county election officials from conducting manual ballot recounts or to enjoin defendants from certifying the results of the Presidential election which contained any manual recounts. The district court denied the emergency injunction and plaintiffs appealed. Upon review, the emergency motion for injunction pending appeal was denied without prejudice. Florida had adequate election dispute procedures, which had been invoked and were being implemented in the forms of administrative actions by state officials and actions in state court.</p>	<p>No</p>	<p>N/A</p>	<p>No</p>

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				ballot recounts or to enjoin defendants from certifying results of the presidential election that contained any manual recounts.	Therefore, the state procedures were adequate to preserve for ultimate review in the United States Supreme Court any federal questions arising out of the state procedures. Moreover, plaintiffs failed to demonstrate a substantial threat of an irreparable injury that would warrant granting the extraordinary remedy of an injunction pending appeal. Denial of plaintiff's petition for emergency injunction pending appeal was affirmed. The state procedures were adequate to preserve any federal issue for review, and plaintiffs failed to demonstrate a substantial threat of an irreparable injury that would have warranted granting the extraordinary remedy of the injunction.			
Gore v. Harris	Supreme Court of Florida	772 So. 2d 1243; 2000 Fla. LEXIS 2373	December 8, 2000	The court of appeal certified as being of great public importance a trial court judgment that denied all relief requested by appellants, candidates for President and Vice	Appellants contested the certification of their opponents as the winners of Florida's electoral votes. The Florida supreme court found no error in the trial court's holding that it was proper to certify election night returns from Nassau County rather than results of a machine recount. Nor did the trial court err in refusing to include votes that the Palm Beach County	No	N/A	No

007997

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>President of the United States, in appellants' contest to certified election results.</p>	<p>Canvassing Board found not to be legal votes during a manual recount. However, the trial court erred in excluding votes that were identified during the Palm Beach County manual recount and during a partial manual recount in Miami--Dade County. It was also error to refuse to examine Miami--Dade County ballots that registered as non--votes during the machine count. The trial court applied an improper standard to determine whether appellants had established that the result of the election was in doubt, and improperly concluded that there was no probability of a different result without examining the ballots that appellants claimed contained rejected legal votes. The judgment was reversed and remanded; the trial court was ordered to tabulate by hand Miami-Dade County ballots that the counting machine registered as non--votes, and was directed to order inclusion of votes that had already been identified during manual recounts. The trial court also was ordered to consider whether manual recounts in other counties were necessary.</p>			

007398

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Reitz v. Rendell	United States District Court for the Middle District of Pennsylvania	2004 U.S. Dist. LEXIS 21813	October 29, 2004	Plaintiff service members filed an action against defendant state officials under the Uniformed and Overseas Citizens Absentee Voting Act alleging that they and similarly situated service members would be disenfranchised because they did not receive their absentee ballots in time. The parties entered into a voluntary agreement and submitted it to the court for approval.	The court issued an order to assure that the service members and other similarly situated service members who were protected by the UOCAVA would not be disenfranchised. The court ordered the Secretary of the Commonwealth of Pennsylvania to take all reasonable steps necessary to direct the county boards of elections to accept as timely received absentee ballots cast by service members and other overseas voters as defined by UOCAVA, so long as the ballots were received by November 10, 2004. The ballots were to be considered solely for purposes of the federal offices that were included on the ballots. The court held that the ballot needed to be cast no later than November 2, 2004 to be counted. The court did not make any findings of liability against the Governor or the Secretary. The court entered an order, pursuant to a stipulation between the parties, that granted injunctive relief to the service members.	No	N/A	No
United States v. Pennsylvania	United States District Court for the Middle	2004 U.S. Dist.	October 20, 2004	Plaintiff United States sued defendant	The testimony of the two witnesses offered by the United States did not support its contention that voters	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	district of Pennsylvania	LEXIS 21167		Commonwealth of Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of candidates so late in the election year.	protected by the Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern regarding their ability or right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of UOCAVA voters to cast their ballots. Moreover, Pennsylvania had adduced substantial evidence that the requested injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs. must consider the following four factors: (1)			

008000

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					the likelihood that the applicant will prevail on the merits of the substantive claim; (2) the extent to which the moving party will be irreparably harmed in the absence of injunctive relief; (3) the extent to which the nonmoving party will suffer irreparable harm if the court grants the requested injunctive relief; and (4) the public interest. District courts should only grant injunctive relief after consideration of each of these factors. Motion for injunctive relief denied.			
Bush v. Hillsborough County Canvassing Bd.	United States District Court for the Northern District of Florida	123 F. Supp. 2d 1305; 2000 U.S. Dist. LEXIS 19265		The matter came before the court on plaintiffs' complaint for declaratory and injunctive relief alleging that defendant county canvassing boards rejected overseas absentee state ballots and federal write--in ballots based on criteria inconsistent with federal law, and requesting that the ballots be declared	Plaintiff presidential and vice--presidential candidates and state political party contended that defendant county canvassing boards rejected overseas absentee state ballots and federal write--in ballots based on criteria inconsistent with the Uniformed and Overseas Citizens Absentee Voting Act. Because the state accepted overseas absentee state ballots and federal write--in ballots up to 10 days after the election, the State needed to access that the ballot in fact came from overseas. However, federal law provided the method to establish that fact by requiring the overseas	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				valid and that they should be counted.	absentee voter to sign an oath that the ballot was mailed from outside the United States and requiring the state election officials to examine the voter's declarations. The court further noted that federal law required the user of a federal write--in ballot to timely apply for a regular state absentee ballot, not that the state receive the application, and that again federal law, by requiring the voter using a federal write--in ballot to swear that he or she had made timely application, had provided the proper method of proof. Plaintiffs withdrew as moot their request for injunctive relief and the court granted in part and denied in part plaintiffs' request for declaratory relief, and relief GRANTED in part and declared valid all federal write--in ballots that were signed pursuant to the oath provided therein but rejected solely because the ballot envelope did not have an APO, FPO, or foreign postmark, or solely because there was no record of an application for a state absentee ballot.			
Harris v. Florida Elections Canvassing	United States District Court for the Northern	122 F. Supp. 2d 1317;	December 9, 2000	Plaintiffs challenged the counting of overseas absentee	In two separate cases, plaintiff electors originally sued defendant state elections canvassing commission and	No	N/A	No

008002

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Comm'n	District of Florida	2000 U.S. Dist. LEXIS 17875		ballots received after 7 p.m. on election day, alleging the ballots violated Florida election law.	state officials in Florida state circuit court, challenging the counting of overseas absentee ballots received after 7 p.m. on election day. Defendant governor removed one case to federal court. The second case was also removed. The court in the second case denied plaintiff's motion for remand and granted a motion to transfer the case to the first federal court under the related case doctrine. Plaintiffs claimed that the overseas ballots violated Florida election law. Defendants argued the deadline was not absolute. The court found Congress did not intend 3 U.S.C.S. § 1 to impose irrational scheduling rules on state and local canvassing officials, and did not intend to disenfranchise overseas voters. The court held the state statute was required to yield to Florida Administrative Code, which required the 10-day extension in the receipt of overseas absentee ballots in federal elections because the rule was promulgated to satisfy a consent decree entered by the state in 1982. Judgment entered for defendants because a Florida administrative rule requiring a 10-day extension in the receipt of			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					overseas absentee ballots in federal elections was enacted to bring the state into compliance with a federally ordered mandate; plaintiffs were not entitled to relief under any provision of state or federal law.			
Romeu v. Cohen	United States District Court for the Southern District of New York	121 F. Supp. 2d 264; 2000 U.S. Dist. LEXIS 12842	September 7, 2000	Plaintiff territorial resident and plaintiff-intervenor territorial governor moved for summary judgment and defendant federal, state, and local officials moved to dismiss the complaint that alleged that the Voting Rights Amendments of 1970, the Uniform Overseas Citizens Absentee Voting Act, and New York election law were unconstitutional since they denied plaintiff's right to receive an absentee	Plaintiff argued that the laws denied him the right to receive a state absentee ballot in violation of the right to vote, the right to travel, the Privileges and Immunities Clause, and the Equal Protection Clause. Plaintiff-intervenor territorial governor intervened on behalf of similarly situated Puerto Rican residents. Defendants' argued that: 1) plaintiff lacked standing; 2) a non-justiciable political question was raised; and 3) the laws were constitutional. The court held that: 1) plaintiff had standing because he made a substantial showing that application for the benefit was futile; 2) whether or not the statutes violated plaintiff's rights presented a legal, not political, question, and there was no lack of judicially discoverable and manageable standards for resolving the matter; and 3) the laws were constitutional and only a constitutional amendment or	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				ballot for the upcoming presidential election.	grant of statehood would enable plaintiff to vote in a presidential election. The court granted defendants' motion to dismiss because the laws that prohibited territorial residents from voting by state absentee ballot in presidential elections were constitutional.			
Romeu v. Cohen	United States Court of Appeals for the Second Circuit	265 F.3d 118; 2001 U.S. App. LEXIS 19876	September 6, 2001	Plaintiff territorial resident sued defendants, state and federal officials, alleging that the Uniformed and Overseas Citizens Absentee Voting Act unconstitutionally prevented the territorial resident from voting in his former state of residence. The resident appealed the judgment of the United States District Court for the Southern District of New York, which dismissed the	The territorial resident contended that the UOCAVA unconstitutionally distinguished between former state residents residing outside the United States, who were permitted to vote in their former states, and former state residents residing in a territory, who were not permitted to vote in their former states. The court of appeals first held that the UOCAVA did not violate the territorial resident's right to equal protection in view of the valid and not insubstantial considerations for the distinction. The territorial resident chose to reside in the territory and had the same voting rights as other territorial residents, even though such residency precluded voting for federal offices. Further, the resident had no constitutional right to vote in his former state after he terminated his	No	N/A	No

008005

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				complaint.	residency in such state, and the consequences of the choice of residency did not constitute an unconstitutional interference with the right to travel. Finally, there was no denial of the privileges and immunities of state citizenship, since the territorial resident was treated identically to other territorial residents. The judgment dismissing the territorial resident's complaint was affirmed.			
Igartua de la Rosa v. United States	United States District Court for the District of Puerto Rico	107 F. Supp. 2d 140; 2000 U.S. Dist. LEXIS 11146	July 19, 2000	Defendant United States moved to dismiss plaintiffs' action seeking a declaratory judgment allowing them to vote, as U.S. citizens residing in Puerto Rico, in the upcoming and all subsequent Presidential elections. Plaintiffs urged, among other claims, that their right to vote in Presidential elections was	The court denied the motion of defendant United States to dismiss the action of plaintiffs, two groups of Puerto Ricans, seeking a declaratory judgment allowing them to vote in Presidential elections. One group always resided in Puerto Rico and the other became ineligible to vote in Presidential elections upon taking up residence in Puerto Rico. Plaintiffs contended that the Constitution and the International Covenant on Civil and Political Rights, guaranteed their right to vote in Presidential elections and that the Uniformed and Overseas Citizens Absentee Voting Act, was unconstitutional in disallowing Puerto Rican citizens to vote by considering	No	N/A	No

008006

10/11

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				guaranteed by the Constitution and the International Covenant on Civil and Political Rights.	them to be within the United States. The court concluded that UOCAVA was constitutional under the rational basis test, and violation of the treaty did not give rise to privately enforceable rights. Nevertheless, the Constitution provided U.S. citizens residing in Puerto Rico the right to participate in Presidential elections. No constitutional amendment was needed. The present political status of Puerto Rico was abhorrent to the Bill of Rights. The court denied defendant United States' motion to dismiss plaintiffs' action seeking a declaratory judgment allowing them to vote in Presidential elections as citizens of the United States and of Puerto Rico. The court held that the United States Constitution itself provided plaintiffs with the right to participate in Presidential elections.			
James v. Bartlett	Supreme Court of North Carolina	359 N.C. 260; 607 S.E.2d 638; 2005 N.C. LEXIS	February 4, 2005	Appellant candidates challenged elections in the superior court through appeals of election protests before the North Carolina State Board	The case involved three separate election challenges. The central issue was whether a provisional ballot cast on election day at a precinct other than the voter's correct precinct of residence could be lawfully counted in final election tallies. The superior court held	No	N/A	No

008007

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		146		of Elections and a declaratory judgment action in the superior court. The court entered an order granting summary judgment in favor of appellees, the Board, the Board's executive director, the Board's members, and the North Carolina Attorney General. The candidates appealed.	that it could be counted. On appeal, the supreme court determined that state law did not permit out-of-precinct provisional ballots to be counted in state and local elections. The candidates failure to challenge the counting of out-of-precinct provisional ballots before the election did not render their action untimely. Reversed and remanded.			
Sandusky County Democratic Party v. Blackwell	United States Court of Appeals for the Sixth Circuit	387 F.3d 565; 2004 U.S. App. LEXIS 22320	October 26, 2004	Defendant state appealed from an order of the U.S. District Court for the Northern District of Ohio which held that the Help America Vote Act required that voters be permitted to cast provisional ballots upon affirming their registration to vote	The district court found that HAVA created an individual right to cast a provisional ballot, that this right is individually enforceable under 42 U.S.C.S. § 1983, and that plaintiffs unions and political parties had standing to bring a § 1983 action on behalf of Ohio voters. The court of appeals agreed that the political parties and unions had associational standing to challenge the state's provisional voting directive. Further, the court determined that HAVA was	No	N/A	No

008008

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				in the county in which they desire to vote and that provisional ballots must be counted as valid ballots when cast in the correct county.	quintessentially about being able to cast a provisional ballot but that the voter casts a provisional ballot at the peril of not being eligible to vote under state law; if the voter is not eligible, the vote will then not be counted. Accordingly, the court of appeals reversed the district court and held that "provisional" ballots cast in a precinct where a voter does not reside and which would be invalid under state law, are not required by the HAVA to be considered legal votes. Affirmed in part and reversed in part.			
State ex rel. Mackey v. Blackwell	Supreme Court of Ohio	106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005 Ohio LEXIS 2074	September 28, 2005	Appellants, a political group and county electors who voted by provisional ballot, sought review of a judgment from the court of appeals which dismissed appellants' complaint, seeking a writ of mandamus to prevent appellees, the Ohio Secretary of State, a county board of elections,	The Secretary of State issued a directive to all Ohio county boards of elections, which specified that a signed affirmation statement was necessary for the counting of a provisional ballot in a presidential election. During the election, over 24,400 provisional ballots were cast in one county. The electors' provisional ballots were not counted. They, together with a political activist group, brought the mandamus action to compel appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				and the board's director, from disenfranchisement of provisional ballot voters.	constitutional and statutory law was relied on in support of the complaint. The trial court dismissed the complaint, finding that no clear legal right was established under Ohio law and the federal claims could be adequately raised in an action under 42 U.S.C.S. § 1983. On appeal, the Ohio Supreme Court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election--contest actions were the exclusive remedy to challenge election results. An adequate remedy existed under § 1983 to raise the federal--law claims. Affirmed.			
Fla. Democratic Party v. Hood	United States District Court for the Northern District of Florida	342 F. Supp. 2d 1073; 2004 U.S. Dist. LEXIS 21720	October 21, 2004	Plaintiff political party sought injunctive relief under the Help America Vote Act, claiming that the election system put in place by defendant election officials violated HAVA because it did not allow	The political party asserted that a prospective voter in a federal election had the right to cast a provisional ballot at a given polling place, even if the local officials asserted that the voter was at the wrong polling place; second, that voter had the right to have that vote counted in the election, if the voter otherwise met all requirements of state law. The court noted that the right to vote was clearly protectable as a civil right, and a primary purpose of	No	N/A	No

003010

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				provisional voting other than in the voter's assigned precinct. The officials moved for judgment on the pleadings.	the HAVA was to preserve the votes of persons who had incorrectly been removed from the voting rolls, and thus would not be listed as voters at what would otherwise have been the correct polling place. The irreparable injury to a voter was easily sufficient to outweigh any harm to the officials. Therefore, the court granted relief as to the first claim, allowing the unlisted voter to cast a provisional ballot, but denied relief as to the second claim, that the ballot at the wrong place must be counted if it was cast at the wrong place, because that result contradicted State law. The provisional ballot could only be counted if it was cast in the proper precinct under State law.			
League of Women Voters v. Blackwell	United States District Court for the Northern District of Ohio	340 F. Supp. 2d 823; 2004 U.S. Dist. LEXIS 20926	October 20, 2004	Plaintiff organizations filed suit against defendant, Ohio's Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote	The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the last four digits of his social security number. If he did not know	No	N/A	No

008011

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				Act. The Secretary filed a motion to dismiss.	either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive, even if the cost, in terms of uncounted ballots, was regrettable.			
Sandusky County Democratic Party v. Blackwell	United States Court of Appeals for the Sixth Circuit	386 F.3d 815; 2004 U.S. App. LEXIS 28765	October 23, 2004	Defendant Ohio Secretary of State challenged an order of the United States District Court for the Northern District of Ohio, which held	On appeal, the court held that the district court correctly ruled that the right to cast a provisional ballot in federal elections was enforceable under 42 U.S.C.S. § 1983 and that at least one plaintiff had standing to enforce that right in the district court.	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				that Ohio Secretary of State Directive 2004--33 violated the federal Help America Vote Act. In its order, the district court directed the Secretary to issue a revised directive that conformed to HAVA's requirements.	The court also held that Ohio Secretary of State Directive 2004--33 violated HAVA to the extent that it failed to ensure that any individual affirming that he or she was a registered voter in the jurisdiction in which he or she desired to vote and eligible to vote in a federal election was permitted to cast a provisional ballot. However, the district court erred in holding that HAVA required that a voter's provisional ballot be counted as a valid ballot if it was cast anywhere in the county in which the voter resided, even if it was cast outside the precinct in which the voter resided.			
Hawkins v. Blunt	United States District Court for the Western District of Missouri	2004 U.S. Dist. LEXIS 21512	October 12, 2004	In an action filed by plaintiffs, voters and a state political party, contending that the provisional voting requirements of Mo. Rev. Stat. § 115.430 conflicted with and was preempted by the Help America Vote Act, plaintiffs and defendants, the	The court held that the text of the HAVA, as well as its legislative history, proved that it could be read to include reasonable accommodations of state precinct voting practices in implementing provisional voting requirements. The court further held that Mo. Rev. Stat. § 115.430.2 was reasonable; to effectuate the HAVA's intent and to protect that interest, it could not be unreasonable to direct a voter to his correct voting place where a full ballot was likely to be cast. The	No	N/A	No

008013

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				secretary of state and others, moved for summary judgment.	court also held that plaintiffs' equal protection rights were not violated by the requirement that before a voter would be allowed to cast a provisional ballot, the voter would first be directed to his proper polling place.			
Bay County Democratic Party v. Land	United States District Court for the Eastern District of Michigan	340 F. Supp. 2d 802; 2004 U.S. Dist. LEXIS 20551	October 13, 2004	Plaintiffs, state and county Democratic parties, filed an action against defendant, Michigan secretary of state and the Michigan director of elections, alleging that the state's intended procedure for casting and counting provisional ballots at the upcoming general election would violate the Help America Vote Act and state laws implementing the federal legislation. Defendants filed a motion to transfer venue.	The parties claimed that if the secretary's proposed procedure was allowed to occur, several voters who were members of the parties' respective organizations were likely to be disenfranchised. Defendants moved to transfer venue of the action to the Western District of Michigan claiming that the only proper venue for an action against a state official is the district that encompasses the state's seat of government. Alternatively, defendants sought transfer for the convenience of the parties and witnesses. The court found that defendants' arguments were not supported by the plain language of the current venue statutes. Federal actions against the Michigan secretary of state over rules and practices governing federal elections traditionally were brought in both the Eastern and Western Districts of Michigan. There was no rule that	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					required such actions to be brought only in the district in which the state's seat of government was located, and no inconvenience resulting from litigating in the state's more populous district reasonably could be claimed by a state official who had a mandate to administer elections throughout the state and operated an office in each of its counties. Motion denied.			
Bay County Democratic Party v. Land	United States District Court for the Eastern District of Michigan	347 F. Supp. 2d 404; 2004 U.S. Dist. LEXIS 20872	October 19, 2004	Plaintiffs, voter organizations and political parties, filed actions against defendants, the Michigan Secretary of State and her director of elections, challenging directives issued to local election officials concerning the casting and tabulation of provisional ballots. Plaintiffs sought a preliminary injunction and contended that the	The court concluded that (1) plaintiffs had standing to assert their claims; (2) HAVA created individual rights enforceable through 42 U.S.C.S. § 1983; (3) Congress had provided a scheme under HAVA in which a voter's right to have a provisional ballot for federal offices tabulated was determined by state law governing eligibility, and defendants' directives for determining eligibility on the basis of precinct--based residency were inconsistent with state and federal election law; (4) Michigan election law defined voter qualifications in terms of the voter's home jurisdiction, and a person who cast a provisional ballot within his or her jurisdiction was entitled under federal law to have his	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				directives violated their rights under the Help America Vote Act.	or her votes for federal offices counted if eligibility to vote in that election could be verified; and (5) defendants' directives concerning proof of identity of first-time voters who registered by mail were consistent with federal and state law.			
Weber v. Shelley	United States Court of Appeals for the Ninth Circuit	347 F.3d 1101; 2003 U.S. App. LEXIS 21979	October 28, 2003	Plaintiff voter brought an suit against defendants, the secretary of state and the county registrar of voters, claiming that the lack of a voter-verified paper trail in the county's newly installed touchscreen voting system violated her rights to equal protection and due process. The United States District Court for the Central District of California granted the secretary and the registrar summary judgment.	On review, the voter contended that use of paperless touch--screen voting systems was unconstitutional and that the trial court erred by ruling her expert testimony inadmissible. The trial court focused on whether the experts' declarations raised genuine issues of material fact about the relative accuracy of the voting systemat issue and excluded references to news--paper articles and unidentified studies absent any indication that experts normally relied upon them. The appellate court found that the trial court's exclusions were not an abuse of discretion and agreed that the admissible opinions which were left did not tend to show that voters had a lesser chance of having their votes counted. It further found that the use of touchscreen voting systems was not subject to strict	No	N/A	No

008016

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				The voter appealed.	scrutiny simply because this particular balloting system might make the possibility of some kinds of fraud more difficult to detect. California made a reasonable, politically neutral and non-discriminatory choice to certify touchscreen systems as an alternative to paper ballots, as did the county in deciding to use such a system. Nothing in the Constitution forbid this choice. The judgment was affirmed.			
Am. Ass'n of People with Disabilities v. Shelley	United States District Court for the Central District of California	324 F. Supp. 2d 1120; 2004 U.S. Dist. LEXIS 12587	July 6, 2004	Plaintiffs, disabled voters and organizations representing those voters, sought to enjoin the directives of defendant California Secretary of State, which decertified and withdrew approval of the use of certain direct recording electronic (DRE) voting systems. One voter applied for a temporary restraining order, or,	The voters urged the invalidation of the Secretary's directives because, allegedly, their effect was to deprive the voters of the opportunity to vote using touch--screen technology. Although it was not disputed that some disabled persons would be unable to vote independently and in private without the use of DREs, it was clear that they would not be deprived of their fundamental right to vote. The Americans with Disabilities Act, did not require accommodation that would enable disabled persons to vote in a manner that was comparable in every way with the voting rights enjoyed by persons without disabilities. Rather, it mandated that voting programs be	No	N/A	No

008017

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				in the alternative, a preliminary injunction. of a preliminary injunction in a number of ways, including a four--part test that considers (1) likelihood of success on the merits; (2) the possibility of irreparable injury in the absence of an injunction; (3) a balancing of the harms; and (4) the public interest.	made accessible. Defendant's decision to suspend the use of DREs pending improvement in their reliability and security of the devices was a rational one, designed to protect the voting rights of the state's citizens. The evidence did not support the conclusion that the elimination of the DREs would have a discriminatory effect on the visually or manually impaired. Thus, the voters showed little likelihood of success on the merits. The individual's request for a temporary restraining order, or, in the alternative, a preliminary injunction, was denied. Ninth Circuit's tests for a preliminary injunction, although phrased differently, require a court to inquire into whether there exists a likelihood of success on the merits, and the possibility of irreparable injury; a court is also required to balance the hardships.			
Fla. Democratic Party v. Hood	Court of Appeal of Florida, First District	884 So. 2d 1148; 2004 Fla. App. LEXIS 16077	October 28, 2004	Petitioner, the Florida Democratic Party, sought review of an emergency rule adopted by the Florida Department	The Party argued that: (1) the Florida Administrative Code, recast language from the earlier invalidated rule prohibiting a manual recount of overvotes and undervotes cast on a touchscreen machine; (2) the rule did	No	N/A	No

008018

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>of State, contending that the findings of immediate danger, necessity, and procedural fairness on which the rule was based were insufficient under Florida law, which required a showing of such circumstances, and Florida case law. This matter followed.</p>	<p>not call for the manual recount of votes to determine voter intent; and (3) the rule created voters who were entitled to manual recounts in close elections and those who were not. The appeals court disagreed. The Department was clearly concerned with the fact that if no rule were in place, the same confusion and inconsistency in divining a voter's intent that attended the 2000 presidential election in Florida, and the same constitutional problems the United States Supreme Court addressed then, might recur in 2004. It was not the court's responsibility to decide the validity of the rule or whether other means were more appropriate. But, the following question was certified to the Supreme Court: Whether under Fla. Stat. ch. 120.54(4), the Department of State set forth sufficient justification for an emergency rule establishing standards for conducting manual recounts of overvotes and undervotes as applied to touchscreen voting systems? The petition was denied, but a question was certified to the supreme court as a matter of great public importance.</p>			

008019

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Wexler v. Lepore	United States District Court for the Southern District of Florida	342 F. Supp. 2d 1097; 2004 U.S. Dist. LEXIS 21344	October 25, 2004	Plaintiffs, a congressman, state commissioners, and a registered voter, brought a § 1983 action against defendants, state officials, alleging that the manual recount procedures for the state's touchscreen paperless voting systems violated their rights under U.S. Const. amends. V and XIV. A bench trial ensued.	The officials claimed that the state had established an updated standard for manual recounts in counties using optical scan systems and touchscreen voting systems, therefore, alleviating equal protection concerns. The court held that the rules prescribing what constituted a clear indication on the ballot that the voter had made a definite choice, as well the rules prescribing additional recount procedures for each certified voting system promulgated pursuant to Florida law complied with equal protection requirements under U.S. Const. amends. V and XIV because the rules prescribed uniform, nondifferential standards for what constituted a legal vote under each certified voting system, as well as procedures for conducting a manual recount of overvotes and undervotes in the entire geographic jurisdiction. The court further held that the ballot images printed during a manual recount pursuant to Florida Administrative Code did not violate Florida law because the manual recount scheme properly reflected a voter's choice. Judgment was entered	No	N/A	No

008020

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					for the officials. The claims of the congressman, commissioners, and voter were denied.			
Spencer v. Blackwell	United States District Court for the Southern District of Ohio	347 F. Supp. 2d 528; 2004 U.S. Dist. LEXIS 22062	November 1, 2004	Plaintiff voters filed a motion for temporary restraining order and preliminary injunction seeking to restrain defendant election officials and intervenor State of Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from being allowed at the polls.	The voters alleged that defendants had combined to implement a voter challenge system at the polls that discriminated against African--American voters. Each precinct was run by its election judges but Ohio law also allowed challengers to be physically present in the polling places in order to challenge voters' eligibility to vote. The court held that the injury asserted, that allowing challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos,	No	N/A	No

008021

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. The court enjoined all defendants from allowing any challengers other than election judges and other electors into the polling places throughout the state on Election Day.			
<p>MARIAN SPENCER, et al., Petitioners v. CLARA PUGH, et al. (No. 04A360)  SUMMIT COUNTY DEMOCRATIC CENTRAL and EXECUTIVE COMMITTEE, et al., Petitioners v. MATTHEW HEIDER, et al. (No. 04A364)</p>	<p>United States Supreme Court</p>	<p>125 S. Ct. 305; 160 L. Ed. 2d 213; 2004 U.S. LEXIS 7400</p>	<p>November 2, 2004</p>	<p>In two separate actions, plaintiffs sued defendant members of a political party, alleging that the members planned to mount indiscriminate challenges in polling places which would disrupt voting. Plaintiffs applied to vacate orders entered by the United States Court of Appeals for the Sixth Circuit which</p>	<p>Plaintiffs contended that the members planned to send numerous challengers to polling places in predominantly African--American neighborhoods to challenge votes in an imminent national election, which would allegedly cause voter intimidation and inordinate delays in voting. A district court ordered challengers to stay out of polling places, and another district court ordered challengers to remain in the polling places only as witnesses, but the appellate court stayed the orders. The United States Supreme Court, acting through a single Circuit Justice, declined to reinstate the injunctions for prudential reasons, despite the few hours left until the</p>	<p>No</p>	<p>N/A</p>	<p>No</p>

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				entered emergency stays of injunctions restricting the members' activities.	upcoming election. While the allegations of abuse were serious, it was not possible to determine with any certainty the ultimate validity of the plaintiffs' claims or for the full Supreme Court to review the relevant submissions, and voting officials would be available to enable proper voting by qualified voters.			
Charles H. Wesley Educ. Found., Inc. v. Cox	United States District Court for the Northern District of Georgia	324 F. Supp. 2d 1358; 2004 U.S. Dist. LEXIS 12120	July 1, 2004	Plaintiffs, a voter, fraternity members, and an organization, sought an injunction ordering defendant, the Georgia Secretary of State, to process the voter registration application forms that they mailed in following a voter registration drive. They contended that by refusing to process the forms defendants violated the National Voter Registration Act and U.S. Const. amends.	The organization participated in numerous non-partisan voter registration drives primarily designed to increase the voting strength of African-Americans. Following one such drive, the fraternity members mailed in over 60 registration forms, including one for the voter who had moved within state since the last election. The Georgia Secretary of State's office refused to process them because they were not mailed individually and neither a registrar, deputy registrar, or an otherwise authorized person had collected the applications as required under state law. The court held that plaintiffs had standing to bring the action. The court held that because the applications were received in accordance with the	No	N/A	No

003023

Name Of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				I, XIV, and XV.	mandates of the NVRA, the State of Georgia was not free to reject them. The court found that: plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Injunction granted.			
Jacksonville Coalition for Voter Prot. v. Hood	United States District Court for the Middle District of Florida	351 F. Supp. 2d 1326; 2004 U.S. Dist. LEXIS 26522	October 25, 2004	Plaintiffs, voter protection coalition, union, and voters, filed an emergency motion for a preliminary injunction and argued that African Americans in the county had less opportunity than other members of the state's electorate to vote in the upcoming election, and that defendants, elections officials,	The coalition, the union, and the voters based their claim on the fact that the county had the largest percentage of African--American registered voters of any major county in the state, and, yet, other similarly-sized counties with smaller African--American registered voter percentages had more early voting sites. Based on that, they argued that African--American voters in the county were disproportionately affected. The court found that while it may have been true that having to drive to an early voting site and having to wait in line may cause people to be inconvenienced, inconvenience did not result in a denial of meaningful access	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				implementation of early voting procedures violated the Voting Rights Act and their constitutional rights.	to the political process. Thus, the coalition, the union, and the voters had not established a likelihood of success on the merits of their claim that the county's implementation of early voting procedures violated § 2 of the Voting Rights Act. Moreover, the coalition, the union, and the voters failed to establish a likelihood of success on the merits of their § 1983 Fourteenth and Fifteenth Amendment claims, which required a higher proof of discriminatory purpose and effect. Injunction denied.			
Taylor v. Howe	United States Court of Appeals for the Eighth Circuit	225 F.3d 993; 2000 U.S. App. LEXIS 22241	August 31, 2000	Plaintiffs, African American voters, poll watchers, and candidates appealed from a judgment of the United States District Court for the Eastern District of Arkansas in favor of defendants, elections commissioners and related individuals, on their § 1983 voting rights claims and contended the	The court of appeals affirmed--in--part, reversed--in--part, and remanded the district court's judgment. The court found that the district court's finding of a lack of intentional discrimination was appropriate as to many defendants. However, as to some of the individual voters' claims for damages, the court held "a definite and firm conviction" that the district court's findings were mistaken. The court noted that the argument that a voter's name was misspelled in the voter register, with a single incorrect letter, was a flimsy pretext and, accordingly, held that the	No	N/A	No

008025

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				district court made erroneous findings of fact and law and failed to appreciate evidence of discriminatory intent.	district court's finding that defendant poll workers did not racially discriminate in denying the vote to this plaintiff was clearly erroneous. Affirmed in part and reversed in part.			
Stewart v. Blackwell	United States District Court for the Northern District of Ohio	356 F. Supp. 2d 791; 2004 U.S. Dist. LEXIS 26897	December 14, 2004	Plaintiffs, including African--American voters, alleged that use of punch card voting and "central--count" optical scanning devices by defendants, the Ohio Secretary of State et al., violated their rights under the Due Process Clause, the Equal Protection Clause, and (African--American plaintiffs) their rights under § 2 of the Voting Rights Act.	The primary thrust of the litigation was an attempt to federalize elections by judicial rule or fiat via the invitation to the court to declare a certain voting technology unconstitutional and then fashion a remedy. The court declined the invitation. The determination of the applicable voting process had always been focused in the legislative branch of the government. While it was true that the percentage of residual or non-voted ballots in the 2000 presidential election ran slightly higher in counties using punch card technology, that fact standing alone was insufficient to declare the use of the system unconstitutional. Moreover, the highest frequency in Ohio of residual voting bore a direct relationship to economic and educational factors, negating the Voting Rights Act claim. The court further stated that local variety in	No	N/A	No

008026

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					voting technology did not violate the Equal Protection Clause, even if the different technologies had different levels of effectiveness in recording voters' intentions, so long as there was some rational basis for the technology choice. It concluded that defendants' cost and security reasons for the use of punch card ballots were plausible.			
Taylor v. Currie	United States District Court for the Eastern District of Michigan	386 F. Supp. 2d 929; 2005 U.S. Dist. LEXIS 20257	September 14, 2005	Plaintiff brought an action against defendants, including a city elections commission, alleging defects in a city council primary election pertaining to absentee balloting. The case was removed to federal court by defendants. Pending before the court was a motion to remand, filed by plaintiff.	This action involved issues pertaining to absentee ballots. Plaintiff alleged that defendants were not complying with state laws requiring certain eligibility checks before issuing absentee ballots. The state court issued an injunction preventing defendants from mailing absentee ballots. Defendants removed the action to federal court and plaintiff sought a remand. Defendants argued that not mailing the absentee ballots would violate the Voting Rights Act, because it would place a restriction only on the City of Detroit, which was predominately African--American. The court ordered the case remanded because it found no basis under 28 U.S.C.S. §§ 1441 or 1443 for federal jurisdiction. Defendants' mere	No	N/A	No

106027

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					reference to a federal law or federal right was not enough to confer subject matter jurisdiction where the complaint sought to assert only rights arising under state statutes against state officials in relation to a state election. The court stated that it would not allow defendants to take haven in federal court under the guise of providing equal protection for the citizens of Detroit but with a goal of perpetuating their violation of a non-discriminatory state law. Motion to remand granted.			

108023

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Hileman v. McGinness	Court of Appeals of Illinois, Fifth District	316 Ill. App. 3d 868; 739 N.E.2d 81; 2000 Ill. App. LEXIS 845	October 25, 2000	Appellant challenged the circuit court declaration that that the result of a primary election for county circuit clerk was void.	In a primary election for county circuit clerk, the parties agreed that 681 absentee ballots were presumed invalid. The ballots had been commingled with the valid ballots. There were no markings or indications on the ballots which would have allowed them to be segregated from other ballots cast. Because the ballots could not have been segregated, apportionment was the	No	N/A	No

008000  
008029

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>appropriate remedy if no fraud was involved. If fraud was involved, the election would have had to have been voided and a new election held. Because the trial court did not hold an evidentiary hearing on the fraud allegations, and did not determine whether fraud was in issue, the case was remanded for a determination as to whether fraud was evident in</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					the electoral process. The court reversed the declaration of the trial court, holding that a determination as to whether fraud was involved in the election was necessary to a determination of whether or not a new election was required.			
DeFabio v. Gummersheimer	Supreme Court of Illinois	192 Ill. 2d 63; 733 N.E.2d 1241; 2000 Ill. LEXIS 993	July 6, 2000	Appellant challenged the judgment of the appellate court, which affirmed the trial court's decision granting appellee's summary judgment motion in action brought by	Appellee filed a petition for election contest, alleging that the official results of the Monroe County coroners election were invalid because none of the 524	No	N/A	No

008031

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>appellee to contest the results of the election for the position of county coroner in Monroe County.</p>	<p>ballots cast in Monroe County's second precinct were initialed by an election judge, in violation of Illinois law. The trial court granted appellee's motion for summary judgment, and the appellate court affirmed the judgment. The Illinois supreme court affirmed, noting that statutes requiring election judges to initial election ballots were mandatory, and</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or corruption. Thus, the supreme court held that the trial court properly invalidated all of the ballots cast in Monroe County's second precinct. The court reasoned that none of the ballots contained the requisite initialing, and neither party</p>			

008033

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>argued that any of the uninitialed ballots could have been distinguished or identified as absentee ballots. The supreme court affirmed the judgment because the Illinois statute requiring election judges to initial election ballots was mandatory, and uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or</p>			

008034

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					corruption. Additionally, none of the ballots in Monroe County's second precinct contained the requisite initialing.			
Gilmore v. Amityville Union Free Sch. Dist.	United States District Court for the Eastern District of New York	305 F. Supp. 2d 271; 2004 U.S. Dist. LEXIS 3116	March 2, 2004	Plaintiffs, two school board candidates, filed a class action complaint against defendants, a school district, the board president, and other district agents or employees, challenging a school board election. Defendants moved to dismiss.	During the election, a voting machine malfunctioned, resulting in votes being cast on lines that were blank on the ballot. The board president devised a plan for counting the machine votes by moving each tally up one line. The two candidates, who	No	N/A	No

008035

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>were African American, alleged that the president's plan eliminated any possibility that an African American would be elected. The court found that the candidates failed to state a claim under § 1983 because they could not show that defendants' actions were done or approved by a person with final policymaking authority, nor was there a showing of</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>intentional or purposeful discrimination on defendants' part. The vote-counting method applied equally to all candidates. The candidates' claims under § 2000a and 2000c--8 failed because schools were not places of public accommodation, as required under § 2000a, and § 2000c--8 applied to school segregation. Their claim under § 1971 of deprivation of voting rights</p>			

008037

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					failed because § 1971 did not provide for a private right of action. The court declined to exercise supplemental jurisdiction over various state law claims. Defendants' motion to dismiss was granted with respect to the candidates' federal claims; the state law claims were dismissed without prejudice.			
State ex rel. Mackey v. Blackwell	Supreme Court of Ohio	106 Ohio St. 3d 261; 2005	September 28, 2005	Appellants, a political group and county electors who voted by	The Secretary of State issued a directive to all Ohio county	No	N/A	No

008038

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		Ohio 4789; 834 N.E.2d 346; 2005 Ohio LEXIS 2074		provisional ballot, sought review of a judgment from the court of appeals, which dismissed appellants' complaint, seeking a writ of mandamus to prevent appellees, the Ohio Secretary of State, a county board of elections, and the board's director, from disenfranchisement of provisional ballot voters.	boards of elections, which specified that a signed affirmation statement was necessary for the counting of a provisional ballot in a presidential election. During the election, over 24,400 provisional ballots were cast in one county. The electors' provisional ballots were not counted. They, together with a political activist group, brought the mandamus action to			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>compel appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted constitutional and statutory law was relied on in support of the complaint. The court dismissed the complaint, finding that no clear legal right was established under Ohio law and the federal claims could be adequately raised in an</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched. Further
					<p>action under § 1983. On appeal, the Ohio supreme court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election--contest actions were the exclusive remedy to challenge election results. An adequate remedy existed under § 1983 to raise the federal--law claims.</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Affirmed.			
Touchston v. McDermott	United States District Court for the Middle District of Florida	120 F. Supp. 2d 1055; 2000 U.S. Dist. LEXIS 20091	November 14, 2000	In action in which plaintiffs, registered voters in Brevard County, Florida, filed suit against defendants, members of several County Canvassing Boards and the Secretary of the Florida Department of State, challenging the constitutionality of Fla. Stat. Ann. § 102.166(4) (2000), before the court was plaintiffs' emergency motion for temporary restraining order and/or preliminary injunction.	In their complaint, plaintiffs challenged the constitutionality of § 102.166(4), asserting that the statute violated their rights under the Equal Protection and Due Process Clauses of U.S. Const. amend. XIV. Based on these claims, plaintiffs sought an order from the court stopping the manual recount of votes. The court found that plaintiffs had failed to set	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>forth a valid basis for intervention by federal courts. They had not alleged that the Florida law was discriminatory, that citizens were being deprived of the right to vote, or that there had been fraudulent interference with the vote. Moreover, plaintiffs had not established a likelihood of success on the merits of their claims. Plaintiffs' motion for temporary restraining order</p>			

008043

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					and/or preliminary injunction denied; plaintiffs had not alleged that the Florida law was discriminatory, that citizens were being deprived of the right to vote, or that there had been fraudulent interference with the vote.			
Siegel v. LePore	United States District Court for the Southern District of Florida	120 F. Supp. 2d 1041; 2000 U.S. Dist. LEXIS 16333	November 13, 2000	Plaintiffs, individual Florida voters and Republican Party presidential and vice-presidential candidates, moved for a temporary restraining order and preliminary	The court addressed who should consider plaintiffs' serious arguments that manual recounts would diminish the accuracy of vote counts due	No	N/A	No

008044

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				injunction to enjoin defendants, canvassing board members from four Florida counties, from proceeding with manual recounts of election ballots.	to ballot degradation and the exercise of discretion in determining voter intent. The court ruled that intervention by a federal district court, particularly on a preliminary basis, was inappropriate. A federal court should not interfere except where there was an immediate need to correct a constitutional violation. Plaintiffs neither demonstrated a clear deprivation of a			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>constitutional injury or a fundamental unfairness in Florida's manual recount provision. The recount provision was reasonable and non--discriminatory on its face and resided within the state's broad control over presidential election procedures. Plaintiffs failed to show that manual recounts were so unreliable as to constitute a constitutional injury, that</p>			

008046

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>plaintiffs' alleged injuries were irreparable, or that they lacked an adequate state court remedy. Injunctive relief denied because plaintiffs demonstrated neither clear deprivation of constitutional injury or fundamental unfairness in Florida's manual recount provision to justify federal court interference in state election procedures.</p>			
Gore v. Harris	Supreme	773 So.	December	In a contest to	The state	No	N/A	No

008047

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	Court of Florida	2d 524; 2000 Fla. LEXIS 2474	22, 2000	results of the 2000 presidential election in Florida, the United States Supreme Court reversed and remanded a Florida Supreme Court decision that had ordered a manual recount of certain ballots.	supreme court had ordered the trial court to conduct a manual recount of 9000 contested Miami--Dade County ballots, and also held that uncounted "undervotes" in all Florida counties were to be manually counted. The trial court was ordered to use the standard that a vote was "legal" if there was a clear indication of the intent of the voter. The United States Supreme Court			

008048

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>released an opinion on December 12, 2000, which held that such a standard violated equal protection rights because it lacked specific standards to ensure equal application, and also mandated that any manual recount would have to have been completed by December 12, 2000. On remand, the state supreme court found that it was impossible under that time frame to adopt</p>			

008049

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>adequate standards and make necessary evaluations of vote tabulation equipment. Also, development of a specific, uniform standard for manual recounts was best left to the legislature. Because adequate standards for a manual recount could not be developed by the deadline set by the United States Supreme Court, appellants were afforded no relief.</p>			

008050

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Goodwin v. St. Thomas--St. John Bd. of Elections	Territorial Court of the Virgin Islands	43 V.I. 89; 2000 V.I. LEXIS 15	December 13, 2000	Plaintiff political candidate alleged that certain general election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.	Plaintiff alleged that defendants counted unlawful absentee ballots that lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the	No	N/A	No

008051

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>position. The court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with</p>			

008052

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>not counted, and ballots without notarized signatures were proper. Plaintiff's request for declaratory and injunctive relief was denied. Invalidation of absentee ballots was not required since the irregularities asserted by plaintiff involved ballots which were in fact valid, were not tabulated by defendants, or were insufficient to change the outcome of the election.</p>			

008054

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Shannon v. Jacobowitz	United States Court of Appeals for the Second Circuit	394 F.3d 90; 2005 U.S. App. LEXIS 259	January 7, 2005	Plaintiffs, voters and an incumbent candidate, sued defendants, a challenger candidate, a county board of election, and commissioners, pursuant to § 1983 alleging violation of the Due Process Clause of the Fourteenth Amendment. The United States District Court for the Northern District of New York granted summary judgment in favor of plaintiffs. Defendants appealed.	Local election inspectors noticed a problem with a voting machine. Plaintiffs asserted that their votes were not counted due to the machine malfunction. Rather than pursue the state remedy of quo warranto, by requesting that New York's Attorney General investigate the machine malfunction and challenge the election results in state court, plaintiffs filed their complaint	No	N/A	No

008055

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>in federal court. The court of appeals found that United States Supreme Court jurisprudence required intentional conduct by state actors as a prerequisite for a due process violation. Neither side alleged that local officials acted intentionally or in a discriminatory manner with regard to the vote miscount. Both sides conceded that the recorded</p>			

008056

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>results were likely due to an unforeseen malfunction with the voting machine. Because no conduct was alleged that would indicate an intentional deprivation of the right to vote, there was no cognizable federal due process claim. The proper remedy was to assert a quo warranto action to challenge the outcome of a general election based on an alleged voting machine</p>			

008057

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					malfunction. The district court's grant of summary judgment was reversed and its injunctions were vacated. The case was remanded for further proceedings consistent with this opinion.			
GEORGE W. BUSH v. PALM BEACH COUNTY CANVASSING BOARD, ET AL.	United States Supreme Court	531 U.S. 70; 121 S. Ct. 471; 148 L. Ed. 2d 366; 2000 U.S. LEXIS 8087	December 4, 2000	Appellant Republican presidential candidate's petition for writ of certiorari to the Florida supreme court was granted in a case involving interpretations of Fla. Stat. Ann. §§ 102.111, 102.112, in proceedings	The Supreme Court vacated the state court's judgment, finding that the state court opinion could be read to indicate that it construed the Florida Election Code without regard to the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>brought by appellees Democratic presidential candidate, county canvassing boards, and Florida Democratic Party regarding authority of the boards and respondent Florida Secretary of State as to manual recounts of ballots and deadlines.</p>	<p>extent to which the Florida Constitution could, consistent with U.S. Const. art. II, § 1, cl. 2, circumscribe the legislative power. The judgment of the Florida Supreme Court was vacated and remanded for further proceedings. The court stated the judgment was unclear as to the extent to which the state court saw the Florida constitution as circumscribing the legislature's</p>			

008059

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					authority under Article II of the United States Constitution, and as to the consideration given the federal statute regarding state electors.			
Touchston v. McDermott	United States Court of Appeals for the Eleventh Circuit	234 F.3d 1130; 2000 U.S. App. LEXIS 29366	November 17, 2000	Plaintiff voters appealed from judgment of the United States District Court for the Middle District of Florida, which denied their emergency motion for an injunction pending appeal against defendant county election officials. Plaintiffs sought to enjoin defendants from conducting manual	Plaintiff voters sought an emergency injunction pending appeal to enjoin defendant county election officials from conducting manual ballot recounts or to enjoin defendants from certifying the results of the Presidential	No	N/A	No

008060

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>ballot recounts or to enjoin defendants from certifying results of the presidential election that contained any manual recounts.</p>	<p>election which contained any manual recounts. The district court denied the emergency injunction and plaintiffs appealed. Upon review, the emergency motion for injunction pending appeal was denied without prejudice. Florida had adequate election dispute procedures, which had been invoked and were being implemented in the forms of</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>administrative actions by state officials and actions in state court. Therefore, the state procedures were adequate to preserve for ultimate review in the United States Supreme Court any federal questions arising out of the state procedures. Moreover, plaintiffs failed to demonstrate a substantial threat of an irreparable injury that would warrant granting the</p>			

008062

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>extraordinary remedy of an injunction pending appeal. Denial of plaintiff's petition for emergency injunction pending appeal was affirmed. The state procedures were adequate to preserve any federal issue for review, and plaintiffs failed to demonstrate a substantial threat of an irreparable injury that would have warranted granting the extraordinary</p>			

008063

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					remedy of the injunction.			
Gore v. Harris	Supreme Court of Florida	772 So. 2d 1243; 2000 Fla. LEXIS 2373	December 8, 2000	The court of appeal certified as being of great public importance a trial court judgment that denied all relief requested by appellants, candidates for President and Vice President of the United States, in appellants' contest to certified election results.	Appellants contested the certification of their opponents as the winners of Florida's electoral votes. The Florida supreme court found no error in the trial court's holding that it was proper to certify election night returns from Nassau County rather than results of a machine recount. Nor did the trial court err in refusing to include votes that the Palm	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>Beach County Canvassing Board found not to be legal votes during a manual recount. However, the trial court erred in excluding votes that were identified during the Palm Beach County manual recount and during a partial manual recount in Miami--Dade County. It was also error to refuse to examine Miami--Dade County ballots that registered as non--votes during the</p>			

008065

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>machine count. The trial court applied an improper standard to determine whether appellants had established that the result of the election was in doubt, and improperly concluded that there was no probability of a different result without examining the ballots that appellants claimed contained rejected legal votes. The judgment was reversed and</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>remanded; the trial court was ordered to tabulate by hand Miami-Dade County ballots that the counting machine registered as non--votes, and was directed to order inclusion of votes that had already been identified during manual recounts. The trial court also was ordered to consider whether manual recounts in other counties were necessary..</p>			

008067

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Reitz v. Rendell	United States District Court for the Middle District of Pennsylvania	2004 U.S. Dist. LEXIS 21813	October 29, 2004	Plaintiff service members filed an action against defendant state officials under the Uniformed and Overseas Citizens Absentee Voting Act alleging that they and similarly situated service members would be disenfranchised because they did not receive their absentee ballots in time. The parties entered into a voluntary agreement and submitted it to the court for approval.	The court issued an order to assure that the service members and other similarly situated service members who were protected by the UOCAVA would not be disenfranchised. The court ordered the Secretary of the Commonwealth of Pennsylvania to take all reasonable steps necessary to direct the county boards of elections to accept as timely received absentee ballots cast by service members and other overseas voters as defined by UOCAVA, so long as the ballots were received by	No	N/A	No

008068

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					November 10, 2004. The ballots were to be considered solely for purposes of the federal offices that were included on the ballots. The court held that the ballot needed to be cast no later than November 2, 2004 to be counted. The court did not make any findings of liability against the Governor or the Secretary. The court entered an order, pursuant to a stipulation between the parties, that granted injunctive relief to the service members.			
United States v.	United States	2004 U.S.	October 20, 2004	Plaintiff United States sued	The testimony of the two witnesses	No	N/A	No

008069

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Pennsylvania	District Court for the Middle district of Pennsylvania	Dist. LEXIS 21167		defendant Commonwealth of Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of candidates so late in the election year.	offered by the United States did not support its contention that voters protected by the Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern			

008070

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>regarding their ability or right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of UOCAVA voters to cast their ballots. Moreover, Pennsylvania had adduced substantial evidence that the requested</p>			

008071

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs. must consider the following four factors: (1) the likelihood that the applicant will prevail on the merits of the substantive claim; (2) the extent to which the moving party will be irreparably harmed in the absence of injunctive relief; (3) the extent to which</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					the nonmoving party will suffer irreparable harm if the court grants the requested injunctive relief; and (4) the public interest. District courts should only grant injunctive relief after consideration of each of these factors. Motion for injunctive relief denied.			
Bush v. Hillsborough County Canvassing Bd.	United States District Court for the Northern District of Florida	123 F. Supp. 2d 1305; 2000 U.S. Dist. LEXIS 19265		The matter came before the court on plaintiffs' complaint for declaratory and injunctive relief alleging that defendant county canvassing boards rejected overseas absentee state	Plaintiff presidential and vise--presidential candidates and state political party contended that defendant county canvassing boards rejected overseas absentee state ballots and federal	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				ballots and federal write--in ballots based on criteria inconsistent with federal law, and requesting that the ballots be declared valid and that they should be counted.	write--in ballots based on criteria inconsistent with the Uniformed and Overseas Citizens Absentee Voting Act. Because the state accepted overseas absentee state ballots and federal write--in ballots up to 10 days after the election, the State needed to access that the ballot in fact came from overseas. However, federal law provided the method to establish that fact by requiring the overseas absentee voter to sign an oath that the ballot was mailed from			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>outside the United States and requiring the state election officials to examine the voter's declarations. The court further noted that federal law required the user of a federal write--in ballot to timely apply for a regular state absentee ballot, not that the state receive the application, and that again federal law, by requiring the voter using a federal write--in ballot to swear that he or she had made timely application, had provided the proper method of proof. Plaintiffs withdrew as moot</p>			

008075

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>their request for injunctive relief and the court granted in part and denied in part plaintiffs' request for declaratory relief, and relief</p> <p>GRANTED in part and declared valid all federal write--in ballots that were signed pursuant to the oath provided therein but rejected solely because the ballot envelope did not have an APO, FPO, or foreign postmark, or solely because there was no record of an application for a state absentee ballot.</p>			
Harris v. Florida	United States	122 F. Supp. 2d	December 9, 2000	Plaintiffs challenged the	In two separate cases, plaintiff	No	N/A	No

008076

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Elections Canvassing Comm'n	District Court for the Northern District of Florida	1317; 2000 U.S. Dist. LEXIS 17875		counting of overseas absentee ballots received after 7 p.m. on election day, alleging the ballots violated Florida election law.	electors originally sued defendant state elections canvassing commission and state officials in Florida state circuit court, challenging the counting of overseas absentee ballots received after 7 p.m. on election day. Defendant governor removed one case to federal court. The second case was also removed. The court in the second case denied plaintiff's motion for remand and granted a motion to transfer the case to the first federal court under the related case			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>doctrine. Plaintiffs claimed that the overseas ballots violated Florida election law. Defendants argued the deadline was not absolute. The court found Congress did not intend 3 U.S.C.S. § 1 to impose irrational scheduling rules on state and local canvassing officials, and did not intend to disenfranchise overseas voters. The court held the state statute was required to yield to Florida Administrative Code, which required the 10-day</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>extension in the receipt of overseas absentee ballots in federal elections because the rule was promulgated to satisfy a consent decree entered by the state in 1982. Judgment entered for defendants because a Florida administrative rule requiring a 10--day extension in the receipt of overseas absentee ballots in federal elections was enacted to bring the state into compliance with a federally ordered mandate; plaintiffs were not entitled to relief under any provision of state or federal law.</p>			

008079

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Romeu v. Cohen	United States District Court for the Southern District of New York	121 F. Supp. 2d 264; 2000 U.S. Dist. LEXIS 12842	September 7, 2000	Plaintiff territorial resident and plaintiff--intervenor territorial governor moved for summary judgment and defendant federal, state, and local officials moved to dismiss the complaint that alleged that the Voting Rights Amendments of 1970, the Uniform Overseas Citizens Absentee Voting Act, and New York election law were unconstitutional since they denied plaintiff's right to receive an absentee ballot for the upcoming presidential election.	Plaintiff argued that the laws denied him the right to receive a state absentee ballot in violation of the right to vote, the right to travel, the Privileges and Immunities Clause, and the Equal Protection Clause. Plaintiff--intervenor territorial governor intervened on behalf of similarly situated Puerto Rican residents. Defendants' argued that: 1) plaintiff lacked standing; 2) a non--justiciable political question was raised; and 3) the laws were constitutional. The court held that: 1) plaintiff had	No	N/A	No

008080

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>standing because he made a substantial showing that application for the benefit was futile; 2) whether or not the statutes violated plaintiff's rights presented a legal, not political, question, and there was no lack of judicially discoverable and manageable standards for resolving the matter; and 3) the laws were constitutional and only a constitutional amendment or grant of statehood would enable plaintiff to vote in a presidential</p>			

008081

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					election. The court granted defendants' motion to dismiss because the laws that prohibited territorial residents from voting by state absentee ballot in presidential elections were constitutional.			
Romeu v. Cohen	United States Court of Appeals for the Second Circuit	265 F.3d 118; 2001 U.S. App. LEXIS 19876	September 6, 2001	Plaintiff territorial resident sued defendants, state and federal officials, alleging that the Uniformed and Overseas Citizens Absentee Voting Act unconstitutionally prevented the territorial resident from voting in his former state of residence. The resident appealed	The territorial resident contended that the UOCAVA unconstitutionally distinguished between former state residents residing outside the United States, who were permitted to vote in their former states, and former state residents residing in a territory, who were not permitted to	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>the judgment of the United States District Court for the Southern District of New York, which dismissed the complaint.</p>	<p>vote in their former states. The court of appeals first held that the UOCAVA did not violate the territorial resident's right to equal protection in view of the valid and not insubstantial considerations for the distinction. The territorial resident chose to reside in the territory and had the same voting rights as other territorial residents, even though such residency precluded voting for federal offices. Further, the resident had no constitutional right to vote in his former state after he terminated his</p>			

008083

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>residency in such state, and the consequences of the choice of residency did not constitute an unconstitutional interference with the right to travel. Finally, there was no denial of the privileges and immunities of state citizenship, since the territorial resident was treated identically to other territorial residents. The judgment dismissing the territorial resident's complaint was affirmed.</p>			
Igartua de la Rosa v. United States	United States District Court for the District of	107 F. Supp. 2d 140; 2000 U.S.	July 19, 2000	Defendant United States moved to dismiss plaintiffs' action seeking a declaratory	The court denied the motion of defendant United States to dismiss the action of	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	Puerto Rico	Dist. LEXIS 11146		judgment allowing them to vote, as U.S. citizens residing in Puerto Rico, in the upcoming and all subsequent Presidential elections. Plaintiffs urged, among other claims, that their right to vote in Presidential elections was guaranteed by the Constitution and the International Covenant on Civil and Political Rights.	plaintiffs, two groups of Puerto Ricans, seeking a declaratory judgment allowing them to vote in Presidential elections. One group always resided in Puerto Rico and the other became ineligible to vote in Presidential elections upon taking up residence in Puerto Rico. Plaintiffs contended that the Constitution and the International Covenant on Civil and Political Rights, guaranteed their right to vote in Presidential elections and that			

008085

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>the Uniformed and Overseas Citizens Absentee Voting Act, was unconstitutional in disallowing Puerto Rican citizens to vote by considering them to be within the United States. The court concluded that UOCAVA was constitutional under the rational basis test, and violation of the treaty did not give rise to privately enforceable rights. Nevertheless, the Constitution provided U.S. citizens residing in Puerto Rico the right to participate in Presidential</p>			

008086

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>elections. No constitutional amendment was needed. The present political status of Puerto Rico was abhorrent to the Bill of Rights. The court denied defendant United States' motion to dismiss plaintiffs' action seeking a declaratory judgment allowing them to vote in Presidential elections as citizens of the United States and of Puerto Rico. The court held that the United States Constitution itself provided plaintiffs with the right to participate in Presidential</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					elections.			

008088

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
James v. Bartlett	Supreme Court of North Carolina	359 N.C. 260; 607 S.E.2d 638; 2005 N.C. LEXIS 146	February 4, 2005	Appellant candidates challenged elections in the superior court through appeals of election protests before the North Carolina State Board of Elections and a declaratory judgment action in the superior court. The court entered an order granting summary judgment in favor of appellees, the Board, the Board's executive director, the Board's members, and the North Carolina Attorney General. The candidates appealed.	The case involved three separate election challenges. The central issue was whether a provisional ballot cast on election day at a precinct other than the voter's correct precinct of residence could be lawfully counted in final election tallies. The superior court held that it could be counted. On appeal, the supreme court determined that state law did not permit out-of-precinct provisional	No	N/A	No

008089

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					ballots to be counted in state and local elections. The candidates failure to challenge the counting of out-of-precinct provisional ballots before the election did not render their action untimely. Reversed and remanded.			
Sandusky County Democratic Party v. Blackwell	United States Court of Appeals for the Sixth Circuit	387 F.3d 565; 2004 U.S. App. LEXIS 22320	October 26, 2004	Defendant state appealed from an order of the U.S. District Court for the Northern District of Ohio which held that the Help America Vote Act required that voters be permitted to cast	The district court found that HAVA created an individual right to cast a provisional ballot, that this right is individually enforceable under 42	No	N/A	No

008090

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>provisional ballots upon affirming their registration to vote in the county in which they desire to vote and that provisional ballots must be counted as valid ballots when cast in the correct county.</p>	<p>U.S.C.S. § 1983, and that plaintiffs unions and political parties had standing to bring a § 1983 action on behalf of Ohio voters. The court of appeals agreed that the political parties and unions had associational standing to challenge the state's provisional voting directive. Further, the court determined that HAVA was quintessentially about being able to cast a provisional</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>ballot but that the voter casts a provisional ballot at the peril of not being eligible to vote under state law; if the voter is not eligible, the vote will then not be counted. Accordingly, the court of appeals reversed the district court and held that "provisional" ballots cast in a precinct where a voter does not reside and which would be invalid under state law, are not required by the HAVA to be considered</p>			

008092

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					legal votes. Affirmed in part and reversed in part.			
State ex rel. Mackey v. Blackwell	Supreme Court of Ohio	106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005 Ohio LEXIS 2074	September 28, 2005	Appellants, a political group and county electors who voted by provisional ballot, sought review of a judgment from the court of appeals which dismissed appellants' complaint, seeking a writ of mandamus to prevent appellees, the Ohio Secretary of State, a county board of elections, and the board's director, from disenfranchisement of provisional ballot voters.	The Secretary of State issued a directive to all Ohio county boards of elections, which specified that a signed affirmation statement was necessary for the counting of a provisional ballot in a presidential election. During the election, over 24,400 provisional ballots were cast in one county. The electors' provisional	No	N/A	No

008093

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>ballots were not counted. They, together with a political activist group, brought the mandamus action to compel appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted constitutional and statutory law was relied on in support of the complaint. The trial court dismissed the complaint, finding that no clear legal right was established</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>under Ohio law and the federal claims could be adequately raised in an action under 42 U.S.C.S. § 1983. On appeal, the Ohio Supreme Court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election--contest actions were the exclusive remedy to challenge election results. An adequate remedy existed</p>			

008095

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					under § 1983 to raise the federal-law claims. Affirmed.			
Fla. Democratic Party v. Hood	United States District Court for the Northern District of Florida	342 F. Supp. 2d 1073; 2004 U.S. Dist. LEXIS 21720	October 21, 2004	Plaintiff political party sought injunctive relief under the Help America Vote Act, claiming that the election system put in place by defendant election officials violated HAVA because it did not allow provisional voting other than in the voter's assigned precinct. The officials moved for judgment on the pleadings.	The political party asserted that a prospective voter in a federal election had the right to cast a provisional ballot at a given polling place, even if the local officials asserted that the voter was at the wrong polling place; second, that voter had the right to have that vote counted in the election, if the voter otherwise	No	N/A	No

008096

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>met all requirements of state law. The court noted that the right to vote was clearly protectable as a civil right, and a primary purpose of the HAVA was to preserve the votes of persons who had incorrectly been removed from the voting rolls, and thus would not be listed as voters at what would otherwise have been the correct polling place. The irreparable injury to a voter was easily sufficient to</p>			

008097

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>outweigh any harm to the officials. Therefore, the court granted relief as to the first claim, allowing the unlisted voter to cast a provisional ballot, but denied relief as to the second claim, that the ballot at the wrong place must be counted if it was cast at the wrong place, because that result contradicted State law. The provisional ballot could only be counted if it</p>			

008098

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					was cast in the proper precinct under State law.			
League of Women Voters v. Blackwell	United States District Court for the Northern District of Ohio	340 F. Supp. 2d 823; 2004 U.S. Dist. LEXIS 20926	October 20, 2004	Plaintiff organizations filed suit against defendant, Ohio's Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote Act. The Secretary filed a motion to dismiss.	The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the	No	N/A	No

008099

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>last four digits of his social security number. If he did not know either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive,</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					even if the cost, in terms of uncounted ballots, was regrettable.			
Sandusky County Democratic Party v. Blackwell	United States Court of Appeals for the Sixth Circuit	386 F.3d 815; 2004 U.S. App. LEXIS 28765	October 23, 2004	Defendant Ohio Secretary of State challenged an order of the United States District Court for the Northern District of Ohio, which held that Ohio Secretary of State Directive 2004--33 violated the federal Help America Vote Act. In its order, the district court directed the Secretary to issue a revised directive that conformed to HAVA's requirements.	On appeal, the court held that the district court correctly ruled that the right to cast a provisional ballot in federal elections was enforceable under 42 U.S.C.S. § 1983 and that at least one plaintiff had standing to enforce that right in the district court. The court also held that Ohio Secretary of State Directive	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>2004--33 violated HAVA to the extent that it failed to ensure that any individual affirming that he or she was a registered voter in the jurisdiction in which he or she desired to vote and eligible to vote in a federal election was permitted to cast a provisional ballot. However, the district court erred in holding that HAVA required that a voter's provisional ballot be counted as a</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					valid ballot if it was cast anywhere in the county in which the voter resided, even if it was cast outside the precinct in which the voter resided.			
Hawkins v. Blunt	United States District Court for the Western District of Missouri	2004 U.S. Dist. LEXIS 21512	October 12, 2004	In an action filed by plaintiffs, voters and a state political party, contending that the provisional voting requirements of Mo. Rev. Stat. § 115.430 conflicted with and was preempted by the Help America Vote Act, plaintiffs and defendants, the secretary of state and others, moved	The court held that the text of the HAVA, as well as its legislative history, proved that it could be read to include reasonable accommodations of state precinct voting practices in implementing provisional voting requirements.	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				for summary judgment.	The court further held that Mo. Rev. Stat. § 115.430.2 was reasonable; to effectuate the HAVA's intent and to protect that interest, it could not be unreasonable to direct a voter to his correct voting place where a full ballot was likely to be cast. The court also held that plaintiffs' equal protection rights were not violated by the requirement that before a voter would be allowed to cast a provisional			

008105

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					ballot, the voter would first be directed to his proper polling place.			
Bay County Democratic Party v. Land	United States District Court for the Eastern District of Michigan	340 F. Supp. 2d 802; 2004 U.S. Dist. LEXIS 20551	October 13, 2004	Plaintiffs, state and county Democratic parties, filed an action against defendant, Michigan secretary of state and the Michigan director of elections, alleging that the state's intended procedure for casting and counting provisional ballots at the upcoming general election would violate the Help America Vote Act and state laws implementing the federal	The parties claimed that if the secretary's proposed procedure was allowed to occur, several voters who were members of the parties' respective organizations were likely to be disenfranchised. Defendants moved to transfer venue of the action to the Western District of Michigan claiming that the only proper	No	N/A	No

008106

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				legislation. Defendants filed a motion to transfer venue.	venue for an action against a state official is the district that encompasses the state's seat of government. Alternatively, defendants sought transfer for the convenience of the parties and witnesses. The court found that defendants' arguments were not supported by the plain language of the current venue statutes. Federal actions against the Michigan secretary of state over rules and practices			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					governing federal elections traditionally were brought in both the Eastern and Western Districts of Michigan. There was no rule that required such actions to be brought only in the district in which the state's seat of government was located, and no inconvenience resulting from litigating in the state's more populous district reasonably could be claimed by a state official who had a			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					mandate to administer elections throughout the state and operated an office in each of its counties. Motion denied.			
Bay County Democratic Party v. Land	United States District Court for the Eastern District of Michigan	347 F. Supp. 2d 404; 2004 U.S. Dist. LEXIS 20872	October 19, 2004	Plaintiffs, voter organizations and political parties, filed actions against defendants, the Michigan Secretary of State and her director of elections, challenging directives issued to local election officials concerning the casting and tabulation of provisional ballots. Plaintiffs sought a	The court concluded that (1) plaintiffs had standing to assert their claims; (2) HAVA created individual rights enforceable through 42 U.S.C.S. § 1983; (3) Congress had provided a scheme under HAVA in which a voter's right to have a	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>preliminary injunction and contended that the directives violated their rights under the Help America Vote Act.</p>	<p>provisional ballot for federal offices tabulated was determined by state law governing eligibility, and defendants' directives for determining eligibility on the basis of precinct--based residency were inconsistent with state and federal election law; (4) Michigan election law defined voter qualifications in terms of the voter's home jurisdiction, and a person who cast a</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					provisional ballot within his or her jurisdiction was entitled under federal law to have his or her votes for federal offices counted if eligibility to vote in that election could be verified; and (5) defendants' directives concerning proof of identity of first--time voters who registered by mail were consistent with federal and state law.			

008111

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
James v. Bartlett	Supreme Court of North Carolina	359 N.C. 260; 607 S.E.2d 638; 2005 N.C. LEXIS 146	February 4, 2005	Appellant candidates challenged elections in the superior court through appeals of election protests before the North Carolina State Board of Elections and a declaratory judgment action in the superior court. The court entered an order granting summary judgment in favor of appellees, the Board, the Board's executive director, the Board's members, and the North Carolina Attorney General. The candidates appealed.	The case involved three separate election challenges. The central issue was whether a provisional ballot cast on election day at a precinct other than the voter's correct precinct of residence could be lawfully counted in final election tallies. The superior court held that it could be counted. On appeal, the supreme court determined that state law did not permit out--of--precinct provisional	No	N/A	No

008112

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					ballots to be counted in state and local elections. The candidates failure to challenge the counting of out-of-precinct provisional ballots before the election did not render their action untimely. Reversed and remanded.			
Sandusky County Democratic Party v. Blackwell	United States Court of Appeals for the Sixth Circuit	387 F.3d 565; 2004 U.S. App. LEXIS 22320	October 26, 2004	Defendant state appealed from an order of the U.S. District Court for the Northern District of Ohio which held that the Help America Vote Act required that voters be permitted to cast	The district court found that HAVA created an individual right to cast a provisional ballot, that this right is individually enforceable under 42	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>provisional ballots upon affirming their registration to vote in the county in which they desire to vote and that provisional ballots must be counted as valid ballots when cast in the correct county.</p>	<p>U.S.C.S. § 1983, and that plaintiffs unions and political parties had standing to bring a § 1983 action on behalf of Ohio voters. The court of appeals agreed that the political parties and unions had associational standing to challenge the state's provisional voting directive. Further, the court determined that HAVA was quintessentially about being able to cast a provisional</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>ballot but that the voter casts a provisional ballot at the peril of not being eligible to vote under state law; if the voter is not eligible, the vote will then not be counted.</p> <p>Accordingly, the court of appeals reversed the district court and held that "provisional" ballots cast in a precinct where a voter does not reside and which would be invalid under state law, are not required by the HAVA to be considered</p>			

008115

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					legal votes. Affirmed in part and reversed in part.			
State ex rel. Mackey v. Blackwell	Supreme Court of Ohio	106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005 Ohio LEXIS 2074	September 28, 2005	Appellants, a political group and county electors who voted by provisional ballot, sought review of a judgment from the court of appeals which dismissed appellants' complaint, seeking a writ of mandamus to prevent appellees, the Ohio Secretary of State, a county board of elections, and the board's director, from disenfranchisement of provisional ballot voters.	The Secretary of State issued a directive to all Ohio county boards of elections, which specified that a signed affirmation statement was necessary for the counting of a provisional ballot in a presidential election. During the election, over 24,400 provisional ballots were cast in one county. The electors' provisional	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>ballots were not counted. They, together with a political activist group, brought the mandamus action to compel appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted constitutional and statutory law was relied on in support of the complaint. The trial court dismissed the complaint, finding that no clear legal right was established</p>			

008117

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>under Ohio law and the federal claims could be adequately raised in an action under 42 U.S.C.S. § 1983. On appeal, the Ohio Supreme Court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election--contest actions were the exclusive remedy to challenge election results. An adequate remedy existed</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					under § 1983 to raise the federal-law claims. Affirmed.			
Fla. Democratic Party v. Hood	United States District Court for the Northern District of Florida	342 F. Supp. 2d 1073; 2004 U.S. Dist. LEXIS 21720	October 21, 2004	Plaintiff political party sought injunctive relief under the Help America Vote Act, claiming that the election system put in place by defendant election officials violated HAVA because it did not allow provisional voting other than in the voter's assigned precinct. The officials moved for judgment on the pleadings.	The political party asserted that a prospective voter in a federal election had the right to cast a provisional ballot at a given polling place, even if the local officials asserted that the voter was at the wrong polling place; second, that voter had the right to have that vote counted in the election, if the voter otherwise	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>met all requirements of state law. The court noted that the right to vote was clearly protectable as a civil right, and a primary purpose of the HAVA was to preserve the votes of persons who had incorrectly been removed from the voting rolls, and thus would not be listed as voters at what would otherwise have been the correct polling place. The irreparable injury to a voter was easily sufficient to</p>			

008120

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>outweigh any harm to the officials. Therefore, the court granted relief as to the first claim, allowing the unlisted voter to cast a provisional ballot, but denied relief as to the second claim, that the ballot at the wrong place must be counted if it was cast at the wrong place, because that result contradicted State law. The provisional ballot could only be counted if it</p>			

008121

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					was cast in the proper precinct under State law.			
League of Women Voters v. Blackwell	United States District Court for the Northern District of Ohio	340 F. Supp. 2d 823; 2004 U.S. Dist. LEXIS 20926	October 20, 2004	Plaintiff organizations filed suit against defendant, Ohio's Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote Act. The Secretary filed a motion to dismiss.	The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the	No	N/A	No

008122

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>last four digits of his social security number. If he did not know either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first--time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive,</p>			

008124

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					even if the cost, in terms of uncounted ballots, was regrettable.			
Sandusky County Democratic Party v. Blackwell	United States Court of Appeals for the Sixth Circuit	386 F.3d 815; 2004 U.S. App. LEXIS 28765	October 23, 2004	Defendant Ohio Secretary of State challenged an order of the United States District Court for the Northern District of Ohio, which held that Ohio Secretary of State Directive 2004--33 violated the federal Help America Vote Act. In its order, the district court directed the Secretary to issue a revised directive that conformed to HAVA's requirements.	On appeal, the court held that the district court correctly ruled that the right to cast a provisional ballot in federal elections was enforceable under 42 U.S.C.S. § 1983 and that at least one plaintiff had standing to enforce that right in the district court. The court also held that Ohio Secretary of State Directive	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>2004--33 violated HAVA to the extent that it failed to ensure that any individual affirming that he or she was a registered voter in the jurisdiction in which he or she desired to vote and eligible to vote in a federal election was permitted to cast a provisional ballot. However, the district court erred in holding that HAVA required that a voter's provisional ballot be counted as a</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					valid ballot if it was cast anywhere in the county in which the voter resided, even if it was cast outside the precinct in which the voter resided.			
Hawkins v. Blunt	United States District Court for the Western District of Missouri	2004 U.S. Dist. LEXIS 21512	October 12, 2004	In an action filed by plaintiffs, voters and a state political party, contending that the provisional voting requirements of Mo. Rev. Stat. § 115.430 conflicted with and was preempted by the Help America Vote Act, plaintiffs and defendants, the secretary of state and others, moved	The court held that the text of the HAVA, as well as its legislative history, proved that it could be read to include reasonable accommodations of state precinct voting practices in implementing provisional voting requirements.	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				for summary judgment.	The court further held that Mo. Rev. Stat. § 115.430.2 was reasonable; to effectuate the HAVA's intent and to protect that interest, it could not be unreasonable to direct a voter to his correct voting place where a full ballot was likely to be cast. The court also held that plaintiffs' equal protection rights were not violated by the requirement that before a voter would be allowed to cast a provisional			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					ballot, the voter would first be directed to his proper polling place.			
Bay County Democratic Party v. Land	United States District Court for the Eastern District of Michigan	340 F. Supp. 2d 802; 2004 U.S. Dist. LEXIS 20551	October 13, 2004	Plaintiffs, state and county Democratic parties, filed an action against defendant, Michigan secretary of state and the Michigan director of elections, alleging that the state's intended procedure for casting and counting provisional ballots at the upcoming general election would violate the Help America Vote Act and state laws implementing the federal	The parties claimed that if the secretary's proposed procedure was allowed to occur, several voters who were members of the parties' respective organizations were likely to be disenfranchised. Defendants moved to transfer venue of the action to the Western District of Michigan claiming that the only proper	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>legislation. Defendants filed a motion to transfer venue.</p>	<p>venue for an action against a state official is the district that encompasses the state's seat of government. Alternatively, defendants sought transfer for the convenience of the parties and witnesses. The court found that defendants' arguments were not supported by the plain language of the current venue statutes. Federal actions against the Michigan secretary of state over rules and practices</p>			

008130

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					governing federal elections traditionally were brought in both the Eastern and Western Districts of Michigan. There was no rule that required such actions to be brought only in the district in which the state's seat of government was located, and no inconvenience resulting from litigating in the state's more populous district reasonably could be claimed by a state official who had a			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					mandate to administer elections throughout the state and operated an office in each of its counties. Motion denied.			
Bay County Democratic Party v. Land	United States District Court for the Eastern District of Michigan	347 F. Supp. 2d 404; 2004 U.S. Dist. LEXIS 20872	October 19, 2004	Plaintiffs, voter organizations and political parties, filed actions against defendants, the Michigan Secretary of State and her director of elections, challenging directives issued to local election officials concerning the casting and tabulation of provisional ballots. Plaintiffs sought a	The court concluded that (1) plaintiffs had standing to assert their claims; (2) HAVA created individual rights enforceable through 42 U.S.C.S. § 1983; (3) Congress had provided a scheme under HAVA in which a voter's right to have a	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>preliminary injunction and contended that the directives violated their rights under the Help America Vote Act.</p>	<p>provisional ballot for federal offices tabulated was determined by state law governing eligibility, and defendants' directives for determining eligibility on the basis of precinct--based residency were inconsistent with state and federal election law; (4) Michigan election law defined voter qualifications in terms of the voter's home jurisdiction, and a person who cast a</p>			

008133

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					provisional ballot within his or her jurisdiction was entitled under federal law to have his or her votes for federal offices counted if eligibility to vote in that election could be verified; and (5) defendants' directives concerning proof of identity of first-time voters who registered by mail were consistent with federal and state law.			

008134

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Charles H. Wesley Educ. Found., Inc. v. Cox	United States Court of Appeals for the Eleventh Circuit	408 F.3d 1349; 2005 U.S. App. LEXIS 8320	May 12, 2005	Plaintiffs, a charitable foundation, four volunteers, and a registered voter, filed a suit against defendant state officials alleging violations of the National Voter Registration Act and the Voting Rights Act. The officials appealed after the United States District Court for the Northern District of Georgia issued a preliminary injunction enjoining them from rejecting voter registrations submitted by the	The foundation conducted a voter registration drive; it placed the completed applications in a single envelope and mailed them to the Georgia Secretary of State for processing. Included in the batch was the voter's change of address form. Plaintiffs filed the suit after they were notified that the applications had been rejected pursuant to Georgia law, which allegedly restricted who could collect voter registration	No	N/A	No

008135

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				foundation.	forms. Plaintiffs contended that the officials had violated the NVRA, the VRA, and U.S. Const. amends. I, XIV, XV. The officials argued that plaintiffs lacked standing and that the district court had erred in issuing the preliminary injunction. The court found no error. Plaintiffs had sufficiently alleged injuries under the NVRA, arising out of the rejection of the voter registration forms; the allegations in the			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					complaint sufficiently showed an injury--in--fact that was fairly traceable to the officials' conduct. The injunction was properly issued. There was a substantial likelihood that plaintiffs would prevail as to their claims; it served the public interest to protect plaintiffs' franchise--related rights. The court affirmed the preliminary injunction order entered by the district court.			
McKay v.	United	226 F.3d	September	Plaintiff	The trial court	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Thompson	States Court of Appeals for the Sixth Circuit	752; 2000 U.S. App. LEXIS 23387	18, 2000	challenged order of United States District Court for Eastern District of Tennessee at Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.	had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous case law, and could be challenged in state court. The requirement did not violate the Privacy Act of 1974, because it			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>was grand fathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. The trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					immunities, and due process claims. Order affirmed because requirement that voters disclose social security numbers as precondition to voter registration did not violate Privacy Act of 1974 or National Voter Registration Act and trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims.			
Nat'l	United	150 F.	July 5,	Plaintiff, national	Defendants	No	N/A	No

008140

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Coalition for Students with Disabilities Educ. & Legal Def. Fund v. Scales	States District Court for the Southern District of Maryland	Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528	2001	organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss the first amended complaint, or in the alternative for summary judgment.	alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged sufficient facts to confer standing under the NVRA, such allegations were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>registration services at the initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					complaint was granted as to the § 1983 claim and denied as to plaintiff's claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion for summary judgment was denied.			
Cunningham v. Chi. Bd. of Election Comm'rs	United States District Court for the Northern District of Illinois	2003 U.S. Dist. LEXIS 2528	February 24, 2003	Plaintiffs, who alleged that they were duly registered voters, six of whom had signed nominating petitions for one candidate and two of whom signed	Plaintiffs argued that objections to their signatures were improperly sustained by defendants, the city board of election commissioners. Plaintiff's argued that they were	No	N/A	No

008144

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>nominating petitions for another candidate. They first asked for a preliminary injunction of the municipal election scheduled for the following Tuesday and suggested, alternatively, that the election for City Clerk and for 4th Ward Alderman be enjoined.</p>	<p>registered voters whose names appeared in an inactive file and whose signatures were therefore, and improperly, excluded. The court ruled that by characterizing the claim as plaintiffs did, they sought to enjoin an election because their signatures were not counted, even though their preferred candidates were otherwise precluded from appearing on the ballot. Without regard to their likelihood of</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>obtaining any relief, plaintiffs failed to demonstrate that they would be irreparably harmed if an injunction did not issue; the threatened injury to defendants, responsible as they were for the conduct of the municipal election, far outweighed any threatened injury to plaintiffs; and the granting of a preliminary injunction would greatly disserve the public interest. Plaintiffs' petition for</p>			

008146

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					preliminary relief was denied.			
Diaz v. Hood	United States District Court for the Southern District of Florida	342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445	October 26, 2004	Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general election. They alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials	The putative voters sought injunctive relief requiring the election officials to register them to vote. The court first noted that the unions lacked even representative standing, because they failed to show that one of their members could have brought the case in their own behalf. The individual putative voters raised separate issues: the first had failed to verify her mental	No	N/A	No

008147

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>moved to dismiss the complaint for lack of standing and failure to state a claim.</p>	<p>capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. Motion to dismiss without</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					prejudice granted.			
Bell v. Marinko	United States District Court for the Northern District of Ohio	235 F. Supp. 2d 772; 2002 U.S. Dist. LEXIS 21753	October 22, 2002	Plaintiff voters sued defendants, a county board of elections, a state secretary of state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.	The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather than permanent residents of the county. The voters claimed that the board hearings did not afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA	No	N/A	No

008150

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and resolve that challenge, did not contravene the MVA. Defendants' motions for</p>			

008152

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					summary judgment were granted as to all claims with prejudice, except the voters' state-law claim, which was dismissed for want of jurisdiction, without prejudice.			
Bell v. Marinko	United States Court of Appeals for the Sixth Circuit	367 F.3d 588; 2004 U.S. App. LEXIS 8330	April 28, 2004	Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19-3509.21 violated the National Voter Registration Act, and the Equal Protection Clause	The voters contested the challenges to their registration brought under Ohio Code Rev. Ann. § 3505.19 based on Ohio Rev. Code Ann. § 3503.02. Specifically, the voters asserted that § 3503.02---which stated that the place	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>of the Fourteenth Amendment. The United States District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.</p>	<p>where the family of a married man or woman resided was considered to be his or her place of residence---- violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote</p>			

008154

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>in the first place. The National Voter Registration Act did not bar the Board's continuing consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code Ann.</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>§ 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed.</p>			

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Miller v. Blackwell	United States District Court for the southern District of Ohio	348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894	October 27, 2004	Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion for a temporary restraining order. Two individuals filed a motion to intervene as defendants.	Plaintiffs alleged that the timing and manner in which defendants intended to hold hearings regarding pre-election challenges to their voter registration violated both the Act and the Due Process Clause. The individuals, who filed pre-election voter eligibility challenges, filed a motion to intervene. The court held that it would grant the motion to intervene because the individuals had a substantial legal interest in	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>the subject matter of the action and time constraints would not permit them to bring separate actions to protect their rights. The court further held that it would grant plaintiffs' motion for a TRO because plaintiffs made sufficient allegations in their complaint to establish standing and because all four factors to consider in issuing a TRO weighed heavily in favor of doing so. The court found that plaintiffs demonstrated a</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>likelihood of success on the merits because they made a strong showing that defendants' intended actions regarding pre-election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the other factors to consider in granting a TRO automatically weighed in plaintiffs' favor. The court granted plaintiffs' motion for a TRO. The</p>			

008159

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					court also granted the individuals' motion to intervene.			
Spencer v. Blackwell	United States District Court for the Southern District of Ohio	347 F. Supp. 2d 528; 2004 U.S. Dist. LEXIS 22062	November 1, 2004	Plaintiff voters filed a motion for temporary restraining order and preliminary injunction seeking to restrain defendant election officials and intervenor State of Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from being allowed at the polls.	The voters alleged that defendants had combined to implement a voter challenge system at the polls that discriminated against African--American voters. Each precinct was run by its election judges but Ohio law also allowed challengers to be physically present in the polling places in order to challenge voters' eligibility to vote. The court held that the injury asserted, that	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>allowing challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos, delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. Because the voters had shown a</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>substantial likelihood of success on the merits on the ground that the application of Ohio's statute allowing challengers at polling places was unconstitutional and the other factors governing the issuance of an injunction weighed in their favor, the court enjoined all defendants from allowing any challengers other than election judges and other electors into the polling places throughout the</p>			

008163

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					state on Election Day.			
Charfauros v. Bd. of Elections	United States Court of Appeals for the Ninth Circuit	2001 U.S. App. LEXIS 15083	May 10, 2001	Defendants, board of elections and related individuals, appealed from an order of the Supreme Court of the Commonwealth of the Northern Mariana Islands reversing a lower court's grant of summary judgment in favor of defendants on the ground of qualified immunity.	Plaintiffs, disqualified voters, claimed that individual members of the Commonwealth of the Northern Mariana Islands Board of Elections violated § 1983 by administering pre--election day voter challenge procedures which precluded a certain class of voters, including plaintiffs, from voting in a 1995 election. The CNMI Supreme Court reversed a lower court's grant of summary	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>judgment and defendants appealed. The court of appeals held that the Board's pre--election day procedures violated the plaintiffs' fundamental right to vote. The federal court reasoned that the right to vote was clearly established at the time of the election, and that a reasonable Board would have known that that treating voters differently based on their political party would violate the Equal</p>			

008165

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>Protection Clause. Further the court added that the allegations of the complaint were sufficient to support liability of the Board members in their individual capacities. Finally, the composition of the CNMI Supreme Court's Special Judge panel did not violate the Board's right to due process of law. The decision of Commonwealth of the Northern Mariana Islands Supreme Court was affirmed</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					where defendants' pre--election day voter challenge procedures violated plaintiffs' fundamental right to vote.			
Wit v. Berman	United States Court of Appeals for the Second Circuit	306 F.3d 1256; 2002 U.S. App. LEXIS 21301	October 11, 2002	Appellant voters who established residences in two separate cities sued appellees, state and city election officials, alleging that provisions of the New York State Election Law unconstitutionally prevented the voters from voting in local elections in both cities where they resided. The voters appealed the order of the	Under state election laws, the voters could only vote in districts in which they resided, and residence was limited to one place. The voters contended that, since they had two lawful residences, they were denied constitutional equal protection by the statutory restriction against voting in the local elections of both	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>United States District Court for the Southern District of New York which granted appellees' motion to dismiss the complaint.</p>	<p>of the places of their residences. The appellate court held, however, that no constitutional violation was shown since the provisions of the New York State Election Law imposed only reasonable, nondiscriminatory restrictions which advanced important state regulatory interests. While the voters may have interests in electoral outcomes in both cities, any rule permitting voting based on such interests would be</p>			

008168

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>unmanageable and subject to potential abuse. Further, basing voter eligibility on domicile, which was always over--or under--inclusive, nonetheless had enormous practical advantages, and the voters offered no workable standard to replace the domicile test. Finally, allowing the voters to choose which of their residences was their domicile for voting purposes could not be deemed</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					discriminatory. Affirmed.			
Curtis v. Smith	United States District Court for the Eastern District of Texas	121 F. Supp. 2d 1054; 2000 U.S. Dist. LEXIS 17987	November 3, 2000	Plaintiffs sought a preliminary injunction to prohibit defendant tax assessor-collector from mailing confirmation letters to approximately 9,000 persons who were registered voters in Polk County, Texas.	Plaintiffs sought to prohibit defendant from mailing confirmation letters to approximately 9,000 persons, self-styled "escapees" who traveled a major portion of each year in recreational vehicles, all of whom were registered to vote in Polk County, Texas. In accordance with Texas law, three resident voters filed affidavits challenging the escapees'	No	N/A	No

008170

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>residency. These affidavits triggered defendant's action in sending confirmation notices to the escapees. The court determined, first, that because of the potential for discrimination, defendant's action required preclearance in accordance with § 5 of the Voting Rights Act and, second, that such preclearance had not been sought or obtained. Accordingly, the court issued a preliminary injunction</p>			

008171

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>prohibiting defendant from pursuing the confirmation of residency of the escapees, or any similarly situated group, under the Texas Election Code until the process had been submitted for preclearance in accordance with § 5. The action was taken to ensure that no discriminatory potential existed in the use of such process in the upcoming presidential election or future election. Motion for preliminary injunction was</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					granted, and defendant was enjoined from pursuing confirmation of residency of the 9,000 "escapees," or any similarly situated group, under the Texas Election Code, until the process had been submitted for preclearance under § 5 of the Voting Rights Act.			
Peace & Freedom Party v. Shelley	Court of Appeal of California, Third Appellate District	114 Cal. App. 4th 1237; 8 Cal. Rptr. 3d 497; 2004 Cal. App. LEXIS 42	January 15, 2004	Plaintiff political party appealed a judgment from the superior court which denied the party's petition for writ of mandate to compel	The trial court ruled that inactive voters were excluded from the primary election. The court of appeals affirmed, observing that although the	No	N/A	No

008173

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>defendant, the California Secretary of State, to include voters listed in the inactive file of registered voters in calculating whether the party qualified to participate in a primary election.</p>	<p>election had already taken place, the issue was likely to recur and was a matter of continuing public interest and importance; hence, a decision on the merits was proper, although the case was technically moot. The law clearly excluded inactive voters from the calculation. The statutory scheme did not violate the inactive voters' constitutional right of association because it was reasonably designed to</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>ensure that all parties on the ballot had a significant modicum of support from eligible voters. Information in the inactive file was unreliable and often duplicative of information in the active file. Moreover, there was no violation of the National Voter Registration Act because voters listed as inactive were not prevented from voting. Although the Act prohibited removal of voters from the official voting list absent</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					certain conditions, inactive voters in California could correct the record and vote as provided the Act. The court affirmed the denial of a writ of mandate.			
Bell v. Marinko	United States District Court for the Northern District of Ohio	235 F. Supp. 2d 772; 2002 U.S. Dist. LEXIS 21753	October 22, 2002	Plaintiff voters sued defendants, a county board of elections, a state secretary of state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also	The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather than permanent residents of the county. The voters claimed that the board hearings did not	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				moved for summary judgment.	afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>resolve that challenge, did not contravene the MVA. Defendants' motions for summary judgment were granted as to all claims with prejudice, except the voters' state-law claim, which was dismissed for want of jurisdiction, without prejudice.</p>			

008179

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Charles H. Wesley Educ. Found., Inc. v. Cox	United States Court of Appeals for the Eleventh Circuit	408 F.3d 1349; 2005 U.S. App. LEXIS 8320	May 12, 2005	Plaintiffs, a charitable foundation, four volunteers, and a registered voter, filed a suit against defendant state officials alleging violations of the National Voter Registration Act and the Voting Rights Act. The officials appealed after the United States District Court for the Northern District of Georgia issued a preliminary injunction enjoining them from rejecting voter registrations submitted by the	The foundation conducted a voter registration drive; it placed the completed applications in a single envelope and mailed them to the Georgia Secretary of State for processing. Included in the batch was the voter's change of address form. Plaintiffs filed the suit after they were notified that the applications had been rejected pursuant to Georgia law, which allegedly restricted who could collect voter registration	No	N/A	No

008180

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				foundation.	forms. Plaintiffs contended that the officials had violated the NVRA, the VRA, and U.S. Const. amends. I, XIV, XV. The officials argued that plaintiffs lacked standing and that the district court had erred in issuing the preliminary injunction. The court found no error. Plaintiffs had sufficiently alleged injuries under the NVRA, arising out of the rejection of the voter registration forms; the allegations in the			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					complaint sufficiently showed an injury--in--fact that was fairly traceable to the officials' conduct. The injunction was properly issued. There was a substantial likelihood that plaintiffs would prevail as to their claims; it served the public interest to protect plaintiffs' franchise--related rights. The court affirmed the preliminary injunction order entered by the district court.			
McKay v.	United	226 F.3d	September	Plaintiff	The trial court	No	N/A	No

008182

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Thompson	States Court of Appeals for the Sixth Circuit	752; 2000 U.S. App. LEXIS 23387	18, 2000	challenged order of United States District Court for Eastern District of Tennessee at Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.	had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous case law, and could be challenged in state court. The requirement did not violate the Privacy Act of 1974, because it			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>was grand fathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. The trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and</p>			

008184

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>immunities, and due process claims. Order affirmed because requirement that voters disclose social security numbers as precondition to voter registration did not violate Privacy Act of 1974 or National Voter Registration Act and trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims.</p>			
Nat'l	United	150 F.	July 5,	Plaintiff, national	Defendants	No	N/A	No

008185

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Coalition for Students with Disabilities Educ. & Legal Def. Fund v. Scales	States District Court for the Southern District of Maryland	Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528	2001	organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss the first amended complaint, or in the alternative for summary judgment.	alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged sufficient facts to confer standing under the NVRA, such allegations were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter</p>			

008187

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>registration services at the initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					complaint was granted as to the § 1983 claim and denied as to plaintiff's claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion for summary judgment was denied.			
Cunningham v. Chi. Bd. of Election Comm'rs	United States District Court for the Northern District of Illinois	2003 U.S. Dist. LEXIS 2528	February 24, 2003	Plaintiffs, who alleged that they were duly registered voters, six of whom had signed nominating petitions for one candidate and two of whom signed	Plaintiffs argued that objections to their signatures were improperly sustained by defendants, the city board of election commissioners. Plaintiff's argued that they were	No	N/A	No

003189

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>nominating petitions for another candidate. They first asked for a preliminary injunction of the municipal election scheduled for the following Tuesday and suggested, alternatively, that the election for City Clerk and for 4th Ward Alderman be enjoined.</p>	<p>registered voters whose names appeared in an inactive file and whose signatures were therefore, and improperly, excluded. The court ruled that by characterizing the claim as plaintiffs did, they sought to enjoin an election because their signatures were not counted, even though their preferred candidates were otherwise precluded from appearing on the ballot. Without regard to their likelihood of</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>obtaining any relief, plaintiffs failed to demonstrate that they would be irreparably harmed if an injunction did not issue; the threatened injury to defendants, responsible as they were for the conduct of the municipal election, far outweighed any threatened injury to plaintiffs; and the granting of a preliminary injunction would greatly disserve the public interest. Plaintiffs' petition for</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					preliminary relief was denied.			
Diaz v. Hood	United States District Court for the Southern District of Florida	342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445	October 26, 2004	Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general election. They alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials	The putative voters sought injunctive relief requiring the election officials to register them to vote. The court first noted that the unions lacked even representative standing, because they failed to show that one of their members could have brought the case in their own behalf. The individual putative voters raised separate issues: the first had failed to verify her mental	No	N/A	No

008192

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>moved to dismiss the complaint for lack of standing and failure to state a claim.</p>	<p>capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. Motion to dismiss without</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					prejudice granted.			
Bell v. Marinko	United States District Court for the Northern District of Ohio	235 F. Supp. 2d 772; 2002 U.S. Dist. LEXIS 21753	October 22, 2002	Plaintiff voters sued defendants, a county board of elections, a state secretary of state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.	The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather than permanent residents of the county. The voters claimed that the board hearings did not afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA	No	N/A	No

008195

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and resolve that challenge, did not contravene the MVA. Defendants' motions for</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					summary judgment were granted as to all claims with prejudice, except the voters' state--law claim, which was dismissed for want of jurisdiction, without prejudice.			
Bell v. Marinko	United States Court of Appeals for the Sixth Circuit	367 F.3d 588; 2004 U.S. App. LEXIS 8330	April 28, 2004	Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19-3509.21 violated the National Voter Registration Act, and the Equal Protection Clause	The voters contested the challenges to their registration brought under Ohio Code Rev. Ann. § 3505.19 based on Ohio Rev. Code Ann. § 3503.02. Specifically, the voters asserted that § 3503.02---which stated that the place	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>of the Fourteenth Amendment. The United States District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.</p>	<p>where the family of a married man or woman resided was considered to be his or her place of residence---- violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote</p>			

008199

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>in the first place. The National Voter Registration Act did not bar the Board's continuing consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code Ann.</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>§ 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed.</p>			

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
New York v. County of Del.	United States District Court for the Northern District of New York	82 F. Supp. 2d 12; 2000 U.S. Dist. LEXIS 1398	February 8, 2000	Plaintiffs brought a claim in the district court under the Americans With Disabilities Act and filed a motion for a preliminary injunction and motion for leave to amend their complaint, and defendants were ordered to show cause why a preliminary injunction should not be issued.	In their complaint plaintiffs alleged that defendants violated the ADA by making the voting locations inaccessible to disabled persons and asked for a preliminary injunction requiring defendants to come into compliance before the next election. The court found that defendants were the correct parties, because	No	N/A	No

008202

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>pursuant to New York election law defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, due to the alleged</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					facts, the court found plaintiffs would likely succeed on the merits. Consequently, the court granted plaintiffs' motion for a preliminary injunction. The court granted plaintiffs' motion for a preliminary injunction and granted plaintiffs' motion for leave to amend their complaint.			
New York v. County of Schoharie	United States District	82 F. Supp. 2d 19; 2000	February 8, 2000	Plaintiffs brought a claim in the	In their complaint, plaintiffs	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	Court for the Northern District of New York	U.S. Dist. LEXIS 1399		district court under the Americans With Disabilities Act and filed a motion for a preliminary injunction and a motion for leave to amend their complaint, and defendants were ordered to show cause why a preliminary injunction should not be issued.	alleged defendants violated the ADA by allowing voting locations to be inaccessible for disabled persons and asked for a preliminary injunction requiring defendants to come into compliance before the next election. The court found that defendants were the correct party, because pursuant to New York election law,			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, the court found that plaintiffs would likely succeed on the</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>merits of their case. Consequently, the court granted plaintiffs' motion for a preliminary injunction. The court granted plaintiffs' motion for a preliminary injunction because plaintiffs showed irreparable harm and proved likely success on the merits and granted plaintiff's motion for leave to amend the complaint.</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Westchester Disabled on the Move, Inc. v. County of Westchester	United States District Court for the Southern District of New York	346 F. Supp. 2d 473; 2004 U.S. Dist. LEXIS 24203	October 22, 2004	Plaintiffs sued defendant county, county board of elections, and election officials pursuant to 42 U.S.C.S. §§ 12131--12134, N.Y. Exec. Law § 296, and N.Y. Elec. Law § 4--1--4. Plaintiffs moved for a preliminary injunction, requesting (among other things) that the court order defendants to modify the polling places in the county so that they	The inability to vote at assigned locations on election day constituted irreparable harm. However, plaintiffs could not show a likelihood of success on the merits because the currently named defendants could not provide complete relief sought by plaintiffs. Although the county board of elections was empowered to	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>were accessible to disabled voters on election day. Defendants moved to dismiss.</p>	<p>select an alternative polling place should it determine that a polling place designated by a municipality was "unsuitable or unsafe," it was entirely unclear that its power to merely designate suitable polling places would be adequate to ensure that all polling places used in the upcoming election actually conformed</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>with the Americans with Disabilities Act. Substantial changes and modifications to existing facilities would have to be made, and such changes would be difficult, if not impossible, to make without the cooperation of municipalities. Further, the court could order defendants to approve voting machines that conformed to</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>the ADA were they to be purchased and submitted for county approval, but the court could not order them to purchase them for the voting districts in the county. A judgment issued in the absence of the municipalities would be inadequate. Plaintiffs' motion for preliminary injunction was denied, and defendants' motion to dismiss was granted.</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Nat'l Org. on Disability v. Tartaglione	United States District Court for the Eastern District of Pennsylvania	2001 U.S. Dist. LEXIS 16731	October 11, 2001	Plaintiffs, disabled voters and special interest organizations, sued defendants, city commissioners, under the Americans with Disabilities Act and § 504 of the Rehabilitation Act of 1973, and regulations under both statutes, regarding election practices. The commissioners moved to dismiss for failure (1) to	The voters were visually impaired or wheelchair bound. They challenged the commissioners' failure to provide talking voting machines and wheelchair accessible voting places. They claimed discrimination in the process of voting because they were not afforded the same opportunity to participate in the voting process as non-disabled	No	N/A	Yes-see if the case was refiled

008212

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				state a cause of action and (2) to join an indispensable party.	voters, and assisted voting and voting by alternative ballot were substantially different from, more burdensome than, and more intrusive than the voting process utilized by non--disabled voters. The court found that the complaint stated causes of actions under the ADA, the Rehabilitation Act, and 28 C.F.R. §§ 35.151 and			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>35.130. The court found that the voters and organizations had standing to raise their claims. The organizations had standing through the voters' standing or because they used significant resources challenging the commissioners' conduct. The plaintiffs failed to join the state official who would need to approve any talking voting machine as a</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>party. As the court could not afford complete relief to the visually impaired voters in that party's absence, it granted the motion to dismiss under Fed. R. Civ. P. 12(b)(7) without prejudice. The court granted the commissioners' motion to dismiss in part, and denied it in part. The court granted the motion to dismiss the claims of the</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					visually impaired voters for failure to join an indispensable party, without prejudice, and with leave to amend the complaint.			
TENNESSEE, Petitioner v. GEORGE LANE et al.	United States Supreme Court	541 U.S. 509; 124 S. Ct. 1978; 158 L. Ed. 2d 820; 2004 U.S. LEXIS 3386	May 17, 2004	Respondent paraplegics sued petitioner State of Tennessee, alleging that the State failed to provide reasonable access to court facilities in violation of Title II of the Americans with Disabilities Act	The state contended that the abrogation of state sovereign immunity in Title II of the ADA exceeded congressional authority under U.S. Const. amend XIV, § 5, to enforce substantive constitutional guarantees.	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>of 1990. Upon the grant of a writ of certiorari, the State appealed the judgment of the United States Court of Appeals for the Sixth Circuit which denied the State's claim of sovereign immunity.</p>	<p>The United States Supreme Court held, however, that Title II, as it applied to the class of cases implicating the fundamental right of access to the courts, constituted a valid exercise of Congress's authority. Title II was responsive to evidence of pervasive unequal treatment of persons with disabilities in the administration of state</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>services and programs, and such disability discrimination was thus an appropriate subject for prophylactic legislation. Regardless of whether the State could be subjected to liability for failing to provide access to other facilities or services, the fundamental right of access to the courts warranted the limited requirement that the State reasonably</p>			

008218

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>accommodate disabled persons to provide such access. Title II was thus a reasonable prophylactic measure, reasonably targeted to a legitimate end. The judgment denying the State's claim of sovereign immunity was affirmed.</p>			

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Bell v. Marinko	United States Court of Appeals for the Sixth Circuit	367 F.3d 588; 2004 U.S. App. LEXIS 8330	April 28, 2004	Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19-3509.21 violated the National Voter Registration Act, and the Equal Protection Clause of the Fourteenth Amendment. The United States District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.	The voters asserted that § 3503.02---- which stated that the place where the family of a married man or woman resided was considered to be his or her place of residence----violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in	No	N/A	No

008220

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>the first place. The National Voter Registration Act did not bar the Board's continuing consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code Ann. § 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed.			
Wilson v. Commonwealth	Court of Appeals of Virginia	2000 Va. App. LEXIS 322	May 2, 2000	Defendant appealed the judgment of the circuit court which convicted her of election fraud.	On appeal, defendant argued that the evidence was insufficient to support her conviction because it failed to prove that she made a willfully false statement on her voter registration form and, even if the evidence did prove that she made such a statement, it did not prove that the voter registration form was the form	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>required by Title 24.2. At trial, the Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter registration form that she was living at a residence in the 51st House District. The evidence included records showing electricity and water usage, records from the Department of Motor Vehicles and school records. Thus, the evidence</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>was sufficient to support the jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed by Title 24.2 in order for her to be a candidate for office in the primary in question. Judgment of conviction affirmed. Evidence, including records showing electricity and water usage, records from the Department of Motor Vehicles and school records, was sufficient to support jury's verdict that defendant made "a false material statement" on the</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					voter registration card required to be filed in order for her to be a candidate for office in the primary in question.			
ACLU of Minn. v. Kiffmeyer	United States District Court for the District of Minnesota	2004 U.S. Dist. LEXIS 22996	October 29, 2004	Plaintiffs, voters and associations, filed for a temporary restraining order pursuant to Fed. R. Civ. P. 65, against defendant, Minnesota Secretary of State, concerning voter registration.	Plaintiffs argued that Minn. Stat. § 201.061 was inconsistent with the Help America Vote Act because it did not authorize the voter to complete registration either by a "current and valid photo identification" or by use of a current utility bill, bank statement, government check, paycheck, or other government document that showed the name and address of the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>individual. The Secretary advised the court that there were less than 600 voters who attempted to register by mail but whose registrations were deemed incomplete. The court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic</p>			

008226

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					tribal identification card by American Indians who do not reside on their tribal reservations. Also, the court found that plaintiffs demonstrated that they were likely to succeed on their claims that Minn. R. 8200.5100, violated the Equal Protection Clause of the United States Constitution. A temporary restraining order was entered.			
Kalsson v. United States FEC	United States District Court for the Southern District of New York	356 F. Supp. 2d 371; 2005 U.S. Dist. LEXIS 2279	February 16, 2005	Defendant Federal Election Commission filed a motion to dismiss for lack of subject matter jurisdiction plaintiff individual's	The individual claimed that his vote was diluted because the NVRA resulted in more people registering to vote than otherwise would have been the case. The court held	No	N/A	No

008227

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>action, which sought a declaration that the National Voter Registration Act was unconstitutional on the theories that its enactment was not within the enumerated powers of the federal government and that it violated Article II of the United States Constitution.</p>	<p>that the individual lacked standing to bring the action. Because New York was not obliged to adhere to the requirements of the NVRA, the individual did not allege any concrete harm. If New York simply adopted election day registration for elections for federal office, it would have been entirely free of the NVRA just as were five other states. Even if the individual's vote were diluted, and even if such an injury in other circumstances might have sufficed for standing, any</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					dilution that he suffered was the result of New York's decision to maintain a voter registration system that brought it under the NVRA, not the NVRA itself. The court granted the motion to dismiss for lack of subject matter jurisdiction.			
Peace & Freedom Party v. Shelley	California Court of Appeal, Third Appellate District	114 Cal. App. 4th 1237; 8 Cal. Rptr. 3d 497; 2004 Cal. App. LEXIS 42	January 15, 2004	Plaintiff political party appealed a judgment from the superior court which denied the party's petition for writ of mandate to compel defendant, the California Secretary of State, to include voters listed in	The trial court ruled that inactive voters were excluded from the primary election calculation. The court of appeals affirmed, observing that although the election had already taken place, the issue was likely to recur and was a matter of continuing public interest and	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>the inactive file of registered voters in calculating whether the party qualified to participate in a primary election.</p>	<p>importance; hence, a decision on the merits was proper, although the case was technically moot. The law clearly excluded inactive voters from the calculation. The statutory scheme did not violate the inactive voters' constitutional right of association because it was reasonably designed to ensure that all parties on the ballot had a significant modicum of support from eligible voters. Information in the inactive file was unreliable and often duplicative of information in the active file.</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Moreover, there was no violation of the National Voter Registration Act because voters listed as inactive were not prevented from voting. Although the Act prohibited removal of voters from the official voting list absent certain conditions, inactive voters in California could correct the record and vote. Affirmed.			
McKay v. Thompson	United States Court of Appeals for the Sixth Circuit	226 F.3d 752; 2000 U.S. App. LEXIS 23387	September 18, 2000	Plaintiff challenged order of United States District Court for Eastern District of Tennessee at Chattanooga, which granted defendant state election officials	The trial court had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.	plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous caselaw, and could be challenged in state court. The requirement did not violate the Privacy Act because it was grand fathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>regarding such use. Plaintiff could not enforce § 1971 as it was enforceable only by the United States Attorney General. The trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims. Although the trial court arguably erred in denying certification of the case to the USAG under 28 U.S.C.S. § 2403(a), plaintiff suffered no harm from the technical violation. Order affirmed because requirement that</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					voters disclose social security numbers as precondition to voter registration did not violate Privacy Act of 1974 or National Voter Registration Act and trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims.			
Lucas County Democratic Party v. Blackwell	United States District Court for the Northern District of Ohio	341 F. Supp. 2d 861; 2004 U.S. Dist. LEXIS 21416	October 21, 2004	Plaintiff organizations brought an action challenging a memorandum issued by defendant, Ohio's Secretary of State, in December 2003.	The case involved a box on Ohio's voter registration form that required a prospective voter who registered in person to supply an Ohio driver's license number or the last four digits of their	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>The organizations claimed that the memorandum contravened provisions of the Help America Vote Act and the National Voter Registration Act. The organizations moved for a preliminary injunction.</p>	<p>Social Security number. In his memorandum, the Secretary informed all Ohio County Boards of Elections that, if a person left the box blank, the Boards were not to process the registration forms. The organizations did not file their suit until 18 days before the national election. The court found that there was not enough time before the election to develop the evidentiary record necessary to determine if the organizations were likely to succeed on the merits of their claim. Denying the</p>			

008235

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>organizations' motion would have caused them to suffer no irreparable harm. There was no appropriate remedy available to the organizations at the time. The likelihood that the organizations could have shown irreparable harm was, in any event, slight in view of the fact that they waited so long before filing suit. Moreover, it would have been entirely improper for the court to order the Boards to re--open in--person registration until election day. The public interest would have been ill-</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					-served by an injunction. The motion for a preliminary injunction was denied sua sponte.			
Nat'l Coalition for Students with Disabilities Educ. & Legal Def. Fund v. Scales	United States District Court for the District of Maryland	150 F. Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528	July 5, 2001	Plaintiff, national organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss the first amended complaint, or in the alternative for	Defendants alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				summary judgment.	registration services were not registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged sufficient facts to confer standing under the NVRA, such allegations were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter registration services at the initial			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university.</p> <p>Defendants' motion to dismiss first amended complaint was granted as to the § 1983 claim and denied as to plaintiff's claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion</p>			

008239

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					for summary judgment was denied.			
People v. Disimone	Court of Appeals of Michigan	251 Mich. App. 605; 650 N.W.2d 436; 2002 Mich. App. LEXIS 826	July 11, 2002	Defendant was charged with attempting to vote more than once in the 2000 general election. The circuit court granted defendant's motion that the State had to prove specific intent. The State appealed.	Defendant was registered in the Colfax township for the 2000 general election. After presenting what appeared to be a valid voter's registration card, defendant proceeded to vote in the Grant township. Defendant had voted in the Colfax township earlier in the day. Defendant moved the court to issue an order that the State had to find that he had a specific intent to vote twice in order to be convicted. The appellate court	No	N/A	No

008240

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>reversed the circuit court judgment and held that under the rules of statutory construction, the fact that the legislature had specifically omitted certain trigger words such as "knowingly," "willingly," "purposefully," or "intentionally" it was unlikely that the legislature had intended for this to be a specific intent crime. The court also rejected the defendant's argument that phrases such as "offer to vote" and "attempt to vote" should be construed as synonymous</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					terms, as when words with similar meanings were used in the same statute, it was presumed that the legislature intended to distinguish between the terms. The order of the circuit court was reversed.			
Diaz v. Hood	United States District Court for the Southern District of Florida	342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445	October 26, 2004	Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general election. They alleged that defendants, state and county election officials,	The putative voters sought injunctive relief requiring the election officials to register them to vote. The court first noted that the unions lacked even representative standing, because they failed to show that one of their members could have brought the case in their own behalf. The individual	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>refused to process their voter registrations for various failures to complete the registration forms. The election officials moved to dismiss the complaint for lack of standing and failure to state a claim.</p>	<p>putative voters raised separate issues: the first had failed to verify her mental capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter applicants whose</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. The motions to dismiss the complaint were granted without prejudice.</p>			
Charles H.	United	324 F.	July 1,	Plaintiffs, a voter,	The organization	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Wesley Educ. Found., Inc. v. Cox	States District Court for the Northern District of Georgia	Supp. 2d 1358; 2004 U.S. Dist. LEXIS 12120	2004	fraternity members, and an organization, sought an injunction ordering defendant, the Georgia Secretary of State, to process the voter registration application forms that they mailed in following a voter registration drive. They contended that by refusing to process the forms defendants violated the National Voter Registration Act and U.S. Const. amends. I, XIV, and XV.	participated in numerous non-partisan voter registration drives primarily designed to increase the voting strength of African-Americans. Following one such drive, the fraternity members mailed in over 60 registration forms, including one for the voter who had moved within state since the last election. The Georgia Secretary of State's office refused to process them because they were not mailed individually and neither a registrar, deputy registrar, or an otherwise authorized person			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>had collected the applications as required under state law. The court held that plaintiffs had standing to bring the action. The court held that because the applications were received in accordance with the mandates of the NVRA, the State of Georgia was not free to reject them. The court found that: plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Plaintiffs' motion for a preliminary injunction was granted. Defendants were ordered to process the applications received from the organization to determine whether those registrants were qualified to vote. Furthermore, defendants were enjoined from rejecting any voter registration application on the grounds that it was</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					mailed as part of a "bundle" or that it was collected by someone not authorized or any other reason contrary to the NVRA.			
Moseley v. Price	United States District Court for the Eastern District of Virginia	300 F. Supp. 2d 389; 2004 U.S. Dist. LEXIS 850	January 22, 2004	Plaintiff alleged, that defendants' actions in investigating his voter registration application constituted a change in voting procedures requiring § 5 preclearance under the Voting Rights Act, which preclearance was never sought or received. Plaintiff claimed he withdrew from	The court concluded that plaintiff's claim under the Voting Rights Act lacked merit. Plaintiff did not allege, as required, that any defendants implemented a new, uncleared voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting. Here, the existing practice or procedure in effect	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>the race for Commonwealth Attorney because of the investigation. Defendants moved to dismiss the complaint.</p>	<p>in the event a mailed registration card was returned was to "resend the voter card, if address verified as correct." This was what precisely occurred. Plaintiff inferred, however, that the existing voting rule or practice was to resend the voter card "with no adverse consequences" and that the county's initiation of an investigation constituted the implementation of a change that had not been pre--cleared. The court found the inference wholly unwarranted</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>because nothing in the written procedure invited or justified such an inference. The court opined that common sense and state law invited a different inference, namely that while a returned card had to be resent if the address was verified as correct, any allegation of fraud could be investigated. Therefore, there was no new procedure for which preclearance was required. The court dismissed plaintiff's federal claims. The court dismissed the state law claims without prejudice.</p>			
Thompson v.	Supreme	295	June 10,	Respondents	Respondents alleged	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Karben	Court of New York, Appellate Division, Second Department	A.D.2d 438; 743 N.Y.S.2d 175; 2002 N.Y. App. Div. LEXIS 6101	2002	filed a motion seeking the cancellation of appellant's voter registration and political party enrollment on the ground that appellant was unlawfully registered to vote in a particular district. The Supreme Court, Rockland County, New York, ordered the cancellation of appellant's voter registration and party enrollment. Appellant challenged the trial court's order.	that appellant was unlawfully registered to vote from an address at which he did not reside and that he should have voted from the address that he claimed as his residence. The appellate court held that respondents adduced insufficient proof to support the conclusion that appellant did not reside at the subject address. On the other hand, appellant submitted copies of his 2002 vehicle registration, 2000 and 2001 federal income tax returns, 2002 property tax bill, a May 2001 paycheck			

008251

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>stub, and 2000 and 2001 retirement account statements all showing the subject address. Appellant also testified that he was a signatory on the mortgage of the subject address and that he kept personal belongings at that address. Respondents did not sustain their evidentiary burden. The judgment of the trial court was reversed.</p>			
Nat'l Coalition v. Taft	United States District Court for the Southern District of Ohio	2002 U.S. Dist. LEXIS 22376	August 2, 2002	Plaintiffs, a nonprofit public interest group and certain individuals, sued defendants, certain state and university	The court found that the disability services offices at issue were subject to the NVRA because the term "office" included a subdivision of a	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>officials, alleging that they violated the National Voter Registration Act in failing to designate the disability services offices at state public colleges and universities as voter registration sites. The group and individuals moved for a preliminary injunction.</p>	<p>government department or institution and the disability offices at issue were places where citizens regularly went for service and assistance. Moreover, the Ohio Secretary of State had an obligation under the NVRA to designate the disability services offices as voter registration sites because nothing in the law superceded the NVRA's requirement that the responsible state official designate disability services offices as voter registration sites. Moreover, under</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>Ohio Rev. Code Ann. § 3501.05(R), the Secretary of State's duties expressly included ensuring compliance with the NVRA. The case was not moot even though the Secretary of State had taken steps to ensure compliance with the NVRA given his position to his obligation under the law. The court granted declaratory judgment in favor of the nonprofit organization and the individuals. The motion for a preliminary injunction was granted in part and the Secretary of</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					State was ordered to notify disabled students who had used the designated disability services offices prior to the opening day of the upcoming semester or who had pre-registered for the upcoming semester as to voter registration availability.			
Lawson v. Shelby County	United States Court of Appeals for the Sixth Circuit	211 F.3d 331; 2000 U.S. App. LEXIS 8634	May 3, 2000	Plaintiffs who were denied the right to vote when they refused to disclose their social security numbers, appealed a judgment of the United States District Court for the Western	Plaintiffs attempted to register to vote in October, and to vote in November, but were denied because they refused to disclose their social security numbers. A year after the election date they filed suit alleging denial of constitutional rights,	No	N/A	No

008255

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>District of Tennessee at Memphis dismissing their amended complaint for failure to state claims barred by U.S. Const. amend. XI.</p>	<p>privileges and immunities, the Privacy Act of 1974 and § 1983. The district court dismissed, finding the claims were barred by U.S. Const. amend. XI, and the one year statute of limitations. The appeals court reversed, holding the district court erred in dismissing the suit because U.S. Const. amend. XI immunity did not apply to suits brought by a private party under the Ex Parte Young exception. Any damages claim not ancillary to injunctive relief was</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>barred. The court also held the statute of limitations ran from the date plaintiffs were denied the opportunity to vote, not register, and their claim was thus timely. Reversed and remanded to district court to order such relief as will allow plaintiffs to vote and other prospective injunctive relief against county and state officials; declaratory relief and attorneys' fees ancillary to the prospective injunctive relief, all permitted under the Young exception to sovereign immunity,</p>			

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Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					to be fashioned.			
Curtis v. Smith	United States District Court for the Eastern District of Texas	145 F. Supp. 2d 814; 2001 U.S. Dist. LEXIS 8544	June 4, 2001	Plaintiffs, representatives of several thousand retired persons who called themselves the "Escapees," and who spent a large part of their lives traveling about the United States in recreational vehicles, but were registered to vote in the county, moved for preliminary injunction seeking to enjoin a Texas state court proceeding under the All Writs Act.	Before a general election, three persons brought an action alleging the Escapees were not bona fide residents of the county, and sought to have their names expunged from the rolls of qualified voters. The plaintiffs brought suit in federal district court. The court issued a preliminary injunction forbidding county officials from attempting to purge the voting. Commissioner contested the results of the election, alleging Escapees' votes should be	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>disallowed. Plaintiffs brought present case assertedly to prevent the same issue from being relitigated. The court held, however, the issues were different, since, unlike the case in the first proceeding, there was notice and an opportunity to be heard. Further, unlike the first proceeding, the plaintiff in the state court action did not seek to change the prerequisites for voting registration in the county, but instead challenged the actual residency of some members of the Escapees, and</p>			

008259

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					such challenge properly belonged in the state court. The court further held that an election contest under state law was the correct vehicle to contest the registration of Escapees. The court dissolved the temporary restraining order it had previously entered and denied plaintiffs' motion for preliminary injunction of the state court proceeding.			
Pepper v. Darnell	United States Court of Appeals for the Sixth Circuit	24 Fed. Appx. 460; 2001 U.S. App. LEXIS 26618	December 10, 2001	Plaintiff individual appealed from a judgment of the district court, in an action against defendant state	Individual argued on appeal that the district court erred in finding that the registration forms used by the state did not violate the	No	N/A	No

008260

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>officials seeking relief under § 1983 and the National Voter Registration Act, for their alleged refusal to permit individual to register to vote. Officials had moved for dismissal or for summary judgment, and the district court granted the motion.</p>	<p>NVRA and in failing to certify a class represented by individual. Individual lived in his automobile and received mail at a rented box. Officials refused to validate individual's attempt to register to vote by mail. Tennessee state law forbade accepting a rented mail box as the address of the potential voter. Individual insisted that his automobile registration provided sufficient proof of residency under the NVRA. The court upheld the legality of state's requirement that one registering to vote</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>provide a specific location as an address, regardless of the transient lifestyle of the potential voter, finding state's procedure faithfully mirrored the requirements of the NVRA as codified in the Code of Federal Regulations. The court also held that the refusal to certify individual as the representative of a class for purposes of this litigation was not an abuse of discretion; in this case, no representative party was available as the indigent individual, acting in his own behalf, was clearly</p>			

008262

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					unable to represent fairly the class. The district court's judgment was affirmed.			
Miller v. Blackwell	United States District Court for the Southern District of Ohio	348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894	October 27, 2004	Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion for a temporary restraining order (TRO). Two	Plaintiffs alleged that the timing and manner in which defendants intended to hold hearings regarding pre-election challenges to their voter registration violated both the Act and the Due Process Clause. The individuals, who filed pre-election voter eligibility challenges, filed a motion to intervene. The court held that it would grant the motion to intervene because the individuals had a	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				individuals filed a motion to intervene as defendants.	substantial legal interest in the subject matter of the action and time constraints would not permit them to bring separate actions to protect their rights. The court further held that it would grant plaintiffs' motion for a TRO because plaintiffs made sufficient allegations in their complaint to establish standing and because all four factors to consider in issuing a TRO weighed heavily in favor of doing so. The court found that plaintiffs demonstrated a likelihood of			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>success on the merits because they made a strong showing that defendants' intended actions regarding pre--election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the other factors to consider in granting a TRO automatically weighed in plaintiffs' favor. The court granted plaintiffs' motion for a TRO. The court also granted the individuals' motion to intervene.</p>			

008265

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Hileman v. McGinness	Appellate Court of Illinois, Fifth District	316 Ill. App. 3d 868; 739 N.E.2d 81; 2000 Ill. App. LEXIS 845	October 25, 2000	Appellant challenged the circuit court's declaration that that the result of a primary election for county circuit clerk was void.	In a primary election for county circuit clerk, the parties agreed that 681 absentee ballots were presumed invalid. The ballots had been commingled with the valid ballots. There were no markings or indications on the ballots which would have allowed them to be segregated from other ballots cast. Because the ballots could not have been	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>segregated, apportionment was the appropriate remedy if no fraud was involved. If fraud was involved, the election would have had to have been voided and a new election held. Because the trial court did not hold an evidentiary hearing on the fraud allegations, and did not determine whether fraud was in issue, the case was remanded for a</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					determination as to whether fraud was evident in the electoral process. Judgment reversed and remanded.			
Eason v. State	Court of Appeals of Mississippi	2005 Miss. App. LEXIS 1017	December 13, 2005	Defendant appealed a decision of the circuit court convicting him of one count of conspiracy to commit voter fraud and eight counts of voter fraud.	Defendant was helping with his cousin's campaign in a run--off election for county supervisor. Together, they drove around town, picking up various people who were either at congregating spots or their homes. Defendant	No	N/A	No

008268

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>would drive the voters to the clerk's office where they would vote by absentee ballot and defendant would give them beer or money. Defendant claimed he was entitled to a mistrial because the prosecutor advanced an impermissible "sending the message" argument. The court held that it was precluded from reviewing the entire context in which the</p>			

008269

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>argument arose because, while the prosecutor's closing argument was in the record, the defense counsel's closing argument was not. Also, because the prosecutor's statement was incomplete due to defense counsel's objection, the court could not say that the statement made it impossible for defendant to receive a fair trial. Judgment affirmed.</p>			
Wilson v.	Court of	2000 Va.	May 2,	Defendant	At trial, the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Commonwealth	Appeals of Virginia	App. LEXIS 322	2000	appealed the judgment of the circuit court which convicted her of election fraud.	Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter registration form that she was living at a residence in the 51st House District. The evidence included records showing electricity and water usage, records from			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>the Department of Motor Vehicles and school records. Thus, the evidence was sufficient to support the jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed in order for her to be a candidate for office in the primary in question. Judgment affirmed.</p>			

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Townson v. Stonicher	Supreme Court of Alabama	2005 Ala. LEXIS 214	December 9, 2005	The circuit court overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross--appealed. In the meantime, the trial court stayed enforcement of	The voters and the incumbent all challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				its judgment pending resolution of the appeal.	at least 30 absentee voters who voted for the incumbent provided with their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat "cure" that defect by providing a proper form of identification at the trial of the election contest, because, under those			

008274

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>circumstances, it was difficult to conclude that those voters made an honest effort to comply with the law. Moreover, to count the votes of voters who failed to comply with the essential requirement of submitting proper identification with their absentee ballots had the effect of disenfranchising qualified electors who choose not to vote but rather than to make the effort to comply</p>			

008275

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					with the absentee--voting requirements. The judgment declaring the incumbent's opponent the winner was affirmed. The judgment counting the challenged votes in the final tally of votes was reversed, and said votes were subtracted from the incumbents total, and the stay was vacated. All other arguments were rendered moot as a result.			
ACLU of Minn. v.	United States	2004 U.S. Dist.	October 29, 2004	Plaintiffs, voters and	Plaintiffs argued that Minn. Stat.	No	N/A	No

008276

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Kiffmeyer	District Court for the District of Minnesota	LEXIS 22996		associations, filed for a temporary restraining order pursuant to Fed. R. Civ. P. 65, against defendant, Minnesota Secretary of State, concerning voter registration.	§ 201.061 was inconsistent with the Help America Vote Act because it did not authorize the voter to complete registration either by a "current and valid photo identification" or by use of a current utility bill, bank statement, government check, paycheck, or other government document that showed the name and address of the			

008277

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>individual. The Secretary advised the court that there were less than 600 voters who attempted to register by mail but whose registrations were deemed incomplete. The court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic tribal identification card by American Indians who do not reside on their tribal reservations. Also, the court found that plaintiffs demonstrated that they were likely to succeed on their claims that</p> <p>Minn. R. 8200.5100,</p>			

008279

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					violated the Equal Protection Clause of the United States Constitution. A temporary restraining order was entered.			
League of Women Voters v. Blackwell	United States District Court for the Northern District of Ohio	340 F. Supp. 2d 823; 2004 U.S. Dist. LEXIS 20926	October 20, 2004	Plaintiff organizations filed suit against defendant, Ohio's Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote Act. The Secretary filed a motion to	The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide documentary identification at the polling place on election day. When submitting a provisional	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				dismiss.	ballot, a first-time voter could identify himself by providing his driver's license number or the last four digits of his social security number. If he did not know either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the</p>			

008282

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive, even if the cost, in terms of uncounted ballots, was regrettable. The court granted the Secretary's motion to dismiss.			

008283

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
United States v. Madden	United States Court of Appeals for the Sixth Circuit	403 F.3d 347; 2005 U.S. App. LEXIS 5326	April 4, 2005	Defendant appealed his conviction for violating the federal vote-buying statute. He also appealed the sentence imposed by the United States District Court for the Eastern District of Kentucky at Pikeville. The district court applied the U.S. Sentencing Guidelines Manual (Guidelines) § 3B1.1(c) supervisory--role	Defendant paid three people to vote for a local candidate in a primary election. The same ballot contained candidates for the U.S. Senate. While he waived his right to appeal his conviction, he nonetheless asserted two arguments in seeking to avoid the waiver. He first posited that the vote buying statute prohibited only buying votes for federal candidates----a prohibition not	No	N/A	No

008284

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				enhancement and increased defendant's base offense level by two levels.	violated by his conduct. In the alternative, he stated if the statute did criminalize buying votes for state or local candidates, then the statute was unconstitutional. Both arguments failed. Defendant argued that applying the supervisory--role enhancement constituted impermissible double counting because the supervision he exercised was no more than necessary to			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>establish a vote-buying offense. That argument also failed. Defendant next argued that the district court erred by applying the vulnerable--victim enhancement under U.S. Sentencing Guidelines Manual § 3A1.1(b)(1). He acknowledged that he knew the mentally ill people who sold their votes were vulnerable, but maintained they were not victims because they received \$50 for</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>their votes. The vote sellers were not victims for Guidelines purposes. The district court erred. Defendant's appeal of conviction was dismissed. Defendant's sentence was vacated, and the case was remanded for resentencing.</p>			
United States v. Slone	United States Court of Appeals for the Sixth Circuit	411 F.3d 643; 2005 U.S. App. LEXIS 10137	June 3, 2005	Defendant pled guilty to vote buying in a federal election. The United States District Court for the Eastern District of	Defendant offered to pay voters for voting in a primary election. Defendant claimed that the vote buying statute did not apply to him	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>Kentucky sentenced defendant to 10 months in custody and recommended that the sentence be served at an institution that could accommodate defendant's medical needs. Defendant appealed his conviction and sentence.</p>	<p>because his conduct related solely to a candidate for a county office. Alternatively, defendant asserted that the statute was unconstitutional because it exceeded Congress' enumerated powers. Finally, defendant argued that the district court erred when it failed to consider his medical condition as a ground for a downward departure at sentencing. The</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>appellate court found that the vote buying statute applied to all elections in which a federal candidate was on the ballot, and the government need not prove that defendant intended to affect the federal component of the election by his corrupt practices. The facts admitted by defendant at his guilty-plea hearing established all of the essential elements of an</p>			

008289

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>offense. The Elections Clause and the Necessary and Proper Clause combined to provide Congress with the power to regulate mixed federal and state elections even when federal candidates were running unopposed. There was no error in the district court's decision on departure under U.S. Sentencing Guidelines Manual § 5H1.4. Defendant's conviction and</p>			

008290

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					sentence were affirmed.			
United States v. Smith	United States Court of Appeals for the Sixth Circuit	139 Fed. Appx. 681; 2005 U.S. App. LEXIS 14855	July 18, 2005	Defendants were convicted of vote buying and conspiracy to buy votes. The United States District Court for the Eastern District of Kentucky entered judgment on the jury verdict and sentenced defendants. Defendants appealed.	One of the defendants was a state representative who decided to run for an elected position. Defendants worked together and with others to buy votes. During defendants' trial, in addition to testimony regarding vote buying, evidence was introduced that two witnesses had been threatened. The appellate court found that defendants	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>failed to show evidence of prejudice with regard to denial of the motion for severance. Threat evidence was not excludable under Fed. R. Evid. 404(b) because it was admissible to show consciousness of guilt without any inference as to the character of defendants. Admission of witnesses' testimony was proper because each witness testified that he or she was approached by a</p>			

003292

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>member of the conspiracy and offered money for his or her vote. The remaining incarcerated defendant's challenges to his sentence had merit because individuals who sold their votes were not "victims" for the purposes of U.S. Sentencing Guidelines Manual § 3 A1.1. Furthermore, application of U.S. Sentencing Guidelines Manual § 3B1.1(b) violated</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					defendant's Sixth Amendment rights because it was based on facts that defendant did not admit or proved to the jury beyond a reasonable doubt. Defendants' convictions were affirmed. The remaining incarcerated defendant's sentence was vacated and his case was remanded for resentencing in accordance with Booker.			
Nugent v. Phelps	Court of Appeal of	816 So. 2d 349; 2002	April 23, 2002	Plaintiff incumbent	The incumbent argued that: (1)	No	N/A	No

008294

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	Louisiana, Second Circuit	La. App. LEXIS 1138		police chief sued defendant challenger, the winning candidate, to have the election nullified and a new election held based on numerous irregularities and unlawful activities by the challenger and his supporters. The challenger won the election by a margin of four votes. At the end of the incumbent's	the number of persons who were bribed for their votes by the challenger's worker was sufficient to change the outcome of the election; (2) the trial judge failed to inform potential witnesses that they could be given immunity from prosecution for bribery of voters if they came forth with truthful testimony; (3) the votes of three of his ardent supporters			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>case, the district court for the dismissed his suit. The incumbent appealed.</p>	<p>should have been counted because they were incarcerated for the sole purpose of keeping them from campaigning and voting; and (4) the district attorney, a strong supporter of the challenger, abused his power when he subpoenaed the incumbent to appear before the grand jury a week preceding the election. The appellate court held no more than two votes would be</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>subtracted, a difference that would be insufficient to change the election result or make it impossible to determine. The appellate court found the trial judge read the immunity portion of the statute to the potential witnesses. The appellate court found the arrests of the three supporters were the result of grand jury indictments, and there was no manifest error in holding that the</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					incumbent failed to prove a scheme by the district attorney. The judgment of the trial court was affirmed.			
Eason v. State	Court of Appeals of Mississippi	2005 Miss. App. LEXIS 1017	December 13, 2005	Defendant appealed a decision of circuit court convicting him of one count of conspiracy to commit voter fraud and eight counts of voter fraud.	Defendant was helping with his cousin's campaign in a run--off election for county supervisor. Together, they drove around town, picking up various people who were either at congregating spots or their homes. Defendant would drive the voters to the clerk's office	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>where they would vote by absentee ballot and defendant would give them beer or money. Defendant claimed he was entitled to a mistrial because the prosecutor advanced an impermissible "sending the message" argument. The court held that it was precluded from reviewing the entire context in which the argument arose because, while the prosecutor's closing</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>argument was in the record, the defense counsel's closing argument was not. Also, because the prosecutor's statement was incomplete due to defense counsel's objection, the court could not say that the statement made it impossible for defendant to receive a fair trial.</p> <p>Furthermore, the trial judge did not abuse his discretion when he did not allow defendant</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					to ask the individual whether she wanted to see defendant go to prison because the individual's potential bias was shown by the individual's testimony that she expected the prosecution to recommend her sentence. The court affirmed defendant's conviction.			
United States v. Turner	United States District Court for the Eastern District of Kentucky	2005 U.S. Dist. LEXIS 31709	November 30, 2005	Defendants were charged with committing mail fraud and conspiracy to commit mail fraud and	Defendants argued that recusal was mandated by 28 U.S.C.S. § 455(a) and (b)(1). The court found no merit in defendants'	No	N/A	No

008301

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>vote--buying. First defendant filed a motion to recuse. Second defendant's motion to join the motion to recuse was granted. First defendant moved to compel the Government to grant testimonial use immunity to second defendant and moved to sever defendants.</p>	<p>arguments. The fact that the judge's husband was the commissioner of the Kentucky Department of Environmental Protection, a position to which he was appointed by the Republican Governor, was not relevant. The judge's husband was neither a party nor a witness. The court further concluded that no reasonable person could find that the judge's spouse had any direct</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>interest in the instant action. As for issue of money donated by the judge's husband to Republican opponents of first defendant, the court could not discern any reason why such facts warranted recusal. First defendant asserted that second defendant should have been granted use immunity based on a belief that second defendant would testify that first defendant did</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>not agree to, possess knowledge of, engage in, or otherwise participate in any of the illegal activity alleged in the indictment. The court found the summary of expected testimony to be too general to grant immunity. In addition, it was far from clear whether the court had the power to grant testimonial use immunity to second defendant. Defendants' motion to recuse</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					was denied. First defendant's motions to compel and to sever were denied.			

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Ways v. Shively	Supreme Court of Nebraska	264 Neb. 250; 646 N.W.2d 621; 2002 Neb. LEXIS 158	July 5, 2002	Appellant felon filed a writ of mandamus, which sought to compel appellee Election Commissioner of Lancaster County, Nebraska, to permit him to register to vote. The District Court for Lancaster County denied the felon's petition for writ of mandamus and dismissed the petition. The felon appealed.	The felon was discharged from the Nebraska State Penitentiary in June 1998 after completing his sentences for the crimes of pandering, carrying a concealed weapon and attempting to possess a controlled substance. The commissioner asserted that as a result of the felon's conviction, the sentence for which had neither been reversed nor annulled, he had lost his right to vote. The commissioner contended that the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>only method by which the felon's right to vote could be restored was through a warrant of discharge issued by the Nebraska Board of Pardons--  -a warrant of discharge had not been issued. The supreme court ruled that the certificate of discharge issued to the felon upon his release did not restore his right to vote. The supreme court ruled that as a matter of law, the specific right to vote was not restored to the felon upon his discharge from incarceration at the</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					completion of his sentences. The judgment was affirmed.			
Fischer v. Governor	Supreme Court of New Hampshire	145 N.H. 28; 749 A.2d 321; 2000 N.H. LEXIS 16	March 24, 2000	Appellant State of New Hampshire challenged a ruling of the superior court that the felon disenfranchisement statutes violate N.H. Const. pt. I, Art. 11.	Appellee was incarcerated at the New Hampshire State Prison on felony convictions. When he requested an absentee ballot to vote from a city clerk, the request was denied. The clerk sent him a copy of N.H. Rev. Stat. Ann. § 607(A)(2) (1986), which prohibits a felon from voting "from the time of his sentence until his final discharge." The trial court declared the disenfranchisement	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>statutes unconstitutional and ordered local election officials to allow the plaintiff to vote. Appellant State of New Hampshire challenged this ruling. The central issue was whether the felon disenfranchisement statutes violated N.H. Const. pt. I, art. 11. After a review of the article, its constitutional history, and legislation pertinent to the right of felons to vote, the court concluded that the legislature retained the authority under</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>the article to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority, and reversed.</p> <p>Judgment reversed because the court concluded that the legislature retained its authority under the New Hampshire Constitution to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative</p>			

008310

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					authority.			
Mixon v. Commonwealth	Commonwealth Court of Pennsylvania	759 A.2d 442; 2000 Pa. Commw. LEXIS 534	September 18, 2000	Respondents filed objections to petitioners' complaint seeking declaratory relief as to the unconstitutionality of the Pennsylvania Election Code, 25 Pa. Cons. Stat. §§ 2600 -- 3591, and the Pennsylvania Voter Registration Act, 25 Pa. Cons. Stat. §§ 961.101--961.5109, regarding felon voting rights.	Petitioner convicted felons were presently or had formerly been confined in state prison. Petitioner elector was currently registered to vote in respondent state. Petitioners filed a complaint against respondent state seeking declaratory relief challenging as unconstitutional, state election and voting laws that excluded confined felons from the definition of qualified absentee electors and that barred a felon who had been released	No	N/A	No

008311

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>from a penal institution for less than five years from registering to vote. Respondents filed objections to petitioners' complaint. The court sustained respondents' objection that incarcerated felons were not unconstitutionally deprived of qualified absentee elector status because respondent state had broad power to determine the conditions under which suffrage could be exercised. However, petitioner elector had no standing</p>			

008312

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					and the court overruled objection as to deprivation of ex-felon voting rights. The court sustained respondents' objection since incarcerated felons were not unconstitutionally deprived of qualified absentee elector status and petitioner elector had no standing, but objection that ex-incarcerated felons' voting rights were deprived was overruled since status penalized them.			
NAACP Philadelphia	United States District Court	2000 U.S.	August 14, 2000	Plaintiffs moved for a preliminary	Plaintiffs, ex-felon,	No	N/A	No

008313

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Branch v. Ridge	for the Eastern District of Pennsylvania	Dist. LEXIS 11520		injunction, which the parties agreed to consolidate with the merits determination for a permanent injunction, in plaintiffs' civil rights suit contending that the Pennsylvania Voter Registration Act, offended the Equal Protection Clause of U.S. Const. amend. XIV.	unincorporated association, and others, filed a civil rights suit against defendant state and local officials, contending that the Pennsylvania Voter Registration Act, violated the Equal Protection Clause by prohibiting some ex--felons from voting during the five year period following their release from prison, while permitting other ex--felons to vote. Plaintiffs conceded that one plaintiff lacked standing, and the court assumed the remaining			

008314

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>plaintiffs had standing. The court found that all that all three of the special circumstances necessary to invoke the Pullman doctrine were present in the case, but found that abstention was not appropriate under the circumstances since it did not agree with plaintiffs' contention that the time constraints caused by the upcoming election meant that the option of pursuing their claims in state court did not offer plaintiffs an</p>			

008315

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					adequate remedy. Plaintiff's motion for permanent injunction denied; the court abstained from deciding merits of plaintiffs' claims under the Pullman doctrine because all three of the special circumstances necessary to invoke the doctrine were present in the case; all further proceedings stayed until further order.			
Farrakhan v. Locke	United States District Court for the Eastern District of Washington	2000 U.S. Dist. LEXIS 22212	December 1, 2000	Plaintiffs, convicted felons who were also racial minorities, sued defendants for alleged violations of the Voting Rights Act. The parties filed cross--	The felons alleged that Washington's felon disenfranchisement and restoration of civil rights schemes, premised upon Wash. Const. art. VI § 3,	No	N/A	No

008316

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>motions for summary judgment.</p>	<p>resulted in the denial of the right to vote to racial minorities in violation of the VRA. They argued that race bias in, or the discriminatory effect of, the criminal justice system resulted in a disproportionate number of racial minorities being disenfranchised following felony convictions. The court concluded that Washington's felon disenfranchisement provision disenfranchised a disproportionate number of minorities; as a result, minorities</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>were under--represented in Washington's political process. The Rooker--Feldman doctrine barred the felons from bringing any as--applied challenges, and even if it did not bar such claims, there was no evidence that the felons' individual convictions were born of discrimination in the criminal justice system. However, the felons' facial challenge also failed. The remedy they sought would create a new constitutional problem, allowing</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					disenfranchisement only of white felons. Further, the felons did not establish a causal connection between the disenfranchisement provision and the prohibited result. The court granted defendants' motion and denied the felons' motion for summary judgment.			
Johnson v. Bush	United States District Court for the Southern District of Florida	214 F. Supp. 2d 1333; 2002 U.S. Dist. LEXIS 14782	July 18, 2002	Plaintiff felons sued defendant state officials for alleged violations of their constitutional rights. The officials moved and the felons cross-moved for summary judgment.	The felons had all successfully completed their terms of incarceration and/or probation, but their civil rights to register and vote had not been restored. They alleged that	No	N/A	No

008319

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>Florida's disenfranchisement law violated their rights under First, Fourteenth, Fifteenth, and Twenty--Fourth Amendments to the United States Constitution, as well as § 1983 and §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on minorities, the cause was racially neutral. Finally, requiring the felons to pay their victim restitution before their rights would be restored did not constitute an improper poll tax or wealth</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					qualification. The court granted the officials' motion for summary judgment and implicitly denied the felons' motion. Thus, the court dismissed the lawsuit with prejudice.			
King v. City of Boston	United States District Court for the District of Massachusetts	2004 U.S. Dist. LEXIS 8421	May 13, 2004	Plaintiff inmate filed a motion for summary judgment in his action challenging the constitutionality of Mass. Gen. Laws ch. 51, § 1, which excluded incarcerated felons from voting while they were imprisoned.	The inmate was convicted of a felony and incarcerated. His application for an absentee ballot was denied on the ground that he was not qualified to register and vote under Mass. Gen. Laws ch. 51, § 1. The inmate argued that the statute was unconstitutional as it applied to him	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>because it amounted to additional punishment for crimes he committed before the statute's enactment and thus violated his due process rights and the prohibition against ex post facto laws and bills of attainder. The court held that the statute was regulatory and not punitive because rational choices were implicated in the statute's disenfranchisement of persons under guardianship, persons disqualified because of corrupt</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>elections practices, persons under 18 years of age, as well as incarcerated felons. Specifically, incarcerated felons were disqualified during the period of their imprisonment when it would be difficult to identify their address and ensure the accuracy of their ballots. Therefore, the court concluded that Mass. Gen. Laws ch. 51, § 1 did not violate the inmate's constitutional rights. The court found the statute at issue to be</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					constitutional and denied the inmate's motion for summary judgment.			
Hayden v. Pataki	United States District Court for the Southern District of New York	2004 U.S. Dist. LEXIS 10863	June 14, 2004	In a 42 U.S.C.S. § 1983 action filed by plaintiffs, black and latino convicted felons, alleging that N.Y. Const. art. II, § 3 and N.Y. Elec. Law § 5--106(2) were unconstitutional, defendants, New York's governor and the chairperson of the board of elections, moved for judgment on the pleadings under Fed. R. Civ. P. 12(c).	The felons sued defendants, alleging that N.Y. Const. art. II, § 3 and N.Y. Elec. Law § 5--106(2) unlawfully denied suffrage to incarcerated and paroled felons on account of their race. The court granted defendants' motion for judgment on the pleadings on the felons' claims under U.S. Const. amend. XIV, XV because their factual allegations were insufficient	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>from which to draw an inference that the challenged provisions or their predecessors were enacted with discriminatory intent, and because denying suffrage to those who received more severe punishments, such as a term of incarceration, and not to those who received a lesser punishment, such as probation, was not arbitrary. The felons' claims under 42 U.S.C.S. § 1973 were dismissed because § 1973 could not be used to challenge the</p>			

009326

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>legality of N.Y. Elec. Law § 5--106. Defendants' motion was granted as to the felons' claims under 42 U.S.C.S. § 1971 because § 1971 did not provide for a private right of action, and because the felons were not "otherwise qualified to vote." The court also granted defendants' motion on the felons' U.S. Const. amend. I claim because it did not guarantee a felon the right to vote. Defendants' motion for judgment on the</p>			

008327

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					pleadings was granted in the felons' § 1983 action.			
Farrakhan v. Washington	United States Court for Appeals for the Ninth Circuit	338 F.3d 1009; 2003 U.S. App. LEXIS 14810	July 25, 2003	Plaintiff inmates sued defendant state officials, claiming that Washington state's felon disenfranchisement scheme constitutes improper race--based vote denial in violation of § 2 of the Voting Rights Act. The United States District Court for the Eastern District of Washington granted of summary judgment dismissing the inmates' claims. The inmates appealed.	Upon conviction of infamous crimes in the state, (that is, crimes punishable by death or imprisonment in a state correctional facility), the inmates were disenfranchised. The inmates claimed that the disenfranchisement scheme violated § 2 because the criminal justice system was biased against minorities, causing a disproportionate minority representation	No	N/A	No

008328

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>among those being disenfranchised. The appellate court held, inter alia, that the district court erred in failing to consider evidence of racial bias in the state's criminal justice system in determining whether the state's felon disenfranchisement laws resulted in denial of the right to vote on account of race. Instead of applying its novel "by itself" causation standard, the district court should have applied a totality of the circumstances test that included</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>analysis of the inmates' compelling evidence of racial bias in Washington's criminal justice system. However, the inmates lacked standing to challenge the restoration scheme because they presented no evidence of their eligibility, much less even allege that they were eligible for restoration, and had not attempted to have their civil rights restored. The court affirmed as to the eligibility claim but reversed and remanded for</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					further proceedings to the bias in the criminal justice system claim.			
In re Phillips	Supreme Court of Virginia	265 Va. 81; 574 S.E.2d 270; 2003 Va. LEXIS 10	January 10, 2003	The circuit court, entered a judgment in which it declined to consider petitioner former felon's petition for approval of her request to seek restoration of her eligibility to register to vote. The former felon appealed.	More than five years earlier, the former felon was convicted of the felony of making a false written statement incident to a firearm purchase. She then petitioned the trial court asking it to approve her request to seek restoration of her eligibility to register to vote. Her request was based on Va. Code Ann. § 53.1--231.2, allowing persons convicted of non--violent	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>felonies to petition a trial court for approval of a request to seek restoration of voting rights. The trial court declined. It found that Va. Code Ann. § 53.1--231.2 violated constitutional separation of powers principles since it gave the trial court powers belonging to the governor. It also found that even if the statute was constitutional, it was fundamentally flawed for not providing notice to respondent Commonwealth regarding a</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>petition. After the petition was denied, the state supreme court found the separation of powers principles were not violated since the statute only allowed the trial court to determine if an applicant met the requirements to have voting eligibility restored. It also found the statute was not fundamentally flawed since the Commonwealth was not an interested party entitled to notice. OUTCOME: The judgment was reversed and the</p>			

008333

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					case was remanded for further proceedings.			
Howard v. Gilmore	United States Court of Appeals for the Fourth Circuit	2000 U.S. App. LEXIS 2680	February 23, 2000	Appellant challenged the United States District Court for the Eastern District of Virginia's order summarily dismissing his complaint, related to his inability to vote as a convicted felon, for failure to state a claim upon which relief can be granted.	Appellant was disenfranchised by the Commonwealth of Virginia following his felony conviction. He challenged that decision by suing the Commonwealth under the U.S. Const. amends. I, XIV, XV, XIX, and XXIV, and under the Voting Rights Act of 1965. The lower court summarily dismissed his complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim.	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>Appellant challenged. The court found U.S. Const. amend. I created no private right of action for seeking reinstatement of previously canceled voting rights, U.S. Const. amends. XIV, XV, XIX, and the VRA required either gender or race discrimination, neither of which appellant asserted, and the U.S. Const. amend. XXIV, while prohibiting the imposition of poll taxes, did not prohibit the imposition of a \$10 fee for</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					reinstatement of appellant's civil rights, including the right to vote. Consequently, appellant failed to state a claim. The court affirmed, finding that none of the constitutional provisions appellant relied on were properly pled because appellant failed to assert that either his race or gender were involved in the decisions to deny him the vote. Conditioning reestablishment of his civil rights on a \$10 fee was not unconstitutional.			
Johnson v.	United States	353 F.3d	December	Plaintiffs, ex--felon	The citizens	No	N/A	No

008336

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Governor of Fla.	Court of Appeals for the Eleventh Circuit	1287; 2003 U.S. App. LEXIS 25859	19, 2003	citizens of Florida, on their own right and on behalf of others, sought review of a decision of the United States District Court for the Southern District of Florida, which granted summary judgment to defendants, members of the Florida Clemency Board in their official capacity. The citizens challenged the validity of the Florida felon disenfranchisement laws.	alleged that Fla. Const. art. VI, § 4 (1968) was racially discriminatory and violated their constitutional rights. The citizens also alleged violations of the Voting Rights Act. The court initially examined the history of Fla. Const. art. VI, § 4 (1968) and determined that the citizens had presented evidence that historically the disenfranchisement provisions were motivated by a discriminatory animus. The citizens had met their initial burden of showing that			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>race was a substantial motivating factor. The state was then required to show that the current disenfranchisement provisions would have been enacted absent the impermissible discriminatory intent. Because the state had not met its burden, summary judgment should not have been granted. The court found that the claim under the Voting Rights Act, also needed to be remanded for further proceedings. Under a totality of the circumstances,</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>the district court needed to analyze whether intentional racial discrimination was behind the Florida disenfranchisement provisions, in violation of the Voting Rights Act. The court affirmed the district court's decision to grant summary judgment on the citizens' poll tax claim. The court reversed the district court's decision to grant summary judgment to the Board on the claims under the equal protection clause and for violation of federal voting laws and remanded the</p>			

008339

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					matter to the district court for further proceedings.			
State v. Black	Court of Appeals of Tennessee	2002 Tenn. App. LEXIS 696	September 26, 2002	In 1997, petitioner was convicted of forgery and sentenced to the penitentiary for two years, but was immediately placed on probation. He subsequently petitioned the circuit court for restoration of citizenship. The trial court restored his citizenship rights. The State appealed. The appellate court issued its opinion, but granted the State's motions to supplement the record and to	The appellate court's original opinion found that petitioner had not lost his right to hold public office because Tennessee law removed that right only from convicted felons who were "sentenced to the penitentiary." The trial court's amended judgment made it clear that petitioner was in fact sentenced to the penitentiary. Based upon this correction to the record, the appellate court	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				rehear its decision.	found that petitioner's sentence to the penitentiary resulted in the forfeiture of his right to seek and hold public office by operation of Tenn. Code Ann. § 40-20--114. However, the appellate court concluded that this new information did not requires a different outcome on the merits of the issue of restoration of his citizenship rights, including the right to seek and hold public office. The appellate court adhered to its conclusion that the			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>statutory presumption in favor of the restoration was not overcome by a showing, by a preponderance of the evidence, of good cause to deny the petition for restoration of citizenship rights. The appellate court affirmed the restoration of petitioner's right to vote and reversed the denial of his right to seek and hold public office. His full rights of citizenship were restored.</p>			
Johnson v. Governor of Fla.	United States Court of Appeals for the Eleventh	405 F.3d 1214; 2005 U.S.	April 12, 2005	Plaintiff individuals sued defendant members of Florida	The individuals argued that the racial animus motivating the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	Circuit	App. LEXIS 5945		Clemency Board, arguing that Florida's felon disenfranchisement law, Fla. Const. art. VI, § 4 (1968), violated the Equal Protection Clause and 42 U.S.C.S. § 1973. The United States District Court for the Southern District of Florida granted the members summary judgment. A divided appellate panel reversed. The panel opinion was vacated and a rehearing en banc was granted.	adoption of Florida's disenfranchisement laws in 1868 remained legally operative despite the reenactment of Fla. Const. art. VI, § 4 in 1968. The subsequent reenactment eliminated any discriminatory taint from the law as originally enacted because the provision narrowed the class of disenfranchised individuals and was amended through a deliberative process. Moreover, there was no allegation of racial discrimination at			

008343

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>the time of the reenactment. Thus, the disenfranchisement provision was not a violation of the Equal Protection Clause and the district court properly granted the members summary judgment on that claim. The argument that 42 U.S.C.S. § 1973 applied to Florida's disenfranchisement provision was rejected because it raised grave constitutional concerns, i.e., prohibiting a practice that the Fourteenth Amendment permitted the state</p>			

008344

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>to maintain. In addition, the legislative history indicated that Congress never intended the Voting Rights Act to reach felon disenfranchisement provisions. Thus, the district court properly granted the members summary judgment on the Voting Rights Act claim. The motion for summary judgment in favor of the members was granted.</p>			

008345

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Jenkins v. Williamson-Butler	Court of Appeal of Louisiana, Fourth Circuit	883 So. 2d 537; 2004 La. App. LEXIS 2433	October 8, 2004	Petitioner, a candidate for a parish juvenile court judgeship, failed to qualify for a runoff election. She filed suit against defendant, the clerk of criminal court for the parish seeking a new election, based on grounds of substantial irregularities. The district court ruled in favor of the candidate	The trial court found that the voting machines were not put into service until two, four, and, in many instances, eight hours after the statutorily mandated starting hour which constituted serious irregularities so as to deprive voters from freely expressing their will. It was impossible to determine the number of voters that were affected by the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				and ordered the holding of a restricted citywide election. The clerk appealed.	late start up or late arrival of voting machines, making it impossible to determine the result. The appellate court agreed that the irregularities were so serious that the trial court's voiding the election and calling a new election was the proper remedy. Judgment affirmed.			
Hester v. McKeithen	Court of Appeal of Louisiana, Fourth Circuit	882 So. 2d 1291; 2004 La. App. LEXIS 2429	October 8, 2004	Petitioner, school board candidate, filed suit against defendants, Louisiana	The candidate argued that the trial court erred in not setting aside the election, even after	No	N/A	No

008347

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				Secretary of State and district court clerk, contesting the school board election results. The trial court rendered judgment against the candidate, finding no basis for the election to be declared void. The candidate appealed.	acknowledging in its reasons for judgment numerous irregularities with the election process. The appellate court ruled that had the irregularities not occurred the outcome would have been exactly the same. Judgment affirmed.			
In re Election Contest of Democratic Primary Election	Supreme Court of Ohio	88 Ohio St. 3d 258; 2000 Ohio 325; 725 N.E.2d 271; 2000 Ohio	March 29, 2000	Appellant sought review of the judgment of the court of common	Appellant contended that an election irregularity occurred when the board failed	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Held May 4, 1999		LEXIS 607		pleas denying his election contest challenging an opponent's nomination for election irregularity.	to meet and act by majority vote on another candidate's withdrawal, instead permitting its employees to make decisions. Appellant had to prove by clear and convincing evidence that one or more election irregularities occurred and it affected enough votes to change or make uncertain the result of the election. Judgment affirmed. The appellant did			

008349

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					not establish election irregularity by the board's actions on the candidate's withdrawal, the board acted diligently and exercised its discretion in keeping the candidate's name on the ballot and notifying electors of his withdrawal.			
In re Election Contest As to Watertown Special Referendum Election	Supreme Court of South Dakota	2001 SD 62; 628 N.W.2d 336; 2001 S.D. LEXIS 66	May 23, 2001	Appellant sought review of the judgment of the circuit court declaring a local election valid and	The burden was on appellants to show not only that voting irregularities occurred, but also show that those irregularities	No	N/A	No

003350

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				declining to order a new election.	were so egregious that the will of the voters was suppressed. Appellants did not meet their burden, as mere inconvenience or delay in voting was not enough to overturn the election. Judgment affirmed.			
Jones v. Jessup	Supreme Court of Georgia	279 Ga. 531; 615 S.E.2d 529; 2005 Ga. LEXIS 447	June 30, 2005	Defendant incumbent appealed a judgment by the trial court that invalidated an election for the position of sheriff and	After the candidate lost the sheriff's election to the incumbent, he contested the election, asserting that there were sufficient irregularities to	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>ordered that a new election be held based on plaintiff candidate's election contest.</p>	<p>place in doubt the election results. The state supreme court held that the candidate failed to prove substantial error in the votes cast by the witnesses adduced at the hearing who voted at the election. Although the candidate's evidence reflected the presence of some irregularities, not every irregularity invalidated the vote. The absentee ballots</p>			

008352

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>were only to be rejected where the electors failed to furnish required information. Because the ballots cast by the witnesses substantially complied with all of the essential requirements of the form, the trial court erred by finding that they should not have been considered. The candidate failed to establish substantial error in the votes. Judgment reversed.</p>			

008353

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Toliver v. Thompson	Supreme Court of Oklahoma	2000 OK 98; 17 P.3d 464; 2000 Okla. LEXIS 101	December 21, 2000	Petitioner challenged an order of the district court denying his motion to compel a recount of votes from an election.	The court held a recount of votes cast in an election could occur when the ballots had been preserved in the manner prescribed by statute. The trial court noted when the ballots had not been preserved in such a manner, no recount would be conducted. The court further noted a petition alleging irregularities in an election could be based upon an allegation that	No	N/A	No

008354

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>it was impossible to determine with mathematical certainty which candidate was entitled to be issued a certificate of election. The Oklahoma supreme court held petitioner failed to show that the actual votes counted in the election were tainted with irregularity, and similarly failed to show a statutory right to a new election based upon a failure to preserve the</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					ballots. Judgment affirmed.			
Adkins v. Huckabay	Supreme Court of Louisiana	755 So. 2d 206; 2000 La. LEXIS 504	February 25, 2000	Plaintiff candidate challenged judgment of court of appeal, second circuit, which reversed the lower court's judgment and declared defendant candidate winner of a runoff election for sheriff.	The issue presented for the appellate court's determination was whether the absentee voting irregularities plaintiff candidate complained of rendered it impossible to determine the outcome of the election for sheriff. The Louisiana supreme court concluded that the lower court had applied the correct	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>standard, substantial compliance, to the election irregularities, but had erred in its application by concluding that the contested absentee ballots substantially complied with the statutory requirements. The supreme court found that in applying substantial compliance to five of the ballot irregularities, the trial court correctly vacated the general election</p>			

008357

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>and set it aside because those absentee ballots should have been disqualified. Because of the constitutional guarantee to secrecy of the ballot and the fact that the margin of victory in the runoff election was three votes, it was impossible to determine the result of the runoff election. Thus, the supreme court ordered a new general election.</p> <p>Judgment of the</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					court of appeals reversed.			
In re Gray--Sadler	Supreme Court of New Jersey	164 N.J. 468; 753 A.2d 1101; 2000 N.J. LEXIS 668	June 30, 2000	Appellants, write--in candidates for the offices of mayor and borough council, appealed the judgment of the superior court, appellate division reversing the trial court's decision to set aside the election results for those offices due to irregularities related to the write--in	The New Jersey supreme court held that the votes that were rejected by election officials did not result from the voters' own errors, but from the election officials' noncompliance with statutory requirements. In other words, the voters were provided with patently inadequate instructions and defective voting machines. Moreover,	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				instructions and defective voting machines.	appellants met the statutory requirement for successfully contesting the election results by showing that enough qualified voters were denied the right to cast write--in votes as to affect the outcome of the election. Judgment reversed and the state trial court's decision reinstated.			
Goodwin v. St. Thomas-St. John Bd. of Elections	Territorial Court of the Virgin Islands	43 V.I. 89; 2000 V.I. LEXIS 15	December 13, 2000	Plaintiff political candidate alleged that certain general election	Plaintiff alleged that defendants counted unlawful absentee ballots that lacked postmarks,	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the</p>	<p>were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The territorial court held that plaintiff was not entitled to relief since he failed to</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				election results tabulated without such ballots.	establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					proper.			
Johnson v. Lopez--Torres	Supreme Court of New York, Appellate Division, Second Department	2005 NY Slip Op 7825; 2005 N.Y. App. Div. LEXIS 11276	October 21, 2005	In a proceeding for a re--canvass of certain affidavit ballots cast in the Democratic Party primary election for the public office of surrogate, the supreme court denied appellant candidate's petition requesting the same and declared appellee opponent the winner of	Finding that the candidate had waived her right to challenge the affidavit ballots and had not sufficiently established her claim of irregularities to warrant a hearing, the trial court denied her petition and declared the opponent the winner of the primary. However, on appeal, the appellate division held that no waiver occurred.			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				that election.	Moreover, because hundreds of apparently otherwise eligible voters failed to fill in their party enrollment and/or prior address, it could be reasonably inferred that these voters were misled thereby into omitting the required information. Finally, the candidate failed to make a sufficient showing of voting irregularities in			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					the machine vote to require a hearing on that issue. Judgment reversed.			
Ex parte Avery	Supreme Court of Alabama	843 So. 2d 137; 2002 Ala. LEXIS 239	August 23, 2002	Petitioner probate judge moved for a writ of mandamus directing a circuit judge to vacate his order requiring the probate judge to transfer all election materials to the circuit clerk and holding him in contempt for failing to do so. The	The issuance of a writ of mandamus was appropriate. The district attorney had a right to the election materials because he was conducting a criminal investigation of the last election. Furthermore, the circuit judge had no jurisdiction or authority to issue an order	No	N/A	No

008366

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				probate judge also requested that said material be turned over to the district attorney, pursuant to an outstanding subpoena.	directing that the election materials be given to the clerk. The district attorney received several claims of irregularities in the election, some of which could constitute voter fraud. Petition granted and writ issued.			
Harpole v. Kemper County Democratic Exec. Comm.	Supreme Court of Mississippi	908 So. 2d 129; 2005 Miss. LEXIS 463	August 4, 2005	After his loss in a primary election for the office of sheriff, appellant candidate sued appellees, a political party's executive	The candidate alleged the sheriff had his deputies transport prisoners to the polls, felons voted, and the absentee voter law was breached. The committee	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>committee and the incumbent sheriff, alleging irregularities in the election. The circuit court dismissed the candidate's petition for judicial review with prejudice. He appealed.</p>	<p>agreed with the last contention and threw out the absentee ballots (seven percent of votes cast); after a recount, the sheriff still prevailed. The trial court dismissed the case due to alleged defects in the petition; in the alternative, it held that the candidate failed to sufficiently allege violations and irregularities in the election. The supreme court held that the petition was</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>not defective. Disqualification of seven percent of the total votes was not substantial enough so as to cause the will of the voters to be impossible to discern and to warrant a special election, and there were not enough illegal votes cast for the sheriff to change the outcome. A blanket allegation implying that the sheriff had deputies transport prisoners to the</p>			

006369

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					polls was not supported by credible evidence. Judgment affirmed.			

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Am. Ass'n of People with Disabilities v. Shelley	United States District Court for the Central District of California	324 F. Supp. 2d 1120; 2004 U.S. Dist. LEXIS 12587	July 6, 2004	Plaintiffs, disabled voters and organizations representing those voters, sought to enjoin the directives of defendant California Secretary of State, which decertified and withdrew approval of the use of certain direct recording electronic voting systems. One voter applied for a temporary restraining order, or, in	The voters urged the invalidation of the Secretary's directives because, allegedly, their effect was to deprive the voters of the opportunity to vote using touch--screen technology. Although it was not disputed that some disabled persons would be unable to vote independently and in private without the use of DREs, it was clear that they would not be	No	N/A	No

003371

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the alternative, a preliminary injunction.	deprived of their fundamental right to vote. The Americans with Disabilities Act did not require accommodation that would enable disabled persons to vote in a manner that was comparable in every way with the voting rights enjoyed by persons without disabilities. Rather, it mandated that voting programs be made accessible.			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>Defendant's decision to suspend the use of DREs pending improvement in their reliability and security of the devices was a rational one, designed to protect the voting rights of the state's citizens. The evidence did not support the conclusion that the elimination of the DREs would have a discriminatory effect on the visually or manually impaired. Thus, the voters</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					showed little likelihood of success on the merits. The individual's request for a temporary restraining order, or, in the alternative, a preliminary injunction, was denied.			
Am. Ass'n of People with Disabilities v. Hood	United States District Court for the Middle District of Florida	310 F. Supp. 2d 1226; 2004 U.S. Dist. LEXIS 5615	March 24, 2004	Plaintiffs, disabled voters, and a national organization, sued defendants, the Florida Secretary of State, the Director of the Division of Elections of the Florida	The voters were visually or manually impaired. The optical scan voting system purchased by the county at issue was not readily accessible to visually or manually impaired	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>Department of State, and a county supervisor of elections, under Title II of the Americans With Disabilities Act and Section 504 of the Rehabilitation Act of 1973. Summary judgment was granted for the Secretary and the Director as to visually impaired voters.</p>	<p>voters. The voters were unable to vote using the system without third--party assistance. If it was feasible for the county to purchase a readily accessible system, then the voters' rights under the ADA and the RA were violated. The court found that the manually impaired voter's rights were violated. To the extent "jelly switches" and "sip and puff" devices</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>needed to be attached to a touch screen machine for it to be accessible, it was not feasible for the supervisor to provide such a system, since no such system had been certified at the time of the county's purchase. 28 C.F.R. § 35.160 did not require that visually or manually impaired voters be able to vote in the same or similar manner as non--</p>			

008376

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>disabled voters. Visually and manually impaired voters had to be afforded an equal opportunity to participate in and enjoy the benefits of voting. The voters' "generic" discrimination claim was coterminous with their claim under 28 C.F.R. § 35.151. A declaratory judgment was entered against the supervisor to the extent another voting</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>system would have permitted unassisted voting. The supervisor was directed to have some voting machines permitting visually impaired voters to vote alone. The supervisor was directed to procure another system if the county's system was not certified and/or did not permit mouth stick voting. The Secretary and Director were granted judgment against the</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					voters.			
Troiano v. Lepore	United States District Court for the Southern District of Florida	2003 U.S. Dist. LEXIS 25850	November 3, 2003	Plaintiffs, disabled voters, sued defendant a state county supervisor of elections alleging discrimination pursuant to the Americans With Disability Act, 42 U.S.C.S. § 12132 et seq., § 504 of the Rehabilitation Act, 29 U.S.C.S. § 794 et seq., and declaratory relief for the discrimination. Both sides moved for summary	The complaint alleged that after the 2000 elections Palm Beach County purchased a certain number of sophisticated voting machines called the "Sequoia." According to the voters, even though such accessible machines were available, the supervisor decided not to place such accessible machines in each precinct because it would slow	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				judgment.	things down too much. The court found that the voters lacked standing because they failed to show that they had suffered an injury in fact. The voters also failed to show a likely threat of a future injury because there was no reasonable grounds to believe that the audio components of the voting machines would not be provided in the future. The voters also			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>failed to state an injury that could be redressed by a favorable decision, because the supervisor was already using the Sequoia machines and had already trained poll workers on the use of the machines. Finally, the action was moot because the Sequoia machines had been provided and there was no reasonable expectation that the machines would not have</p>			

008381

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					audio components available in the future. The supervisor's motion for summary judgment was granted. The voters' motion for summary judgment was denied.			
Troiano v. Supervisor of Elections	United States Court of Appeals for the Eleventh Circuit	382 F.3d 1276; 2004 U.S. App. LEXIS 18497	September 1, 2004	Plaintiff visually impaired registered voters sued defendant county election supervisor, alleging that the failure to make available audio components in	The district court granted the election supervisor summary judgment on the grounds that the voters did not have standing to assert their claims and the claims were moot. The	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>voting booths to assist persons who were blind or visually impaired violated state and federal law. The United States District Court for the Southern District of Florida entered summary judgment in favor of the election supervisor. The voters appealed.</p>	<p>appellate court agreed that the case was moot because the election supervisor had furnished the requested audio components and those components were to be available in all of the county's voting precincts in upcoming elections. Specifically, the election supervisor had ceased the allegedly illegal practice of limiting access to the audio</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>components prior to receiving notice of the litigation. Moreover, since making the decision to use audio components in every election, the election supervisor had consistently followed that policy and taken actions to implement it even prior to the litigation. Thus, the appellate court could discern no hint that she had any intention of removing the</p>			

008384

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					accessible voting machines in the future. Therefore, the voters' claims were moot, and the district court's dismissal was affirmed for lack of subject matter jurisdiction. The decision was affirmed.			
Am. Ass'n of People with Disabilities v. Smith	United States District Court for the Middle District of Florida	227 F. Supp. 2d 1276; 2002 U.S. Dist. LEXIS 21373	October 16, 2002	Plaintiff organization of people with disabilities and certain visually and manually impaired voters filed an action against defendant state	Individual plaintiffs were unable to vote unassisted with the equipment currently used in the county or the equipment the county had recently purchased. In	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>and local election officials and members of a city council, claiming violation of the Americans with Disabilities Act, 42 U.S.C.S. § 12101 et seq., and the Rehabilitation Act of 1973, and Fla. Const. art. VI, § 1. Defendants filed motions to dismiss.</p>	<p>order to vote, the impaired individuals relied on the assistance of third parties. The court held that it could not say that plaintiffs would be unable to prove any state of facts that would satisfy the ripeness and standing requirements. The issue of whether several Florida statutory sections were violative of the Florida Constitution were so intertwined</p>			

008386

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>with the federal claims that to decline supplemental jurisdiction be an abuse of discretion. Those statutes which provided for assistance in voting did not violate Fla. Const. art. VI, § 1. Because plaintiffs may be able to prove that visually and manually impaired voters were being denied meaningful access to the service, program, or activity, the</p>			

008387

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>court could not say with certainty that they would not be entitled to relief under any state of facts which could be proved in support of their claims. Defendant council members were entitled to absolute legislative immunity. The state officials' motion to dismiss was granted in part such that the counts were dismissed with prejudice to the extent plaintiffs</p>			

008388

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>asserted that they had been excluded from or denied the benefits of a program of direct and secret voting and in part was dismissed with leave to amend. The local officials motion to dismiss was granted in part such that all counts against the city council members were dismissed.</p>			

**Deliberative Process  
Privilege**

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
United States v. Rogelio Mejorada-Lopez	Alaska	05-CR-074	December 5, 2005	Mejorada-Lopez, a Mexican citizen, completed several voter registration applications to register to vote in Alaska and voted in the 2000, 2002, and 2004 general elections. He was charged with three counts of voting by a non-citizen in violation of 18 U.S.C. section 611 and pled guilty. Mejorada-Lopez was sentenced to probation for	No	N/A	No

008390

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				one year.			
United States v. Shah	Colorado	1:04-CR-00458	March 1, 2005	Shah was indicted on two counts of providing false information concerning United States citizenship in order to register to vote in violation of 18 U.S.C. section 911 and 1015(f). Shah was convicted on both counts.	No	N/A	No
United States v. Mohsin Ali	Northern Florida	4:05-CR-47	January 17, 2006	A misdemeanor was filed against Ali charging him with voting by a non-citizen of 18 U.S.C. section 611. Trial was set for January 17, 2006	No	N/A	Yes-need information on the outcome of the trial.

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
United States v. Chaudhary	Northern Florida	4:04-CR-00059	May 18, 2005	Chaudhary was indicted for misuse of a social security number in violation of 42 U.S.C. section 408 and for making a false claim of United States citizenship on a 2002 driver's license application in violation of 18 U.S.C. section 911. A superceding indictment was returned, charging Chaudhary with falsely claiming United States citizenship on a driver's license	No	N/A	No

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				application and on the accompanying voter registration application. He was convicted of the false citizenship claim on his voter registration application.			
United States v. Velasquez	Southern Florida	1:03-CR-20233	September 9, 2003	Velasquez, a former 1996 and 1998 candidate for the Florida legislature, was indicted on charges of misrepresenting United States citizenship in connection with voting and for making false statements	No	N/A	No

008393

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				to the Immigration and Naturalization Service, in violation of 18 U.S.C. section 911, 1015(f) and 1001. Velasquez was convicted on two counts of making false statements on his naturalization application to the INS concerning his voting history.			
United States v. McKenzie; United States v. Francois; United States v. Exavier; United States v. Lloyd Palmer; United	Southern Florida	0:04-CR-60160; 1:04-CR-20488; 0:04-CR-60161; 0:04-CR-60159;	July 15, 2004	Fifteen non-citizens were charged with voting in various elections beginning in 1998 in	No	N/A	No

008394

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
States v. Velrine Palmer; United states v. Shivdayal; United States v. Rickman; United States v. Knight; United States v. Sweeting; United States v. Lubin; United States v. Bennett; United States v. O'Neil; United States v. Torres-Perez; United States v. Phillip; United States v. Bain Knight		0:04-CR-60162; 0:04-CR-60164; 1:04-CR-20491; 1:04-CR-20490; 1:04-CR-20489; 0:04-CR-60163; 1:04-CR-14048; 0:04-CR-60165; 2:04-CR-14046; 9:04-CR-80103; 2:04-CR-14047		violation of 18 U.S.C. section 611. Four of the defendants were also charged with making false citizenship claims in violation of 18 U.S.C. sections 911 or 1015(f). Ten defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government.			
United States v. Brooks	Southern Illinois	3:03-CR-30201	February 12, 2004	East St. Louis election official Leander Brooks was indicted for	No	N/A	No

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				submitting fraudulent ballots in the 2002 general election in violation of 42 U.S.C. section 1973i(c), 1973i(e), 1973gg-10(2)(B), and 18 U.S.C. sections 241 and 371. Brooks pled guilty to all charges.			
United States v. Scott; United States v. Nichols; United States v. Terrance Stith; United States v. Sandra Stith; United States v. Powell, et al.	Southern Illinois	3:05-CR-30040; 3:05-CR-30041; 3:05-CR-30042; 3:05-CR-30043; 3:05-CR-30044	June 29, 2005	Four Democrat precinct committeemen in East St. Louis were charged with vote buying on the 2004 general election in violation of 42 U.S.C.	No	N/A	No

008396

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>section 1973i(c). All four pled guilty. Also indicted were four additional Democrat committeemen, Charles Powell, Jr., Jesse Lewis, Sheila Thomas, Kelvin Ellis, and one precinct worker, Yvette Johnson, on conspiracy and vote buying charges in violation of 18 U.S.C. section 371 and 42 U.S.C. section 1973i(c). All five defendants were convicted. Kelvin Ellis</p>			

008397

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				also pled guilty to one count of 18 U.S.C. section 1512(c)(2) relative to a scheme to kill one of the trial witnesses and two counts of 18 U.S.C. section 1503 relative to directing two other witnesses to refuse to testify before the grand jury.			
United States v. McIntosh	Kansas	2:04-CR-20142	December 20, 2004	A felony information was filed against lawyer Leslie McIntosh for voting in both Wyandotte County, Kansas and Jackson	No	N/A	No

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				County, Missouri, in the general elections of 2000 and 2002 in violation of 42 U.S.C. section 1973i(e). A superseding misdemeanor information was filed, charging McIntosh with causing the deprivation of constitutional rights in violation of 18 U.S.C. section 242, to which the defendant pled guilty.			
United States v. Conley; United States v. Slone; United States v.	Eastern Kentucky	7:03-CR-00013; 7:03-CR-00014;	March 28, 2003 and April 24, 2003	Ten people were indicted on vote buying charges in	No	N/A	No

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Madden; United States v. Slone et al.; United States v. Calhoun; United States v. Johnson; United States v. Newsome, et al.		7:03-CR-00015; 7:03-CR-00016; 7:03-CR-00017; 7:03-CR-00018; 7:03-CR-00019		connection with the 1998 primary election in Knott County, Kentucky, in violation of 42 U.S.C. section 1973i(c). Five of the defendants pled guilty, two were convicted, and three were acquitted.			
United States v. Hays, et al.	Eastern Kentucky	7:03-CR-00011	March 7, 2003	Ten defendants were indicted for conspiracy and vote buying for a local judge in Pike County, Kentucky, in the 2002 general election, in violation of 42 U.S.C. section	No	N/A	No

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				1973i(c) and 18 U.S.C. section 371. Five defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government.			
United States v. Turner, et al.	Eastern Kentucky	3:05-CR-00002	May 5, 2005	Three defendants were indicted for vote buying and mail fraud in connection with the 2000 elections in Knott, Letcher, Floyd, and Breathitt Counties, Kentucky, in violation of 42	No	N/A	Yes-need update on case status.

008401

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				U.S.C. section 1973i(c) and 18 U.S.C. section 341.			
United States v. Braud	Middle Louisiana	3:03-CR-00019	May 2, 2003	Tyrell Mathews Braud was indicted on three counts of making false declarations to a grand jury in connection with his 2002 fabrication of eleven voter registration applications, in violation of 18 U.S.C. section 1623. Braud pled guilty on all counts.	No	N/A	No
United States v. Thibodeaux	Western Louisiana	6:03-CR-60055	April 12, 2005	St. Martinsville City Councilwoman Pamela C. Thibodeaux was indicted on	No	N/A	No

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				two counts of conspiring to submit false voter registration information, in violation of 18 U.S.C. section 371 and 42 U.S.C. section 1973i(c). She pled guilty to both charges.			
United States v. Scherzer; United States v. Goodrich; United States v. Jones; United States v. Martin	Western Missouri	4:04-CR-00401; 4:04-CR-00402; 4:05-CR-00257; 4:05-CR-00258	January 7, 2005; March 28, 2005; September 8, 2005; October 13, 2005	Two misdemeanor informations were filed charging Lorraine Goodrich and James Scherzer, Kansas residents who voted in the 2000 and 2002 general elections on	No	N/A	No

008403

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>both Johnson County, Kansas and in Kansas City, Missouri. The informations charged deprivation of a constitutional right by causing spurious ballots, in violation of 18 U.S.C. sections 242 and 2. Both pled guilty. Additionally, similar misdemeanor informations were filed against Tammy J. Martin, who voted in both Independence and Kansas</p>			

008404

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				City, Missouri in the 2004 general election and Brandon E. Jones, who voted both in Raytown and Kansas City, Missouri in the 2004 general election. Both pled guilty.			
United States v. Raymond; United States v. McGee; United States v. Tobin; United States v. Hansen	New Hampshire	04-CR-00141; 04-CR-00146; 04-CR-00216; 04-CR-00054	December 15, 2005	Two informations were filed charging Allen Raymond, former president of a Virginia-based political consulting firm called GOP Marketplace, and Charles McGee, former executive director of the	No	N/A	No

008405

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>New Hampshire State Republican Committee, with conspiracy to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. section 371 and 47 U.S.C. section 223. The charges stem from a scheme to block the phone lines used by two Manchester organizations to arrange drives to the polls during the 2002 general</p>			

008406

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>election. Both pled guilty. James Tobin, former New England Regional Director of the Republican National Committee, was indicted on charges of conspiring to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. section 371 and 47 U.S.C. section 223. An information was filed charging Shaun Hansen, the</p>			

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>principal of an Idaho telemarketing firm called MILO Enterprises which placed the harassing calls, with conspiracy and aiding and abetting telephone harassment, in violation of 18 U.S.C. section 371 and 2 and 47 U.S.C. section 223. The information against Hansen was dismissed upon motion of the government. A superseding indictment was</p>			

008403

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>returned against Tobin charging conspiracy to impede the constitutional right to vote for federal candidates, in violation of 18 U.S.C. section 241 and conspiracy to make harassing telephone calls in violation of 47 U.S.C. section 223. Tobin was convicted of one count of conspiracy to commit telephone harassment and one count of aiding and abetting of</p>			

008409

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				telephone harassment.			
United States v. Workman	Western North Carolina	1:03-CR-00038	June 30, 2003	A ten-count indictment was returned charging Joshua Workman, a Canadian citizen, with voting and related offenses in the 200 and 2002 primary and general elections in Avery County, North Carolina, in violation of 18 U.S.C. sections 611, 911, 1001, and 1015(f). Workman pled guilty to providing false information to election	No	N/A	No

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				officials and to a federal agency.			
United States v. Shatley, et al.	Western North Carolina	5:03-CR-00035	May 14, 2004	A nine-count indictment was returned charging Wayne Shatley, Anita Moore, Valerie Moore, Carlos "Sunshine" Hood and Ross "Toogie" Banner with conspiracy and vote buying in the Caldwell County 2002 general election, in violation of 42 U.S.C. section 1973i(c) and 18 U.S.C. section 371. Anita and Valerie Moore pled guilty.	No	N/A	No

008411

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				Shatley, Hood, and Banner were all convicted.			
United States v. Vargas	South Dakota	05-CR-50085	December 22, 2005	An indictment was filed against Rudolph Vargas, for voting more than once at Pine Ridge in the 2002 general election in violation of 42 U.S.C. section 1973i(e). Vargas pled guilty.	No	N/A	No
United States v. Wells; United States v. Mendez; United States v. Porter; United States v. Hrutkay; United States v. Porter;	Southern West Virginia	02-CR-00234; 2:04-CR-00101; 2:04-CR-00145; 2:04-CR-00149;	July 22, 2003; July 19, 2004; December 7, 2004; January 7, 2005; March 21,	Danny Ray Wells, Logan County, West Virginia, magistrate, was indicted and charged with violating 18	No	N/A	No

008412

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
United States v. Stapleton; United States v. Thomas E. Esposito; United States v. Nagy; United States v. Adkins; United States v. Harvey		2:04-CR-00173; 2:05-CR-00002; 05-CR-00019; 05-CR-00148; 05-CR-00161	2005; October 11, 2005; December 13, 2005	U.S.C. section 1962. Wells was found guilty. A felony indictment was filed against Logan County sheriff Johnny Mendez for conspiracy to defraud the United States in violation 18 U.S.C section 371. Mendez pled guilty. An information was filed charging former Logan County police chief Alvin Ray Porter, Jr., with making expenditures to influence voting in violation of 18			

008413

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>U.S.C. section 597. Porter pled guilty. Logan County attorney Mark Oliver Hrutkay was charged by information with mail fraud in violation of 18 U.S.C. section 1341. Hrutkay pled guilty. Earnest Stapleton, commander of the local VFW, was charged by information with mail fraud. He pled guilty. An information was filed charging Thomas E. Esposito, a former mayor</p>			

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>of the City of Logan, with concealing the commission of a felony, in violation of 18 U.S.C. section 4. Esposito pled guilty. John Wesley Nagy, Logan County Court marshal, pled guilty to making false statements to a federal agent, a violation of 18 U.S.C. section 1001. An information charging Glen Dale Adkins, county clerk of Logan County, with accepting payment for voting, in</p>			

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				violation of 18 U.S.C. section 1973i(c). Adkins pled guilty. Perry French Harvey, Jr., a retired UMW official, pled guilty to involvement in a conspiracy to buy votes.			
United States v. Adkins, et al.	Southern West Virginia	2:04-CR-00162	December 28 & 30, 2005	Jackie Adkins was indicted for vote buying in Lincoln County, West Virginia, in violation of 42 U.S.C. section 1973i(c). A superceding indictment added Wandell "Rocky" Adkins to the indictment and charged both	No	N/A	No

008416

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>defendants with conspiracy to buy votes in violation of 18 U.S.C. section 371 and vote buying. A second superseding indictment was returned which added three additional defendants, Gegory Brent Stowers, Clifford Odell "Groundhog" Vance, and Toney "Zeke" Dingess, to the conspiracy and vote buying indictment. Charges were later dismissed against Jackie Adkins. A third</p>			

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>superseding indictment was returned adding two additional defendants, Jerry Allen Weaver and Ralph Dale Adkins. A superseding information was filed charging Vance with expenditures to influence voting, in violation of 18 U.S.C. section 597. Vance pled guilty. Superseding informations were filed against Stowers and Dingess for expenditures to influence</p>			

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				voting, in violation of 18 U.S.C. section 597. Both defendants pled guilty. Weaver also pled guilty. Superseding informations were filed against Ralph and Wandell Adkins for expenditures to influence voting, in violation of 18 U.S.C. section 597. Both defendants pled guilty.			
United States v. Davis; United States v. Byas; United States v. Ocasio; United States v. Prude;	Eastern Wisconsin	2:05-MJ-00454; 2:05-MJ-00455; 2:05-CR-00161;	September 16, 2005; September 21, 2005; October 5, 2005;	Criminal complaints were issued against Brian L. Davis and Theresa J. Byas	No	N/A	Need updated status on Gooden and the Anderson, Cox, Edwards, and Little cases.

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
United States v. Sanders; United States v. Alicea; United States v. Brooks; United States v. Hamilton; United States v. Little; United States v. Swift; United States v. Anderson; United States v. Cox; United States v. Edwards; United States v. Gooden		2:05-CR-00162; 2:05-CR-00163; 2:05-CR-00168; 2:05-CR-00170; 2:05-CR-00171; 2:05-CR-00172; 2:05-CR-00177; 2:05-CR-00207; 2:05-CR-00209; 2:05-CR-00211; 2:05-CR-00212	October 26, 2005; October 31, 2005, November 10, 2005	charging them with double voting, in violation of 42 U.S.C. section 1973i(e). Indictments were filed against convicted felons Milo R. Ocasio and Kimberly Prude, charging them with falsely certifying that they were eligible to vote, in violation of 42 U.S.C. section 1973gg-10(2)(B), and against Enrique C. Sanders, charging him with multiple			

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>voting, in violation of 42 U.S.C. section 1973i(e). Five more indictments were later returned charging Cynthia C. Alicea with multiple voting in violation of 42 U.S.C. section 1973i(e) and convicted felons Deshawn B. Brooks, Alexander T. Hamilton, Derek G. Little, and Eric L. Swift with falsely certifying that they were</p>			

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>eligible to vote in violation of 42 U.S.C. section 1973gg-10(2)(B). Indictments were filed against Davis and Byas charging them with double voting. Four more indictments were returned charging convicted felons Ethel M. Anderson, Jiyto L. Cox, Correan F. Edwards, and Joseph J. Gooden with falsely certifying that they were</p>			

008422

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>eligible to vote. Ocasio and Hamilton pled guilty. Prude was found guilty. A mistrial was declared in the Sanders case. Brooks was acquitted. Byas signed a plea agreement agreeing to plead to a misdemeanor 18 U.S.C. section 242 charge. Swift moved to change his plea. Davis was found incompetent to stand trial so the government dismissed the case. Gooden is</p>			

008423

Name of Case	District	Case Number	Date	Facts	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				a fugitive. Alicea was acquitted. Four cases are pending --- Anderson, Cox, Edwards, and Little.			

008424

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Johnson v. Bush	United States District Court for the Southern District of Florida	214 F. Supp. 2d 1333; 2002 U.S. Dist. LEXIS 14782	July 18, 2002	Plaintiff felons sued defendant state officials for alleged violations of their constitutional rights. The officials moved and the felons cross-moved for summary judgment.	The felons had all successfully completed their terms of incarceration and/or probation, but their civil rights to register and vote had not been restored. They alleged that Florida's disenfranchisement law violated their rights under First, Fourteenth, Fifteenth, and Twenty--Fourth Amendments to the United States Constitution, as well as § 1983 and §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed.	No	N/A	No

008425

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>minorities, the cause was racially neutral. Finally, requiring the felons to pay their victim restitution before their rights would be restored did not constitute an improper poll tax or wealth qualification. The court granted the officials' motion for summary judgment and implicitly denied the felons' motion. Thus, the court dismissed the lawsuit with prejudice.</p>			
Farrakhan v. Locke	United States District Court for the Eastern District of Washington	2000 U.S. Dist. LEXIS 22212	December 1, 2000	Plaintiffs, convicted felons who were also racial minorities, sued defendants for alleged	The felons alleged that Washington's felon disenfranchisement and restoration of civil rights	No	N/A	No

008427

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>violations of the Voting Rights Act. The parties filed cross--motions for summary judgment.</p>	<p>schemes, premised upon Wash. Const. art. VI § 3, resulted in the denial of the right to vote to racial minorities in violation of the VRA. They argued that race bias in, or the discriminatory effect of, the criminal justice system resulted in a disproportionate number of racial minorities being disenfranchised following felony convictions. The court concluded that Washington's felon disenfranchisement provision disenfranchised a disproportionate number of</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>minorities; as a result, minorities were under--represented in Washington's political process. The Rooker--Feldman doctrine barred the felons from bringing any as--applied challenges, and even if it did not bar such claims, there was no evidence that the felons' individual convictions were born of discrimination in the criminal justice system. However, the felons' facial challenge also failed. The remedy they sought would create a new</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					constitutional problem, allowing disenfranchisement only of white felons. Further, the felons did not establish a causal connection between the disenfranchisement provision and the prohibited result. The court granted defendants' motion and denied the felons' motion for summary judgment.			
Farrakhan v. Washington	United States Court of Appeals for the Ninth Circuit	338 F.3d 1009; 2003 U.S. App. LEXIS 14810	July 25, 2003	Plaintiff inmates sued defendant state officials, claiming that Washington state's felon disenfranchisement scheme constitutes improper race--based vote denial	Upon conviction of infamous crimes in the state, (that is, crimes punishable by death or imprisonment in a state correctional facility), the inmates were disenfranchised.	No	N/A	No

008430

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>in violation of § 2 of the Voting Rights Act. The United States District Court for the Eastern District of Washington granted of summary judgment dismissing the inmates' claims. The inmates appealed.</p>	<p>The inmates claimed that the disenfranchisement scheme violated § 2 because the criminal justice system was biased against minorities, causing a disproportionate minority representation among those being disenfranchised. The appellate court held, inter alia, that the district court erred in failing to consider evidence of racial bias in the state's criminal justice system in determining whether the state's felon disenfranchisement laws resulted in</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>denial of the right to vote on account of race. Instead of applying its novel "by itself" causation standard, the district court should have applied a totality of the circumstances test that included analysis of the inmates' compelling evidence of racial bias in Washington's criminal justice system. However, the inmates lacked standing to challenge the restoration scheme because they presented no evidence of their eligibility, much</p>			

008432

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					less even allege that they were eligible for restoration, and had not attempted to have their civil rights restored. The court affirmed as to the eligibility claim but reversed and remanded for further proceedings to the bias in the criminal justice system claim.			
Muntaqim v. Coombe	United States Court of Appeals for the Second Circuit	366 F.3d 102; 2004 U.S. App. LEXIS 8077	April 23, 2004	Plaintiff inmate appealed a judgment of the United States District Court for the Northern District of New York, which granted summary judgment in favor of defendants in the inmate's action alleging violation	At issue was whether the VRA could be applied to N.Y. Elec. Law § 5-106, which disenfranchised currently incarcerated felons and parolees. The instant court concluded that the Voting Rights Act did not apply to the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				of § 2 of the Voting Rights Act of 1965.	New York law. Applying the Act to state law would alter the traditional balance of power between the states and the federal government. The court was not convinced that there was a congruence and proportionality between the injury to be prevented or remedied (i.e., the use of vote denial and dilution schemes to avoid the strictures of the VRA), and the means adopted to that end (i.e., prohibition of state felon disenfranchisement law that resulted in			

008434

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>vote denial or dilution but were not enacted with a discriminatory purpose). Further, there was no clear statement from Congress that the Act applied to state felon disenfranchisement statutes. Inter alia, defendants were entitled to qualified immunity as to claim asserted against them in their personal capacities, and to Eleventh Amendment immunity to the extent the inmate sought damages against defendants in their official capacities. The</p>			

008435

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					district court's judgment was affirmed.			
Johnson v. Governor of Fla.	United States Court of Appeals for the Eleventh Circuit	353 F.3d 1287; 2003 U.S. App. LEXIS 25859	December 19, 2003	Plaintiffs, ex--felon citizens of Florida, on their own right and on behalf of others, sought review of a decision of the United States District Court for the Southern District of Florida, which granted summary judgment to defendants, members of the Florida Clemency Board in their official capacity. The citizens challenged the validity of the Florida felon disenfranchisement laws.	The citizens alleged that Fla. Const. art. VI, § 4 (1968) was racially discriminatory and violated their constitutional rights. The citizens also alleged violations of the Voting Rights Act. The court of appeals initially examined the history of Fla. Const. art. VI, § 4 (1968) and determined that the citizens had presented evidence that historically the disenfranchisement provisions were motivated by a	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>discriminatory animus. The citizens had met their initial burden of showing that race was a substantial motivating factor. The state was then required to show that the current disenfranchisement provisions would have been enacted absent the impermissible discriminatory intent. Because the state had not met its burden, summary judgment should not have been granted. The court of appeals found that the claim under the Voting Rights Act, also needed to</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>be remanded for further proceedings. Under a totality of the circumstances, the district court needed to analyze whether intentional racial discrimination was behind the Florida disenfranchisement provisions. The court affirmed the district court's decision to grant summary judgment on the citizens' poll tax claim. The court reversed the district court's decision to grant summary judgment to the Board on the claims under the equal protection clause and for</p>			

008438

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					violation of federal voting laws and remanded the matter to the district court for further proceedings.			
Fischer v. Governor	Supreme Court of New Hampshire	145 N.H. 28; 749 A.2d 321; 2000 N.H. LEXIS 16	March 24, 2000	Appellant State of New Hampshire challenged a ruling of the superior court that the felon disenfranchisement statutes violate N.H. Const. pt. I, Art. 11.	Appellee was incarcerated at the New Hampshire State Prison on felony convictions. When he requested an absentee ballot to vote from a city clerk, the request was denied. The clerk sent him a copy of N.H. Rev. Stat. Ann. § 607(A)(2) (1986), which prohibits a felon from voting "from the time of his sentence until his final discharge." The trial court	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>declared the disenfranchisement statutes unconstitutional and ordered local election officials to allow the plaintiff to vote. Appellant State of New Hampshire challenged this ruling. The central issue was whether the felon disenfranchisement statutes violated N.H. Const. pt. I, art. 11. After a review of the article, its constitutional history, and legislation pertinent to the right of felons to vote, the court concluded that the legislature retained the</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>authority under the article to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority, and reversed. Judgment reversed because the court concluded that the legislature retained its authority under the New Hampshire Constitution to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority.</p>			
Johnson v. Governor of	United States Court of	405 F.3d 1214;	April 12, 2005	Plaintiff individuals sued	The individuals argued that the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Fla.	Appeals for the Eleventh Circuit	2005 U.S. App. LEXIS 5945		defendant members of Florida Clemency Board, arguing that Florida's felon disenfranchisement law, Fla. Const. art. VI, § 4 (1968), violated the Equal Protection Clause and the Voting Rights Act. The United States District Court for the Southern District of Florida granted the members summary judgment. A divided appellate panel reversed. The panel opinion was vacated and a rehearing en banc was granted.	racial animus motivating the adoption of Florida's disenfranchisement laws in 1868 remained legally operative despite the reenactment of Fla. Const. art. VI, § 4 in 1968. The subsequent reenactment eliminated any discriminatory taint from the law as originally enacted because the provision narrowed the class of disenfranchised individuals and was amended through a deliberative process. Moreover, there was no allegation of racial			

003442

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>discrimination at the time of the reenactment. Thus, the disenfranchisement provision was not a violation of the Equal Protection Clause and the district court properly granted the members summary judgment on that claim. The argument that the Voting Rights Act applied to Florida's disenfranchisement provision was rejected because it raised grave constitutional concerns, i.e., prohibiting a practice that the Fourteenth Amendment</p>			

008443

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					permitted the state to maintain. In addition, the legislative history indicated that Congress never intended the Voting Rights Act to reach felon disenfranchisement provisions. Thus, the district court properly granted the members summary judgment on the Voting Rights Act claim. The motion for summary judgment in favor of the members was granted.			
Mixon v. Commonwealth	Commonwealth Court of Pennsylvania	759 A.2d 442; 2000 Pa. Commw.	September 18, 2000	Respondents filed objections to petitioners' complaint seeking declaratory relief	Petitioner convicted felons were presently or had formerly been confined in state	No	N/A	No

008444

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		LEXIS 534		as to the unconstitutionality of the Pennsylvania Election Code, 25 Pa. Cons. Stat. §§ 2600 -- 3591, and the Pennsylvania Voter Registration Act, 25 Pa. Cons. Stat. §§ 961.101--961.5109, regarding felon voting rights.	prison. Petitioner elector was currently registered to vote in respondent state. Petitioners filed a complaint against respondent state seeking declaratory relief challenging as unconstitutional, state election and voting laws that excluded confined felons from the definition of qualified absentee electors and that barred a felon who had been released from a penal institution for less than five years from registering to vote. Respondents filed objections to petitioners'			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>complaint. The court sustained respondents' objection that incarcerated felons were not unconstitutionally deprived of qualified absentee elector status because respondent state had broad power to determine the conditions under which suffrage could be exercised. However, petitioner elector had no standing and the court overruled objection as to deprivation of ex-felon voting rights. The court sustained respondents' objection since</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					incarcerated felons were not unconstitutionally deprived of qualified absentee elector status and petitioner elector had no standing, but objection that ex--incarcerated felons' voting rights were deprived was overruled since status penalized them.			
Rosello v. Calderon	United States District Court for the District of Puerto Rico	2004 U.S. Dist. LEXIS 27216	November 30, 2004	Plaintiff voters filed a § 1983 action against defendant government officials alleging violations the Due Process and Equal Protection Clauses of the U.S. Const. amend. XIV, resulting from the	The voters' § 1983 action against government officials alleged that absentee ballots for a gubernatorial election were untimely mailed and that split votes, which registered two votes for the	No	N/A	No

008447

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>invalidity of absentee and split ballots in a gubernatorial election.</p>	<p>same office, were null. The court asserted jurisdiction over the disparate treatment claims, which arose under the U.S. Constitution. The court declined to exercise discretionary abstention because the case was not merely a facial attack on the constitutionality of a statute, but was mainly an applied challenge, requiring a hearing in order to develop the record, and because equal protection and due process were secured under the state and federal</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>constitutions. The court held that the voters had a fundamental due process right created by Puerto Rico Election Law and suffered an equal protection violation in further violation of the U.S. Const. amend. I right to vote, thereby creating their total disenfranchisement. The court held that the evidence created an inference that the split ballots were not uniformly treated and that it was required to examine a mixed question of fact and constitutional law</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					pursuant to federal guidelines to determine whether potential over votes were invalid. The court asserted jurisdiction over the voters' claims.			
Woodruff v. Wyoming	United States Court of Appeals for the Tenth Circuit	49 Fed. Appx. 199; 2002 U.S. App. LEXIS 21060	October 7, 2002	Plaintiffs, pro se inmates, appealed from an order of the United States District Court for the District of Wyoming, dismissing their complaint brought under § 1983, challenging Wyo. Stat. Ann. § 6--10-106, which denied them, as convicted felons, the right to vote. The district court dismissed the action for failure to state a claim upon	The inmates argued that the statute violated their Eighth Amendment right and their State constitutional right to be free from cruel and unusual punishment, their equal protection rights under the Fourteenth Amendment and State Constitution, and their federal and state rights to due process. One inmate had not paid the appellate filing	No	N/A	No

008450

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>which relief could be granted and as frivolous.</p>	<p>fee or filed a motion to proceed on appeal without prepayment of costs or fees, and his appeal was dismissed. The court found that U.S. Const. amend. XIV, § 2 had long been held to exclude felons from the right to vote. It could scarcely be unreasonable for a state to decide that perpetrators of serious crimes should not take part in electing the legislators who made the laws, the executives who enforced them, the prosecutors who tried the cases, or the judges who</p>			

008451

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					heard their cases. The court also found the dismissed suit constituted a "strike" under 28 U.S.C.S. § 1915(g), although the suit did not challenge prison conditions per se. One inmate's appeal was dismissed; the judgment dismissing the other's complaint was affirmed.			
N.J. State Conf.--NAACP v. Harvey	Superior Court of New Jersey, Appellate Division	381 N.J. Super. 155; 885 A.2d 445; 2005 N.J. Super. LEXIS 316	November 2, 2005	The Superior Court of New Jersey, Chancery Division, Union County, dismissed a complaint filed by plaintiff interested parties to invalidate N.J. Stat. Ann. § 19:4--1(8) on the ground	The statute at issue prohibited all people on parole or probation for indictable offenses from voting. The interested parties alleged that the criminal justice system in New Jersey	No	N/A	No

003452

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>that it denied African--Americans and Hispanics equal protection of the law. Defendant, the New Jersey Attorney General, moved to dismiss the complaint for failure to state a claim, and said motion was granted. The interested parties then appealed.</p>	<p>discriminated against African-Americans and Hispanics, thereby disproportionately increasing their population among parolees and probationers and diluting their political power. As a result, the alleged that enforcement of the statute resulted in a denial of equal protection under the state Constitution. The appeals court disagreed. N.J. Const. art. II authorized the New Jersey Legislature to disenfranchise persons convicted of certain crimes from voting.</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Moreover, those convicts could not vote unless pardoned or unless otherwise restored by law to the right of suffrage. The statute also limited the period of disenfranchisement during a defendant's actual service on parole or probation. Thus, it clearly complied with this specific constitutional mandate. The judgment was affirmed.			
King v. City of Boston	United States District Court for the District of Massachusetts	2004 U.S. Dist. LEXIS 8421	May 13, 2004	Plaintiff inmate filed a motion for summary judgment in his action challenging the constitutionality of Mass. Gen. Laws	The inmate was convicted of a felony and incarcerated. His application for an absentee ballot was denied on the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>ch. 51, § 1, which excluded incarcerated felons from voting while they were imprisoned.</p>	<p>ground that he was not qualified to register and vote under Mass. Gen. Laws ch. 51, § 1. The inmate argued that the statute was unconstitutional as it applied to him because it amounted to additional punishment for crimes he committed before the statute's enactment and thus violated his due process rights and the prohibition against ex post facto laws and bills of attainder. The court held that the statute was regulatory and not punitive because</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>rational choices were implicated in the statute's disenfranchisement of persons under guardianship, persons disqualified because of corrupt elections practices, persons under 18 years of age, as well as incarcerated felons. Specifically, incarcerated felons were disqualified during the period of their imprisonment when it would be difficult to identify their address and ensure the accuracy of their ballots. Therefore, the court concluded that Mass. Gen. Laws ch. 51, § 1 did not</p>			

008456

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					violate the inmate's constitutional rights. The court found the statute at issue to be constitutional and denied the inmate's motion for summary judgment.			
Southwest Voter Registration Educ. Project v. Shelley	United States District Court for the Central District of California	278 F. Supp. 2d 1131; 2003 U.S. Dist. LEXIS 14413	August 15, 2003	Plaintiffs, several groups, brought suit alleging that the proposed use of "punch-card" balloting machines in the California election would violate the United States Constitution and Voting Rights Act. Plaintiffs moved for an order delaying that election, scheduled for October 7, 2003, until such time as it could be	Plaintiffs claimed voters using punch-card machines would have a comparatively lesser chance of having their votes counted in violation of the Equal Protection Clause and the counties employing punch-card systems had greater minority populations thereby disproportionately disenfranchising and/or diluting the	No	N/A	No

008457

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>conducted without use of punch--card machines.</p>	<p>votes on the basis of race, in violation of § 2 of the Voting Rights Act. While the court did not need to decide the res judicata issue at this juncture, there was ample reason to believe that plaintiffs would have had a difficult time overcoming it as they were seeking to establish the same constitutional violations alleged in prior litigation, but to secure an additional remedy. Plaintiffs failed to prove a likelihood of success on the merits with regard to both of their claims. Even if</p>			

008458

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>plaintiffs could show disparate treatment, such would not have amounted to illegal or unconstitutional treatment. The balance of hardships weighed heavily in favor of allowing the election to proceed. The public interests in avoiding wholesale disenfranchisement, and/or not plunging the State into a constitutional crisis, weighed heavily against enjoining the election. Plaintiffs' motion for preliminary injunction (consolidated with</p>			

008459

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					plaintiffs' ex parte application for temporary restraining order) was denied.			
Igartua--de la Rosa v. United States	United States Court of Appeals for the First Circuit	417 F.3d 145; 2005 U.S. App. LEXIS 15944	August 3, 2005	Plaintiff, a U.S. citizen residing in Puerto Rico, appealed from an order of the United States District Court for the District of Puerto Rico, that rejected his claim that he was deprived of the constitutional right to vote for President and Vice President of the United States, and was also violative of three treaty obligations of the United States.	The putative voter had brought the same claims twice before. The court pointed out that U.S. law granted to the citizens of states the right to vote for the slate of electors to represent that state. Although modern ballots omitted the names of the electors and listed only the candidates, and in form it appeared that the citizens were voting for President and Vice President directly, they were	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>not, but were voting for electors. Puerto Rico was not a state, and had not been enfranchised as the District of Columbia had by the 23rd Amendment. The franchise for choosing electors was confined to "states" by the Constitution. The court declined to turn to foreign or treaty law as a source to reverse the political will of the country. The judgment of the district court was affirmed.</p>			

008461

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Spencer v. Blackwell	United States District Court for the Southern District of Ohio	347 F. Supp. 2d 528; 2004 U.S. Dist. LEXIS 22062	November 1, 2004	Plaintiff voters filed a motion for temporary restraining order and preliminary injunction seeking to restrain defendant election officials and intervenor State of Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from being allowed at the	The voters alleged that defendants had combined to implement a voter challenge system at the polls that discriminated against African--American voters. Each precinct was run by its election judges but Ohio law also allowed challengers to be physically present in the polling places in order to challenge voters' eligibility to vote. The court held that the injury asserted, that allowing	No	N/A	No

008529

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				polls.	challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos, delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. The court enjoined all</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					defendants from allowing any challengers other than election judges and other electors into the polling places throughout the state on Election Day.			
MARIAN SPENCER, et al., Petitioners v. CLARA PUGH, et al. (No. 04A360) SUMMIT COUNTY DEMOCRATIC CENTRAL and EXECUTIVE COMMITTEE, et al., Petitioners v. MATTHEW HEIDER, et al. (No. 04A364)	United States Supreme Court	125 S. Ct. 305; 160 L. Ed. 2d 213; 2004 U.S. LEXIS 7400	November 2, 2004	In two separate actions, plaintiffs sued defendant members of a political party, alleging that the members planned to mount indiscriminate challenges in polling places which would disrupt voting. Plaintiffs applied to	Plaintiffs contended that the members planned to send numerous challengers to polling places in predominantly African--American neighborhoods to challenge votes in an imminent national election, which would allegedly cause	No	N/A	No

008532

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>vacate orders entered by the United States Court of Appeals for the Sixth Circuit which entered emergency stays of injunctions restricting the members' activities.</p>	<p>voter intimidation and inordinate delays in voting. A district court ordered challengers to stay out of polling places, and another district court ordered challengers to remain in the polling places only as witnesses, but the appellate court stayed the orders. The United States Supreme Court, acting through a single Circuit Justice, declined to reinstate the injunctions for</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					prudential reasons, despite the few hours left until the upcoming election. While the allegations of abuse were serious, it was not possible to determine with any certainty the ultimate validity of the plaintiffs' claims or for the full Supreme Court to review the relevant submissions, and voting officials would be available to enable proper voting by qualified voters.			
Charles H. Wesley Educ.	United States	324 F. Supp. 2d	July 1, 2004	Plaintiffs, a voter, fraternity	The organization participated in	No	N/A	No

008534

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Found., Inc. v. Cox	District Court for the Northern District of Georgia	1358; 2004 U.S. Dist. LEXIS 12120		members, and an organization, sought an injunction ordering defendant, the Georgia Secretary of State, to process the voter registration application forms that they mailed in following a voter registration drive. They contended that by refusing to process the forms defendants violated the National Voter	numerous non-partisan voter registration drives primarily designed to increase the voting strength of African-Americans. Following one such drive, the fraternity members mailed in over 60 registration forms, including one for the voter who had moved within state since the last election. The Georgia Secretary of State's office refused to process them because they			

008535

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>Registration Act and U.S. Const. amends. I, XIV, and XV.</p>	<p>were not mailed individually and neither a registrar, deputy registrar, or an otherwise authorized person had collected the applications as required under state law. The court held that plaintiffs had standing to bring the action. The court held that because the applications were received in accordance with the mandates of the NVRA, the State of Georgia was not free to reject them. The court found that:</p>			

008536

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Injunction granted.			
Jacksonville Coalition for Voter Prot. v. Hood	United States District Court for	351 F. Supp. 2d 1326; 2004 U.S.	October 25, 2004	Plaintiffs, voter protection coalition, union, and	The coalition, the union, and the voters based their claim on	No	N/A	No

008537

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	the Middle District of Florida	Dist. LEXIS 26522		voters, filed an emergency motion for a preliminary injunction and argued that African Americans in the county had less opportunity than other members of the state's electorate to vote in the upcoming election, and that defendants, elections officials', implementation of early voting procedures violated the Voting Rights	the fact that the county had the largest percentage of African--American registered voters of any major county in the state, and, yet, other similarly-sized counties with smaller African--American registered voter percentages had more early voting sites. Based on that, they argued that African--American voters in the county were disproportionately affected. The			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				Act and their constitutional rights.	court found that while it may have been true that having to drive to an early voting site and having to wait in line may cause people to be inconvenienced, inconvenience did not result in a denial of meaningful access to the political process. Thus, the coalition, the union, and the voters had not established a likelihood of success on the merits of their claim that the county's implementation			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					of early voting procedures violated § 2 of the Voting Rights Act. Moreover, the coalition, the union, and the voters failed to establish a likelihood of success on the merits of their § 1983 Fourteenth and Fifteenth Amendment claims, which required a higher proof of discriminatory purpose and effect. Injunction denied.			
Taylor v. Howe	United States Court of Appeals	225 F.3d 993; 2000 U.S. App. LEXIS	August 31, 2000	Plaintiffs, African American voters, poll	The court of appeals affirmed--in--part, reversed--	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	for the Eighth Circuit	22241		<p>watchers, and candidates appealed from a judgment of the United States District Court for the Eastern District of Arkansas in favor of defendants, elections commissioners and related individuals, on their § 1983 voting rights claims and contended the district court made erroneous findings of fact and law and failed to appreciate evidence of</p>	<p>in--part, and remanded the district court's judgment. The court found that the district court's finding of a lack of intentional discrimination was appropriate as to many defendants. However, as to some of the individual voters' claims for damages, the court held "a definite and firm conviction" that the district court's findings were mistaken. The court noted that the argument that a</p>			

008541

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				discriminatory intent.	voter's name was misspelled in the voter register, with a single incorrect letter, was a flimsy pretext and, accordingly, held that the district court's finding that defendant poll workers did not racially discriminate in denying the vote to this plaintiff was clearly erroneous. Affirmed in part and reversed in part.			
Stewart v. Blackwell	United States District Court for the	356 F. Supp. 2d 791; 2004 U.S. Dist. LEXIS	December 14, 2004	Plaintiffs, including African--American voters, alleged	The primary thrust of the litigation was an attempt to federalize	No	N/A	No

008542

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	Northern District of Ohio	26897		that use of punch card voting and "central--count" optical scanning devices by defendants, the Ohio Secretary of State et al., violated their rights under the Due Process Clause, the Equal Protection Clause, and (African--American plaintiffs) their rights under § 2 of the Voting Rights Act.	elections by judicial rule or fiat via the invitation to the court to declare a certain voting technology unconstitutional and then fashion a remedy. The court declined the invitation. The determination of the applicable voting process had always been focused in the legislative branch of the government. While it was true that the percentage of residual or non-voted ballots in the 2000			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>presidential election ran slightly higher in counties using punch card technology, that fact standing alone was insufficient to declare the use of the system unconstitutional. Moreover, the highest frequency in Ohio of residual voting bore a direct relationship to economic and educational factors, negating the Voting Rights Act claim. The court further stated that local variety</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					in voting technology did not violate the Equal Protection Clause, even if the different technologies had different levels of effectiveness in recording voters' intentions, so long as there was some rational basis for the technology choice. It concluded that defendants' cost and security reasons for the use of punch card ballots were plausible.			
Taylor v. Currie	United States District	386 F. Supp. 2d 929; 2005	September 14, 2005	Plaintiff brought an action against	This action involved issues pertaining to	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	Court for the Eastern District of Michigan	U.S. Dist. LEXIS 20257		defendants, including a city elections commission, alleging defects in a city council primary election pertaining to absentee balloting. The case was removed to federal court by defendants. Pending before the court was a motion to remand, filed by plaintiff.	absentee ballots. Plaintiff alleged that defendants were not complying with state laws requiring certain eligibility checks before issuing absentee ballots. The state court issued an injunction preventing defendants from mailing absentee ballots. Defendants removed the action to federal court and plaintiff sought a remand. Defendants argued that not mailing the absentee ballots			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>would violate the Voting Rights Act, because it would place a restriction only on the City of Detroit, which was predominately African--American. The court ordered the case remanded because it found no basis under 28 U.S.C.S. §§ 1441 or 1443 for federal jurisdiction. Defendants' mere reference to a federal law or federal right was not enough to confer subject matter</p>			

008547

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>jurisdiction where the complaint sought to assert only rights arising under state statutes against state officials in relation to a state election. The court stated that it would not allow defendants to take haven in federal court under the guise of providing equal protection for the citizens of Detroit but with a goal of perpetuating their violation of a non-discriminatory state law.</p>			

008548

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Motion to remand granted.			

008549

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Powers v. Donahue	Supreme Court of New York, Appellate Division, First Department	276 A.D.2d 157; 717 N.Y.S.2d 550; 2000 N.Y. App. Div. LEXIS 12644	December 5, 2000	Petitioner appealed an order of the supreme court, which denied his motion to direct the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to count only the absentee ballot listing correct candidates' names.	When the New York County Board of Elections learned some absentee ballots mailed to voters in one district listed the wrong candidates for state senator it sent a second set of absentee ballots to absentee voters informing them the first ballot was defective and requesting they use the second ballot. The board agreed if two ballots were received from the same voter, only the corrected ballot would be counted.	No	N/A	No

008462

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>Appellant candidate moved in support of the board's determination. Respondent candidate opposed the application, contending that only the first ballot received should have been canvassed. The trial court denied appellant's motion, ruling that pursuant to New York law, where two ballots were received from the same voter, only the ballot with the earlier date was to be accepted. The court found the</p>			

008463

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					local board officials should have resolved the dispute as they proposed. The order was modified and the motion granted to the extent of directing the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to accept only the corrected ballot postmarked on or before November 7, 2000, and otherwise affirmed.			
Goodwin v. St. Thomas--	Territorial Court of the	43 V.I. 89; 2000	December 13, 2000	Plaintiff political	Plaintiff alleged that defendants	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
St. John Bd. of Elections	Virgin Islands	V.I. LEXIS 15		candidate alleged that certain general election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results	counted unlawful absentee ballots that lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The court held that plaintiff was not entitled to relief since he failed to			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				tabulated without such ballots.	establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot			

008466

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper. Request for declaratory and injunctive relief denied.</p>			
Townson v. Stonicher	Supreme Court of Alabama	2005 Ala. LEXIS	December 9, 2005	The circuit court	The voters and the incumbent all	No	N/A	No

008467

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		214		<p>overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross-- appealed. In the meantime, the trial court stayed enforcement of its judgment pending</p>	<p>challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that at least 30 absentee voters who voted for the incumbent provided with</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				resolution of the appeal.	their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat "cure" that defect by providing a proper form of identification at the trial of the election contest, because, under those circumstances, it was difficult to conclude that those voters made an honest effort to comply with the law. Moreover, to			

008468

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>count the votes of voters who failed to comply with the essential requirement of submitting proper identification with their absentee ballots had the effect of disenfranchising qualified electors who choose not to vote but rather than to make the effort to comply with the absentee-voting requirements. Affirmed.</p>			
Gross v. Albany County Bd. of Elections	Supreme Court of New York, Appellate Division, Third Department	10 A.D.3d 476; 781 N.Y.S.2d 172; 2004 N.Y. App. Div. LEXIS	August 23, 2004	Appellant candidates appealed from a judgment entered by the supreme court, which partially	The candidates argued that the Board violated a federal court order regarding the election. The appellate court	No	N/A	No

008470

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		10360		granted the candidates' petition challenging the method used by respondent Albany County Board of Elections for counting absentee applications and ballots for the office of Albany County Legislator, 26th and 29th Districts, in a special general election required by the federal courts.	held that absentee ballots that were sent to voters for the special general election based solely on their applications for the general election were properly voided. The Board had no authority to issue the ballots without an absentee ballot application for the special general election. Two ballots were properly invalidated as the Board failed to retain the envelopes. Ballots were properly counted for voters who failed to			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>identify their physician on their applications. A ballot was properly counted where the Board failed to scrutinize the sufficiency of the reason for the application. A ballot containing two signatures was properly rejected. A ballot was properly rejected due to extraneous marks outside the voting square. A ballot was properly counted despite the failure of the election inspector to witness the voter's signature. A ballot was</p>			

008472

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					properly counted as the application stated the date of the voter's absence. A ballot was properly counted as the failure to date the application was cured by a time stamp. Affirmed.			
Erlandson v. Kiffmeyer	Supreme Court of Minnesota	659 N.W.2d 724; 2003 Minn. LEXIS 196	April 17, 2003	Petitioners, representing the Democratic--Farmer--Labor Party, brought an action against respondents, the Minnesota Secretary of State and the Hennepin County Auditor, seeking relief	The appellate court found that, while it may have seemed unfair to the replacement candidate to count votes for other candidates from regular absentee ballots on which the replacement candidate did not appear, those were properly cast ballots voting for a properly	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>in regard to the election for United States Senator, following the death of Senator Wellstone. The issue concerned the right of absentee voters to obtain replacement ballots. Individuals intervened on behalf of the Republican Party. The instant court granted review.</p>	<p>nominated candidate. Petitioners' request that the Minnesota supreme court order that votes for United States Senator cast on regular absentee ballots not be counted was denied. A key issue was Minn. Stat. § 204B.41 (2002), which provided, in--part, that official supplemental ballots could not be mailed to absent voters to whom ballots were mailed before the official supplemental ballots were</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>prepared. The supreme court held that, by treating similarly-situated voters differently, § 204B.41 violated equal protection guarantees and could not even survive rational basis review. For voters who cast their regular absentee ballots for Wellstone before the vacancy occurred, but were unable to go to their polling place on election day or pick up a replacement ballot by election day, the prohibition on</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					mailing replacement ballots in § 204B.41 denied them the right to cast a meaningful vote for United States Senator. The petition of petitioners was denied in part, but granted with respect to mailing replacement ballots to all applicants for regular absentee ballots who requested a replacement ballot.			
People v. Deganutti	Appellate Court of Illinois, First District, Third Division	348 Ill. App. 3d 512; 810 N.E.2d 191; 2004 Ill. App.	May 12, 2004	Defendant appealed from a judgment of the circuit court, which convicted	Defendant went to the voters' homes and obtained their signatures on absentee ballot	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		LEXIS 518		defendant on charges of unlawful observation of voting and on charges of absentee ballot violations in connection with the completion and mailing of the absentee ballots of two voters.	request forms. Once the ballots were mailed to the voters, defendant returned to the homes. With voter one, defendant sat on the couch with the voter and instructed which numbers to punch on the ballot. With voter two, defendant provided a list a numbers and stood nearby as voter two completed the ballots. Defendant then looked at the ballot and had voter two re-- punch a number that had not			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>punched cleanly. Defendant then put the ballots in the mail for the voters. On appeal, she argued insufficient evidence to sustain her convictions. The court affirmed, holding that (1) the circumstantial evidence surrounding defendant's presence as the voters completed their ballots supported the unlawful observation convictions; (2) the fact that defendant knowingly took the voters ballots</p>			

008478

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					and mailed them, a violation of Illinois law supported her conviction, and (3) the fact that the statutes defendant was convicted under required only a knowing mental state rather than criminal intent did not violate substantive due process. Affirmed.			
Jacobs v. Seminole County Canvassing Bd.	Supreme Court	773 So. 2d 519; 2000 Fla. LEXIS 2404	December 12, 2000	In an election contest, the First District court of appeal certified a trial court order to be of great public importance and to require	Prior to the general election, two political parties mailed preprinted requests for absentee ballots to registered voters in Seminole County.	No	N/A	No

008479

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>immediate resolution by the supreme court. The trial court denied appellants' request to invalidate absentee ballot requests in Seminole County in the 2000 presidential election.</p>	<p>Forms mailed by one party failed to include either a space for the voter identification number or the preprinted number. Representatives from that party were allowed to add voter identification numbers to request forms after they were returned, and absentee ballots were sent to the persons named on the request forms. The supreme court affirmed the trial court's refusal to invalidate the</p>			

008480

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>ballot requests, and adopted the trial court's reasoning that the information required, which included the voter identification number, was directory rather than mandatory. The trial court properly found that the evidence did not support a finding of fraud, gross negligence, or intentional wrongdoing. Allowing one party to correct ballots did not constitute illegal disparate treatment because there was no need to correct the</p>			

008481

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					other party's forms. Affirmed.			
Gross v. Albany County Bd. of Elections	Court of Appeals of New York	3 N.Y.3d 251; 819 N.E.2d 197; 785 N.Y.S.2d 729; 2004 N.Y. LEXIS 2412	October 14, 2004	Appellant candidates sought review from an order of the Appellate Division, which affirmed a trial court order holding that absentee ballots from a special general election were not to be canvassed because respondent Albany County Board of Elections failed to follow the set procedure for those voters.	Due to a challenge to a redistricting plan, the Board was enjoined from conducting primary and general elections for certain county districts. A special primary election was directed, with a special general election to be held "expeditiously thereafter." Absentee ballot requests for the first special election were based on prior requests, but new requests had to be	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>made for the general election. However, the Board forwarded absentee ballots for that election as well, based on the prior requests. Candidates in two close races thereafter challenged those absentee ballots, as they violated the procedure that was to be followed. The trial court held that the ballots should not be canvassed, which decision was affirmed on appeal. On further review due to dissenting opinions, the</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>court found that the ballots were in violation of the federal court order that directed the procedure to be followed, as well as in violation of New York election law. The court concluded that the Board's error was not technical, ministerial, or inconsequential because it was central to the substantive process, and the voters who used absentee ballots were not determined to be "duly qualified electors."            Affirmed.</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election	Supreme Court of Pennsylvania	577 Pa. 231; 843 A.2d 1223; 2004 Pa. LEXIS 431	March 8, 2004	A county elections board voided certain absentee ballots cast in the November 4, 2003, general election. The court of common pleas held that absentee ballots delivered by third persons were valid and should be counted. The commonwealth court affirmed the trial court's decision. The state supreme court granted allocatur. Appellants and appellees were certain	The absentee ballots at issue were hand-delivered to the county elections board by third persons on behalf of non--disabled voters. On appeal, the issue was whether non--disabled absentee voters could have third persons hand--deliver their ballots to the elections board where the board indicated that the practice was permitted. The state supreme court concluded that the "in person" delivery requirement was mandatory, and	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				candidates and voters.	that absentee ballots delivered in violation of the provision were invalid, notwithstanding the board's erroneous instructions to the contrary. Under the statute's plain meaning, a non-disabled absentee voter had two choices: send the ballot by mail, or deliver it in person. Third--person hand--delivery of absentee ballots was not permitted. To ignore the law's clear instructions regarding in--person delivery			

008486

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>would undermine the statute's very purpose as a safeguard against fraud. The state supreme court concluded that its precedent was clear, and it could not simply ignore substantive provisions of the Pennsylvania Election Code. The judgment of the Commonwealth Court was reversed in so far as it held that certain absentee ballots delivered on behalf of non--disabled absentee voters were valid.</p>			
In re Canvass of	Commonwealth Court of	839 A.2d 451; 2003	December 22, 2003	The Allegheny County	On appeal, the issue was whether	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Absentee Ballots of November 4, 2003	Pennsylvania	Pa. Commw. LEXIS 963		Elections Board did not allow 74 challenged third--party hand--delivered absentee ballots to be counted in the statewide general election. The court of common pleas of Allegheny County reversed the Board's decision and allowed the 74 ballots to be counted. Appellant objecting candidates appealed the trial court's order.	non-disabled voters who voted by absentee ballots and had those ballots delivered by third parties to county election boards could have their ballots counted in the statewide general election. First, the appellate court concluded that political bodies had standing to appeal. Also, the trial court did not err by counting the 74 ballots because absentee voters could not be held responsible for following the statutory			

008488

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>requirements of Pennsylvania election law where the Board knowingly failed to abide by the statutory language regarding the delivery of absentee ballots, changed its policy to require voters to abide by the language, and then changed its policy back to its original stance that voters did not have to abide by the statutory language, thereby misleading absentee voters regarding delivery requirements.</p>			

008489

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Under the circumstances, it was more important to protect the interest of the voters by not disenfranchising them than to adhere to the strict language of the statute. However, one ballot was not counted because it was not delivered to the Board. Affirmed with the exception that one voter's ballot was stricken.			
United States v. Pennsylvania	United States District Court for the Middle District of Pennsylvania	2004 U.S. Dist. LEXIS 21167	October 20, 2004	Plaintiff United States sued defendant Commonwealth of	The testimony of the two witnesses offered by the United States did not support its	No	N/A	No

008490

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of candidates so</p>	<p>contention that voters protected by the Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern regarding their ability or</p>			

008491

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				late in the election year.	right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of UOCAVA voters to cast their ballots. Moreover, Pennsylvania had			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					adduced substantial evidence that the requested injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs. Motion for injunctive relief denied.			
Hoblock v. Albany County Bd. of Elections	United States District Court for the Northern District of New York	341 F. Supp. 2d 169; 2004 U.S. Dist. LEXIS 21326	October 25, 2004	Plaintiffs, candidates and voters, sued defendant, the Albany County, New York,	An election for members of the Albany County Legislature had been enjoined, and special	No	N/A	No

008493

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>Board of Elections, under § 1983, claiming that the Board violated plaintiffs' Fourteenth Amendment rights by refusing to tally the voters' absentee ballots. Plaintiffs moved for a preliminary injunction.</p>	<p>primary and general elections were ordered. The order stated that the process for obtaining and counting absentee ballots for the general election would follow New York election law, which required voters to request absentee ballots. However, the Board issued absentee ballots for the general election to all persons who had applied for an absentee ballot for the cancelled election. The voters used absentee ballots</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>to vote; their ballots were later invalidated. A state court determined that automatically sending absentee ballots to those who had not filed an application violated the constitution of New York. The district court found that the candidates' claims could have been asserted in state court and were barred by res judicata, but the voters were not parties to the state court action. The candidates were not entitled to joinder and had</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>not filed a motion to intervene. The voters established a likelihood of success on the merits, as the Board effectively took away their right to vote by issuing absentee ballots and then refusing to count them. The voters' claims involved more than just an "unintended irregularity." The candidates' claims were dismissed, and their request for joinder or to intervene was denied. Plaintiffs' motion for a preliminary injunction preventing the</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Board from certifying winners of the election was granted.			
Griffin v. Roupas	United States Court of Appeals for the Seventh Circuit	385 F.3d 1128; 2004 U.S. App. LEXIS 21476	October 15, 2004	In a suit brought by plaintiff working mothers against defendants, members of the Illinois State Board of Elections, alleging that the United States Constitution required Illinois to allow them to vote by absentee ballot, the mothers appealed from a decision of the United States District	The mothers contended that, because it was a hardship for them to vote in person on election day, the U.S. Constitution required Illinois to allow them to vote by absentee ballot. The district court dismissed the mothers' complaint. On appeal, the court held that the district court's ruling was correct, because, although it was possible that the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>Court for the Northern District of Illinois, Eastern Division, which dismissed their complaint for failure to state a claim.</p>	<p>problems created by absentee voting might be outweighed by the harm to voters who would lose their vote if they were unable to vote by absentee ballot, the striking of the balance between discouraging fraud and encouraging voter turnout was a legislative judgment with which the court would not interfere unless strongly convinced that such judgment was grossly awry. The court further held that Illinois</p>			

008498

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>law did not deny the mothers equal protection of the laws, because the hardships that prevented voting in person did not bear more heavily on working mothers than other classes in the community. Finally, the court held that, although the length and complexity of the Illinois ballot supported an argument for allowing people to vote by mail, such argument had nothing to do with the problems faced by working mothers. It</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					applied to everyone. Affirmed.			
Reitz v. Rendell	United States District Court for the Middle District of Pennsylvania	2004 U.S. Dist. LEXIS 21813	October 29, 2004	Plaintiff service members filed an action against defendant state officials under the Uniformed and Overseas Citizens Absentee Voting Act, alleging that they and similarly situated service members would be disenfranchised because they did not receive their absentee ballots in time. The parties entered into a	The court issued an order to assure that service members and other similarly situated service members who were protected by the UOCAVA would not be disenfranchised. The court ordered the Secretary of the Commonwealth of Pennsylvania to take all reasonable steps necessary to direct the county boards of elections to accept as timely received absentee	No	N/A	No

008500

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				voluntary agreement and submitted it to the court for approval.	ballots cast by service members and other overseas voters as defined by UOCAVA, so long as the ballots were received by November 10, 2004. The ballots were to be considered solely for purposes of the federal offices that were included on the ballots. The court held that the ballot needed to be cast no later than November 2, 2004 to be counted. The court did not make any findings of liability against			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					the Governor or the Secretary. The court entered an order, pursuant to a stipulation between the parties, that granted injunctive relief to the service members.			
Bush v. Hillsborough County Canvassing Bd.	United States District Court for the Northern District of Florida	123 F. Supp. 2d 1305; 2000 U.S. Dist. LEXIS 19265	December 8, 2000	The matter came before the court on plaintiffs' complaint for declaratory and injunctive relief alleging that defendant county canvassing boards rejected overseas absentee state ballots and federal write-in ballots based	Plaintiff presidential and vice--presidential candidates and state political party contended that defendant county canvassing boards rejected overseas absentee state ballots and federal write--in ballots based on criteria inconsistent with the Uniformed	No	N/A	No

008502

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>on criteria inconsistent with federal law, and requesting that the ballots be declared valid and that they should be counted.</p>	<p>and Overseas Citizens Absentee Voting Act. Because the state accepted overseas absentee state ballots and federal write--in ballots up to 10 days after the election, the State needed to access that the ballot in fact came from overseas. However, federal law provided the method to establish that fact by requiring the overseas absentee voter to sign an oath that the ballot was mailed from outside the United States and requiring the state</p>			

008503

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>election officials to examine the voter's declarations. The court further noted that federal law required the user of a federal write--in ballot to timely apply for a regular state absentee ballot, not that the state receive the application, and that again federal law, by requiring the voter using a federal write--in ballot to swear that he or she had made timely application, had provided the proper method of proof. Plaintiffs withdrew as moot</p>			

008504

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>their request for injunctive relief and the court granted in part and denied in part plaintiffs' request for declaratory relief, and declared valid all federal write--in ballots that were signed pursuant to the oath provided therein but rejected solely because the ballot envelope did not have an APO, FPO, or foreign postmark, or solely because there was no record of an application for a state absentee ballot.</p>			
Kolb v.	Supreme Court	270	March 17,	Both petitioner	Both petitioner	No	N/A	No

008505

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Casella	of New York, Appellate Division, Fourth Department	A.D.2d 964; 705 N.Y.S.2d 746; 2000 N.Y. App. Div. LEXIS 3483	2000	and respondent appealed from order of supreme court, determining which absentee and other paper ballots would be counted in a special legislative election.	and respondent, presumably representing different candidates, challenged the validity of particular paper ballots, mostly absentee, in a special legislative election. The court affirmed most of the trial court's findings, but modified its order to invalidate ballots improperly marked outside the voting square--ballots where the signature on the envelope differed substantially from the voter			

008506

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>registration card signature----and ballots where voters neglected to supply statutorily required information on the envelopes. However, the court, seeking to avoid disenfranchising voters where permissible, held that ballots were not invalid where applications substantially complied with statute, there was no objection to the ballots themselves, and there was no evidence of fraud. Where absentee</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					ballot envelopes contained extra ballots, the ballots were to be placed in a ballot box so that procedures applicable when excess ballots are placed in a ballot box could be followed. Order modified.			
People v. Woods	Court of Appeals of Michigan	241 Mich. App. 545; 616 N.W.2d 211; 2000 Mich. App. LEXIS 156	June 27, 2000	Defendant filed an interlocutory appeal of the decision by the circuit court, which denied defendant's request for a jury instruction on entrapment by estoppel, but stayed the proceedings to allow defendant to	Defendant distributed and collected absentee ballots in an election. Because both defendant and his brother were candidates on the ballot, defendant's assistance was illegal under Michigan law. Bound over for trial on election	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				pursue the interlocutory appeal, in a criminal action alleging violations of election laws.	fraud charges, defendant requested a jury instruction on entrapment by estoppel, which was denied. On interlocutory appeal, the appellate court reversed and remanded for an entrapment hearing, holding that defendant should be given the opportunity to present evidence that he unwittingly committed the unlawful acts in reasonable reliance upon the word of the township clerk. The necessary			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>elements of the entrapment defense were: (1) a government official (2) told the defendant that certain criminal conduct was legal; (3) the defendant actually relied on the official's statements; (4) the defendant's reliance was in good faith and reasonable in light of the official's identity, the point of law represented, and the substance of the official's statement; and (5) the prosecution would be so unfair as to</p>			

008510

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					violate the defendant's right to due process. Denial of jury instruction was reversed because the trial court did not hold an entrapment hearing; remanded for an entrapment hearing where defendant could present elements of the entrapment by estoppel defense.			
Harris v. Florida Elections Canvassing Comm'n	United States District Court for the Northern District of Florida	122 F. Supp. 2d 1317; 2000 U.S. Dist. LEXIS 17875	December 9, 2000	Plaintiffs challenged the counting of overseas absentee ballots received after 7 p.m. on election day, alleging the	The court found Congress did not intend 3 U.S.C.S. § 1 to impose irrational scheduling rules on state and local canvassing officials, and did	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				ballots violated Florida law.	not intend to disenfranchise overseas voters. The court held the state statute was required to yield to the Florida Administrative Code, which required the 10-day extension in the receipt of overseas absentee ballots in federal elections because the rule was promulgated to satisfy a consent decree entered by the state in 1982.			
Weldon v. Berks County Dep't of Election Servs.	United States District Court for the Eastern District of Pennsylvania	2004 U.S. Dist. LEXIS 21948	November 1, 2004	Plaintiffs, a congressman and a state representative, filed a motion seeking a preliminary	The congressman and representative sought to have the absentee ballots at issue set aside until a hearing could be held to	No	N/A	No

008512

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>injunction or temporary restraining order that would prohibit defendant county department of election services from delivering to local election districts absentee ballots received from any state, county, or city correctional facility.</p>	<p>determine whether any of the straining order denied. CASE SUMMARY: PROCEDURAL POSTURE: Plaintiffs, a congressman and a state representative, filed a motion seeking a preliminary injunction or temporary restraining order that would prohibit defendant county department of election services from delivering to local election districts absentee ballots received from any state,</p>			

008513

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>county, or city correctional facility as provided in Pa. Stat. Ann. tit. 25, § 3416.6 and Pa. Stat. Ann. tit. 25, § 3416.8.</p> <p><b>OVERVIEW:</b>  The congressman and representative sought to have the absentee ballots at issue set aside until a hearing could be held to determine whether any of the ballots were delivered to the county board of elections by a third party in violation of Pennsylvania law, whether any of the ballots were</p>			

008514

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>submitted by convicted incarcerated felons in violation of Pennsylvania law, and whether any of the ballots were submitted by qualified voters who were improperly assisted without the proper declaration required by Pennsylvania law. The court concluded that an ex parte temporary restraining order was not warranted because there were potential jurisdictional issues, substantial questions</p>			

008515

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					concerning the alleged violations, and the complaint did not allege that the department acted or threatened to act in an unlawful manner. The court denied the ex parte motion for a temporary restraining order. The court set a hearing on the motion for preliminary injunction.			
Qualkinbush v. Skubisz	Court of Appeals of Illinois, First District	822 N.E.2d 38; 2004 Ill. App. LEXIS 1546	December 28, 2004	Respondent appealed from an order of the circuit court certifying mayoral election results for a city in which the court	Respondent first claimed the trial court erred in denying his motion to dismiss with respect to 38 votes the Election Code was preempted by and	No	N/A	No

008516

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				declared petitioner mayor.	violated the Voting Rights Act and the Americans with Disabilities Act of 1990 since it restricted the individuals with whom an absentee voter could entrust their ballot for mailing. The appeals court found the trial court did not err in denying the motion to dismiss, as Illinois election law prevented a candidate or his or her agent from asserting undue influence upon a disabled voter and from manipulating that			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>voter into voting for the candidate or the agent's candidate, and was designed to protect the rights of disabled voters. Respondent had not established that the federal legislature intended to preempt the rights of state legislatures to restrict absentee voting, and, particularly, who could return absentee ballots. The Election Code did not violate equal protection principles, as the burden placed</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					upon absentee voters by the restriction on who could mail an absentee ballot was slight and nondiscriminatory and substantially contributed to the integrity of the election process. Affirmed.			
Panio v. Sunderland	Supreme Court of New York, Appellate Division, Second Department	14 A.D.3d 627; 790 N.Y.S.2d 136; 2005 N.Y. App. Div. LEXIS 3433	January 25, 2005	In proceedings filed pursuant to New York election law to determine the validity of certain absentee and affidavit ballots tendered for the office of 35th District Senator, appellants, a chairperson of	The question presented was whether the county election board should count the six categories of ballots that were in dispute. After a review of the evidence presented, the appeals court modified the trial court's order by:	No	N/A	No

008519

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>the county Republican committee and the Republican candidate, both sought review of an order by the supreme court to count or not count certain ballots. Respondent Democratic candidate cross-- appealed.</p>	<p>(1) deleting an order directing the county elections board (board) to count 160 affidavit ballots tendered by voters who appeared at the correct polling place but the wrong election district, as there were meaningful distinctions between those voters who went to the wrong polling place and those voters who went to the correct polling place but the wrong election district; (2) directing that the board not count</p>			

008520

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>10 affidavit ballots tendered in the wrong election district because of a map error, as there was no evidence that the voters in this category relied on the maps when they went to the wrong election districts; and (3) directing the board to count 45 absentee ballots tendered by poll workers, as it appeared that the workers substantially complied with the statute by providing a written statement that was the functional</p>			

008521

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					equivalent of an application for a special ballot. Order modified and judgment affirmed.			
Pierce v. Allegheny County Bd. of Elections	United States District Court for the Western District of Pennsylvania	324 F. Supp. 2d 684; 2003 U.S. Dist. LEXIS 25569	November 13, 2003	Plaintiff voters sought to enjoin defendant election board from allowing three different procedures for third--party absentee ballot delivery, require the set aside of all absentee third--party delivered ballots in connection with the November 2003 election, prohibit those	Intervenor political committees also moved to dismiss for lack of standing, lack of subject matter jurisdiction, and failure to state a claim, as well as abstention. Inter alia, the court found that abstention was appropriate under the Pullman doctrine because: (1) construction of Pennsylvania election law was not clear	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				ballots from being delivered to local election districts after having been commingled with other absentee ballots, and convert a temporary restraining order to an injunction.	regarding whether the absentee ballot provision requiring hand-delivery to be "in person" was mandatory or directory; (2) the construction of the provision by state courts as mandatory or directory could obviate the need to determine whether there had been a Fourteenth Amendment equal protection violation; and (3) erroneous construction of the provision could disrupt very important state voting rights policies.			

008523

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>However, the court had a continuing duty to consider the motion for temporary restraining order/preliminary injunction despite abstention. The court issued a limited preliminary injunction whereby the 937 hand--delivered absentee ballots at issue were set aside as "challenged" ballots subject to the election code challenge procedure. Any equal protection issues could be heard in state</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					court by virtue of the state court's concurrent jurisdiction.			
Friedman v. Snipes	United States District Court for the Southern District of Florida	345 F. Supp. 2d 1356; 2004 U.S. Dist. LEXIS 23739	November 9, 2004	Plaintiff registered voters sued defendant state and county election officials under § 1983 for alleged violations of their rights under 42 U.S.C.S. § 1971(a)(2)(B) of the Civil Rights Act, and the First and Fourteenth Amendments to the United States Constitution. The voters	The voters claimed they timely requested absentee ballots but (1) never received the requested ballot or (2) received a ballot when it was too late for them to submit the absentee ballot. The court held that 42 U.S.C.S. § 1971(a)(2)(B) was not intended to apply to the counting of ballots by those already deemed qualified to vote. The plain meaning of §	No	N/A	No

008525

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>moved for a temporary restraining order (TRO) and/or preliminary injunction. The court granted the TRO and held a hearing on the preliminary injunction.</p>	<p>1971(a)(2)(B) did not support the voters' claim that it should cover an error or omission on any record or paper or any error or omission in the treatment, handling, or counting of any record or paper. Further, because Florida election law only related to the mechanics of the electoral process, the correct standard to be applied here was whether Florida's important regulatory interests justified the restrictions imposed on their</p>			

008526

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>First and Fourteenth Amendment rights. The State's interests in ensuring a fair and honest election and counting votes within a reasonable time justified the light imposition on voting rights. The deadline for returning ballots did not disenfranchise a class of voters. Rather, it imposed a time deadline by which voters had to return their votes. So there was no equal protection violation.</p>			

008527

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Preliminary injunction denied.			

008528

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Weber v. Shelley	United States Court of Appeals for the Ninth Circuit	347 F.3d 1101; 2003 U.S. App. LEXIS 21979	October 28, 2003	Plaintiff voter brought an suit against defendants, the secretary of state and the county registrar of voters, claiming that the lack of a voter--verified paper trail in the county's newly installed touchscreen voting system violated her rights to equal protection and due process. The United States District Court for the Central District of California granted the	On review, the voter contended that use of paperless touch--screen voting systems was unconstitutional and that the trial court erred by ruling her expert testimony inadmissible. The trial court focused on whether the experts' declarations raised genuine issues of material fact about the relative accuracy of the voting systemat issue and excluded references to news--paper articles and unidentified studies absent any indication that	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				secretary and the registrar summary judgment. The voter appealed.	experts normally relied upon them. The appellate court found that the trial court's exclusions were not an abuse of discretion and agreed that the admissible opinions which were left did not tend to show that voters had a lesser chance of having their votes counted. It further found that the use of touchscreen voting systems was not subject to strict scrutiny simply because this particular balloting system might make the possibility of some kinds of fraud more difficult to detect. California			

008551

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					made a reasonable, politically neutral and non--discriminatory choice to certify touchscreen systems as an alternative to paper ballots, as did the county in deciding to use such a system. Nothing in the Constitution forbid this choice. The judgment was affirmed.			
Am. Ass'n of People with Disabilities v. Shelley	United States District Court for the Central District of California	324 F. Supp. 2d 1120; 2004 U.S. Dist. LEXIS 12587	July 6, 2004	Plaintiffs, disabled voters and organizations representing those voters, sought to enjoin the directives of defendant California	The voters urged the invalidation of the Secretary's directives because, allegedly, their effect was to deprive the voters of the opportunity to vote using touch-screen technology. Although it was not	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>Secretary of State, which decertified and withdrew approval of the use of certain direct recording electronic (DRE) voting systems. One voter applied for a temporary restraining order, or, in the alternative, a preliminary injunction. of a preliminary injunction in a number of ways, including a four--part test that considers (1) likelihood of success on</p>	<p>disputed that some disabled persons would be unable to vote independently and in private without the use of DREs, it was clear that they would not be deprived of their fundamental right to vote. The Americans with Disabilities Act, did not require accommodation that would enable disabled persons to vote in a manner that was comparable in every way with the voting rights enjoyed by persons without disabilities. Rather, it mandated that voting programs be made</p>			

008553

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>the merits; (2) the possibility of irreparable injury in the absence of an injunction; (3) a balancing of the harms; and (4) the public interest.</p>	<p>accessible. Defendant's decision to suspend the use of DREs pending improvement in their reliability and security of the devices was a rational one, designed to protect the voting rights of the state's citizens. The evidence did not support the conclusion that the elimination of the DREs would have a discriminatory effect on the visually or manually impaired. Thus, the voters showed little likelihood of success on the merits. The</p>			

008554

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					individual's request for a temporary restraining order, or, in the alternative, a preliminary injunction, was denied. Ninth Circuit's tests for a preliminary injunction, although phrased differently, require a court to inquire into whether there exists a likelihood of success on the merits, and the possibility of irreparable injury; a court is also required to balance the hardships.			
Fla. Democratic Party v. Hood	Court of Appeal of Florida, First	884 So. 2d 1148; 2004 Fla. App.	October 28, 2004	Petitioner, the Florida Democratic Party, sought	The Party argued that: (1) the Florida Administrative Code, recast	No	N/A	No

008555

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	District	LEXIS 16077		review of an emergency rule adopted by the Florida Department of State, contending that the findings of immediate danger, necessity, and procedural fairness on which the rule was based were insufficient under Florida law, which required a showing of such circumstances, and Florida case law. This matter followed.	language from the earlier invalidated rule prohibiting a manual recount of overvotes and undervotes cast on a touchscreen machine; (2) the rule did not call for the manual recount of votes to determine voter intent; and (3) the rule created voters who were entitled to manual recounts in close elections and those who were not. The appeals court disagreed. The Department was clearly concerned with the fact that if no rule were in place, the same confusion and inconsistency in			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>divining a voter's intent that attended the 2000 presidential election in Florida, and the same constitutional problems the United States Supreme Court addressed then, might recur in 2004. It was not the court's responsibility to decide the validity of the rule or whether other means were more appropriate. But, the following question was certified to the Supreme Court: Whether under Fla. Stat. ch. 120.54(4), the Department of</p>			

008557

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					State set forth sufficient justification for an emergency rule establishing standards for conducting manual recounts of overvotes and undervotes as applied to touchscreen voting systems? The petition was denied, but a question was certified to the supreme court as a matter of great public importance.			
Wexler v. Lepore	United States District Court for the Southern District of	342 F. Supp. 2d 1097; 2004 U.S. Dist. LEXIS 21344	October 25, 2004	Plaintiffs, a congressman, state commissioners, and a registered voter, brought	The officials claimed that the state had established an updated standard for manual recounts in counties using	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	Florida			a § 1983 action against defendants, state officials, alleging that the manual recount procedures for the state's touchscreen paperless voting systems violated their rights under U.S. Const. amends. V and XIV. A bench trial ensued.	optical scan systems and touchscreen voting systems, therefore, alleviating equal protection concerns. The court held that the rules prescribing what constituted a clear indication on the ballot that the voter had made a definite choice, as well the rules prescribing additional recount procedures for each certified voting system promulgated pursuant to Florida law complied with equal protection requirements under U.S. Const. amends. V and XIV because the rules			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>prescribed uniform, nondifferential standards for what constituted a legal vote under each certified voting system, as well as procedures for conducting a manual recount of overvotes and undervotes in the entire geographic jurisdiction. The court further held that the ballot images printed during a manual recount pursuant to Florida Administrative Code did not violate Florida law because the manual recount scheme properly reflected a voter's choice.</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Judgment was entered for the officials. The claims of the congressman, commissioners, and voter were denied.			

**Deliberative Process  
Privilege**

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Powers v. Donahue	Supreme Court of New York, Appellate Division, First Department	276 A.D.2d 157; 717 N.Y.S.2d 550; 2000 N.Y. App. Div. LEXIS 12644	December 5, 2000	Petitioner appealed an order of the supreme court, which denied his motion to direct the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to count only the absentee ballot listing correct candidates' names.	When the New York County Board of Elections learned some absentee ballots mailed to voters in one district listed the wrong candidates for state senator it sent a second set of absentee ballots to absentee voters informing them the first ballot was defective and requesting they use the second ballot. The board agreed if two ballots were received from the same voter, only the corrected ballot would be counted. Appellant candidate moved in support of the board's determination. Respondent candidate opposed the application, contending that only the first ballot received should have been canvassed. The trial court denied appellant's motion, ruling that pursuant to New York law, where two ballots were received from the same voter, only the ballot with the earlier date was to be accepted. The court found the local board officials should have resolved the dispute as they proposed. The order was modified and the motion granted to the extent of directing the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to accept only the corrected	No	N/A	No

008562

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					ballot postmarked on or before November 7, 2000, and otherwise affirmed.			
Goodwin v. St. Thomas--St. John Bd. of Elections	Territorial Court of the Virgin Islands	43 V.I. 89; 2000 V.I. LEXIS 15	December 13, 2000	Plaintiff political candidate alleged that certain general election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.	Plaintiff alleged that defendants counted unlawful absentee ballots that lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result.	No	N/A	No

008563

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper. Request for declaratory and injunctive relief denied.			
Townson v. Stonicher	Supreme Court of Alabama	2005 Ala. LEXIS 214	December 9, 2005	The circuit court overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross-appealed. In the meantime, the trial court stayed enforcement of its judgment pending resolution of the appeal.	The voters and the incumbent all challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that at least 30 absentee voters who voted for the incumbent provided with their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat "cure" that defect by providing a proper form of identification at the trial of the election contest, because, under those	No	N/A	No

008564

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					circumstances, it was difficult to conclude that those voters made an honest effort to comply with the law. Moreover, to count the votes of voters who failed to comply with the essential requirement of submitting proper identification with their absentee ballots had the effect of disenfranchising qualified electors who choose not to vote but rather than to make the effort to comply with the absentee--voting requirements. Affirmed.			
Gross v. Albany County Bd. of Elections	Supreme Court of New York, Appellate Division, Third Department	10 A.D.3d 476; 781 N.Y.S.2d 172; 2004 N.Y. App. Div. LEXIS 10360	August 23, 2004	Appellant candidates appealed from a judgment entered by the supreme court, which partially granted the candidates' petition challenging the method used by respondent Albany County Board of Elections for counting absentee applications and ballots for the office of Albany County	The candidates argued that the Board violated a federal court order regarding the election. The appellate court held that absentee ballots that were sent to voters for the special general election based solely on their applications for the general election were properly voided. The Board had no authority to issue the ballots without an absentee ballot application for the special general election. Two ballots were properly invalidated as the Board failed to retain the envelopes. Ballots were properly counted for voters who failed to identify their physician on their applications. A ballot was	No	N/A	No

008565

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				Legislator, 26th and 29th Districts, in a special general election required by the federal courts.	properly counted where the Board failed to scrutinize the sufficiency of the reason for the application. A ballot containing two signatures was properly rejected. A ballot was properly rejected due to extraneous marks outside the voting square. A ballot was properly counted despite the failure of the election inspector to witness the voter's signature. A ballot was properly counted as the application stated the date of the voter's absence. A ballot was properly counted as the failure to date the application was cured by a time stamp. Affirmed.			
Erlandson v. Kiffmeyer	Supreme Court of Minnesota	659 N.W.2d 724; 2003 Minn. LEXIS 196	April 17, 2003	Petitioners, representing the Democratic--Farmer--Labor Party, brought an action against respondents, the Minnesota Secretary of State and the Hennepin County Auditor, seeking relief in regard to the election for United States Senator, following	The appellate court found that, while it may have seemed unfair to the replacement candidate to count votes for other candidates from regular absentee ballots on which the replacement candidate did not appear, those were properly cast ballots voting for a properly nominated candidate. Petitioners' request that the Minnesota supreme court order that votes for United States Senator cast on regular absentee ballots not be counted was denied. A key issue was Minn. Stat. § 204B.41 (2002), which provided, in--	No	N/A	No

008566

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the death of Senator Wellstone. The issue concerned the right of absentee voters to obtain replacement ballots. Individuals intervened on behalf of the Republican Party. The instant court granted review.	part, that official supplemental ballots could not be mailed to absent voters to whom ballots were mailed before the official supplemental ballots were prepared. The supreme court held that, by treating similarly--situated voters differently, § 204B.41 violated equal protection guarantees and could not even survive rational basis review. For voters who cast their regular absentee ballots for Wellstone before the vacancy occurred, but were unable to go to their polling place on election day or pick up a replacement ballot by election day, the prohibition on mailing replacement ballots in § 204B.41 denied them the right to cast a meaningful vote for United States Senator. The petition of petitioners was denied in part, but granted with respect to mailing replacement ballots to all applicants for regular absentee ballots who requested a replacement ballot.			
People v. Deganutti	Appellate Court of Illinois, First District, Third Division	348 Ill. App. 3d 512; 810 N.E.2d 191; 2004 Ill.	May 12, 2004	Defendant appealed from a judgment of the circuit court, which convicted defendant on charges of unlawful	Defendant went to the voters' homes and obtained their signatures on absentee ballot request forms. Once the ballots were mailed to the voters, defendant returned to the homes. With voter one, defendant sat on the couch	No	N/A	No

008567

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		App. LEXIS 518		observation of voting and on charges of absentee ballot violations in connection with the completion and mailing of the absentee ballots of two voters.	with the voter and instructed which numbers to punch on the ballot. With voter two, defendant provided a list a numbers and stood nearby as voter two completed the ballots. Defendant then looked at the ballot and had voter two re-punch a number that had not punched cleanly. Defendant then put the ballots in the mail for the voters. On appeal, she argued insufficient evidence to sustain her convictions. The court affirmed, holding that (1) the circumstantial evidence surrounding defendant's presence as the voters completed their ballots supported the unlawful observation convictions; (2) the fact that defendant knowingly took the voters ballots and mailed them, a violation of Illinois law supported her conviction, and (3) the fact that the statutes defendant was convicted under required only a knowing mental state rather than criminal intent did not violate substantive due process. Affirmed.			
Jacobs v. Seminole County Canvassing Bd.	Supreme Court	773 So. 2d 519; 2000 Fla. LEXIS	December 12, 2000	In an election contest, the First District court of appeal certified a	Prior to the general election, two political parties mailed preprinted requests for absentee ballots to registered voters in Seminole County.	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
		2404		trial court order to be of great public importance and to require immediate resolution by the supreme court. The trial court denied appellants' request to invalidate absentee ballot requests in Seminole County in the 2000 presidential election.	Forms mailed by one party failed to include either a space for the voter identification number or the preprinted number. Representatives from that party were allowed to add voter identification numbers to request forms after they were returned, and absentee ballots were sent to the persons named on the request forms. The supreme court affirmed the trial court's refusal to invalidate the ballot requests, and adopted the trial court's reasoning that the information required, which included the voter identification number, was directory rather than mandatory. The trial court properly found that the evidence did not support a finding of fraud, gross negligence, or intentional wrongdoing. Allowing one party to correct ballots did not constitute illegal disparate treatment because there was no need to correct the other party's forms. Affirmed.			
Gross v. Albany County Bd. of Elections	Court of Appeals of New York	3 N.Y.3d 251; 819 N.E.2d 197; 785 N.Y.S.2d 729;	October 14, 2004	Appellant candidates sought review from an order of the Appellate Division, which affirmed a trial court order	Due to a challenge to a redistricting plan, the Board was enjoined from conducting primary and general elections for certain county districts. A special primary election was directed, with a special general election to be	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		2004 N.Y. LEXIS 2412		holding that absentee ballots from a special general election were not to be canvassed because respondent Albany County Board of Elections failed to follow the set procedure for those voters.	held "expeditiously thereafter." Absentee ballot requests for the first special election were based on prior requests, but new requests had to be made for the general election. However, the Board forwarded absentee ballots for that election as well, based on the prior requests. Candidates in two close races thereafter challenged those absentee ballots, as they violated the procedure that was to be followed. The trial court held that the ballots should not be canvassed, which decision was affirmed on appeal. On further review due to dissenting opinions, the court found that the ballots were in violation of the federal court order that directed the procedure to be followed, as well as in violation of New York election law. The court concluded that the Board's error was not technical, ministerial, or inconsequential because it was central to the substantive process, and the voters who used absentee ballots were not determined to be "duly qualified electors." Affirmed.			
In re Canvass of	Supreme Court of	577 Pa.	March 8,	A county elections	The absentee ballots at issue were	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Absentee Ballots of Nov. 4, 2003 Gen. Election	Pennsylvania	231; 843 A.2d 1223; 2004 Pa. LEXIS 431	2004	board voided certain absentee ballots cast in the November 4, 2003, general election. The court of common pleas held that absentee ballots delivered by third persons were valid and should be counted. The commonwealth court affirmed the trial court's decision. The state supreme court granted allocatur. Appellants and appellees were certain candidates and voters.	hand-delivered to the county elections board by third persons on behalf of non--disabled voters. On appeal, the issue was whether non--disabled absentee voters could have third persons hand--deliver their ballots to the elections board where the board indicated that the practice was permitted. The state supreme court concluded that the "in person" delivery requirement was mandatory, and that absentee ballots delivered in violation of the provision were invalid, notwithstanding the board's erroneous instructions to the contrary. Under the statute's plain meaning, a non--disabled absentee voter had two choices: send the ballot by mail, or deliver it in person. Third--person hand--delivery of absentee ballots was not permitted. To ignore the law's clear instructions regarding in--person delivery would undermine the statute's very purpose as a safeguard against fraud. The state supreme court concluded that its precedent was clear, and it could not simply ignore substantive provisions of the Pennsylvania Election Code. The judgment of the Commonwealth Court was reversed in so far as it held that			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					certain absentee ballots delivered on behalf of non--disabled absentee voters were valid.			
In re Canvass of Absentee Ballots of November 4, 2003	Commonwealth Court of Pennsylvania	839 A.2d 451; 2003 Pa. Commw. LEXIS 963	December 22, 2003	The Allegheny County Elections Board did not allow 74 challenged third--party hand--delivered absentee ballots to be counted in the statewide general election. The court of common pleas of Allegheny County reversed the Board's decision and allowed the 74 ballots to be counted. Appellant objecting candidates appealed the trial court's order.	On appeal, the issue was whether non-disabled voters who voted by absentee ballots and had those ballots delivered by third parties to county election boards could have their ballots counted in the statewide general election. First, the appellate court concluded that political bodies had standing to appeal. Also, the trial court did not err by counting the 74 ballots because absentee voters could not be held responsible for following the statutory requirements of Pennsylvania election law where the Board knowingly failed to abide by the statutory language regarding the delivery of absentee ballots, changed its policy to require voters to abide by the language, and then changed its policy back to its original stance that voters did not have to abide by the statutory language, thereby misleading absentee voters regarding delivery requirements. Under the circumstances, it was more important to protect the interest of the voters by not disenfranchising them	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					than to adhere to the strict language of the statute. However, one ballot was not counted because it was not delivered to the Board. Affirmed with the exception that one voter's ballot was stricken.			
United States v. Pennsylvania	United States District Court for the Middle District of Pennsylvania	2004 U.S. Dist. LEXIS 21167	October 20, 2004	Plaintiff United States sued defendant Commonwealth of Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of	The testimony of the two witnesses offered by the United States did not support its contention that voters protected by the Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern regarding their ability or right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				candidates so late in the election year.	UOCAVA voters to cast their ballots. Moreover, Pennsylvania had adduced substantial evidence that the requested injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs. Motion for injunctive relief denied.			
Hoblock v. Albany County Bd. of Elections	United States District Court for the Northern District of New York	341 F. Supp. 2d 169; 2004 U.S. Dist. LEXIS 21326	October 25, 2004	Plaintiffs, candidates and voters, sued defendant, the Albany County, New York, Board of Elections, under § 1983, claiming that the Board violated plaintiffs' Fourteenth Amendment rights by refusing to tally the voters' absentee ballots. Plaintiffs moved for a preliminary injunction.	An election for members of the Albany County Legislature had been enjoined, and special primary and general elections were ordered. The order stated that the process for obtaining and counting absentee ballots for the general election would follow New York election law, which required voters to request absentee ballots. However, the Board issued absentee ballots for the general election to all persons who had applied for an absentee ballot for the cancelled election. The voters used absentee ballots to vote; their ballots were later invalidated. A state court determined that automatically sending absentee ballots to those who had not filed an application violated the constitution of	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					New York. The district court found that the candidates' claims could have been asserted in state court and were barred by res judicata, but the voters were not parties to the state court action. The candidates were not entitled to joinder and had not filed a motion to intervene. The voters established a likelihood of success on the merits, as the Board effectively took away their right to vote by issuing absentee ballots and then refusing to count them. The voters' claims involved more than just an "unintended irregularity." The candidates' claims were dismissed, and their request for joinder or to intervene was denied. Plaintiffs' motion for a preliminary injunction preventing the Board from certifying winners of the election was granted.			
Griffin v. Roupas	United States Court of Appeals for the Seventh Circuit	385 F.3d 1128; 2004 U.S. App. LEXIS 21476	October 15, 2004	In a suit brought by plaintiff working mothers against defendants, members of the Illinois State Board of Elections, alleging that the United States	The mothers contended that, because it was a hardship for them to vote in person on election day, the U.S. Constitution required Illinois to allow them to vote by absentee ballot. The district court dismissed the mothers' complaint. On appeal, the court held that the district court's ruling was	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				Constitution required Illinois to allow them to vote by absentee ballot, the mothers appealed from a decision of the United States District Court for the Northern District of Illinois, Eastern Division, which dismissed their complaint for failure to state a claim.	correct, because, although it was possible that the problems created by absentee voting might be outweighed by the harm to voters who would lose their vote if they were unable to vote by absentee ballot, the striking of the balance between discouraging fraud and encouraging voter turnout was a legislative judgment with which the court would not interfere unless strongly convinced that such judgment was grossly awry. The court further held that Illinois law did not deny the mothers equal protection of the laws, because the hardships that prevented voting in person did not bear more heavily on working mothers than other classes in the community. Finally, the court held that, although the length and complexity of the Illinois ballot supported an argument for allowing people to vote by mail, such argument had nothing to do with the problems faced by working mothers. It applied to everyone. Affirmed.			
Reitz v. Rendell	United States District Court for the Middle District of	2004 U.S. Dist. LEXIS	October 29, 2004	Plaintiff service members filed an action against defendant state	The court issued an order to assure that service members and other similarly situated service members who were protected by the UOCAVA would not	No	N/A	No

008576

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	Pennsylvania	21813		officials under the Uniformed and Overseas Citizens Absentee Voting Act, alleging that they and similarly situated service members would be disenfranchised because they did not receive their absentee ballots in time. The parties entered into a voluntary agreement and submitted it to the court for approval.	be disenfranchised. The court ordered the Secretary of the Commonwealth of Pennsylvania to take all reasonable steps necessary to direct the county boards of elections to accept as timely received absentee ballots cast by service members and other overseas voters as defined by UOCAVA, so long as the ballots were received by November 10, 2004. The ballots were to be considered solely for purposes of the federal offices that were included on the ballots. The court held that the ballot needed to be cast no later than November 2, 2004 to be counted. The court did not make any findings of liability against the Governor or the Secretary. The court entered an order, pursuant to a stipulation between the parties, that granted injunctive relief to the service members.			
Bush v. Hillsborough County Canvassing Bd.	United States District Court for the Northern District of Florida	123 F. Supp. 2d 1305; 2000 U.S. Dist. LEXIS 19265	December 8, 2000	The matter came before the court on plaintiffs' complaint for declaratory and injunctive relief alleging that defendant county canvassing boards	Plaintiff presidential and vice--presidential candidates and state political party contended that defendant county canvassing boards rejected overseas absentee state ballots and federal write--in ballots based on criteria inconsistent with the Uniformed and Overseas Citizens	No	N/A	No

008577

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>rejected overseas absentee state ballots and federal write--in ballots based on criteria inconsistent with federal law, and requesting that the ballots be declared valid and that they should be counted.</p>	<p>Absentee Voting Act. Because the state accepted overseas absentee state ballots and federal write--in ballots up to 10 days after the election, the State needed to access that the ballot in fact came from overseas. However, federal law provided the method to establish that fact by requiring the overseas absentee voter to sign an oath that the ballot was mailed from outside the United States and requiring the state election officials to examine the voter's declarations. The court further noted that federal law required the user of a federal write--in ballot to timely apply for a regular state absentee ballot, not that the state receive the application, and that again federal law, by requiring the voter using a federal write--in ballot to swear that he or she had made timely application, had provided the proper method of proof. Plaintiffs withdrew as moot their request for injunctive relief and the court granted in part and denied in part plaintiffs' request for declaratory relief, and declared valid all federal write--in ballots that were signed pursuant to the oath provided therein but rejected solely because the ballot envelope did</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					not have an APO, FPO, or foreign postmark, or solely because there was no record of an application for a state absentee ballot.			
Kolb v. Casella	Supreme Court of New York, Appellate Division, Fourth Department	270 A.D.2d 964; 705 N.Y.S.2d 746; 2000 N.Y. App. Div. LEXIS 3483	March 17, 2000	Both petitioner and respondent appealed from order of supreme court, determining which absentee and other paper ballots would be counted in a special legislative election.	Both petitioner and respondent, presumably representing different candidates, challenged the validity of particular paper ballots, mostly absentee, in a special legislative election. The court affirmed most of the trial court's findings, but modified its order to invalidate ballots improperly marked outside the voting square---ballots where the signature on the envelope differed substantially from the voter registration card signature---and ballots where voters neglected to supply statutorily required information on the envelopes. However, the court, seeking to avoid disenfranchising voters where permissible, held that ballots were not invalid where applications substantially complied with statute, there was no objection to the ballots themselves, and there was no evidence of fraud. Where absentee ballot envelopes contained extra ballots, the ballots were to be placed in a ballot	No	N/A	No

008579

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					box so that procedures applicable when excess ballots are placed in a ballot box could be followed. Order modified.			
People v. Woods	Court of Appeals of Michigan	241 Mich. App. 545; 616 N.W.2d 211; 2000 Mich. App. LEXIS 156	June 27, 2000	Defendant filed an interlocutory appeal of the decision by the circuit court, which denied defendant's request for a jury instruction on entrapment by estoppel, but stayed the proceedings to allow defendant to pursue the interlocutory appeal, in a criminal action alleging violations of election laws.	Defendant distributed and collected absentee ballots in an election. Because both defendant and his brother were candidates on the ballot, defendant's assistance was illegal under Michigan law. Bound over for trial on election fraud charges, defendant requested a jury instruction on entrapment by estoppel, which was denied. On interlocutory appeal, the appellate court reversed and remanded for an entrapment hearing, holding that defendant should be given the opportunity to present evidence that he unwittingly committed the unlawful acts in reasonable reliance upon the word of the township clerk. The necessary elements of the entrapment defense were: (1) a government official (2) told the defendant that certain criminal conduct was legal; (3) the defendant actually relied on the official's statements; (4) the defendant's reliance was in good faith and reasonable in light of the official's	No	N/A	No

008580

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					identity, the point of law represented, and the substance of the official's statement; and (5) the prosecution would be so unfair as to violate the defendant's right to due process. Denial of jury instruction was reversed because the trial court did not hold an entrapment hearing; remanded for an entrapment hearing where defendant could present elements of the entrapment by estoppel defense.			
Harris v. Florida Elections Canvassing Comm'n	United States District Court for the Northern District of Florida	122 F. Supp. 2d 1317; 2000 U.S. Dist. LEXIS 17875	December 9, 2000	Plaintiffs challenged the counting of overseas absentee ballots received after 7 p.m. on election day, alleging the ballots violated Florida law.	The court found Congress did not intend 3 U.S.C.S. § 1 to impose irrational scheduling rules on state and local canvassing officials, and did not intend to disenfranchise overseas voters. The court held the state statute was required to yield to the Florida Administrative Code, which required the 10-day extension in the receipt of overseas absentee ballots in federal elections because the rule was promulgated to satisfy a consent decree entered by the state in 1982.	No	N/A	No
Weldon v. Berks County Dep't of Election Servs.	United States District Court for the Eastern District of Pennsylvania	2004 U.S. Dist. LEXIS 21948	November 1, 2004	Plaintiffs, a congressman and a state representative, filed a motion seeking a	The congressman and representative sought to have the absentee ballots at issue set aside until a hearing could be held to determine whether any of the straining order denied. CASE	No	N/A	No

003581

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>preliminary injunction or temporary restraining order that would prohibit defendant county department of election services from delivering to local election districts absentee ballots received from any state, county, or city correctional facility.</p>	<p>SUMMARY: PROCEDURAL POSTURE: Plaintiffs, a congressman and a state representative, filed a motion seeking a preliminary injunction or temporary restraining order that would prohibit defendant county department of election services from delivering to local election districts absentee ballots received from any state, county, or city correctional facility as provided in Pa. Stat. Ann. tit. 25, § 3416.6 and Pa. Stat. Ann. tit. 25, § 3416.8. OVERVIEW: The congressman and representative sought to have the absentee ballots at issue set aside until a hearing could be held to determine whether any of the ballots were delivered to the county board of elections by a third party in violation of Pennsylvania law, whether any of the ballots were submitted by convicted incarcerated felons in violation of Pennsylvania law, and whether any of the ballots were submitted by qualified voters who were improperly assisted without the proper declaration required by Pennsylvania law. The court concluded that an ex parte temporary restraining order was not warranted because there</p>			

008582

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Cascade be Researched Further
					were potential jurisdictional issues, substantial questions concerning the alleged violations, and the complaint did not allege that the department acted or threatened to act in an unlawful manner. The court denied the ex parte motion for a temporary restraining order. The court set a hearing on the motion for preliminary injunction.			
Qualkinbush v. Skubisz	Court of Appeals of Illinois, First District	822 N.E.2d 38; 2004 Ill. App. LEXIS 1546	December 28, 2004	Respondent appealed from an order of the circuit court certifying mayoral election results for a city in which the court declared petitioner mayor.	Respondent first claimed the trial court erred in denying his motion to dismiss with respect to 38 votes the Election Code was preempted by and violated the Voting Rights Act and the Americans with Disabilities Act of 1990 since it restricted the individuals with whom an absentee voter could entrust their ballot for mailing. The appeals court found the trial court did not err in denying the motion to dismiss, as Illinois election law prevented a candidate or his or her agent from asserting undue influence upon a disabled voter and from manipulating that voter into voting for the candidate or the agent's candidate, and was designed to protect the rights of disabled voters. Respondent had not established that the federal legislature	No	N/A	No

008583

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					intended to preempt the rights of state legislatures to restrict absentee voting, and, particularly, who could return absentee ballots. The Election Code did not violate equal protection principles, as the burden placed upon absentee voters by the restriction on who could mail an absentee ballot was slight and nondiscriminatory and substantially contributed to the integrity of the election process. Affirmed.			
Panio v. Sunderland	Supreme Court of New York, Appellate Division, Second Department	14 A.D.3d 627; 790 N.Y.S.2d 136; 2005 N.Y. App. Div. LEXIS 3433	January 25, 2005	In proceedings filed pursuant to New York election law to determine the validity of certain absentee and affidavit ballots tendered for the office of 35th District Senator, appellants, a chairperson of the county Republican committee and the Republican candidate, both sought review of an	The question presented was whether the county election board should count the six categories of ballots that were in dispute. After a review of the evidence presented, the appeals court modified the trial court's order by: (1) deleting an order directing the county elections board (board) to count 160 affidavit ballots tendered by voters who appeared at the correct polling place but the wrong election district, as there were meaningful distinctions between those voters who went to the wrong polling place and those voters who went to the correct polling place but the wrong election district; (2) directing that the board not count 10	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				order by the supreme court to count or not count certain ballots. Respondent Democratic candidate cross-- appealed.	affidavit ballots tendered in the wrong election district because of a map error, as there was no evidence that the voters in this category relied on the maps when they went to the wrong election districts; and (3) directing the board to count 45 absentee ballots tendered by poll workers, as it appeared that the workers substantially complied with the statute by providing a written statement that was the functional equivalent of an application for a special ballot. Order modified and judgment affirmed.			
Pierce v. Allegheny County Bd. of Elections	United States District Court for the Western District of Pennsylvania	324 F. Supp. 2d 684; 2003 U.S. Dist. LEXIS 25569	November 13, 2003	Plaintiff voters sought to enjoin defendant election board from allowing three different procedures for third-party absentee ballot delivery, require the set aside of all absentee third-party delivered ballots in connection with the November 2003 election, prohibit those ballots from	Intervenor political committees also moved to dismiss for lack of standing, lack of subject matter jurisdiction, and failure to state a claim, as well as abstention. Inter alia, the court found that abstention was appropriate under the Pullman doctrine because: (1) construction of Pennsylvania election law was not clear regarding whether the absentee ballot provision requiring hand-delivery to be "in person" was mandatory or directory; (2) the construction of the provision by state courts as mandatory or directory could obviate the need to determine whether	No	N/A	No

008585

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				being delivered to local election districts after having been commingled with other absentee ballots, and convert a temporary restraining order to an injunction.	there had been a Fourteenth Amendment equal protection violation; and (3) erroneous construction of the provision could disrupt very important state voting rights policies. However, the court had a continuing duty to consider the motion for temporary restraining order/preliminary injunction despite abstention. The court issued a limited preliminary injunction whereby the 937 hand-delivered absentee ballots at issue were set aside as "challenged" ballots subject to the election code challenge procedure. Any equal protection issues could be heard in state court by virtue of the state court's concurrent jurisdiction.			
Friedman v. Snipes	United States District Court for the Southern District of Florida	345 F. Supp. 2d 1356; 2004 U.S. Dist. LEXIS 23739	November 9, 2004	Plaintiff registered voters sued defendant state and county election officials under § 1983 for alleged violations of their rights under 42 U.S.C.S. § 1971(a)(2)(B) of the Civil Rights Act, and	The voters claimed they timely requested absentee ballots but (1) never received the requested ballot or (2) received a ballot when it was too late for them to submit the absentee ballot. The court held that 42 U.S.C.S. § 1971(a)(2)(B) was not intended to apply to the counting of ballots by those already deemed qualified to vote. The plain meaning of § 1971(a)(2)(B) did not support the voters' claim that it	No	N/A	No

008586

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the First and Fourteenth Amendments to the United States Constitution. The voters moved for a temporary restraining order (TRO) and/or preliminary injunction. The court granted the TRO and held a hearing on the preliminary injunction.	should cover an error or omission on any record or paper or any error or omission in the treatment, handling, or counting of any record or paper. Further, because Florida election law only related to the mechanics of the electoral process, the correct standard to be applied here was whether Florida's important regulatory interests justified the restrictions imposed on their First and Fourteenth Amendment rights. The State's interests in ensuring a fair and honest election and counting votes within a reasonable time justified the light imposition on voting rights. The deadline for returning ballots did not disenfranchise a class of voters. Rather, it imposed a time deadline by which voters had to return their votes. So there was no equal protection violation. Preliminary injunction denied.			
Johnson v. Bush	United States District Court for the Southern District of Florida	214 F. Supp. 2d 1333; 2002 U.S. Dist. LEXIS	July 18, 2002	Plaintiff felons sued defendant state officials for alleged violations of their constitutional rights. The officials moved and the felons cross-	The felons had all successfully completed their terms of incarceration and/or probation, but their civil rights to register and vote had not been restored. They alleged that Florida's disenfranchisement law violated their rights under First, Fourteenth,	No	N/A	No

008587

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		14782		moved for summary judgment.	Fifteenth, and Twenty--Fourth Amendments to the United States Constitution, as well as § 1983 and §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re--enactment of that provision. Although it appeared that there was a disparate impact on minorities, the cause was racially neutral. Finally, requiring the felons to pay their victim restitution before their rights would be restored did not constitute an improper poll tax or wealth qualification. The court granted the officials' motion for summary judgment and implicitly denied the felons' motion. Thus, the court dismissed the lawsuit with prejudice.			
Farrakhan v.	United States	2000	December	Plaintiffs, convicted	The felons alleged that Washington's	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Locke	District Court for the Eastern District of Washington	U.S. Dist. LEXIS 22212	1, 2000	felons who were also racial minorities, sued defendants for alleged violations of the Voting Rights Act. The parties filed cross-motions for summary judgment.	felon disenfranchisement and restoration of civil rights schemes, premised upon Wash. Const. art. VI § 3, resulted in the denial of the right to vote to racial minorities in violation of the VRA. They argued that race bias in, or the discriminatory effect of, the criminal justice system resulted in a disproportionate number of racial minorities being disenfranchised following felony convictions. The court concluded that Washington's felon disenfranchisement provision disenfranchised a disproportionate number of minorities; as a result, minorities were under-represented in Washington's political process. The Rooker-Feldman doctrine barred the felons from bringing any as-applied challenges, and even if it did not bar such claims, there was no evidence that the felons' individual convictions were born of discrimination in the criminal justice system. However, the felons' facial challenge also failed. The remedy they sought would create a new constitutional problem, allowing disenfranchisement only of white felons. Further, the felons did not establish a causal connection between			

008589

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					the disenfranchisement provision and the prohibited result. The court granted defendants' motion and denied the felons' motion for summary judgment.			
Farrakhan v. Washington	United States Court of Appeals for the Ninth Circuit	338 F.3d 1009; 2003 U.S. App. LEXIS 14810	July 25, 2003	Plaintiff inmates sued defendant state officials, claiming that Washington state's felon disenfranchisement scheme constitutes improper race--based vote denial in violation of § 2 of the Voting Rights Act. The United States District Court for the Eastern District of Washington granted of summary judgment dismissing the inmates' claims. The inmates appealed.	Upon conviction of infamous crimes in the state, (that is, crimes punishable by death or imprisonment in a state correctional facility), the inmates were disenfranchised. The inmates claimed that the disenfranchisement scheme violated § 2 because the criminal justice system was biased against minorities, causing a disproportionate minority representation among those being disenfranchised. The appellate court held, inter alia, that the district court erred in failing to consider evidence of racial bias in the state's criminal justice system in determining whether the state's felon disenfranchisement laws resulted in denial of the right to vote on account of race. Instead of applying its novel "by itself" causation standard, the district court should have applied a totality of the circumstances test that included analysis of the inmates' compelling evidence of racial bias in Washington's criminal justice system.	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					However, the inmates lacked standing to challenge the restoration scheme because they presented no evidence of their eligibility, much less even allege that they were eligible for restoration, and had not attempted to have their civil rights restored. The court affirmed as to the eligibility claim but reversed and remanded for further proceedings to the bias in the criminal justice system claim.			
Muntaqim v. Coombe	United States Court of Appeals for the Second Circuit	366 F.3d 102; 2004 U.S. App. LEXIS 8077	April 23, 2004	Plaintiff inmate appealed a judgment of the United States District Court for the Northern District of New York, which granted summary judgment in favor of defendants in the inmate's action alleging violation of § 2 of the Voting Rights Act of 1965.	At issue was whether the VRA could be applied to N.Y. Elec. Law § 5--106, which disenfranchised currently incarcerated felons and parolees. The instant court concluded that the Voting Rights Act did not apply to the New York law. Applying the Act to state law would alter the traditional balance of power between the states and the federal government. The court was not convinced that there was a congruence and proportionality between the injury to be prevented or remedied (i.e., the use of vote denial and dilution schemes to avoid the strictures of the VRA), and the means adopted to that end (i.e., prohibition of state felon disenfranchisement law that resulted in	No	N/A	No

008591

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					vote denial or dilution but were not enacted with a discriminatory purpose). Further, there was no clear statement from Congress that the Act applied to state felon disenfranchisement statutes. Inter alia, defendants were entitled to qualified immunity as to claim asserted against them in their personal capacities, and to Eleventh Amendment immunity to the extent the inmate sought damages against defendants in their official capacities. The district court's judgment was affirmed.			
Johnson v. Governor of Fla.	United States Court of Appeals for the Eleventh Circuit	353 F.3d 1287; 2003 U.S. App. LEXIS 25859	December 19, 2003	Plaintiffs, ex--felon citizens of Florida, on their own right and on behalf of others, sought review of a decision of the United States District Court for the Southern District of Florida, which granted summary judgment to defendants, members of the Florida Clemency Board in	The citizens alleged that Fla. Const. art. VI, § 4 (1968) was racially discriminatory and violated their constitutional rights. The citizens also alleged violations of the Voting Rights Act. The court of appeals initially examined the history of Fla. Const. art. VI, § 4 (1968) and determined that the citizens had presented evidence that historically the disenfranchisement provisions were motivated by a discriminatory animus. The citizens had met their initial burden of showing that race was a substantial motivating factor. The state was then required to	No	N/A	No

008592

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>their official capacity. The citizens challenged the validity of the Florida felon disenfranchisement laws.</p>	<p>show that the current disenfranchisement provisions would have been enacted absent the impermissible discriminatory intent. Because the state had not met its burden, summary judgment should not have been granted. The court of appeals found that the claim under the Voting Rights Act, also needed to be remanded for further proceedings. Under a totality of the circumstances, the district court needed to analyze whether intentional racial discrimination was behind the Florida disenfranchisement provisions. The court affirmed the district court's decision to grant summary judgment on the citizens' poll tax claim. The court reversed the district court's decision to grant summary judgment to the Board on the claims under the equal protection clause and for violation of federal voting laws and remanded the matter to the district court for further proceedings.</p>			
Fischer v. Governor	Supreme Court of New Hampshire	145 N.H. 28; 749 A.2d 321;	March 24, 2000	Appellant State of New Hampshire challenged a ruling of the superior court	Appellee was incarcerated at the New Hampshire State Prison on felony convictions. When he requested an absentee ballot to vote from a city	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		2000 N.H. LEXIS 16		that the felon disenfranchisement statutes violate N.H. Const. pt. I, Art. 11.	clerk, the request was denied. The clerk sent him a copy of N.H. Rev. Stat. Ann. § 607(A)(2) (1986), which prohibits a felon from voting "from the time of his sentence until his final discharge." The trial court declared the disenfranchisement statutes unconstitutional and ordered local election officials to allow the plaintiff to vote. Appellant State of New Hampshire challenged this ruling. The central issue was whether the felon disenfranchisement statutes violated N.H. Const. pt. I, art. 11. After a review of the article, its constitutional history, and legislation pertinent to the right of felons to vote, the court concluded that the legislature retained the authority under the article to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority, and reversed. Judgment reversed because the court concluded that the legislature retained its authority under the New Hampshire Constitution to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative			

008594

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Johnson v. Governor of Fla.	United States Court of Appeals for the Eleventh Circuit	405 F.3d 1214; 2005 U.S. App. LEXIS 5945	April 12, 2005	Plaintiff individuals sued defendant members of Florida Clemency Board, arguing that Florida's felon disenfranchisement law, Fla. Const. art. VI, § 4 (1968), violated the Equal Protection Clause and the Voting Rights Act. The United States District Court for the Southern District of Florida granted the members summary judgment. A divided appellate panel reversed. The panel opinion was vacated and a rehearing en banc was granted.	authority. The individuals argued that the racial animus motivating the adoption of Florida's disenfranchisement laws in 1868 remained legally operative despite the reenactment of Fla. Const. art. VI, § 4 in 1968. The subsequent reenactment eliminated any discriminatory taint from the law as originally enacted because the provision narrowed the class of disenfranchised individuals and was amended through a deliberative process. Moreover, there was no allegation of racial discrimination at the time of the reenactment. Thus, the disenfranchisement provision was not a violation of the Equal Protection Clause and the district court properly granted the members summary judgment on that claim. The argument that the Voting Rights Act applied to Florida's disenfranchisement provision was rejected because it raised grave constitutional concerns, i.e., prohibiting a practice that the Fourteenth Amendment permitted the state to maintain. In addition, the legislative history indicated that	No	N/A	No

008595

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Congress never intended the Voting Rights Act to reach felon disenfranchisement provisions. Thus, the district court properly granted the members summary judgment on the Voting Rights Act claim. The motion for summary judgment in favor of the members was granted.			
Mixon v. Commonwealth	Commonwealth Court of Pennsylvania	759 A.2d 442; 2000 Pa. Commw. LEXIS 534	September 18, 2000	Respondents filed objections to petitioners' complaint seeking declaratory relief as to the unconstitutionality of the Pennsylvania Election Code, 25 Pa. Cons. Stat. §§ 2600 -- 3591, and the Pennsylvania Voter Registration Act, 25 Pa. Cons. Stat. §§ 961.101-961.5109, regarding felon voting rights.	Petitioner convicted felons were presently or had formerly been confined in state prison. Petitioner elector was currently registered to vote in respondent state. Petitioners filed a complaint against respondent state seeking declaratory relief challenging as unconstitutional, state election and voting laws that excluded confined felons from the definition of qualified absentee electors and that barred a felon who had been released from a penal institution for less than five years from registering to vote. Respondents filed objections to petitioners' complaint. The court sustained respondents' objection that incarcerated felons were not unconstitutionally deprived of qualified absentee elector status because respondent state had broad power to determine the	No	N/A	No

008596

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>conditions under which suffrage could be exercised. However, petitioner elector had no standing and the court overruled objection as to deprivation of ex--felon voting rights. The court sustained respondents' objection since incarcerated felons were not unconstitutionally deprived of qualified absentee elector status and petitioner elector had no standing, but objection that ex--incarcerated felons' voting rights were deprived was overruled since status penalized them.</p>			
Rosello v. Calderon	United States District Court for the District of Puerto Rico	2004 U.S. Dist. LEXIS 27216	November 30, 2004	Plaintiff voters filed a § 1983 action against defendant government officials alleging violations the Due Process and Equal Protection Clauses of the U.S. Const. amend. XIV, resulting from the invalidity of absentee and split ballots in a gubernatorial election.	The voters' § 1983 action against government officials alleged that absentee ballots for a gubernatorial election were untimely mailed and that split votes, which registered two votes for the same office, were null. The court asserted jurisdiction over the disparate treatment claims, which arose under the U.S. Constitution. The court declined to exercise discretionary abstention because the case was not merely a facial attack on the constitutionality of a statute, but was mainly an applied challenge, requiring a hearing in order to develop the record, and because equal protection	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					and due process were secured under the state and federal constitutions. The court held that the voters had a fundamental due process right created by Puerto Rico Election Law and suffered an equal protection violation in further violation of the U.S. Const. amend. I right to vote, thereby creating their total disenfranchisement. The court held that the evidence created an inference that the split ballots were not uniformly treated and that it was required to examine a mixed question of fact and constitutional law pursuant to federal guidelines to determine whether potential over votes were invalid. The court asserted jurisdiction over the voters' claims.			
Woodruff v. Wyoming	United States Court of Appeals for the Tenth Circuit	49 Fed. Appx. 199; 2002 U.S. App. LEXIS 21060	October 7, 2002	Plaintiffs, pro se inmates, appealed from an order of the United States District Court for the District of Wyoming, dismissing their complaint brought under § 1983, challenging Wyo. Stat. Ann. § 6--10--	The inmates argued that the statute violated their Eighth Amendment right and their State constitutional right to be free from cruel and unusual punishment, their equal protection rights under the Fourteenth Amendment and State Constitution, and their federal and state rights to due process. One inmate had not paid the appellate filing fee or filed a motion to proceed on appeal without prepayment	No	N/A	No

008598

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				106, which denied them, as convicted felons, the right to vote. The district court dismissed the action for failure to state a claim upon which relief could be granted and as frivolous.	of costs or fees, and his appeal was dismissed. The court found that U.S. Const. amend. XIV, § 2 had long been held to exclude felons from the right to vote. It could scarcely be unreasonable for a state to decide that perpetrators of serious crimes should not take part in electing the legislators who made the laws, the executives who enforced them, the prosecutors who tried the cases, or the judges who heard their cases. The court also found the dismissed suit constituted a "strike" under 28 U.S.C.S. § 1915(g), although the suit did not challenge prison conditions per se. One inmate's appeal was dismissed; the judgment dismissing the other's complaint was affirmed.			
N.J. State Conf.-NAACP v. Harvey	Superior Court of New Jersey, Appellate Division	381 N.J. Super. 155; 885 A.2d 445; 2005 N.J. Super. LEXIS 316	November 2, 2005	The Superior Court of New Jersey, Chancery Division, Union County, dismissed a complaint filed by plaintiff interested parties to invalidate N.J. Stat. Ann. § 19:4-1(8) on the	The statute at issue prohibited all people on parole or probation for indictable offenses from voting. The interested parties alleged that the criminal justice system in New Jersey discriminated against African-Americans and Hispanics, thereby disproportionately increasing their population among parolees and probationers and diluting their political	No	N/A	No

008599

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				ground that it denied African--Americans and Hispanics equal protection of the law. Defendant, the New Jersey Attorney General, moved to dismiss the complaint for failure to state a claim, and said motion was granted. The interested parties then appealed.	power. As a result, the alleged that enforcement of the statute resulted in a denial of equal protection under the state Constitution. The appeals court disagreed. N.J. Const. art. II authorized the New Jersey Legislature to disenfranchise persons convicted of certain crimes from voting. Moreover, those convicts could not vote unless pardoned or unless otherwise restored by law to the right of suffrage. The statute also limited the period of disenfranchisement during a defendant's actual service on parole or probation. Thus, it clearly complied with this specific constitutional mandate. The judgment was affirmed.			
King v. City of Boston	United States District Court for the District of Massachusetts	2004 U.S. Dist. LEXIS 8421	May 13, 2004	Plaintiff inmate filed a motion for summary judgment in his action challenging the constitutionality of Mass. Gen. Laws ch. 51, § 1, which excluded incarcerated felons from voting while they were	The inmate was convicted of a felony and incarcerated. His application for an absentee ballot was denied on the ground that he was not qualified to register and vote under Mass. Gen. Laws ch. 51, § 1. The inmate argued that the statute was unconstitutional as it applied to him because it amounted to additional punishment for crimes he committed before the statute's enactment and thus violated his due process rights and the prohibition	No	N/A	No

008600

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				imprisoned.	against ex post facto laws and bills of attainder. The court held that the statute was regulatory and not punitive because rational choices were implicated in the statute's disenfranchisement of persons under guardianship, persons disqualified because of corrupt elections practices, persons under 18 years of age, as well as incarcerated felons. Specifically, incarcerated felons were disqualified during the period of their imprisonment when it would be difficult to identify their address and ensure the accuracy of their ballots. Therefore, the court concluded that Mass. Gen. Laws ch. 51, § 1 did not violate the inmate's constitutional rights. The court found the statute at issue to be constitutional and denied the inmate's motion for summary judgment.			
Southwest Voter Registration Educ. Project v. Shelley	United States District Court for the Central District of California	278 F. Supp. 2d 1131; 2003 U.S. Dist. LEXIS	August 15, 2003	Plaintiffs, several groups, brought suit alleging that the proposed use of "punch-card" balloting machines in the California	Plaintiffs claimed voters using punch-card machines would have a comparatively lesser chance of having their votes counted in violation of the Equal Protection Clause and the counties employing punch-card systems had greater minority	No	N/A	No

008601

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
		14413		election would violate the United States Constitution and Voting Rights Act. Plaintiffs moved for an order delaying that election, scheduled for October 7, 2003, until such time as it could be conducted without use of punch-card machines.	populations thereby disproportionately disenfranchising and/or diluting the votes on the basis of race, in violation of § 2 of the Voting Rights Act. While the court did not need to decide the res judicata issue at this juncture, there was ample reason to believe that plaintiffs would have had a difficult time overcoming it as they were seeking to establish the same constitutional violations alleged in prior litigation, but to secure an additional remedy. Plaintiffs failed to prove a likelihood of success on the merits with regard to both of their claims. Even if plaintiffs could show disparate treatment, such would not have amounted to illegal or unconstitutional treatment. The balance of hardships weighed heavily in favor of allowing the election to proceed. The public interests in avoiding wholesale disenfranchisement, and/or not plunging the State into a constitutional crisis, weighed heavily against enjoining the election. Plaintiffs' motion for preliminary injunction (consolidated with plaintiffs' ex parte application for temporary restraining			

008602

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Igartua--de la Rosa v. United States	United States Court of Appeals for the First Circuit	417 F.3d 145; 2005 U.S. App. LEXIS 15944	August 3, 2005	Plaintiff, a U.S. citizen residing in Puerto Rico, appealed from an order of the United States District Court for the District of Puerto Rico, that rejected his claim that he was deprived of the constitutional right to vote for President and Vice President of the United States, and was also violative of three treaty obligations of the United States.	order) was denied. The putative voter had brought the same claims twice before. The court pointed out that U.S. law granted to the citizens of states the right to vote for the slate of electors to represent that state. Although modern ballots omitted the names of the electors and listed only the candidates, and in form it appeared that the citizens were voting for President and Vice President directly, they were not, but were voting for electors. Puerto Rico was not a state, and had not been enfranchised as the District of Columbia had by the 23rd Amendment. The franchise for choosing electors was confined to "states" by the Constitution. The court declined to turn to foreign or treaty law as a source to reverse the political will of the country. The judgment of the district court was affirmed.	No	N/A	No
United States v. Rogelio Mejorada-Lopez	Alaska	05-CR-074	December 5, 2005	Mejorada-Lopez, a Mexican citizen, completed several voter registration applications to register to vote in Alaska and voted in		No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the 2000, 2002, and 2004 general elections. He was charged with three counts of voting by a non-citizen in violation of 18 U.S.C. section 611 and pled guilty. Mejrada-Lopez was sentenced to probation for one year.				
United States v. Shah	Colorado	1:04-CR-00458	March 1, 2005	Shah was indicted on two counts of providing false information concerning United States citizenship in order to register to vote in violation of 18 U.S.C. section 911 and 1015(f). Shah was convicted on both counts.		No	N/A	No
United States v. Mohsin Ali	Northern Florida	4:05-CR-47	January 17, 2006	A misdemeanor was filed against Ali charging him with voting by a non-		No	N/A	Yes-need information on the outcome of

008604

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				citizen of 18 U.S.C. section 611. Trial was set for January 17, 2006				the trial.
United States v. Chaudhary	Northern Florida	4:04-CR-00059	May 18, 2005	Chaudhary was indicted for misuse of a social security number in violation of 42 U.S.C. section 408 and for making a false claim of United States citizenship on a 2002 driver's license application in violation of 18 U.S.C. section 911. A superceding indictment was returned, charging Chaudhary with falsely claiming United States citizenship on a driver's license application and on the accompanying voter registration application. He was convicted of the false		No	N/A	No

008605

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				citizenship claim on his voter registration application.				
United States v. Velasquez	Southern Florida	1:03-CR-20233	September 9, 2003	Velasquez, a former 1996 and 1998 candidate for the Florida legislature, was indicted on charges of misrepresenting United States citizenship in connection with voting and for making false statements to the Immigration and Naturalization Service, in violation of 18 U.S.C. section 911, 1015(f) and 1001. Velasquez was convicted on two counts of making false statements on his naturalization application to the INS concerning his voting history.		No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
United States v. McKenzie; United States v. Francois; United States v. Exavier; United States v. Lloyd Palmer; United States v. Velrine Palmer; United states v. Shivdayal; United States v. Rickman; United States v. Knight; United States v. Sweeting; United States v. Lubin; United States v. Bennett; United States v. O'Neil; United States v. Torres-Perez; United States v. Phillip; United States v. Bain Knight	Southern Florida	0:04-CR-60160; 1:04-CR-20488; 0:04-CR-60161; 0:04-CR-60159; 0:04-CR-60162; 0:04-CR-60164; 1:04-CR-20491; 1:04-CR-20490; 1:04-CR-20489; 0:04-CR-60163; 1:04-CR-14048; 0:04-CR-60165; 2:04-CR-14046; 9:04-CR-80103; 2:04-CR-14047	July 15, 2004	Fifteen non-citizens were charged with voting in various elections beginning in 1998 in violation of 18 U.S.C. section 611. Four of the defendants were also charged with making false citizenship claims in violation of 18 U.S.C. sections 911 or 1015(f). Ten defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government.		No	N/A	No

008607

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
United States v. Brooks	Southern Illinois	3:03-CR-30201	February 12, 2004	East St. Louis election official Leander Brooks was indicted for submitting fraudulent ballots in the 2002 general election in violation of 42 U.S.C. section 1973i(c), 1973i(e), 1973gg-10(2)(B), and 18 U.S.C. sections 241 and 371. Brooks pled guilty to all charges.		No	N/A	No
United States v. Scott; United States v. Nichols; United States v. Terrance Stith; United States v. Sandra Stith; United States v. Powell, et al.	Southern Illinois	3:05-CR-30040; 3:05-CR-30041; 3:05-CR-30042; 3:05-CR-30043; 3:05-CR-30044	June 29, 2005	Four Democrat precinct committeemen in East St. Louis were charged with vote buying on the 2004 general election in violation of 42 U.S.C. section 1973i(c). All four pled guilty. Also indicted were four additional Democrat committeemen,		No	N/A	No

008608

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				Charles Powell, Jr., Jesse Lewis, Sheila Thomas, Kelvin Ellis, and one precinct worker, Yvette Johnson, on conspiracy and vote buying charges in violation of 18 U.S.C. section 371 and 42 U.S.C. section 1973i(c). All five defendants were convicted. Kelvin Ellis also pled guilty to one count of 18 U.S.C. section 1512(c)(2) relative to a scheme to kill one of the trial witnesses and two counts of 18 U.S.C. section 1503 relative to directing two other witnesses to refuse to testify before the grand jury.				
United States v. McIntosh	Kansas	2:04-CR-20142	December 20, 2004	A felony information was filed against		No	N/A	No

008609

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				and eight counts of voter fraud.	voters to the clerk's office where they would vote by absentee ballot and defendant would give them beer or money. Defendant claimed he was entitled to a mistrial because the prosecutor advanced an impermissible "sending the message" argument. The court held that it was precluded from reviewing the entire context in which the argument arose because, while the prosecutor's closing argument was in the record, the defense counsel's closing argument was not. Also, because the prosecutor's statement was incomplete due to defense counsel's objection, the court could not say that the statement made it impossible for defendant to receive a fair trial. Judgment affirmed.			
Wilson v. Commonwealth	Court of Appeals of Virginia	2000 Va. App. LEXIS 322	May 2, 2000	Defendant appealed the judgment of the circuit court which convicted her of election fraud.	At trial, the Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter registration form that she was living at a residence in the 51st House District. The evidence included records showing electricity and water usage, records from the Department of Motor	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should this Case be Researched Further?
States v. Slone et al.; United States v. Calhoun; United States v. Johnson; United States v. Newsome, et al.		00015; 7:03-CR-00016; 7:03-CR-00017; 7:03-CR-00018; 7:03-CR-00019		election in Knott County, Kentucky, in violation of 42 U.S.C. section 1973i(c). Five of the defendants pled guilty, two were convicted, and three were acquitted.				
United States v. Hays, et al.	Eastern Kentucky	7:03-CR-00011	March 7, 2003	Ten defendants were indicted for conspiracy and vote buying for a local judge in Pike County, Kentucky, in the 2002 general election, in violation of 42 U.S.C. section 1973i(c) and 18 U.S.C. section 371. Five defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government.		No	N/A	No

008611

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the case be researched further?
United States v. Turner, et al.	Eastern Kentucky	3:05-CR-00002	May 5, 2005	Three defendants were indicted for vote buying and mail fraud in connection with the 2000 elections in Knott, Letcher, Floyd, and Breathitt Counties, Kentucky, in violation of 42 U.S.C. section 1973i(c) and 18 U.S.C. section 341.		No	N/A	Yes-need update on case status.
United States v. Braud	Middle Louisiana	3:03-CR-00019	May 2, 2003	Tyrell Mathews Braud was indicted on three counts of making false declarations to a grand jury in connection with his 2002 fabrication of eleven voter registration applications, in violation of 18 U.S.C. section 1623. Braud pled guilty on all counts.		No	N/A	No
United States v.	Western	6:03-CR-	April 12,	St. Martinsville City		No	N/A	No

008612

Name of Case	Court	Citations	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Researched further
Thibodeaux	Louisiana	60055	2005	Councilwoman Pamela C. Thibodeaux was indicted on two counts of conspiring to submit false voter registration information, in violation of 18 U.S.C. section 371 and 42 U.S.C. section 1973i(c). She pled guilty to both charges.				
United States v. Scherzer; United States v. Goodrich; United States v. Jones; United States v. Martin	Western Missouri	4:04-CR-00401; 4:04-CR-00402; 4:05-CR-00257; 4:05-CR-00258	January 7, 2005; March 28, 2005; September 8, 2005; October 13, 2005	Two misdemeanor informations were filed charging Lorraine Goodrich and James Scherzer, Kansas residents who voted in the 2000 and 2002 general elections on both Johnson County, Kansas and in Kansas City, Missouri. The informations charged deprivation of a		No	N/A	No

008613

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (If of Note)	Other Notes	Should be Cited or Researched further?
				constitutional right by causing spurious ballots, in violation of 18 U.S.C. sections 242 and 2. Both pled guilty. Additionally, similar misdemeanor informations were filed against Tammy J. Martin, who voted in both Independence and Kansas City, Missouri in the 2004 general election and Brandon E. Jones, who voted both in Raytown and Kansas City, Missouri in the 2004 general election. Both pled guilty.				
United States v. Raymond; United States v. McGee; United States v. Tobin; United States v. Hansen	New Hampshire	04-CR-00141; 04-CR-00146; 04-CR-00216; 04-CR-00054	December 15, 2005	Two informations were filed charging Allen Raymond, former president of a Virginia-based political consulting firm called GOP Marketplace, and		No	N/A	No

003614

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the case be Reopened?
				<p>Charles McGee, former executive director of the New Hampshire State-Republican Committee, with conspiracy to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. section 371 and 47 U.S.C. section 223. The charges stem from a scheme to block the phone lines used by two Manchester organizations to arrange drives to the polls during the 2002 general election. Both pled guilty. ~ James Tobin, former New England Regional Director of the Republican National Committee, was indicted on charges of conspiring</p>				

008615

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any) (Note)	Other Notes	Should the Case be Researched Further
				<p>to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. section 371 and 47 U.S.C. section 223. An information was filed charging Shaun Hansen, the principal of an Idaho telemarketing firm called MILO Enterprises which placed the harassing calls, with conspiracy and aiding and abetting telephone harassment, in violation of 18 U.S.C. section 371 and 2 and 47 U.S.C. section 223. The information against Hansen was dismissed upon motion of the government. A superseding</p>				

008616

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Researched
				indictment was returned against Tobin charging conspiracy to impede the constitutional right to vote for federal candidates, in violation of 18 U.S.C. section 241 and conspiracy to make harassing telephone calls in violation of 47 U.S.C. section 223. Tobin was convicted of one count of conspiracy to commit telephone harassment and one count of aiding and abetting of telephone harassment.				
United States v. Workman	Western North Carolina	1:03-CR-00038	June 30, 2003	A ten-count indictment was returned charging Joshua Workman, a Canadian citizen, with voting and related offenses in		No	N/A	No

008617

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the 200 and 2002 primary and general elections in Avery County, North Carolina, in violation of 18 U.S.C. sections 611, 911, 1001, and 1015(f). Workman pled guilty to providing false information to election officials and to a federal agency.				
United States v. Shatley, et al.	Western North Carolina	5:03-CR-00035	May 14, 2004	A nine-count indictment was returned charging Wayne Shatley, Anita Moore, Valerie Moore, Carlos "Sunshine" Hood and Ross "Toogie" Banner with conspiracy and vote buying in the Caldwell County 2002 general election, in violation of 42 U.S.C. section 1973i(c) and 18		No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				U.S.C. section 371. Anita and Valerie Moore pled guilty. Shatley, Hood, and Banner were all convicted.				
United States v. Vargas	South Dakota	05-CR-50085	December 22, 2005	An indictment was filed against Rudolph Vargas, for voting more than once at Pine Ridge in the 2002 general election in violation of 42 U.S.C. section 1973i(e). Vargas pled guilty.		No	N/A	No
United States v. Wells; United States v. Mendez; United States v. Porter; United States v. Hrutkay; United States v. Porter; United States v. Stapleton; United States v. Thomas E. Esposito; United	Southern West Virginia	02-CR-00234; 2:04-CR-00101; 2:04-CR-00145; 2:04-CR-00149; 2:04-CR-00173; 2:05-CR-00002; 05-CR-	July 22, 2003; July 19, 2004; December 7, 2004; January 7, 2005; March 21, 2005; October 11, 2005; December 13, 2005	Danny Ray Wells, Logan County, West Virginia, magistrate, was indicted and charged with violating 18 U.S.C. section 1962. Wells was found guilty. A felony indictment was filed against Logan County sheriff Johnny Mendez for conspiracy to		No	N/A	No

008619

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if Note)	Other Notes	Should the Case be Researched Further
States v. Nagy; United States v. Adkins; United States v. Harvey		00019; 05-CR-00148; 05-CR-00161		defraud the United States in violation 18 U.S.C section 371. Mendez pled guilty. An information was filed charging former Logan County police chief Alvin Ray Porter, Jr., with making expenditures to influence voting in violation of 18 U.S.C. section 597. Porter pled guilty. Logan County attorney Mark Oliver Hrutkay was charged by information with mail fraud in violation of 18 U.S.C. section 1341. Hrutkay pled guilty. Earnest Stapleton, commander of the local VFW, was charged by information with mail fraud. He pled guilty. An information was filed				

008620

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should be Cited or Researched
				<p>charging Thomas E. Esposito, a former mayor of the City of Logan, with concealing the commission of a felony, in violation of 18 U.S.C. section 4. Esposito pled guilty. John Wesley Nagy, Logan County Court marshal, pled guilty to making false statements to a federal agent, a violation of 18 U.S.C. section 1001. An information charging Glen Dale Adkins, county clerk of Logan County, with accepting payment for voting, in violation of 18 U.S.C. section 1973i(c). Adkins pled guilty. Perry French Harvey, Jr., a retired UMW official, pled guilty</p>				

003621

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched (Number)
				to involvement in a conspiracy to buy votes.				
United States v. Adkins, et al.	Southern West Virginia	2:04-CR-00162	December 28 & 30, 2005	Jackie Adkins was indicted for vote buying in Lincoln County, West Virginia, in violation of 42 U.S.C. section 1973i(c). A superceding indictment added Wandell "Rocky" Adkins to the indictment and charged both defendants with conspiracy to buy votes in violation of 18 U.S.C. section 371 and vote buying. A second superseding indictment was returned which added three additional defendants, Gegory Brent Stowers,		No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should be Cited by Researcher Further
				<p>Clifford Odell "Groundhog" Vance, and Toney "Zeke" Dingess, to the conspiracy and vote buying indictment. Charges were later dismissed against Jackie Adkins. A third superseding indictment was returned adding two additional defendants, Jerry Allen Weaver and Ralph Dale Adkins. A superseding information was filed charging Vance with expenditures to influence voting, in violation of 18 U.S.C. section 597. Vance pled guilty. Superseding informations were filed against Stowers and Dingess for expenditures to influence voting, in</p>				

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				violation of 18 U.S.C. section 597. Both defendants pled guilty. Weaver also pled guilty. Superseding informations were filed against Ralph and Wandell Adkins for expenditures to influence voting, in violation of 18 U.S.C. section 597. Both defendants pled guilty.				
United States v. Davis; United States v. Byas; United States v. Ocasio; United States v. Prude; United States v. Sanders; United States v. Alicea; United States v. Brooks; United States v. Hamilton; United States v.	Eastern Wisconsin	2:05-MJ-00454; 2:05-MJ-00455; 2:05-CR-00161; 2:05-CR-00162; 2:05-CR-00163; 2:05-CR-00168; 2:05-CR-00170;	September 16, 2005; September 21, 2005; October 5, 2005; October 26, 2005; October 31, 2005, November 10, 2005	Criminal complaints were issued against Brian L. Davis and Theresa J. Byas charging them with double voting, in violation of 42 U.S.C. section 1973i(e). Indictments were filed against convicted felons Milo R. Ocasio and Kimberly Prude, charging them with		No	N/A	Need updated status on Gooden and the Anderson, Cox, Edwards, and Little cases.

008624

Name of Case	Court	Citation	Date	Facts	Holding	Statutor Basis (if of Note)	Other Notes	Should the case be researched further
Little; United States v. Swift; United States v. Anderson; United States v. Cox; United States v. Edwards; United States v. Gooden		2:05-CR-00171; 2:05-CR-00172; 2:05-CR-00177; 2:05-CR-00207; 2:05-CR-00209; 2:05-CR-00211; 2:05-CR-00212		falsely certifying that they were eligible to vote, in violation of 42 U.S.C. section 1973gg-10(2)(B), and against Enrique C. Sanders, charging him with multiple voting, in violation of 42 U.S.C. section 1973i(e). Five more indictments were later returned charging Cynthia C. Alicea with multiple voting in violation of 42 U.S.C. section 1973i(e) and convicted felons Deshawn B. Brooks, Alexander T. Hamilton, Derek G. Little, and Eric L. Swift with falsely certifying that they were eligible to vote in violation of 42 U.S.C. section 1973gg-10(2)(B). Indictments were				

008625

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should this case be researched further?
				<p>filed against Davis and Byas charging them with double voting. Four more indictments were returned charging convicted felons Ethel M. Anderson, Jiyto L. Cox, Correan F. Edwards, and Joseph J. Gooden with falsely certifying that they were eligible to vote. Ocasio and Hamilton pled guilty. Prude was found guilty. A mistrial was declared in the Sanders case. Brooks was acquitted. Byas signed a plea agreement agreeing to plead to a misdemeanor 18 U.S.C. section 242 charge. Swift moved to change his plea. Davis was found incompetent to stand</p>				

008626

Name of Case	Court	Citation	Date	Fact	Holding	Statutory Basis (If of Note)	Other Notes	Should the case be Researched further
				trial so the government dismissed the case. Gooden is a fugitive. Alicea was acquitted. Four cases are pending ---Anderson, Cox, Edwards, and Little.				
Am. Ass'n of People with Disabilities v. Shelley	United States District Court for the Central District of California	324 F. Supp. 2d 1120; 2004 U.S. Dist. LEXIS 12587	July 6, 2004	Plaintiffs, disabled voters and organizations representing those voters, sought to enjoin the directives of defendant California Secretary of State, which decertified and withdrew approval of the use of certain direct recording electronic voting systems. One voter applied for a temporary restraining order, or, in the alternative, a preliminary	The voters urged the invalidation of the Secretary's directives because, allegedly, their effect was to deprive the voters of the opportunity to vote using touch--screen technology. Although it was not disputed that some disabled persons would be unable to vote independently and in private without the use of DREs, it was clear that they would not be deprived of their fundamental right to vote. The Americans with Disabilities Act did not require accommodation that would enable disabled persons to vote in a manner that was comparable in every way with the voting rights enjoyed by persons without disabilities. Rather, it mandated that voting programs be made accessible. Defendant's decision to suspend the use of DREs pending	No	N/A	No

008627

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Researched Further
				injunction.	improvement in their reliability and security of the devices was a rational one, designed to protect the voting rights of the state's citizens. The evidence did not support the conclusion that the elimination of the DREs would have a discriminatory effect on the visually or manually impaired. Thus, the voters showed little likelihood of success on the merits. The individual's request for a temporary restraining order, or, in the alternative, a preliminary injunction, was denied.			
Am. Ass'n of People with Disabilities v. Hood	United States District Court for the Middle District of Florida	310 F. Supp. 2d 1226; 2004 U.S. Dist. LEXIS 5615	March 24, 2004	Plaintiffs, disabled voters, and a national organization, sued defendants, the Florida Secretary of State, the Director of the Division of Elections of the Florida Department of State, and a county supervisor of elections, under Title II of the Americans With Disabilities Act and Section 504 of	The voters were visually or manually impaired. The optical scan voting system purchased by the county at issue was not readily accessible to visually or manually impaired voters. The voters were unable to vote using the system without third-party assistance. If it was feasible for the county to purchase a readily accessible system, then the voters' rights under the ADA and the RA were violated. The court found that the manually impaired voter's rights were violated. To the extent "jelly switches" and "sip and puff" devices needed to be	No	N/A	No

008628

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Researched Further
				<p>the Rehabilitation Act of 1973. Summary judgment was granted for the Secretary and the Director as to visually impaired voters.</p>	<p>attached to a touch screen machine for it to be accessible, it was not feasible for the supervisor to provide such a system, since no such system had been certified at the time of the county's purchase. 28 C.F.R. § 35.160 did not require that visually or manually impaired voters be able to vote in the same or similar manner as non-disabled voters. Visually and manually impaired voters had to be afforded an equal opportunity to participate in and enjoy the benefits of voting. The voters' "generic" discrimination claim was coterminous with their claim under 28 C.F.R. § 35.151. A declaratory judgment was entered against the supervisor to the extent another voting system would have permitted unassisted voting. The supervisor was directed to have some voting machines permitting visually impaired voters to vote alone. The supervisor was directed to procure another system if the county's system was not certified and/or did not permit mouth stick voting. The Secretary and Director were granted judgment against the voters.</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (Y or Note)	Other Notes	Should the Case be Researched Further
Troiano v. Lepore	United States District Court for the Southern District of Florida	2003 U.S. Dist. LEXIS 25850	November 3, 2003	Plaintiffs, disabled voters, sued defendant a state county supervisor of elections alleging discrimination pursuant to the Americans With Disability Act, 42 U.S.C.S. § 12132 et seq., § 504 of the Rehabilitation Act, 29 U.S.C.S. § 794 et seq., and declaratory relief for the discrimination. Both sides moved for summary judgment.	The complaint alleged that after the 2000 elections Palm Beach County purchased a certain number of sophisticated voting machines called the "Sequoia." According to the voters, even though such accessible machines were available, the supervisor decided not to place such accessible machines in each precinct because it would slow things down too much. The court found that the voters lacked standing because they failed to show that they had suffered an injury in fact. The voters also failed to show a likely threat of a future injury because there was no reasonable grounds to believe that the audio components of the voting machines would not be provided in the future. The voters also failed to state an injury that could be redressed by a favorable decision, because the supervisor was already using the Sequoia machines and had already trained poll workers on the use of the machines. Finally, the action was moot because the Sequoia machines had been provided and there was no reasonable expectation that the machines would not have audio components available in the future.	No	N/A	No

008630

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					The supervisor's motion for summary judgment was granted. The voters' motion for summary judgment was denied.			
Troiano v. Supervisor of Elections	United States Court of Appeals for the Eleventh Circuit	382 F.3d 1276; 2004 U.S. App. LEXIS 18497	September 1, 2004	Plaintiff visually impaired registered voters sued defendant county election supervisor, alleging that the failure to make available audio components in voting booths to assist persons who were blind or visually impaired violated state and federal law. The United States District Court for the Southern District of Florida entered summary judgment in favor of the election supervisor. The voters appealed.	The district court granted the election supervisor summary judgment on the grounds that the voters did not have standing to assert their claims and the claims were moot. The appellate court agreed that the case was moot because the election supervisor had furnished the requested audio components and those components were to be available in all of the county's voting precincts in upcoming elections. Specifically, the election supervisor had ceased the allegedly illegal practice of limiting access to the audio components prior to receiving notice of the litigation. Moreover, since making the decision to use audio components in every election, the election supervisor had consistently followed that policy and taken actions to implement it even prior to the litigation. Thus, the appellate court could discern no hint that she had any intention of removing the accessible voting machines in the future. Therefore, the voters' claims	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (Y or No)	Other Note	Should the Case be Re-searched further
					were moot, and the district court's dismissal was affirmed for lack of subject matter jurisdiction. The decision was affirmed.			
Am. Ass'n of People with Disabilities v. Smith	United States District Court for the Middle District of Florida	227 F. Supp. 2d 1276; 2002 U.S. Dist. LEXIS 21373	October 16, 2002	Plaintiff organization of people with disabilities and certain visually and manually impaired voters filed an action against defendant state and local election officials and members of a city council, claiming violation of the Americans with Disabilities Act, 42 U.S.C.S. § 12101 et seq., and the Rehabilitation Act of 1973, and Fla. Const. art. VI, § 1. Defendants filed motions to dismiss.	Individual plaintiffs were unable to vote unassisted with the equipment currently used in the county or the equipment the county had recently purchased. In order to vote, the impaired individuals relied on the assistance of third parties. The court held that it could not say that plaintiffs would be unable to prove any state of facts that would satisfy the ripeness and standing requirements. The issue of whether several Florida statutory sections were violative of the Florida Constitution were so intertwined with the federal claims that to decline supplemental jurisdiction be an abuse of discretion. Those statutes which provided for assistance in voting did not violate Fla. Const. art. VI, § 1. Because plaintiffs may be able to prove that visually and manually impaired voters were being denied meaningful access to the service, program, or activity, the court could not say with certainty that they would	No	N/A	No

008632

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Researched (number)
					not be entitled to relief under any state of facts which could be proved in support of their claims. Defendant council members were entitled to absolute legislative immunity. The state officials' motion to dismiss was granted in part such that the counts were dismissed with prejudice to the extent plaintiffs asserted that they had been excluded from or denied the benefits of a program of direct and secret voting and in part was dismissed with leave to amend. The local officials motion to dismiss was granted in part such that all counts against the city council members were dismissed.			
Jenkins v. Williamson-Butler	Court of Appeal of Louisiana, Fourth Circuit	883 So. 2d 537; 2004 La. App. LEXIS 2433	October 8, 2004	Petitioner, a candidate for a parish juvenile court judgeship, failed to qualify for a runoff election. She filed suit against defendant, the clerk of criminal court for the parish seeking a new election, based on grounds of substantial	The trial court found that the voting machines were not put into service until two, four, and, in many instances, eight hours after the statutorily mandated starting hour which constituted serious irregularities so as to deprive voters from freely expressing their will. It was impossible to determine the number of voters that were affected by the late start up or late arrival of voting machines, making it impossible to determine the result. The appellate court agreed that the	No	N/A	No

008633

Name of Case	Court	Citation	Date	Issues	Holding	Statute Basis (if of Note)	Other Notes	Should the Case be Researched Further?
				irregularities. The district court ruled in favor of the candidate and ordered the holding of a restricted citywide election. The clerk appealed.	irregularities were so serious that the trial court's voiding the election and calling a new election was the proper remedy. Judgment affirmed.			
Hester v. McKeithen	Court of Appeal of Louisiana, Fourth Circuit	882 So. 2d 1291; 2004 La. App. LEXIS 2429	October 8, 2004	Petitioner, school board candidate, filed suit against defendants, Louisiana Secretary of State and district court clerk, contesting the school board election results. The trial court rendered judgment against the candidate, finding no basis for the election to be declared void. The candidate appealed.	The candidate argued that the trial court erred in not setting aside the election, even after acknowledging in its reasons for judgment numerous irregularities with the election process. The appellate court ruled that had the irregularities not occurred the outcome would have been exactly the same. Judgment affirmed.	No	N/A	No
In re Election Contest of Democratic Primary Election	Supreme Court of Ohio	88 Ohio St. 3d 258; 2000	March 29, 2000	Appellant sought review of the judgment of the court of common	Appellant contended that an election irregularity occurred when the board failed to meet and act by majority vote on another candidate's withdrawal,	No	N/A	No

003634

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (Y/N or Note)	Other Notes	Should the Case be Researched Further?
Held May 4, 1999		Ohio 325; 725 N.E.2d 271; 2000 Ohio LEXIS 607		pleas denying his election contest challenging an opponent's nomination for election irregularity.	instead permitting its employees to make decisions. Appellant had to prove by clear and convincing evidence that one or more election irregularities occurred and it affected enough votes to change or make uncertain the result of the election. Judgment affirmed. The appellant did not establish election irregularity by the board's actions on the candidate's withdrawal, the board acted diligently and exercised its discretion in keeping the candidate's name on the ballot and notifying electors of his withdrawal.			
In re Election Contest As to Watertown Special Referendum Election	Supreme Court of South Dakota	2001 SD 62; 628 N.W.2d 336; 2001 S.D. LEXIS 66	May 23, 2001	Appellant sought review of the judgment of the circuit court declaring a local election valid and declining to order a new election.	The burden was on appellants to show not only that voting irregularities occurred, but also show that those irregularities were so egregious that the will of the voters was suppressed. Appellants did not meet their burden, as mere inconvenience or delay in voting was not enough to overturn the election. Judgment affirmed.	No	N/A	No
Jones v. Jessup	Supreme Court of Georgia	279 Ga. 531; 615 S.E.2d 529; 2005 Ga. LEXIS	June 30, 2005	Defendant incumbent appealed a judgment by the trial court that invalidated an election for the	After the candidate lost the sheriff's election to the incumbent, he contested the election, asserting that there were sufficient irregularities to place in doubt the election results. The state supreme court held that the candidate	No	N/A	No

008635

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Researched Further
		447		position of sheriff and ordered that a new election be held based on plaintiff candidate's election contest.	failed to prove substantial error in the votes cast by the witnesses adduced at the hearing who voted at the election. Although the candidate's evidence reflected the presence of some irregularities, not every irregularity invalidated the vote. The absentee ballots were only to be rejected where the electors failed to furnish required information. Because the ballots cast by the witnesses substantially complied with all of the essential requirements of the form, the trial court erred by finding that they should not have been considered. The candidate failed to establish substantial error in the votes. Judgment reversed.			
Toliver v. Thompson	Supreme Court of Oklahoma	2000 OK 98; 17 P.3d 464; 2000 Okla. LEXIS 101	December 21, 2000	Petitioner challenged an order of the district court denying his motion to compel a recount of votes from an election.	The court held a recount of votes cast in an election could occur when the ballots had been preserved in the manner prescribed by statute. The trial court noted when the ballots had not been preserved in such a manner, no recount would be conducted. The court further noted a petition alleging irregularities in an election could be based upon an allegation that it was impossible to determine with mathematical certainty which	No	N/A	No

008636

Name of Case	Court	Citation	Date	Fact	Holding	Statutory Basis (Y or Note)	Other Note	Should the Case be Researched Further
					candidate was entitled to be issued a certificate of election. The Oklahoma supreme court held petitioner failed to show that the actual votes counted in the election were tainted with irregularity, and similarly failed to show a statutory right to a new election based upon a failure to preserve the ballots. Judgment affirmed.			
Adkins v. Huckabay	Supreme Court of Louisiana	755 So. 2d 206; 2000 La. LEXIS 504	February 25, 2000	Plaintiff candidate challenged judgment of court of appeal, second circuit, which reversed the lower court's judgment and declared defendant candidate winner of a runoff election for sheriff.	The issue presented for the appellate court's determination was whether the absentee voting irregularities plaintiff candidate complained of rendered it impossible to determine the outcome of the election for sheriff. The Louisiana supreme court concluded that the lower court had applied the correct standard, substantial compliance, to the election irregularities, but had erred in its application by concluding that the contested absentee ballots substantially complied with the statutory requirements. The supreme court found that in applying substantial compliance to five of the ballot irregularities, the trial court correctly vacated the general election and set it aside because those absentee ballots should have been disqualified. Because of the	No	N/A	No

008637

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					constitutional guarantee to secrecy of the ballot and the fact that the margin of victory in the runoff election was three votes, it was impossible to determine the result of the runoff election. Thus, the supreme court ordered a new general election. Judgment of the court of appeals reversed.			
In re Gray-- Sadler	Supreme Court of New Jersey	164 N.J. 468; 753 A.2d 1101; 2000 N.J. LEXIS 668	June 30, 2000	Appellants, write--in candidates for the offices of mayor and borough council, appealed the judgment of the superior court, appellate division reversing the trial court's decision to set aside the election results for those offices due to irregularities related to the write--in instructions and defective voting machines.	The New Jersey supreme court held that the votes that were rejected by election officials did not result from the voters' own errors, but from the election officials' noncompliance with statutory requirements. In other words, the voters were provided with patently inadequate instructions and defective voting machines. Moreover, appellants met the statutory requirement for successfully contesting the election results by showing that enough qualified voters were denied the right to cast write--in votes as to affect the outcome of the election. Judgment reversed and the state trial court's decision reinstated.	No	N/A	No
Goodwin v. St. Thomas--St.	Territorial Court of the Virgin	43 V.I. 89; 2000	December 13, 2000	Plaintiff political candidate alleged	Plaintiff alleged that defendants counted unlawful absentee ballots that	No	N/A	No

008638

Name of Case	Court	Citation	Date	Pages	Holding	Statutory Basis (if of Note)	Other Note	Should the Case be Researched Further
John Bd. of Elections	Islands	V.I. LEXIS 15		that certain general election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.	lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The territorial court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper.			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Johnson v. Lopez-Torres	Supreme Court of New York, Appellate Division, Second Department	2005 NY Slip Op 7825; 2005 N.Y. App. Div. LEXIS 11276	October 21, 2005	In a proceeding for a re--canvass of certain affidavit ballots cast in the Democratic Party primary election for the public office of surrogate, the supreme court denied appellant candidate's petition requesting the same and declared appellee opponent the winner of that election.	Finding that the candidate had waived her right to challenge the affidavit ballots and had not sufficiently established her claim of irregularities to warrant a hearing, the trial court denied her petition and declared the opponent the winner of the primary. However, on appeal, the appellate division held that no waiver occurred. Moreover, because hundreds of apparently otherwise eligible voters failed to fill in their party enrollment and/or prior address, it could be reasonably inferred that these voters were misled thereby into omitting the required information. Finally, the candidate failed to make a sufficient showing of voting irregularities in the machine vote to require a hearing on that issue. Judgment reversed.			
Ex parte Avery	Supreme Court of Alabama	843 So. 2d 137; 2002 Ala. LEXIS 239	August 23, 2002	Petitioner probate judge moved for a writ of mandamus directing a circuit judge to vacate his order requiring the probate judge to transfer all election materials to the	The issuance of a writ of mandamus was appropriate. The district attorney had a right to the election materials because he was conducting a criminal investigation of the last election. Furthermore, the circuit judge had no jurisdiction or authority to issue an order directing that the election materials be given to the clerk. The	No	N/A	No

008640

008641

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (or of Note)	Other Notes	Should the Case be Researched Further
				circuit clerk and holding him in contempt for failing to do so. The probate judge also requested that said material be turned over to the district attorney, pursuant to an outstanding subpoena.	district attorney received several claims of irregularities in the election, some of which could constitute voter fraud. Petition granted and writ issued.			
Harpole v. Kemper County Democratic Exec. Comm.	Supreme Court of Mississippi	908 So. 2d 129; 2005 Miss. LEXIS 463	August 4, 2005	After his loss in a primary election for the office of sheriff, appellant candidate sued appellees, a political party's executive committee and the incumbent sheriff, alleging irregularities in the election. The circuit court dismissed the candidate's petition for judicial review with prejudice. He appealed.	The candidate alleged the sheriff had his deputies transport prisoners to the polls, felons voted, and the absentee voter law was breached. The committee agreed with the last contention and threw out the absentee ballots (seven percent of votes cast); after a recount, the sheriff still prevailed. The trial court dismissed the case due to alleged defects in the petition; in the alternative, it held that the candidate failed to sufficiently allege violations and irregularities in the election. The supreme court held that the petition was not defective. Disqualification of seven percent of the total votes was not substantial enough so as to cause the will of the voters to	No	N/A	No

008642

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Re-searched Further
					be impossible to discern and to warrant a special election, and there were not enough illegal votes cast for the sheriff to change the outcome. A blanket allegation implying that the sheriff had deputies transport prisoners to the polls was not supported by credible evidence. Judgment affirmed.			
United States v. Madden	United States Court of Appeals for the Sixth Circuit	403 F.3d 347; 2005 U.S. App. LEXIS 5326	April 4, 2005	Defendant appealed his conviction for violating the federal vote--buying statute. He also appealed the sentence imposed by the United States District Court for the Eastern District of Kentucky at Pikeville. The district court applied the U.S. Sentencing Guidelines Manual (Guidelines) § 3B1.1(c) supervisory--role enhancement and increased defendant's base offense level by two	Defendant paid three people to vote for a local candidate in a primary election. The same ballot contained candidates for the U.S. Senate. While he waived his right to appeal his conviction, he nonetheless asserted two arguments in seeking to avoid the waiver. He first posited that the vote buying statute prohibited only buying votes for federal candidates----a prohibition not violated by his conduct. In the alternative, he stated if the statute did criminalize buying votes for state or local candidates, then the statute was unconstitutional. Both arguments failed. Defendant argued that applying the supervisory--role enhancement constituted impermissible double counting because the supervision he exercised was no more than necessary to establish a vote--buying offense.	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any Note)	Other Notes	Should the Case be Researched further
				levels.	That argument also failed. Defendant next argued that the district court erred by applying the vulnerable--victim enhancement under U.S. Sentencing Guidelines Manual § 3A1.1(b)(1). He acknowledged that he knew the mentally ill people who sold their votes were vulnerable, but maintained they were not victims because they received \$50 for their votes. The vote sellers were not victims for Guidelines purposes. The district court erred. Defendant's appeal of conviction was dismissed. Defendant's sentence was vacated, and the case was remanded for resentencing.			
United States v. Slone	United States Court of Appeals for the Sixth Circuit	411 F.3d 643; 2005 U.S. App. LEXIS 10137	June 3, 2005	Defendant pled guilty to vote buying in a federal election. The United States District Court for the Eastern District of Kentucky sentenced defendant to 10 months in custody and recommended that the sentence be served at an institution that could	Defendant offered to pay voters for voting in a primary election. Defendant claimed that the vote buying statute did not apply to him because his conduct related solely to a candidate for a county office. Alternatively, defendant asserted that the statute was unconstitutional because it exceeded Congress' enumerated powers. Finally, defendant argued that the district court erred when it failed to consider his medical condition as a ground for a downward departure at sentencing. The	No	N/A	No

Name of Case	Court	Citation	Date	Fact	Holding	Statutory Basis (or Note)	Other Notes	Should the case be researched further
				accommodate defendant's medical needs. Defendant appealed his conviction and sentence.	appellate court found that the vote buying statute applied to all elections in which a federal candidate was on the ballot, and the government need not prove that defendant intended to affect the federal component of the election by his corrupt practices. The facts admitted by defendant at his guilty-plea hearing established all of the essential elements of an offense. The Elections Clause and the Necessary and Proper Clause combined to provide Congress with the power to regulate mixed federal and state elections even when federal candidates were running unopposed. There was no error in the district court's decision on departure under U.S. Sentencing Guidelines Manual § 5H1.4. Defendant's conviction and sentence were affirmed.			
United States v. Smith	United States Court of Appeals for the Sixth Circuit	139 Fed. Appx. 681; 2005 U.S. App. LEXIS 14855	July 18, 2005	Defendants were convicted of vote buying and conspiracy to buy votes. The United States District Court for the Eastern District of Kentucky entered judgment on	One of the defendants was a state representative who decided to run for an elected position. Defendants worked together and with others to buy votes. During defendants' trial, in addition to testimony regarding vote buying, evidence was introduced that two witnesses had been threatened. The appellate court found that defendants	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Researched Further
				<p>the jury verdict and sentenced defendants. Defendants appealed.</p>	<p>failed to show evidence of prejudice with regard to denial of the motion for severance. Threat evidence was not excludable under Fed. R. Evid. 404(b) because it was admissible to show consciousness of guilt without any inference as to the character of defendants. Admission of witnesses' testimony was proper because each witness testified that he or she was approached by a member of the conspiracy and offered money for his or her vote. The remaining incarcerated defendant's challenges to his sentence had merit because individuals who sold their votes were not "victims" for the purposes of U.S. Sentencing Guidelines Manual § 3 A1.1. Furthermore, application of U.S. Sentencing Guidelines Manual § 3B1.1(b) violated defendant's Sixth Amendment rights because it was based on facts that defendant did not admit or proved to the jury beyond a reasonable doubt. Defendants' convictions were affirmed. The remaining incarcerated defendant's sentence was vacated and his case was remanded for resentencing in accordance with Booker.</p>			

008646

Name of Case	Court	Citation	Date	Backs	Holding	Statute Has (Y) or Not (N)	Other Notes	Should the Case be Researched Further
Nugent v. Phelps	Court of Appeal of Louisiana, Second Circuit	816 So. 2d 349; 2002 La. App. LEXIS 1138	April 23, 2002	Plaintiff incumbent police chief sued defendant challenger, the winning candidate, to have the election nullified and a new election held based on numerous irregularities and unlawful activities by the challenger and his supporters. The challenger won the election by a margin of four votes. At the end of the incumbent's case, the district court for the dismissed his suit. The incumbent appealed.	The incumbent argued that: (1) the number of persons who were bribed for their votes by the challenger's worker was sufficient to change the outcome of the election; (2) the trial judge failed to inform potential witnesses that they could be given immunity from prosecution for bribery of voters if they came forth with truthful testimony; (3) the votes of three of his ardent supporters should have been counted because they were incarcerated for the sole purpose of keeping them from campaigning and voting; and (4) the district attorney, a strong supporter of the challenger, abused his power when he subpoenaed the incumbent to appear before the grand jury a week preceding the election. The appellate court held no more than two votes would be subtracted, a difference that would be insufficient to change the election result or make it impossible to determine. The appellate court found the trial judge read the immunity portion of the statute to the potential witnesses. The appellate court found the arrests of the three supporters were the result of grand jury indictments, and there was no manifest error in	No	N/A	No

008647

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (Yes or No)	Other Notes	Should the Case be Researched Further
					holding that the incumbent failed to prove a scheme by the district attorney. The judgment of the trial court was affirmed.			
Eason v. State	Court of Appeals of Mississippi	2005 Miss. App. LEXIS 1017	December 13, 2005	Defendant appealed a decision of circuit court convicting him of one count of conspiracy to commit voter fraud and eight counts of voter fraud.	Defendant was helping with his cousin's campaign in a run-off election for county supervisor. Together, they drove around town, picking up various people who were either at congregating spots or their homes. Defendant would drive the voters to the clerk's office where they would vote by absentee ballot and defendant would give them beer or money. Defendant claimed he was entitled to a mistrial because the prosecutor advanced an impermissible "sending the message" argument. The court held that it was precluded from reviewing the entire context in which the argument arose because, while the prosecutor's closing argument was in the record, the defense counsel's closing argument was not. Also, because the prosecutor's statement was incomplete due to defense counsel's objection, the court could not say that the statement made it impossible for defendant to receive a fair trial. Furthermore, the trial judge did not	No	N/A	No

008648

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Researched Further
					abuse his discretion when he did not allow defendant to ask the individual whether she wanted to see defendant go to prison because the individual's potential bias was shown by the individual's testimony that she expected the prosecution to recommend her sentence. The court affirmed defendant's conviction.			
United States v. Turner	United States District Court for the Eastern District of Kentucky	2005 U.S. Dist. LEXIS 31709	November 30, 2005	Defendants were charged with committing mail fraud and conspiracy to commit mail fraud and vote-buying. First defendant filed a motion to recuse. Second defendant's motion to join the motion to recuse was granted. First defendant moved to compel the Government to grant testimonial use immunity to second defendant and moved to sever	Defendants argued that recusal was mandated by 28 U.S.C.S. § 455(a) and (b)(1). The court found no merit in defendants' arguments. The fact that the judge's husband was the commissioner of the Kentucky Department of Environmental Protection, a position to which he was appointed by the Republican Governor, was not relevant. The judge's husband was neither a party nor a witness. The court further concluded that no reasonable person could find that the judge's spouse had any direct interest in the instant action. As for issue of money donated by the judge's husband to Republican opponents of first defendant, the court could not discern any reason why such facts warranted recusal. First defendant asserted that	No	N/A	No

Name of Case	Court	Citation	Date	Basis	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Researched further
				defendants.	second defendant should have been granted use immunity based on a belief that second defendant would testify that first defendant did not agree to, possess knowledge of, engage in, or otherwise participate in any of the illegal activity alleged in the indictment. The court found the summary of expected testimony to be too general to grant immunity. In addition, it was far from clear whether the court had the power to grant testimonial use immunity to second defendant. Defendants' motion to recuse was denied. First defendant's motions to compel and to sever were denied.			
Ways v. Shively	Supreme Court of Nebraska	264 Neb. 250; 646 N.W.2d 621; 2002 Neb. LEXIS 158	July 5, 2002	Appellant felon filed a writ of mandamus, which sought to compel appellee Election Commissioner of Lancaster County, Nebraska, to permit him to register to vote. The District Court for Lancaster County denied the	The felon was discharged from the Nebraska State Penitentiary in June 1998 after completing his sentences for the crimes of pandering, carrying a concealed weapon and attempting to possess a controlled substance. The commissioner asserted that as a result of the felon's conviction, the sentence for which had neither been reversed nor annulled, he had lost his right to vote. The commissioner contended that the only method by which the felon's	No	N/A	No

008650

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Researched further
				felon's petition for writ of mandamus and dismissed the petition. The felon appealed.	right to vote could be restored was through a warrant of discharge issued by the Nebraska Board of Pardons---a warrant of discharge had not been issued. The supreme court ruled that the certificate of discharge issued to the felon upon his release did not restore his right to vote. The supreme court ruled that as a matter of law, the specific right to vote was not restored to the felon upon his discharge from incarceration at the completion of his sentences. The judgment was affirmed.			
Fischer v. Governor	Supreme Court of New Hampshire	145 N.H. 28; 749 A.2d 321; 2000 N.H. LEXIS 16	March 24, 2000	Appellant State of New Hampshire challenged a ruling of the superior court that the felon disenfranchisement statutes violate N.H. Const. pt. I, Art. 11.	Appellee was incarcerated at the New Hampshire State Prison on felony convictions. When he requested an absentee ballot to vote from a city clerk, the request was denied. The clerk sent him a copy of N.H. Rev. Stat. Ann. § 607(A)(2) (1986), which prohibits a felon from voting "from the time of his sentence until his final discharge." The trial court declared the disenfranchisement statutes unconstitutional and ordered local election officials to allow the plaintiff to vote. Appellant State of New Hampshire challenged this ruling. The central issue was whether the felon	No	N/A	No

003651

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Researched Further
					<p>disenfranchisement statutes violated N.H. Const. pt. I, art. 11. After a review of the article, its constitutional history, and legislation pertinent to the right of felons to vote, the court concluded that the legislature retained the authority under the article to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority, and reversed. Judgment reversed because the court concluded that the legislature retained its authority under the New Hampshire Constitution to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority.</p>			
Mixon v. Commonwealth	Commonwealth Court of Pennsylvania	759 A.2d 442; 2000 Pa. Commw. LEXIS 534	September 18, 2000	Respondents filed objections to petitioners' complaint seeking declaratory relief as to the unconstitutionality of the Pennsylvania Election Code, 25 Pa. Cons. Stat. §§	Petitioner convicted felons were presently or had formerly been confined in state prison. Petitioner elector was currently registered to vote in respondent state. Petitioners filed a complaint against respondent state seeking declaratory relief challenging as unconstitutional, state election and voting laws that excluded confined felons from the definition of qualified	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any Note)	Other Notes	Should the Case be Researched Further
				2600 -- 3591, and the Pennsylvania Voter Registration Act, 25 Pa. Cons. Stat. §§ 961.101--961.5109, regarding felon voting rights.	absentee electors and that barred a felon who had been released from a penal institution for less than five years from registering to vote. Respondents filed objections to petitioners' complaint. The court sustained respondents' objection that incarcerated felons were not unconstitutionally deprived of qualified absentee elector status because respondent state had broad power to determine the conditions under which suffrage could be exercised. However, petitioner elector had no standing and the court overruled objection as to deprivation of ex--felon voting rights. The court sustained respondents' objection since incarcerated felons were not unconstitutionally deprived of qualified absentee elector status and petitioner elector had no standing, but objection that ex--incarcerated felons' voting rights were deprived was overruled since status penalized them.			
NAACP Philadelphia Branch v. Ridge	United States District Court for the Eastern District of Pennsylvania	2000 U.S. Dist. LEXIS 11520	August 14, 2000	Plaintiffs moved for a preliminary injunction, which the parties agreed to consolidate with the	Plaintiffs, ex--felon, unincorporated association, and others, filed a civil rights suit against defendant state and local officials, contending that the Pennsylvania Voter Registration Act,	No	N/A	No

008653

Name of Case	Court	Citation	Date	Case	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
				merits determination for a permanent injunction, in plaintiffs' civil rights suit contending that the Pennsylvania Voter Registration Act, offended the Equal Protection Clause of U.S. Const. amend. XIV.	violated the Equal Protection Clause by prohibiting some ex--felons from voting during the five year period following their release from prison, while permitting other ex--felons to vote. Plaintiffs conceded that one plaintiff lacked standing, and the court assumed the remaining plaintiffs had standing. The court found that all that all three of the special circumstances necessary to invoke the Pullman doctrine were present in the case, but found that abstention was not appropriate under the circumstances since it did not agree with plaintiffs' contention that the time constraints caused by the upcoming election meant that the option of pursuing their claims in state court did not offer plaintiffs an adequate remedy. Plaintiff's motion for permanent injunction denied; the court abstained from deciding merits of plaintiffs' claims under the Pullman doctrine because all three of the special circumstances necessary to invoke the doctrine were present in the case; all further proceedings stayed until further order.			
Farrakhan v.	United States	2000	December	Plaintiffs, convicted	The felons alleged that Washington's	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Researched Further
Locke	District Court for the Eastern District of Washington	U.S. Dist. LEXIS 22212	1, 2000	felons who were also racial minorities, sued defendants for alleged violations of the Voting Rights Act. The parties filed cross-motions for summary judgment.	felon disenfranchisement and restoration of civil rights schemes, premised upon Wash. Const. art. VI § 3, resulted in the denial of the right to vote to racial minorities in violation of the VRA. They argued that race bias in, or the discriminatory effect of, the criminal justice system resulted in a disproportionate number of racial minorities being disenfranchised following felony convictions. The court concluded that Washington's felon disenfranchisement provision disenfranchised a disproportionate number of minorities; as a result, minorities were under-represented in Washington's political process. The Rooker-Feldman doctrine barred the felons from bringing any as-applied challenges, and even if it did not bar such claims, there was no evidence that the felons' individual convictions were born of discrimination in the criminal justice system. However, the felons' facial challenge also failed. The remedy they sought would create a new constitutional problem, allowing disenfranchisement only of white felons. Further, the felons did not establish a causal connection between			

008655

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (If Any)	Other Note	Should the Case be Researched (If Yes, Number)
					the disenfranchisement provision and the prohibited result. The court granted defendants' motion and denied the felons' motion for summary judgment.			
Johnson v. Bush	United States District Court for the Southern District of Florida	214 F. Supp. 2d 1333; 2002 U.S. Dist. LEXIS 14782	July 18, 2002	Plaintiff felons sued defendant state officials for alleged violations of their constitutional rights. The officials moved and the felons cross-moved for summary judgment.	The felons had all successfully completed their terms of incarceration and/or probation, but their civil rights to register and vote had not been restored. They alleged that Florida's disenfranchisement law violated their rights under First, Fourteenth, Fifteenth, and Twenty-Fourth Amendments to the United States Constitution, as well as § 1983 and §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on minorities, the	No	N/A	No

008656

Name Of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					cause was racially neutral. Finally, requiring the felons to pay their victim restitution before their rights would be restored did not constitute an improper poll tax or wealth qualification. The court granted the officials' motion for summary judgment and implicitly denied the felons' motion. Thus, the court dismissed the lawsuit with prejudice.			
King v. City of Boston	United States District Court for the District of Massachusetts	2004 U.S. Dist. LEXIS 8421	May 13, 2004	Plaintiff inmate filed a motion for summary judgment in his action challenging the constitutionality of Mass. Gen. Laws ch. 51, § 1, which excluded incarcerated felons from voting while they were imprisoned.	The inmate was convicted of a felony and incarcerated. His application for an absentee ballot was denied on the ground that he was not qualified to register and vote under Mass. Gen. Laws ch. 51, § 1. The inmate argued that the statute was unconstitutional as it applied to him because it amounted to additional punishment for crimes he committed before the statute's enactment and thus violated his due process rights and the prohibition against ex post facto laws and bills of attainder. The court held that the statute was regulatory and not punitive because rational choices were implicated in the statute's disenfranchisement of persons under guardianship, persons disqualified	No	N/A	No

008657

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					because of corrupt elections practices, persons under 18 years of age, as well as incarcerated felons. Specifically, incarcerated felons were disqualified during the period of their imprisonment when it would be difficult to identify their address and ensure the accuracy of their ballots. Therefore, the court concluded that Mass. Gen. Laws ch. 51, § 1 did not violate the inmate's constitutional rights. The court found the statute at issue to be constitutional and denied the inmate's motion for summary judgment.			
Hayden v. Pataki	United States District Court for the Southern District of New York	2004 U.S. Dist. LEXIS 10863	June 14, 2004	In a 42 U.S.C.S. § 1983 action filed by plaintiffs, black and latino convicted felons, alleging that N.Y. Const. art. II, § 3 and N.Y. Elec. Law § 5--106(2) were unconstitutional, defendants, New York's governor and the chairperson of the board of elections, moved for	The felons sued defendants, alleging that N.Y. Const. art. II, § 3 and N.Y. Elec. Law § 5--106(2) unlawfully denied suffrage to incarcerated and paroled felons on account of their race. The court granted defendants' motion for judgment on the pleadings on the felons' claims under U.S. Const. amend. XIV, XV because their factual allegations were insufficient from which to draw an inference that the challenged provisions or their predecessors were enacted with discriminatory intent, and because denying suffrage to those who received	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
				judgment on the pleadings under Fed. R. Civ. P. 12(c).	more severe punishments, such as a term of incarceration, and not to those who received a lesser punishment, such as probation, was not arbitrary. The felons' claims under 42 U.S.C.S. § 1973 were dismissed because § 1973 could not be used to challenge the legality of N.Y. Elec. Law § 5--106. Defendants' motion was granted as to the felons' claims under 42 U.S.C.S. § 1971 because § 1971 did not provide for a private right of action, and because the felons were not "otherwise qualified to vote." The court also granted defendants' motion on the felons' U.S. Const. amend. I claim because it did not guarantee a felon the right to vote. Defendants' motion for judgment on the pleadings was granted in the felons' § 1983 action.			
Farrakhan v. Washington	United States Court for Appeals for the Ninth Circuit	338 F.3d 1009; 2003 U.S. App. LEXIS 14810	July 25, 2003	Plaintiff inmates sued defendant state officials, claiming that Washington state's felon disenfranchisement scheme constitutes improper race--based vote denial in	Upon conviction of infamous crimes in the state, (that is, crimes punishable by death or imprisonment in a state correctional facility), the inmates were disenfranchised. The inmates claimed that the disenfranchisement scheme violated § 2 because the criminal justice system was biased against minorities, causing a disproportionate	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				violation of § 2 of the Voting Rights Act. The United States District Court for the Eastern District of Washington granted of summary judgment dismissing the inmates' claims. The inmates appealed.	minority representation among those being disenfranchised. The appellate court held, inter alia, that the district court erred in failing to consider evidence of racial bias in the state's criminal justice system in determining whether the state's felon disenfranchisement laws resulted in denial of the right to vote on account of race. Instead of applying its novel "by itself" causation standard, the district court should have applied a totality of the circumstances test that included analysis of the inmates' compelling evidence of racial bias in Washington's criminal justice system. However, the inmates lacked standing to challenge the restoration scheme because they presented no evidence of their eligibility, much less even allege that they were eligible for restoration, and had not attempted to have their civil rights restored. The court affirmed as to the eligibility claim but reversed and remanded for further proceedings to the bias in the criminal justice system claim.			
In re Phillips	Supreme Court of Virginia	265 Va. 81; 574	January 10, 2003	The circuit court, entered a judgment	More than five years earlier, the former felon was convicted of the felony of	No	N/A	No

008660

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (or None)	Other Notes	Should the Case be Revisited?
		S.E.2d 270; 2003 Va. LEXIS 10		in which it declined to consider petitioner former felon's petition for approval of her request to seek restoration of her eligibility to register to vote. The former felon appealed.	making a false written statement incident to a firearm purchase. She then petitioned the trial court asking it to approve her request to seek restoration of her eligibility to register to vote. Her request was based on Va. Code Ann. § 53.1--231.2, allowing persons convicted of non-violent felonies to petition a trial court for approval of a request to seek restoration of voting rights. The trial court declined. It found that Va. Code Ann. § 53.1--231.2 violated constitutional separation of powers principles since it gave the trial court powers belonging to the governor. It also found that even if the statute was constitutional, it was fundamentally flawed for not providing notice to respondent Commonwealth regarding a petition. After the petition was denied, the state supreme court found the separation of powers principles were not violated since the statute only allowed the trial court to determine if an applicant met the requirements to have voting eligibility restored. It also found the statute was not fundamentally flawed since the Commonwealth was not an interested			

008661

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Note	Should the Case be Researched further
					party entitled to notice. OUTCOME: The judgment was reversed and the case was remanded for further proceedings.			
Howard v. Gilmore	United States Court of Appeals for the Fourth Circuit	2000 U.S. App. LEXIS 2680	February 23, 2000	Appellant challenged the United States District Court for the Eastern District of Virginia's order summarily dismissing his complaint, related to his inability to vote as a convicted felon, for failure to state a claim upon which relief can be granted.	Appellant was disenfranchised by the Commonwealth of Virginia following his felony conviction. He challenged that decision by suing the Commonwealth under the U.S. Const. amends. I, XIV, XV, XIX, and XXIV, and under the Voting Rights Act of 1965. The lower court summarily dismissed his complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. Appellant challenged. The court found U.S. Const. amend. I created no private right of action for seeking reinstatement of previously canceled voting rights, U.S. Const. amends. XIV, XV, XIX, and the VRA required either gender or race discrimination, neither of which appellant asserted, and the U.S. Const. amend. XXIV, while prohibiting the imposition of poll taxes, did not prohibit the imposition of a \$10 fee for reinstatement of appellant's civil rights, including the right to vote. Consequently, appellant failed to state a claim. The court affirmed, finding	No	N/A	No

008662

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					that none of the constitutional provisions appellant relied on were properly pled because appellant failed to assert that either his race or gender were involved in the decisions to deny him the vote. Conditioning reestablishment of his civil rights on a \$10 fee was not unconstitutional.			
Johnson v. Governor of Fla.	United States Court of Appeals for the Eleventh Circuit	353 F.3d 1287; 2003 U.S. App. LEXIS 25859	December 19, 2003	Plaintiffs, ex-felon citizens of Florida, on their own right and on behalf of others, sought review of a decision of the United States District Court for the Southern District of Florida, which granted summary judgment to defendants, members of the Florida Clemency Board in their official capacity. The citizens challenged the validity of the Florida felon disenfranchisement	The citizens alleged that Fla. Const. art. VI, § 4 (1968) was racially discriminatory and violated their constitutional rights. The citizens also alleged violations of the Voting Rights Act. The court initially examined the history of Fla. Const. art. VI, § 4 (1968) and determined that the citizens had presented evidence that historically the disenfranchisement provisions were motivated by a discriminatory animus. The citizens had met their initial burden of showing that race was a substantial motivating factor. The state was then required to show that the current disenfranchisement provisions would have been enacted absent the impermissible discriminatory intent. Because the state had not met its burden, summary judgment should not have been granted. The court found	No	N/A	No

008663

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Researched Further
				laws.	that the claim under the Voting Rights Act, also needed to be remanded for further proceedings. Under a totality of the circumstances, the district court needed to analyze whether intentional racial discrimination was behind the Florida disenfranchisement provisions, in violation of the Voting Rights Act. The court affirmed the district court's decision to grant summary judgment on the citizens' poll tax claim. The court reversed the district court's decision to grant summary judgment to the Board on the claims under the equal protection clause and for violation of federal voting laws and remanded the matter to the district court for further proceedings.			
State v. Black	Court of Appeals of Tennessee	2002 Tenn. App. LEXIS 696	September 26, 2002	In 1997, petitioner was convicted of forgery and sentenced to the penitentiary for two years, but was immediately placed on probation. He subsequently petitioned the circuit court for restoration	The appellate court's original opinion found that petitioner had not lost his right to hold public office because Tennessee law removed that right only from convicted felons who were "sentenced to the penitentiary." The trial court's amended judgment made it clear that petitioner was in fact sentenced to the penitentiary. Based upon this correction to the record, the appellate court found that petitioner's	No	N/A	No

008664

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Note	Should the Case be Researched Further
				<p>of citizenship. The trial court restored his citizenship rights. The State appealed. The appellate court issued its opinion, but granted the State's motions to supplement the record and to rehear its decision.</p>	<p>sentence to the penitentiary resulted in the forfeiture of his right to seek and hold public office by operation of Tenn. Code Ann. § 40-20--114. However, the appellate court concluded that this new information did not requires a different outcome on the merits of the issue of restoration of his citizenship rights, including the right to seek and hold public office. The appellate court adhered to its conclusion that the statutory presumption in favor of the restoration was not overcome by a showing, by a preponderance of the evidence, of good cause to deny the petition for restoration of citizenship rights. The appellate court affirmed the restoration of petitioner's right to vote and reversed the denial of his right to seek and hold public office. His full rights of citizenship were restored.</p>			
Johnson v. Governor of Fla.	United States Court of Appeals for the Eleventh Circuit	405 F.3d 1214; 2005 U.S. App. LEXIS 5945	April 12, 2005	Plaintiff individuals sued defendant members of Florida Clemency Board, arguing that Florida's felon disenfranchisement	The individuals argued that the racial animus motivating the adoption of Florida's disenfranchisement laws in 1868 remained legally operative despite the reenactment of Fla. Const. art. VI, § 4 in 1968. The subsequent reenactment eliminated any	No	N/A	No

008665

Name of Case	Court	Citation	Date	Issue	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Reopened?
				<p>law, Fla. Const. art. VI, § 4 (1968), violated the Equal Protection Clause and 42 U.S.C.S. § 1973. The United States District Court for the Southern District of Florida granted the members summary judgment. A divided appellate panel reversed. The panel opinion was vacated and a rehearing en banc was granted.</p>	<p>discriminatory taint from the law as originally enacted because the provision narrowed the class of disenfranchised individuals and was amended through a deliberative process. Moreover, there was no allegation of racial discrimination at the time of the reenactment. Thus, the disenfranchisement provision was not a violation of the Equal Protection Clause and the district court properly granted the members summary judgment on that claim. The argument that 42 U.S.C.S. § 1973 applied to Florida's disenfranchisement provision was rejected because it raised grave constitutional concerns, i.e., prohibiting a practice that the Fourteenth Amendment permitted the state to maintain. In addition, the legislative history indicated that Congress never intended the Voting Rights Act to reach felon disenfranchisement provisions. Thus, the district court properly granted the members summary judgment on the Voting Rights Act claim. The motion for summary judgment in favor of the members was granted.</p>			

008666

Name of case	Court	Citation	Date	Facts	Holding	Statutory Basis (if on Note)	Other Notes	Should the case be Researched further
Hileman v. McGinness	Appellate Court of Illinois, Fifth District	316 Ill. App. 3d 868; 739 N.E.2d 81; 2000 Ill. App. LEXIS 845	October 25, 2000	Appellant challenged the circuit court's declaration that that the result of a primary election for county circuit clerk was void.	In a primary election for county circuit clerk, the parties agreed that 681 absentee ballots were presumed invalid. The ballots had been commingled with the valid ballots. There were no markings or indications on the ballots which would have allowed them to be segregated from other ballots cast. Because the ballots could not have been segregated, apportionment was the appropriate remedy if no fraud was involved. If fraud was involved, the election would have had to have been voided and a new election held. Because the trial court did not hold an evidentiary hearing on the fraud allegations, and did not determine whether fraud was in issue, the case was remanded for a determination as to whether fraud was evident in the electoral process. <i>Judgment reversed and remanded.</i>	No	N/A	No
Eason v. State	Court of Appeals of Mississippi	2005 Miss. App. LEXIS 1017	December 13, 2005	Defendant appealed a decision of the circuit court convicting him of one count of conspiracy to commit voter fraud	Defendant was helping with his cousin's campaign in a run-off election for county supervisor. Together, they drove around town, picking up various people who were either at congregating spots or their homes. Defendant would drive the	No	N/A	No

008667

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis or Note	Other Note	Should the Case be Reopened
				and eight counts of voter fraud.	voters to the clerk's office where they would vote by absentee ballot and defendant would give them beer or money. Defendant claimed he was entitled to a mistrial because the prosecutor advanced an impermissible "sending the message" argument. The court held that it was precluded from reviewing the entire context in which the argument arose because, while the prosecutor's closing argument was in the record, the defense counsel's closing argument was not. Also, because the prosecutor's statement was incomplete due to defense counsel's objection, the court could not say that the statement made it impossible for defendant to receive a fair trial. Judgment affirmed.			
Wilson v. Commonwealth	Court of Appeals of Virginia	2000 Va. App. LEXIS 322	May 2, 2000	Defendant appealed the judgment of the circuit court which convicted her of election fraud.	At trial, the Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter registration form that she was living at a residence in the 51st House District. The evidence included records showing electricity and water usage, records from the Department of Motor	No	N/A	No

008668

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Vehicles and school records. Thus, the evidence was sufficient to support the jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed in order for her to be a candidate for office in the primary in question. Judgment affirmed.			
Townson v. Stonicher	Supreme Court of Alabama	2005 Ala. LEXIS 214	December 9, 2005	The circuit court overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross-appealed. In the meantime, the trial court stayed enforcement of its judgment pending resolution of the appeal.	The voters and the incumbent all challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that at least 30 absentee voters who voted for the incumbent provided with their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat "cure" that defect by providing a proper form of identification at the trial of the election contest, because, under those	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>circumstances, it was difficult to conclude that those voters made an honest effort to comply with the law. Moreover, to count the votes of voters who failed to comply with the essential requirement of submitting proper identification with their absentee ballots had the effect of disenfranchising qualified electors who choose not to vote but rather than to make the effort to comply with the absentee--voting requirements. The judgment declaring the incumbent's opponent the winner was affirmed. The judgment counting the challenged votes in the final tally of votes was reversed, and said votes were subtracted from the incumbents total, and the stay was vacated. All other arguments were rendered moot as a result.</p>			
<p>ACLU of Minn. v. Kiffmeyer</p>	<p>United States District Court for the District of Minnesota</p>	<p>2004 U.S. Dist. LEXIS 22996</p>	<p>October 29, 2004</p>	<p>Plaintiffs, voters and associations, filed for a temporary restraining order pursuant to Fed. R. Civ. P. 65, against defendant, Minnesota Secretary</p>	<p>Plaintiffs argued that Minn. Stat. § 201.061 was inconsistent with the Help America Vote Act because it did not authorize the voter to complete registration either by a "current and valid photo identification" or by use of a current utility bill, bank statement, government check, paycheck, or other</p>	<p>No</p>	<p>N/A</p>	<p>No</p>

008670

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				of State, concerning voter registration.	government document that showed the name and address of the individual. The Secretary advised the court that there were less than 600 voters who attempted to register by mail but whose registrations were deemed incomplete. The court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic tribal identification card by American Indians who do not reside on their tribal reservations. Also, the court found that plaintiffs demonstrated that they were likely to succeed on their claims that Minn. R. 8200.5100, violated the Equal Protection Clause of the United States Constitution. A temporary restraining order was entered.			
League of Women Voters v. Blackwell	United States District Court for the Northern District of Ohio	340 F. Supp. 2d 823; 2004	October 20, 2004	Plaintiff organizations filed suit against defendant, Ohio's	The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide	No	N/A	No

008671

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		U.S. Dist. LEXIS 20926		Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote Act. The Secretary filed a motion to dismiss.	documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the last four digits of his social security number. If he did not know either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive, even if the cost, in terms of uncounted ballots, was regrettable. The court granted the Secretary's motion to dismiss.			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
New York v. County of Del.	United States District Court for the Northern District of New York	82 F. Supp. 2d 12; 2000 U.S. Dist. LEXIS 1398	February 8, 2000	Plaintiffs brought a claim in the district court under the Americans With Disabilities Act and filed a motion for a preliminary injunction and motion for leave to amend their complaint, and defendants were ordered to show cause why a preliminary injunction should not be issued.	In their complaint plaintiffs alleged that defendants violated the ADA by making the voting locations inaccessible to disabled persons and asked for a preliminary injunction requiring defendants to come into compliance before the next election. The court found that defendants were the correct parties, because pursuant to New York election law defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, due to the alleged facts, the court found plaintiffs would likely succeed on the merits. Consequently, the court granted plaintiffs' motion for a preliminary injunction. The court granted plaintiffs' motion for a preliminary injunction and granted plaintiffs' motion for leave to amend their complaint.	No	N/A	No
New York v. County of Schoharie	United States District Court for the Northern	82 F. Supp. 2d 19; 2000	February 8, 2000	Plaintiffs brought a claim in the district court under the	In their complaint, plaintiffs alleged defendants violated the ADA by allowing voting locations to be	No	N/A	No

008673

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
	District of New York	U.S. Dist. LEXIS 1399		Americans With Disabilities Act and filed a motion for a preliminary injunction and a motion for leave to amend their complaint, and defendants were ordered to show cause why a preliminary injunction should not be issued.	inaccessible for disabled persons and asked for a preliminary injunction requiring defendants to come into compliance before the next election. The court found that defendants were the correct party, because pursuant to New York election law, defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, the court found that plaintiffs would likely succeed on the merits of their case. Consequently, the court granted plaintiffs' motion for a preliminary injunction. The court granted plaintiffs' motion for a preliminary injunction because plaintiffs showed irreparable harm and proved likely success on the merits and granted plaintiff's motion for leave to amend the complaint.			
Westchester Disabled on the Move, Inc. v. County of	United States District Court for the Southern District of New York	346 F. Supp. 2d 473; 2004	October 22, 2004	Plaintiffs sued defendant county, county board of elections, and	The inability to vote at assigned locations on election day constituted irreparable harm. However, plaintiffs could not show a likelihood of success	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Westchester	York	U.S. Dist. LEXIS 24203		election officials pursuant to 42 U.S.C.S. §§ 12131--12134, N.Y. Exec. Law § 296, and N.Y. Elec. Law § 4--1--4. Plaintiffs moved for a preliminary injunction, requesting (among other things) that the court order defendants to modify the polling places in the county so that they were accessible to disabled voters on election day. Defendants moved to dismiss.	on the merits because the currently named defendants could not provide complete relief sought by plaintiffs. Although the county board of elections was empowered to select an alternative polling place should it determine that a polling place designated by a municipality was "unsuitable or unsafe," it was entirely unclear that its power to merely designate suitable polling places would be adequate to ensure that all polling places used in the upcoming election actually conformed with the Americans with Disabilities Act. Substantial changes and modifications to existing facilities would have to be made, and such changes would be difficult, if not impossible, to make without the cooperation of municipalities. Further, the court could order defendants to approve voting machines that conformed to the ADA were they to be purchased and submitted for county approval, but the court could not order them to purchase them for the voting districts in the county. A judgment issued in the absence of the municipalities would be inadequate. Plaintiffs' motion for preliminary			

008675

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					injunction was denied, and defendants' motion to dismiss was granted.			
Nat'l Org. on Disability v. Tartaglione	United States District Court for the Eastern District of Pennsylvania	2001 U.S. Dist. LEXIS 16731	October 11, 2001	Plaintiffs, disabled voters and special interest organizations, sued defendants, city commissioners, under the Americans with Disabilities Act and § 504 of the Rehabilitation Act of 1973, and regulations under both statutes, regarding election practices. The commissioners moved to dismiss for failure (1) to state a cause of action and (2) to join an indispensable party.	The voters were visually impaired or wheelchair bound. They challenged the commissioners' failure to provide talking voting machines and wheelchair accessible voting places. They claimed discrimination in the process of voting because they were not afforded the same opportunity to participate in the voting process as non-disabled voters, and assisted voting and voting by alternative ballot were substantially different from, more burdensome than, and more intrusive than the voting process utilized by non-disabled voters. The court found that the complaint stated causes of actions under the ADA, the Rehabilitation Act, and 28 C.F.R. §§ 35.151 and 35.130. The court found that the voters and organizations had standing to raise their claims. The organizations had standing through the voters' standing or because they used significant resources challenging the commissioners' conduct. The plaintiffs failed to join the state official who would need to approve any talking	No	N/A	Yes-see if the case was refiled

008676

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					voting machine as a party. As the court could not afford complete relief to the visually impaired voters in that party's absence, it granted the motion to dismiss under Fed. R. Civ. P. 12(b)(7) without prejudice. The court granted the commissioners' motion to dismiss in part, and denied it in part. The court granted the motion to dismiss the claims of the visually impaired voters for failure to join an indispensable party, without prejudice, and with leave to amend the complaint.			
TENNESSEE, Petitioner v. GEORGE LANE et al.	United States Supreme Court	541 U.S. 509; 124 S. Ct. 1978; 158 L. Ed. 2d 820; 2004 U.S. LEXIS 3386	May 17, 2004	Respondent paraplegics sued petitioner State of Tennessee, alleging that the State failed to provide reasonable access to court facilities in violation of Title II of the Americans with Disabilities Act of 1990. Upon the grant of a writ of certiorari, the State appealed the judgment of the	The state contended that the abrogation of state sovereign immunity in Title II of the ADA exceeded congressional authority under U.S. Const. amend XIV, § 5, to enforce substantive constitutional guarantees. The United States Supreme Court held, however, that Title II, as it applied to the class of cases implicating the fundamental right of access to the courts, constituted a valid exercise of Congress's authority. Title II was responsive to evidence of pervasive unequal treatment of persons with disabilities in the administration of state services and programs, and such disability discrimination was thus	No	N/A	No

008677

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				United States Court of Appeals for the Sixth Circuit which denied the State's claim of sovereign immunity.	an appropriate subject for prophylactic legislation. Regardless of whether the State could be subjected to liability for failing to provide access to other facilities or services, the fundamental right of access to the courts warranted the limited requirement that the State reasonably accommodate disabled persons to provide such access. Title II was thus a reasonable prophylactic measure, reasonably targeted to a legitimate end. The judgment denying the State's claim of sovereign immunity was affirmed.			
Bell v. Marinko	United States Court of Appeals for the Sixth Circuit	367 F.3d 588; 2004 U.S. App. LEXIS 8330	April 28, 2004	Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19--3509.21 violated the National Voter Registration Act, and the Equal Protection Clause of the Fourteenth Amendment. The United States	The voters asserted that § 3503.02--- which stated that the place where the family of a married man or woman resided was considered to be his or her place of residence---violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place. The National Voter Registration Act did not bar the Board's continuing	No	N/A	No

008678

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
				District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.	consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code Ann. § 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed.			
Wilson v. Commonwealth	Court of Appeals of Virginia	2000 Va. App. LEXIS 322	May 2, 2000	Defendant appealed the judgment of the circuit court which convicted her of election fraud.	On appeal, defendant argued that the evidence was insufficient to support her conviction because it failed to prove that she made a willfully false statement on her voter registration form and, even if the evidence did prove that she made such a statement, it did not prove that the voter registration form was the form required by Title 24.2. At trial, the Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>registration form that she was living at a residence in the 51st House District. The evidence included records showing electricity and water usage, records from the Department of Motor Vehicles and school records. Thus, the evidence was sufficient to support the jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed by Title 24.2 in order for her to be a candidate for office in the primary in question. Judgment of conviction affirmed. Evidence, including records showing electricity and water usage, records from the Department of Motor Vehicles and school records, was sufficient to support jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed in order for her to be a candidate for office in the primary in question.</p>			
<p>ACLU of Minn. v. Kiffmeyer</p>	<p>United States District Court for the District of Minnesota</p>	<p>2004 U.S. Dist. LEXIS 22996</p>	<p>October 29, 2004</p>	<p>Plaintiffs, voters and associations, filed for a temporary restraining order pursuant to Fed. R. Civ. P. 65, against</p>	<p>Plaintiffs argued that Minn. Stat. § 201.061 was inconsistent with the Help America Vote Act because it did not authorize the voter to complete registration either by a "current and valid photo identification" or by use of</p>	<p>No</p>	<p>N/A</p>	<p>No</p>

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				defendant, Minnesota Secretary of State, concerning voter registration.	a current utility bill, bank statement, government check, paycheck, or other government document that showed the name and address of the individual. The Secretary advised the court that there were less than 600 voters who attempted to register by mail but whose registrations were deemed incomplete. The court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic tribal identification card by American Indians who do not reside on their tribal reservations. Also, the court found that plaintiffs demonstrated that they were likely to succeed on their claims that Minn. R. 8200.5100, violated the Equal Protection Clause of the United States Constitution. A temporary restraining order was entered.			
Kalsson v. United States	United States District Court for	356 F. Supp. 2d	February 16, 2005	Defendant Federal Election	The individual claimed that his vote was diluted because the NVRA	No	N/A	No

008681

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
FEC	the Southern District of New York	371; 2005 U.S. Dist. LEXIS 2279		Commission filed a motion to dismiss for lack of subject matter jurisdiction plaintiff individual's action, which sought a declaration that the National Voter Registration Act was unconstitutional on the theories that its enactment was not within the enumerated powers of the federal government and that it violated Article II of the United States Constitution.	resulted in more people registering to vote than otherwise would have been the case. The court held that the individual lacked standing to bring the action. Because New York was not obliged to adhere to the requirements of the NVRA, the individual did not allege any concrete harm. If New York simply adopted election day registration for elections for federal office, it would have been entirely free of the NVRA just as were five other states. Even if the individual's vote were diluted, and even if such an injury in other circumstances might have sufficed for standing, any dilution that he suffered was the result of New York's decision to maintain a voter registration system that brought it under the NVRA, not the NVRA itself. The court granted the motion to dismiss for lack of subject matter jurisdiction.			
Peace & Freedom Party v. Shelley	California Court of Appeal, Third Appellate District	114 Cal. App. 4th 1237; 8 Cal. Rptr. 3d 497; 2004 Cal.	January 15, 2004	Plaintiff political party appealed a judgment from the superior court which denied the party's petition for writ of	The trial court ruled that inactive voters were excluded from the primary election calculation. The court of appeals affirmed, observing that although the election had already taken place, the issue was likely to recur and	No	N/A	No

008632

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		App. LEXIS 42		mandate to compel defendant, the California Secretary of State, to include voters listed in the inactive file of registered voters in calculating whether the party qualified to participate in a primary election.	was a matter of continuing public interest and importance; hence, a decision on the merits was proper, although the case was technically moot. The law clearly excluded inactive voters from the calculation. The statutory scheme did not violate the inactive voters' constitutional right of association because it was reasonably designed to ensure that all parties on the ballot had a significant modicum of support from eligible voters. Information in the inactive file was unreliable and often duplicative of information in the active file. Moreover, there was no violation of the National Voter Registration Act because voters listed as inactive were not prevented from voting. Although the Act prohibited removal of voters from the official voting list absent certain conditions, inactive voters in California could correct the record and vote. Affirmed.			
McKay v. Thompson	United States Court of Appeals for the Sixth Circuit	226 F.3d 752; 2000 U.S. App.	September 18, 2000	Plaintiff challenged order of United States District Court for Eastern District of Tennessee at	The trial court had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required	No	N/A	No

003683

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		LEXIS 23387		Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.	plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous caselaw, and could be challenged in state court. The requirement did not violate the Privacy Act because it was grand fathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. Plaintiff could not enforce § 1971 as it was enforceable only by the United States Attorney General. The trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims. Although the trial court arguably erred in denying certification of the case to the USAG under 28 U.S.C.S. § 2403(a), plaintiff suffered no harm from the technical violation. Order affirmed because requirement that voters disclose social security numbers as precondition to voter registration did not violate Privacy Act of 1974 or National Voter			

008684

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					Registration Act and trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims.			
Lucas County Democratic Party v. Blackwell	United States District Court for the Northern District of Ohio	341 F. Supp. 2d 861; 2004 U.S. Dist. LEXIS 21416	October 21, 2004	Plaintiff organizations brought an action challenging a memorandum issued by defendant, Ohio's Secretary of State, in December 2003. The organizations claimed that the memorandum contravened provisions of the Help America Vote Act and the National Voter Registration Act. The organizations moved for a preliminary injunction.	The case involved a box on Ohio's voter registration form that required a prospective voter who registered in person to supply an Ohio driver's license number or the last four digits of their Social Security number. In his memorandum, the Secretary informed all Ohio County Boards of Elections that, if a person left the box blank, the Boards were not to process the registration forms. The organizations did not file their suit until 18 days before the national election. The court found that there was not enough time before the election to develop the evidentiary record necessary to determine if the organizations were likely to succeed on the merits of their claim. Denying the organizations' motion would have caused them to suffer no irreparable harm. There was no appropriate remedy available to the organizations at the time. The likelihood that the organizations could	No	N/A	No

008685

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>have shown irreparable harm was, in any event, slight in view of the fact that they waited so long before filing suit. Moreover, it would have been entirely improper for the court to order the Boards to re-open in-person registration until election day. The public interest would have been ill-served by an injunction. The motion for a preliminary injunction was denied sua sponte.</p>			
<p>Nat'l Coalition for Students with Disabilities Educ. &amp; Legal Def. Fund v. Scales</p>	<p>United States District Court for the District of Maryland</p>	<p>150 F. Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528</p>	<p>July 5, 2001</p>	<p>Plaintiff, national organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss the first amended complaint, or in the</p>	<p>Defendants alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged sufficient facts to confer standing under the NVRA, such allegations</p>	<p>No</p>	<p>N/A</p>	<p>No</p>

008686

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				alternative for summary judgment.	were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter registration services at the initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended complaint was granted as to the § 1983 claim and denied as to plaintiff's claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion for summary judgment was denied.			
People v. Disimone	Court of Appeals of Michigan	251 Mich. App. 605; 650 N.W.2d 436; 2002 Mich. App.	July 11, 2002	Defendant was charged with attempting to vote more than once in the 2000 general election. The circuit court granted defendant's motion that the State had to	Defendant was registered in the Colfax township for the 2000 general election. After presenting what appeared to be a valid voter's registration card, defendant proceeded to vote in the Grant township. Defendant had voted in the Colfax township earlier in the day. Defendant moved the court to issue an order that the State had to find	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		LEXIS 826		prove specific intent. The State appealed.	that he had a specific intent to vote twice in order to be convicted. The appellate court reversed the circuit court judgment and held that under the rules of statutory construction, the fact that the legislature had specifically omitted certain trigger words such as "knowingly," "willingly," "purposefully," or "intentionally" it was unlikely that the legislature had intended for this to be a specific intent crime. The court also rejected the defendant's argument that phrases such as "offer to vote" and "attempt to vote" should be construed as synonymous terms, as when words with similar meanings were used in the same statute, it was presumed that the legislature intended to distinguish between the terms. The order of the circuit court was reversed.			
Diaz v. Hood	United States District Court for the Southern District of Florida	342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445	October 26, 2004	Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general	The putative voters sought injunctive relief requiring the election officials to register them to vote. The court first noted that the unions lacked even representative standing, because they failed to show that one of their members could have brought the case in their own behalf. The individual	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>election. They alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials moved to dismiss the complaint for lack of standing and failure to state a claim.</p>	<p>putative voters raised separate issues: the first had failed to verify her mental capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. The motions to dismiss the complaint were granted without prejudice.</p>			
Charles H. Wesley Educ.	United States District Court for	324 F. Supp. 2d	July 1, 2004	Plaintiffs, a voter, fraternity members,	The organization participated in numerous non-partisan voter	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Found., Inc. v. Cox	the Northern District of Georgia	1358; 2004 U.S. Dist. LEXIS 12120		and an organization, sought an injunction ordering defendant, the Georgia Secretary of State, to process the voter registration application forms that they mailed in following a voter registration drive. They contended that by refusing to process the forms defendants violated the National Voter Registration Act and U.S. Const. amends. I, XIV, and XV.	registration drives primarily designed to increase the voting strength of African--Americans. Following one such drive, the fraternity members mailed in over 60 registration forms, including one for the voter who had moved within state since the last election. The Georgia Secretary of State's office refused to process them because they were not mailed individually and neither a registrar, deputy registrar, or an otherwise authorized person had collected the applications as required under state law. The court held that plaintiffs had standing to bring the action. The court held that because the applications were received in accordance with the mandates of the NVRA, the State of Georgia was not free to reject them. The court found that: plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Plaintiffs' motion for a preliminary injunction			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>was granted. Defendants were ordered to process the applications received from the organization to determine whether those registrants were qualified to vote. Furthermore, defendants were enjoined from rejecting any voter registration application on the grounds that it was mailed as part of a "bundle" or that it was collected by someone not authorized or any other reason contrary to the NVRA.</p>			
Moseley v. Price	United States District Court for the Eastern District of Virginia	300 F. Supp. 2d 389; 2004 U.S. Dist. LEXIS 850	January 22, 2004	Plaintiff alleged, that defendants' actions in investigating his voter registration application constituted a change in voting procedures requiring § 5 preclearance under the Voting Rights Act, which preclearance was never sought or received. Plaintiff claimed he withdrew from the race for Commonwealth	The court concluded that plaintiff's claim under the Voting Rights Act lacked merit. Plaintiff did not allege, as required, that any defendants implemented a new, uncleared voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting. Here, the existing practice or procedure in effect in the event a mailed registration card was returned was to "resend the voter card, if address verified as correct." This was what precisely occurred. Plaintiff inferred, however, that the existing voting rule or practice was to resend the voter card "with no adverse consequences" and that the county's	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				Attorney because of the investigation. Defendants moved to dismiss the complaint.	initiation of an investigation constituted the implementation of a change that had not been pre-cleared. The court found the inference wholly unwarranted because nothing in the written procedure invited or justified such an inference. The court opined that common sense and state law invited a different inference, namely that while a returned card had to be resent if the address was verified as correct, any allegation of fraud could be investigated. Therefore, there was no new procedure for which preclearance was required. The court dismissed plaintiff's federal claims. The court dismissed the state law claims without prejudice.			
Thompson v. Karben	Supreme Court of New York, Appellate Division, Second Department	295 A.D.2d 438; 743 N.Y.S.2d 175; 2002 N.Y. App. Div. LEXIS 6101	June 10, 2002	Respondents filed a motion seeking the cancellation of appellant's voter registration and political party enrollment on the ground that appellant was unlawfully registered to vote in	Respondents alleged that appellant was unlawfully registered to vote from an address at which he did not reside and that he should have voted from the address that he claimed as his residence. The appellate court held that respondents adduced insufficient proof to support the conclusion that appellant did not reside at the subject address. On the other hand, appellant submitted copies of his 2002 vehicle registration,	No	N/A	No

008692

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				a particular district. The Supreme Court, Rockland County, New York, ordered the cancellation of appellant's voter registration and party enrollment. Appellant challenged the trial court's order.	2000 and 2001 federal income tax returns, 2002 property tax bill, a May 2001 paycheck stub, and 2000 and 2001 retirement account statements all showing the subject address. Appellant also testified that he was a signatory on the mortgage of the subject address and that he kept personal belongings at that address. Respondents did not sustain their evidentiary burden. The judgment of the trial court was reversed.			
Nat'l Coalition v. Taft	United States District Court for the Southern District of Ohio	2002 U.S. Dist. LEXIS 22376	August 2, 2002	Plaintiffs, a nonprofit public interest group and certain individuals, sued defendants, certain state and university officials, alleging that they violated the National Voter Registration Act in failing to designate the disability services offices at state public colleges and universities as voter registration sites.	The court found that the disability services offices at issue were subject to the NVRA because the term "office" included a subdivision of a government department or institution and the disability offices at issue were places where citizens regularly went for service and assistance. Moreover, the Ohio Secretary of State had an obligation under the NVRA to designate the disability services offices as voter registration sites because nothing in the law superceded the NVRA's requirement that the responsible state official designate disability services offices as voter registration sites. Moreover, under	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				The group and individuals moved for a preliminary injunction.	Ohio Rev. Code Ann. § 3501.05(R), the Secretary of State's duties expressly included ensuring compliance with the NVRA. The case was not moot even though the Secretary of State had taken steps to ensure compliance with the NVRA given his position to his obligation under the law. The court granted declaratory judgment in favor of the nonprofit organization and the individuals. The motion for a preliminary injunction was granted in part and the Secretary of State was ordered to notify disabled students who had used the designated disability services offices prior to the opening day of the upcoming semester or who had pre-registered for the upcoming semester as to voter registration availability.			
Lawson v. Shelby County	United States Court of Appeals for the Sixth Circuit	211 F.3d 331; 2000 U.S. App. LEXIS 8634	May 3, 2000	Plaintiffs who were denied the right to vote when they refused to disclose their social security numbers, appealed a judgment of the United States	Plaintiffs attempted to register to vote in October, and to vote in November, but were denied because they refused to disclose their social security numbers. A year after the election date they filed suit alleging denial of constitutional rights, privileges and immunities, the Privacy Act of 1974	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				District Court for the Western District of Tennessee at Memphis dismissing their amended complaint for failure to state claims barred by U.S. Const. amend. XI.	and § 1983. The district court dismissed, finding the claims were barred by U.S. Const. amend. XI, and the one year statute of limitations. The appeals court reversed, holding the district court erred in dismissing the suit because U.S. Const. amend. XI immunity did not apply to suits brought by a private party under the Ex Parte Young exception. Any damages claim not ancillary to injunctive relief was barred. The court also held the statute of limitations ran from the date plaintiffs were denied the opportunity to vote, not register, and their claim was thus timely. Reversed and remanded to district court to order such relief as will allow plaintiffs to vote and other prospective injunctive relief against county and state officials; declaratory relief and attorneys' fees ancillary to the prospective injunctive relief, all permitted under the Young exception to sovereign immunity, to be fashioned.			
Curtis v. Smith	United States District Court for the Eastern District of Texas	145 F. Supp. 2d 814; 2001	June 4, 2001	Plaintiffs, representatives of several thousand retired persons who	Before a general election, three persons brought an action alleging the Escapees were not bona fide residents of the county, and sought to have their	No	N/A	No

008695

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		U.S. Dist. LEXIS 8544		called themselves the "Escapees," and who spent a large part of their lives traveling about the United States in recreational vehicles, but were registered to vote in the county, moved for preliminary injunction seeking to enjoin a Texas state court proceeding under the All Writs Act.	names expunged from the rolls of qualified voters. The plaintiffs brought suit in federal district court. The court issued a preliminary injunction forbidding county officials from attempting to purge the voting. Commissioner contested the results of the election, alleging Escapees' votes should be disallowed. Plaintiffs brought present case assertedly to prevent the same issue from being relitigated. The court held, however, the issues were different, since, unlike the case in the first proceeding, there was notice and an opportunity to be heard. Further, unlike the first proceeding, the plaintiff in the state court action did not seek to change the prerequisites for voting registration in the county, but instead challenged the actual residency of some members of the Escapees, and such challenge properly belonged in the state court. The court further held that an election contest under state law was the correct vehicle to contest the registration of Escapees. The court dissolved the temporary restraining order it had previously entered and denied plaintiffs' motion for preliminary			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Pepper v. Darnell	United States Court of Appeals for the Sixth Circuit	24 Fed. Appx. 460; 2001 U.S. App. LEXIS 26618	December 10, 2001	Plaintiff individual appealed from a judgment of the district court, in an action against defendant state officials seeking relief under § 1983 and the National Voter Registration Act, for their alleged refusal to permit individual to register to vote. Officials had moved for dismissal or for summary judgment, and the district court granted the motion.	injunction of the state court proceeding. Individual argued on appeal that the district court erred in finding that the registration forms used by the state did not violate the NVRA and in failing to certify a class represented by individual. Individual lived in his automobile and received mail at a rented box. Officials refused to validate individual's attempt to register to vote by mail. Tennessee state law forbade accepting a rented mail box as the address of the potential voter. Individual insisted that his automobile registration provided sufficient proof of residency under the NVRA. The court upheld the legality of state's requirement that one registering to vote provide a specific location as an address, regardless of the transient lifestyle of the potential voter, finding state's procedure faithfully mirrored the requirements of the NVRA as codified in the Code of Federal Regulations. The court also held that the refusal to certify individual as the representative of a class for purposes of this litigation was not an abuse of	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					discretion; in this case, no representative party was available as the indigent individual, acting in his own behalf, was clearly unable to represent fairly the class. The district court's judgment was affirmed.			
Miller v. Blackwell	United States District Court for the Southern District of Ohio	348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894	October 27, 2004	Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion for a temporary restraining order (TRO). Two individuals filed a motion to intervene as defendants.	Plaintiffs alleged that the timing and manner in which defendants intended to hold hearings regarding pre-election challenges to their voter registration violated both the Act and the Due Process Clause. The individuals, who filed pre-election voter eligibility challenges, filed a motion to intervene. The court held that it would grant the motion to intervene because the individuals had a substantial legal interest in the subject matter of the action and time constraints would not permit them to bring separate actions to protect their rights. The court further held that it would grant plaintiffs' motion for a TRO because plaintiffs made sufficient allegations in their complaint to establish standing and because all four factors to consider in issuing a TRO weighed heavily in favor of doing so. The court found that plaintiffs	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					demonstrated a likelihood of success on the merits because they made a strong showing that defendants' intended actions regarding pre-election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the other factors to consider in granting a TRO automatically weighed in plaintiffs' favor. The court granted plaintiffs' motion for a TRO. The court also granted the individuals' motion to intervene.			
Miller v. Blackwell	United States District Court for the southern District of Ohio	348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894	October 27, 2004	Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion	Plaintiffs alleged that the timing and manner in which defendants intended to hold hearings regarding pre-election challenges to their voter registration violated both the Act and the Due Process Clause. The individuals, who filed pre-election voter eligibility challenges, filed a motion to intervene. The court held that it would grant the motion to intervene because the individuals had a substantial legal interest in the subject matter of the action and time constraints would not permit them to bring separate actions to protect their	No	N/A	No

008699

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				for a temporary restraining order. Two individuals filed a motion to intervene as defendants.	rights. The court further held that it would grant plaintiffs' motion for a TRO because plaintiffs made sufficient allegations in their complaint to establish standing and because all four factors to consider in issuing a TRO weighed heavily in favor of doing so. The court found that plaintiffs demonstrated a likelihood of success on the merits because they made a strong showing that defendants' intended actions regarding pre-election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the other factors to consider in granting a TRO automatically weighed in plaintiffs' favor. The court granted plaintiffs' motion for a TRO. The court also granted the individuals' motion to intervene.			
Spencer v. Blackwell	United States District Court for the Southern District of Ohio	347 F. Supp. 2d 528; 2004 U.S. Dist. LEXIS	November 1, 2004	Plaintiff voters filed a motion for temporary restraining order and preliminary injunction seeking to restrain defendant	The voters alleged that defendants had combined to implement a voter challenge system at the polls that discriminated against African-American voters. Each precinct was run by its election judges but Ohio law also allowed challengers to be	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		22062		election officials and intervenor State of Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from being allowed at the polls.	physically present in the polling places in order to challenge voters' eligibility to vote. The court held that the injury asserted, that allowing challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos, delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. Because the voters had shown a substantial likelihood of success on the merits on the ground that the application of Ohio's statute allowing challengers at polling places was			

008701

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					unconstitutional and the other factors governing the issuance of an injunction weighed in their favor, the court enjoined all defendants from allowing any challengers other than election judges and other electors into the polling places throughout the state on Election Day.			
Charfauros v. Bd. of Elections	United States Court of Appeals for the Ninth Circuit	2001 U.S. App. LEXIS 15083	May 10, 2001	Defendants, board of elections and related individuals, appealed from an order of the Supreme Court of the Commonwealth of the Northern Mariana Islands reversing a lower court's grant of summary judgment in favor of defendants on the ground of qualified immunity.	Plaintiffs, disqualified voters, claimed that individual members of the Commonwealth of the Northern Mariana Islands Board of Elections violated § 1983 by administering pre-election day voter challenge procedures which precluded a certain class of voters, including plaintiffs, from voting in a 1995 election. The CNMI Supreme Court reversed a lower court's grant of summary judgment and defendants appealed. The court of appeals held that the Board's pre-election day procedures violated the plaintiffs' fundamental right to vote. The federal court reasoned that the right to vote was clearly established at the time of the election, and that a reasonable Board would have known that that treating voters differently based on their political party would	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>violate the Equal Protection Clause. Further the court added that the allegations of the complaint were sufficient to support liability of the Board members in their individual capacities. Finally, the composition of the CNMI Supreme Court's Special Judge panel did not violate the Board's right to due process of law. The decision of Commonwealth of the Northern Mariana Islands Supreme Court was affirmed where defendants' pre-election day voter challenge procedures violated plaintiffs' fundamental right to vote.</p>			
Wit v. Berman	United States Court of Appeals for the Second Circuit	306 F.3d 1256; 2002 U.S. App. LEXIS 21301	October 11, 2002	Appellant voters who established residences in two separate cities sued appellees, state and city election officials, alleging that provisions of the New York State Election Law unconstitutionally prevented the voters from voting in local elections in both	Under state election laws, the voters could only vote in districts in which they resided, and residence was limited to one place. The voters contended that, since they had two lawful residences, they were denied constitutional equal protection by the statutory restriction against voting in the local elections of both of the places of their residences. The appellate court held, however, that no constitutional violation was shown since the provisions of the New York State Election Law imposed only reasonable,	No	N/A	No

008703

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				cities where they resided. The voters appealed the order of the United States District Court for the Southern District of New York which granted appellees' motion to dismiss the complaint.	nondiscriminatory restrictions which advanced important state regulatory interests. While the voters may have interests in electoral outcomes in both cities, any rule permitting voting based on such interests would be unmanageable and subject to potential abuse. Further, basing voter eligibility on domicile, which was always over- or under-inclusive, nonetheless had enormous practical advantages, and the voters offered no workable standard to replace the domicile test. Finally, allowing the voters to choose which of their residences was their domicile for voting purposes could not be deemed discriminatory. Affirmed.			
Curtis v. Smith	United States District Court for the Eastern District of Texas	121 F. Supp. 2d 1054; 2000 U.S. Dist. LEXIS 17987	November 3, 2000	Plaintiffs sought a preliminary injunction to prohibit defendant tax assessor-collector from mailing confirmation letters to approximately 9,000 persons who were registered voters in Polk	Plaintiffs sought to prohibit defendant from mailing confirmation letters to approximately 9,000 persons, self-styled "escapees" who traveled a major portion of each year in recreational vehicles, all of whom were registered to vote in Polk County, Texas. In accordance with Texas law, three resident voters filed affidavits challenging the escapees' residency. These affidavits triggered defendant's action in sending confirmation notices	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				County, Texas.	to the escapees. The court determined, first, that because of the potential for discrimination, defendant's action required preclearance in accordance with § 5 of the Voting Rights Act and, second, that such preclearance had not been sought or obtained. Accordingly, the court issued a preliminary injunction prohibiting defendant from pursuing the confirmation of residency of the escapees, or any similarly situated group, under the Texas Election Code until the process had been submitted for preclearance in accordance with § 5. The action was taken to ensure that no discriminatory potential existed in the use of such process in the upcoming presidential election or future election. Motion for preliminary injunction was granted, and defendant was enjoined from pursuing confirmation of residency of the 9,000 "escapees," or any similarly situated group, under the Texas Election Code, until the process had been submitted for preclearance under § 5 of the Voting Rights Act.			
Peace & Freedom Party	Court of Appeal of California,	114 Cal. App. 4th	January 15, 2004	Plaintiff political party appealed a	The trial court ruled that inactive voters were excluded from the primary	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
v. Shelley	Third Appellate District	1237; 8 Cal. Rptr. 3d 497; 2004 Cal. App. LEXIS 42		judgment from the superior court which denied the party's petition for writ of mandate to compel defendant, the California Secretary of State, to include voters listed in the inactive file of registered voters in calculating whether the party qualified to participate in a primary election.	election. The court of appeals affirmed, observing that although the election had already taken place, the issue was likely to recur and was a matter of continuing public interest and importance; hence, a decision on the merits was proper, although the case was technically moot. The law clearly excluded inactive voters from the calculation. The statutory scheme did not violate the inactive voters' constitutional right of association because it was reasonably designed to ensure that all parties on the ballot had a significant modicum of support from eligible voters. Information in the inactive file was unreliable and often duplicative of information in the active file. Moreover, there was no violation of the National Voter Registration Act because voters listed as inactive were not prevented from voting. Although the Act prohibited removal of voters from the official voting list absent certain conditions, inactive voters in California could correct the record and vote as provided the Act. The court affirmed the denial of a writ of mandate.			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Bell v. Marinko	United States District Court for the Northern District of Ohio	235 F. Supp. 2d 772; 2002 U.S. Dist. LEXIS 21753	October 22, 2002	Plaintiff voters sued defendants, a county board of elections, a state secretary of state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.	The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather than permanent residents of the county. The voters claimed that the board hearings did not afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and resolve that challenge, did not	No	N/A	No

008707

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					contravene the MVA. Defendants' motions for summary judgment were granted as to all claims with prejudice, except the voters' state-law claim, which was dismissed for want of jurisdiction, without prejudice.			
Charles H. Wesley Educ. Found., Inc. v. Cox	United States Court of Appeals for the Eleventh Circuit	408 F.3d 1349; 2005 U.S. App. LEXIS 8320	May 12, 2005	Plaintiffs, a charitable foundation, four volunteers, and a registered voter, filed a suit against defendant state officials alleging violations of the National Voter Registration Act and the Voting Rights Act. The officials appealed after the United States District Court for the Northern District of Georgia issued a preliminary injunction enjoining them from rejecting voter registrations submitted by the	The foundation conducted a voter registration drive; it placed the completed applications in a single envelope and mailed them to the Georgia Secretary of State for processing. Included in the batch was the voter's change of address form. Plaintiffs filed the suit after they were notified that the applications had been rejected pursuant to Georgia law, which allegedly restricted who could collect voter registration forms. Plaintiffs contended that the officials had violated the NVRA, the VRA, and U.S. Const. amends. I, XIV, XV. The officials argued that plaintiffs lacked standing and that the district court had erred in issuing the preliminary injunction. The court found no error. Plaintiffs had sufficiently alleged injuries under the NVRA, arising out of the rejection of the voter registration forms; the allegations in the complaint	No	N/A	No

008703

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (If of Note)	Other Notes	Should the Case be Researched Further
				foundation.	sufficiently showed an injury--in--fact that was fairly traceable to the officials' conduct. The injunction was properly issued. There was a substantial likelihood that plaintiffs would prevail as to their claims; it served the public interest to protect plaintiffs' franchise--related rights. The court affirmed the preliminary injunction order entered by the district court.			
McKay v. Thompson	United States Court of Appeals for the Sixth Circuit	226 F.3d 752; 2000 U.S. App. LEXIS 23387	September 18, 2000	Plaintiff challenged order of United States District Court for Eastern District of Tennessee at Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.	The trial court had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous case law, and could be challenged in state court. The requirement did not violate the Privacy Act of 1974, because it was grand fathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. The trial	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims. Order affirmed because requirement that voters disclose social security numbers as precondition to voter registration did not violate Privacy Act of 1974 or National Voter Registration Act and trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims.</p>			
<p>Nat'l Coalition for Students with Disabilities Educ. &amp; Legal Def. Fund v. Scales</p>	<p>United States District Court for the Southern District of Maryland</p>	<p>150 F. Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528</p>	<p>July 5, 2001</p>	<p>Plaintiff, national organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss</p>	<p>Defendants alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged</p>	<p>No</p>	<p>N/A</p>	<p>No</p>

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the first amended complaint, or in the alternative for summary judgment.	sufficient facts to confer standing under the NVRA, such allegations were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter registration services at the initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended complaint was granted as to the § 1983 claim and denied as to plaintiff's claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion for summary judgment was denied.			
Cunningham v. Chi. Bd. of Election Comm'rs	United States District Court for the Northern District of Illinois	2003 U.S. Dist. LEXIS 2528	February 24, 2003	Plaintiffs, who alleged that they were duly registered voters, six of whom had signed nominating petitions for one candidate	Plaintiffs argued that objections to their signatures were improperly sustained by defendants, the city board of election commissioners. Plaintiff's argued that they were registered voters whose names appeared in an inactive file and whose signatures were	No	N/A	No

008711

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				and two of whom signed nominating petitions for another candidate. They first asked for a preliminary injunction of the municipal election scheduled for the following Tuesday and suggested, alternatively, that the election for City Clerk and for 4th Ward Alderman be enjoined.	therefore, and improperly, excluded. The court ruled that by characterizing the claim as plaintiffs did, they sought to enjoin an election because their signatures were not counted, even though their preferred candidates were otherwise precluded from appearing on the ballot. Without regard to their likelihood of obtaining any relief, plaintiffs failed to demonstrate that they would be irreparably harmed if an injunction did not issue; the threatened injury to defendants, responsible as they were for the conduct of the municipal election, far outweighed any threatened injury to plaintiffs; and the granting of a preliminary injunction would greatly disserve the public interest. Plaintiffs' petition for preliminary relief was denied.			
Diaz v. Hood	United States District Court for the Southern District of Florida	342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445	October 26, 2004	Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general election. They	The putative voters sought injunctive relief requiring the election officials to register them to vote. The court first noted that the unions lacked even representative standing, because they failed to show that one of their members could have brought the case in their own behalf. The individual putative voters raised separate issues:	No	N/A	No

008712

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials moved to dismiss the complaint for lack of standing and failure to state a claim.	the first had failed to verify her mental capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. Motion to dismiss without prejudice granted.			
Bell v. Marinko	United States District Court for the Northern District of Ohio	235 F. Supp. 2d 772; 2002	October 22, 2002	Plaintiff voters sued defendants, a county board of elections, a state secretary of	The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		U.S. Dist. LEXIS 21753		state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.	than permanent residents of the county. The voters claimed that the board hearings did not afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and resolve that challenge, did not contravene the MVA. Defendants' motions for summary judgment were granted as to all claims with prejudice, except the voters' state-law claim,			

008714

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					which was dismissed for want of jurisdiction, without prejudice.			
Bell v. Marinko	United States Court of Appeals for the Sixth Circuit	367 F.3d 588; 2004 U.S. App. LEXIS 8330	April 28, 2004	Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19--3509.21 violated the National Voter Registration Act, and the Equal Protection Clause of the Fourteenth Amendment. The United States District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.	The voters contested the challenges to their registration brought under Ohio Code Rev. Ann. § 3505.19 based on Ohio Rev. Code Ann. § 3503.02. Specifically, the voters asserted that § 3503.02—which stated that the place where the family of a married man or woman resided was considered to be his or her place of residence—violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place. The National Voter Registration Act did not bar the Board's continuing consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Ann. § 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed.			
Hileman v. McGinness	Court of Appeals of Illinois, Fifth District	316 Ill. App. 3d 868; 739 N.E.2d 81; 2000 Ill. App. LEXIS 845	October 25, 2000	Appellant challenged the circuit court declaration that that the result of a primary election for county circuit clerk was void.	In a primary election for county circuit clerk, the parties agreed that 681 absentee ballots were presumed invalid. The ballots had been commingled with the valid ballots. There were no markings or indications on the ballots which would have allowed them to be segregated from other ballots cast. Because the ballots could not have been segregated, apportionment was the appropriate remedy if no fraud was involved. If fraud was involved, the election would have had to have been voided and a new election held. Because the trial court did not hold an evidentiary hearing on the fraud allegations, and did not determine whether fraud was in issue, the case was remanded for a determination as to whether fraud was evident in the electoral process. The court reversed the declaration of the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					trial court, holding that a determination as to whether fraud was involved in the election was necessary to a determination of whether or not a new election was required.			
DeFabio v. Gummersheimer	Supreme Court of Illinois	192 Ill. 2d 63; 733 N.E.2d 1241; 2000 Ill. LEXIS 993	July 6, 2000	Appellant challenged the judgment of the appellate court, which affirmed the trial court's decision granting appellee's summary judgment motion in action brought by appellee to contest the results of the election for the position of county coroner in Monroe County.	Appellee filed a petition for election contest, alleging that the official results of the Monroe County coroners election were invalid because none of the 524 ballots cast in Monroe County's second precinct were initialed by an election judge, in violation of Illinois law. The trial court granted appellee's motion for summary judgment, and the appellate court affirmed the judgment. The Illinois supreme court affirmed, noting that statutes requiring election judges to initial election ballots were mandatory, and uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or corruption. Thus, the supreme court held that the trial court properly invalidated all of the ballots cast in Monroe County's second precinct. The court reasoned that none of the ballots contained the requisite initialing, and neither party argued that any of the	No	N/A	No

008717

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					uninitialed ballots could have been distinguished or identified as absentee ballots. The supreme court affirmed the judgment because the Illinois statute requiring election judges to initial election ballots was mandatory, and uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or corruption. Additionally, none of the ballots in Monroe County's second precinct contained the requisite initialing.			
Gilmore v. Amityville Union Free Sch. Dist.	United States District Court for the Eastern District of New York	305 F. Supp. 2d 271; 2004 U.S. Dist. LEXIS 3116	March 2, 2004	Plaintiffs, two school board candidates, filed a class action complaint against defendants, a school district, the board president, and other district agents or employees, challenging a school board election. Defendants moved to dismiss.	During the election, a voting machine malfunctioned, resulting in votes being cast on lines that were blank on the ballot. The board president devised a plan for counting the machine votes by moving each tally up one line. The two candidates, who were African American, alleged that the president's plan eliminated any possibility that an African American would be elected. The court found that the candidates failed to state a claim under § 1983 because they could not show that defendants' actions were done or approved by a person with final policymaking authority, nor was there	No	N/A	No

008718

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>a showing of intentional or purposeful discrimination on defendants' part. The vote--counting method applied equally to all candidates. The candidates' claims under § 2000a and 2000c--8 failed because schools were not places of public accommodation, as required under § 2000a, and § 2000c--8 applied to school segregation. Their claim under § 1971 of deprivation of voting rights failed because § 1971 did not provide for a private right of action. The court declined to exercise supplemental jurisdiction over various state law claims. Defendants' motion to dismiss was granted with respect to the candidates' federal claims; the state law claims were dismissed without prejudice.</p>			
State ex rel. Mackey v. Blackwell	Supreme Court of Ohio	106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005	September 28, 2005	Appellants, a political group and county electors who voted by provisional ballot, sought review of a judgment from the court of appeals, which dismissed appellants' complaint, seeking a	The Secretary of State issued a directive to all Ohio county boards of elections, which specified that a signed affirmation statement was necessary for the counting of a provisional ballot in a presidential election. During the election, over 24,400 provisional ballots were cast in one county. The electors' provisional ballots were not counted. They, together with a political	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		Ohio LEXIS 2074		writ of mandamus to prevent appellees, the Ohio Secretary of State, a county board of elections, and the board's director, from disenfranchisement of provisional ballot voters.	activist group, brought the mandamus action to compel appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted constitutional and statutory law was relied on in support of the complaint. The court dismissed the complaint, finding that no clear legal right was established under Ohio law and the federal claims could be adequately raised in an action under § 1983. On appeal, the Ohio supreme court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election--contest actions were the exclusive remedy to challenge election results. An adequate remedy existed under § 1983 to raise the federal--law claims. Affirmed.			
Touchston v. McDermott	United States District Court for the Middle District of Florida	120 F. Supp. 2d 1055; 2000 U.S. Dist. LEXIS	November 14, 2000	In action in which plaintiffs, registered voters in Brevard County, Florida, filed suit against defendants, members of several	In their complaint, plaintiffs challenged the constitutionality of § 102.166(4), asserting that the statute violated their rights under the Equal Protection and Due Process Clauses of U.S. Const. amend. XIV. Based on these claims, plaintiffs sought an order	No	N/A	No

008720

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (If of Note)	Other Notes	Should the Case be Researched Further
		20091		County Canvassing Boards and the Secretary of the Florida Department of State, challenging the constitutionality of Fla. Stat. Ann. § 102.166(4) (2000), before the court was plaintiffs' emergency motion for temporary restraining order and/or preliminary injunction.	from the court stopping the manual recount of votes. The court found that plaintiffs had failed to set forth a valid basis for intervention by federal courts. They had not alleged that the Florida law was discriminatory, that citizens were being deprived of the right to vote, or that there had been fraudulent interference with the vote. Moreover, plaintiffs had not established a likelihood of success on the merits of their claims. Plaintiffs' motion for temporary restraining order and/or preliminary injunction denied; plaintiffs had not alleged that the Florida law was discriminatory, that citizens were being deprived of the right to vote, or that there had been fraudulent interference with the vote.			
Siegel v. LePore	United States District Court for the Southern District of Florida	120 F. Supp. 2d 1041; 2000 U.S. Dist. LEXIS 16333	November 13, 2000	Plaintiffs, individual Florida voters and Republican Party presidential and vice-presidential candidates, moved for a temporary restraining order and preliminary injunction to enjoin	The court addressed who should consider plaintiffs' serious arguments that manual recounts would diminish the accuracy of vote counts due to ballot degradation and the exercise of discretion in determining voter intent. The court ruled that intervention by a federal district court, particularly on a preliminary basis, was inappropriate. A federal court should not interfere	No	N/A	No

008721

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				defendants, canvassing board members from four Florida counties, from proceeding with manual recounts of election ballots.	except where there was an immediate need to correct a constitutional violation. Plaintiffs neither demonstrated a clear deprivation of a constitutional injury or a fundamental unfairness in Florida's manual recount provision. The recount provision was reasonable and non-discriminatory on its face and resided within the state's broad control over presidential election procedures. Plaintiffs failed to show that manual recounts were so unreliable as to constitute a constitutional injury, that plaintiffs' alleged injuries were irreparable, or that they lacked an adequate state court remedy. Injunctive relief denied because plaintiffs demonstrated neither clear deprivation of constitutional injury or fundamental unfairness in Florida's manual recount provision to justify federal court interference in state election procedures.			
Gore v. Harris	Supreme Court of Florida	773 So. 2d 524; 2000 Fla. LEXIS 2474	December 22, 2000	In a contest to results of the 2000 presidential election in Florida, the United States Supreme Court	The state supreme court had ordered the trial court to conduct a manual recount of 9000 contested Miami--Dade County ballots, and also held that uncounted "undervotes" in all Florida counties were to be manually counted.	No	N/A	No

008722

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				reversed and remanded a Florida Supreme Court decision that had ordered a manual recount of certain ballots.	The trial court was ordered to use the standard that a vote was "legal" if there was a clear indication of the intent of the voter. The United States Supreme Court released an opinion on December 12, 2000, which held that such a standard violated equal protection rights because it lacked specific standards to ensure equal application, and also mandated that any manual recount would have to have been completed by December 12, 2000. On remand, the state supreme court found that it was impossible under that time frame to adopt adequate standards and make necessary evaluations of vote tabulation equipment. Also, development of a specific, uniform standard for manual recounts was best left to the legislature. Because adequate standards for a manual recount could not be developed by the deadline set by the United States Supreme Court, appellants were afforded no relief.			
Goodwin v. St. Thomas-St. John Bd. of	Territorial Court of the Virgin Islands	43 V.I. 89; 2000 V.I.	December 13, 2000	Plaintiff political candidate alleged that certain general	Plaintiff alleged that defendants counted unlawful absentee ballots that lacked postmarks, were not signed or	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
Elections		LEXIS 15		election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.	notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper. Plaintiff's request for declaratory and injunctive			

008724

Name of Case	Court	Citation	Date	Facts	Holdings	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					relief was denied. Invalidation of absentee ballots was not required since the irregularities asserted by plaintiff involved ballots which were in fact valid, were not tabulated by defendants, or were insufficient to change the outcome of the election.			
Shannon v. Jacobowitz	United States Court of Appeals for the Second Circuit	394 F.3d 90; 2005 U.S. App. LEXIS 259	January 7, 2005	Plaintiffs, voters and an incumbent candidate, sued defendants, a challenger candidate, a county board of election, and commissioners, pursuant to § 1983 alleging violation of the Due Process Clause of the Fourteenth Amendment. The United States District Court for the Northern District of New York granted summary judgment in favor of plaintiffs. Defendants appealed.	Local election inspectors noticed a problem with a voting machine. Plaintiffs asserted that their votes were not counted due to the machine malfunction. Rather than pursue the state remedy of quo warranto, by requesting that New York's Attorney General investigate the machine malfunction and challenge the election results in state court, plaintiffs filed their complaint in federal court. The court of appeals found that United States Supreme Court jurisprudence required intentional conduct by state actors as a prerequisite for a due process violation. Neither side alleged that local officials acted intentionally or in a discriminatory manner with regard to the vote miscount. Both sides conceded that the recorded results were likely due to an unforeseen malfunction with the voting machine.	No	N/A	No

008725

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Because no conduct was alleged that would indicate an intentional deprivation of the right to vote, there was no cognizable federal due process claim. The proper remedy was to assert a quo warranto action to challenge the outcome of a general election based on an alleged voting machine malfunction. The district court's grant of summary judgment was reversed and its injunctions were vacated. The case was remanded for further proceedings consistent with this opinion.			
GEORGE W. BUSH v. PALM BEACH COUNTY CANVASSING BOARD, ET AL.	United States Supreme Court	531 U.S. 70; 121 S. Ct. 471; 148 L. Ed. 2d 366; 2000 U.S. LEXIS 8087	December 4, 2000	Appellant Republican presidential candidate's petition for writ of certiorari to the Florida supreme court was granted in a case involving interpretations of Fla. Stat. Ann. §§ 102.111, 102.112, in proceedings brought by appellees Democratic	The Supreme Court vacated the state court's judgment, finding that the state court opinion could be read to indicate that it construed the Florida Election Code without regard to the extent to which the Florida Constitution could, consistent with U.S. Const. art. II, § 1, cl. 2, circumscribe the legislative power. The judgment of the Florida Supreme Court was vacated and remanded for further proceedings. The court stated the judgment was unclear as to the extent to which the state court saw the Florida constitution as circumscribing the legislature's	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>presidential candidate, county canvassing boards, and Florida Democratic Party regarding authority of the boards and respondent Florida Secretary of State as to manual recounts of ballots and deadlines.</p>	<p>authority under Article II of the United States Constitution, and as to the consideration given the federal statute regarding state electors.</p>			
Touchston v. McDermott	United States Court of Appeals for the Eleventh Circuit	234 F.3d 1130; 2000 U.S. App. LEXIS 29366	November 17, 2000	<p>Plaintiff voters appealed from judgment of the United States District Court for the Middle District of Florida, which denied their emergency motion for an injunction pending appeal against defendant county election officials. Plaintiffs sought to enjoin defendants from conducting manual</p>	<p>Plaintiff voters sought an emergency injunction pending appeal to enjoin defendant county election officials from conducting manual ballot recounts or to enjoin defendants from certifying the results of the Presidential election which contained any manual recounts. The district court denied the emergency injunction and plaintiffs appealed. Upon review, the emergency motion for injunction pending appeal was denied without prejudice. Florida had adequate election dispute procedures, which had been invoked and were being implemented in the forms of administrative actions by state officials and actions in state court.</p>	No	N/A	No

008727

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				ballot recounts or to enjoin defendants from certifying results of the presidential election that contained any manual recounts.	Therefore, the state procedures were adequate to preserve for ultimate review in the United States Supreme Court any federal questions arising out of the state procedures. Moreover, plaintiffs failed to demonstrate a substantial threat of an irreparable injury that would warrant granting the extraordinary remedy of an injunction pending appeal. Denial of plaintiff's petition for emergency injunction pending appeal was affirmed. The state procedures were adequate to preserve any federal issue for review, and plaintiffs failed to demonstrate a substantial threat of an irreparable injury that would have warranted granting the extraordinary remedy of the injunction.			
Gore v. Harris	Supreme Court of Florida	772 So. 2d 1243; 2000 Fla. LEXIS 2373	December 8, 2000	The court of appeal certified as being of great public importance a trial court judgment that denied all relief requested by appellants, candidates for President and Vice	Appellants contested the certification of their opponents as the winners of Florida's electoral votes. The Florida supreme court found no error in the trial court's holding that it was proper to certify election night returns from Nassau County rather than results of a machine recount. Nor did the trial court err in refusing to include votes that the Palm Beach County	No	N/A	No

008728

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>President of the United States, in appellants' contest to certified election results.</p>	<p>Canvassing Board found not to be legal votes during a manual recount. However, the trial court erred in excluding votes that were identified during the Palm Beach County manual recount and during a partial manual recount in Miami--Dade County. It was also error to refuse to examine Miami--Dade County ballots that registered as non--votes during the machine count. The trial court applied an improper standard to determine whether appellants had established that the result of the election was in doubt, and improperly concluded that there was no probability of a different result without examining the ballots that appellants claimed contained rejected legal votes. The judgment was reversed and remanded; the trial court was ordered to tabulate by hand Miami-Dade County ballots that the counting machine registered as non--votes, and was directed to order inclusion of votes that had already been identified during manual recounts. The trial court also was ordered to consider whether manual recounts in other counties were necessary.</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Reitz v. Rendell	United States District Court for the Middle District of Pennsylvania	2004 U.S. Dist. LEXIS 21813	October 29, 2004	Plaintiff service members filed an action against defendant state officials under the Uniformed and Overseas Citizens Absentee Voting Act alleging that they and similarly situated service members would be disenfranchised because they did not receive their absentee ballots in time. The parties entered into a voluntary agreement and submitted it to the court for approval.	The court issued an order to assure that the service members and other similarly situated service members who were protected by the UOCAVA would not be disenfranchised. The court ordered the Secretary of the Commonwealth of Pennsylvania to take all reasonable steps necessary to direct the county boards of elections to accept as timely received absentee ballots cast by service members and other overseas voters as defined by UOCAVA, so long as the ballots were received by November 10, 2004. The ballots were to be considered solely for purposes of the federal offices that were included on the ballots. The court held that the ballot needed to be cast no later than November 2, 2004 to be counted. The court did not make any findings of liability against the Governor or the Secretary. The court entered an order, pursuant to a stipulation between the parties, that granted injunctive relief to the service members.	No	N/A	No
United States v. Pennsylvania	United States District Court for the Middle	2004 U.S. Dist.	October 20, 2004	Plaintiff United States sued defendant	The testimony of the two witnesses offered by the United States did not support its contention that voters	No	N/A	No

008730

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	district of Pennsylvania	LEXIS 21167		Commonwealth of Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of candidates so late in the election year.	protected by the Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern regarding their ability or right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of UOCAVA voters to cast their ballots. Moreover, Pennsylvania had adduced substantial evidence that the requested injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs. must consider the following four factors: (1)			

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					the likelihood that the applicant will prevail on the merits of the substantive claim; (2) the extent to which the moving party will be irreparably - harmed in the absence of injunctive relief; (3) the extent to which the nonmoving party will suffer irreparable harm if the court grants the requested injunctive relief; and (4) the public interest. District courts should only grant injunctive relief after consideration of each of these factors. Motion for injunctive relief denied.			
Bush v. Hillsborough County Canvassing Bd.	United States District Court for the Northern District of Florida	123 F. Supp. 2d 1305; 2000 U.S. Dist. LEXIS 19265		The matter came before the court on plaintiffs' complaint for declaratory and injunctive relief alleging that defendant county canvassing boards rejected overseas absentee state ballots and federal write--in ballots based on criteria inconsistent with federal law, and requesting that the ballots be declared	Plaintiff presidential and vise--presidential candidates and state political party contended that defendant county canvassing boards rejected overseas absentee state ballots and federal write--in ballots based on criteria inconsistent with the Uniformed and Overseas Citizens Absentee Voting Act. Because the state accepted overseas absentee state ballots and federal write--in ballots up to 10 days after the election, the State needed to access that the ballot in fact came from overseas. However, federal law provided the method to establish that fact by requiring the overseas	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				valid and that they should be counted.	absentee voter to sign an oath that the ballot was mailed from outside the United States and requiring the state election officials to examine the voter's declarations. The court further noted that federal law required the user of a federal write--in ballot to timely apply for a regular state absentee ballot, not that the state receive the application, and that again federal law, by requiring the voter using a federal write--in ballot to swear that he or she had made timely application, had provided the proper method of proof. Plaintiffs withdrew as moot their request for injunctive relief and the court granted in part and denied in part plaintiffs' request for declaratory relief, and relief GRANTED in part and declared valid all federal write--in ballots that were signed pursuant to the oath provided therein but rejected solely because the ballot envelope did not have an APO, FPO, or foreign postmark, or solely because there was no record of an application for a state absentee ballot.			
Harris v. Florida Elections Canvassing	United States District Court for the Northern	122 F. Supp. 2d 1317;	December 9, 2000	Plaintiffs challenged the counting of overseas absentee	In two separate cases, plaintiff electors originally sued defendant state elections canvassing commission and	No	N/A	No

008733

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Comm'n	District of Florida	2000 U.S. Dist. LEXIS 17875		ballots received after 7 p.m. on election day, alleging the ballots violated Florida election law.	state officials in Florida state circuit court, challenging the counting of overseas absentee ballots received after 7 p.m. on election day. Defendant governor removed one case to federal court. The second case was also removed. The court in the second case denied plaintiff's motion for remand and granted a motion to transfer the case to the first federal court under the related case doctrine. Plaintiffs claimed that the overseas ballots violated Florida election law. Defendants argued the deadline was not absolute. The court found Congress did not intend 3 U.S.C.S. § 1 to impose irrational scheduling rules on state and local canvassing officials, and did not intend to disenfranchise overseas voters. The court held the state statute was required to yield to Florida Administrative Code, which required the 10-day extension in the receipt of overseas absentee ballots in federal elections because the rule was promulgated to satisfy a consent decree entered by the state in 1982. Judgment entered for defendants because a Florida administrative rule requiring a 10-day extension in the receipt of			

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					overseas absentee ballots in federal elections was enacted to bring the state into compliance with a federally ordered mandate; plaintiffs were not entitled to relief under any provision of state or federal law.			
Romeu v. Cohen	United States District Court for the Southern District of New York	121 F. Supp. 2d 264; 2000 U.S. Dist. LEXIS 12842	September 7, 2000	Plaintiff territorial resident and plaintiff-intervenor territorial governor moved for summary judgment and defendant federal, state, and local officials moved to dismiss the complaint that alleged that the Voting Rights Amendments of 1970, the Uniform Overseas Citizens Absentee Voting Act, and New York election law were unconstitutional since they denied plaintiff's right to receive an absentee	Plaintiff argued that the laws denied him the right to receive a state absentee ballot in violation of the right to vote, the right to travel, the Privileges and Immunities Clause, and the Equal Protection Clause. Plaintiff-intervenor territorial governor intervened on behalf of similarly situated Puerto Rican residents. Defendants' argued that: 1) plaintiff lacked standing; 2) a non-justiciable political question was raised; and 3) the laws were constitutional. The court held that: 1) plaintiff had standing because he made a substantial showing that application for the benefit was futile; 2) whether or not the statutes violated plaintiff's rights presented a legal, not political, question, and there was no lack of judicially discoverable and manageable standards for resolving the matter; and 3) the laws were constitutional and only a constitutional amendment or	No	N/A	No

008735

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				ballot for the upcoming presidential election.	grant of statehood would enable plaintiff to vote in a presidential election. The court granted defendants' motion to dismiss because the laws that prohibited territorial residents from voting by state absentee ballot in presidential elections were constitutional.			
Romeu v. Cohen	United States Court of Appeals for the Second Circuit	265 F.3d 118; 2001 U.S. App. LEXIS 19876	September 6, 2001	Plaintiff territorial resident sued defendants, state and federal officials, alleging that the Uniformed and Overseas Citizens Absentee Voting Act unconstitutionally prevented the territorial resident from voting in his former state of residence. The resident appealed the judgment of the United States District Court for the Southern District of New York, which dismissed the	The territorial resident contended that the UOCAVA unconstitutionally distinguished between former state residents residing outside the United States, who were permitted to vote in their former states, and former state residents residing in a territory, who were not permitted to vote in their former states. The court of appeals first held that the UOCAVA did not violate the territorial resident's right to equal protection in view of the valid and not insubstantial considerations for the distinction. The territorial resident chose to reside in the territory and had the same voting rights as other territorial residents, even though such residency precluded voting for federal offices. Further, the resident had no constitutional right to vote in his former state after he terminated his	No	N/A	No

008736

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				complaint.	residency in such state, and the consequences of the choice of residency did not constitute an unconstitutional interference with the right to travel. Finally, there was no denial of the privileges and immunities of state citizenship, since the territorial resident was treated identically to other territorial residents. The judgment dismissing the territorial resident's complaint was affirmed.			
Igartua de la Rosa v. United States	United States District Court for the District of Puerto Rico	107 F. Supp. 2d 140; 2000 U.S. Dist. LEXIS 11146	July 19, 2000	Defendant United States moved to dismiss plaintiffs' action seeking a declaratory judgment allowing them to vote, as U.S. citizens residing in Puerto Rico, in the upcoming and all subsequent Presidential elections. Plaintiffs urged, among other claims, that their right to vote in Presidential elections was	The court denied the motion of defendant United States to dismiss the action of plaintiffs, two groups of Puerto Ricans, seeking a declaratory judgment allowing them to vote in Presidential elections. One group always resided in Puerto Rico and the other became ineligible to vote in Presidential elections upon taking up residence in Puerto Rico. Plaintiffs contended that the Constitution and the International Covenant on Civil and Political Rights, guaranteed their right to vote in Presidential elections and that the Uniformed and Overseas Citizens Absentee Voting Act, was unconstitutional in disallowing Puerto Rican citizens to vote by considering	No	N/A	No

008737

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				guaranteed by the Constitution and the International Covenant on Civil and Political Rights.	them to be within the United States. The court concluded that UOCAVA was constitutional under the rational basis test, and violation of the treaty did not give rise to privately enforceable rights. Nevertheless, the Constitution provided U.S. citizens residing in Puerto Rico the right to participate in Presidential elections. No constitutional amendment was needed. The present political status of Puerto Rico was abhorrent to the Bill of Rights. The court denied defendant United States' motion to dismiss plaintiffs' action seeking a declaratory judgment allowing them to vote in Presidential elections as citizens of the United States and of Puerto Rico. The court held that the United States Constitution itself provided plaintiffs with the right to participate in Presidential elections.			
James v. Bartlett	Supreme Court of North Carolina	359 N.C. 260; 607 S.E.2d 638; 2005 N.C. LEXIS	February 4, 2005	Appellant candidates challenged elections in the superior court through appeals of election protests before the North Carolina State Board	The case involved three separate election challenges. The central issue was whether a provisional ballot cast on election day at a precinct other than the voter's correct precinct of residence could be lawfully counted in final election tallies. The superior court held	No	N/A	No

008738

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		146		of Elections and a declaratory judgment action in the superior court. The court entered an order granting summary judgment in favor of appellees, the Board, the Board's executive director, the Board's members, and the North Carolina Attorney General. The candidates appealed.	that it could be counted. On appeal, the supreme court determined that state law did not permit out-of-precinct provisional ballots to be counted in state and local elections. The candidates failure to challenge the counting of out-of-precinct provisional ballots before the election did not render their action untimely. Reversed and remanded.			
Sandusky County Democratic Party v. Blackwell	United States Court of Appeals for the Sixth Circuit	387 F.3d 565; 2004 U.S. App. LEXIS 22320	October 26, 2004	Defendant state appealed from an order of the U.S. District Court for the Northern District of Ohio which held that the Help America Vote Act required that voters be permitted to cast provisional ballots upon affirming their registration to vote	The district court found that HAVA created an individual right to cast a provisional ballot, that this right is individually enforceable under 42 U.S.C.S. § 1983, and that plaintiffs unions and political parties had standing to bring a § 1983 action on behalf of Ohio voters. The court of appeals agreed that the political parties and unions had associational standing to challenge the state's provisional voting directive. Further, the court determined that HAVA was	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				in the county in which they desire to vote and that provisional ballots must be counted as valid ballots when cast in the correct county.	quintessentially about being able to cast a provisional ballot but that the voter casts a provisional ballot at the peril of not being eligible to vote under state law; if the voter is not eligible, the vote will then not be counted. Accordingly, the court of appeals reversed the district court and held that "provisional" ballots cast in a precinct where a voter does not reside and which would be invalid under state law, are not required by the HAVA to be considered legal votes. Affirmed in part and reversed in part.			
State ex rel. Mackey v. Blackwell	Supreme Court of Ohio	106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005 Ohio LEXIS 2074	September 28, 2005	Appellants, a political group and county electors who voted by provisional ballot, sought review of a judgment from the court of appeals which dismissed appellants' complaint, seeking a writ of mandamus to prevent appellees, the Ohio Secretary of State, a county board of elections,	The Secretary of State issued a directive to all Ohio county boards of elections, which specified that a signed affirmation statement was necessary for the counting of a provisional ballot in a presidential election. During the election, over 24,400 provisional ballots were cast in one county. The electors' provisional ballots were not counted. They, together with a political activist group, brought the mandamus action to compel appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted	No	N/A	No

008740

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				and the board's director, from disenfranchisement of provisional ballot voters.	constitutional and statutory law was relied on in support of the complaint. The trial court dismissed the complaint, finding that no clear legal right was established under Ohio law and the federal claims could be adequately raised in an action under 42 U.S.C.S. § 1983. On appeal, the Ohio Supreme Court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election--contest actions were the exclusive remedy to challenge election results. An adequate remedy existed under § 1983 to raise the federal--law claims. Affirmed.			
Fla. Democratic Party v. Hood	United States District Court for the Northern District of Florida	342 F. Supp. 2d 1073; 2004 U.S. Dist. LEXIS 21720	October 21, 2004	Plaintiff political party sought injunctive relief under the Help America Vote Act, claiming that the election system put in place by defendant election officials violated HAVA because it did not allow	The political party asserted that a prospective voter in a federal election had the right to cast a provisional ballot at a given polling place, even if the local officials asserted that the voter was at the wrong polling place; second, that voter had the right to have that vote counted in the election, if the voter otherwise met all requirements of state law. The court noted that the right to vote was clearly protectable as a civil right, and a primary purpose of	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				provisional voting other than in the voter's assigned precinct. The officials moved for judgment on the pleadings.	the HAVA was to preserve the votes of persons who had incorrectly been removed from the voting rolls, and thus would not be listed as voters at what would otherwise have been the correct polling place. The irreparable injury to a voter was easily sufficient to outweigh any harm to the officials. Therefore, the court granted relief as to the first claim, allowing the unlisted voter to cast a provisional ballot, but denied relief as to the second claim, that the ballot at the wrong place must be counted if it was cast at the wrong place, because that result contradicted State law. The provisional ballot could only be counted if it was cast in the proper precinct under State law.			
League of Women Voters v. Blackwell	United States District Court for the Northern District of Ohio	340 F. Supp. 2d 823; 2004 U.S. Dist. LEXIS 20926	October 20, 2004	Plaintiff organizations filed suit against defendant, Ohio's Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote	The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the last four digits of his social security number. If he did not know	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				Act. The Secretary filed a motion to dismiss.	either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive, even if the cost, in terms of uncounted ballots, was regrettable.			
Sandusky County Democratic Party v. Blackwell	United States Court of Appeals for the Sixth Circuit	386 F.3d 815; 2004 U.S. App. LEXIS 28765	October 23, 2004	Defendant Ohio Secretary of State challenged an order of the United States District Court for the Northern District of Ohio, which held	On appeal, the court held that the district court correctly ruled that the right to cast a provisional ballot in federal elections was enforceable under 42 U.S.C.S. § 1983 and that at least one plaintiff had standing to enforce that right in the district court.	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				that Ohio Secretary of State Directive 2004--33 violated the federal Help America Vote Act. In its order, the district court directed the Secretary to issue a revised directive that conformed to HAVA's requirements.	The court also held that Ohio Secretary of State Directive 2004--33 violated HAVA to the extent that it failed to ensure that any individual affirming that he or she was a registered voter in the jurisdiction in which he or she desired to vote and eligible to vote in a federal election was permitted to cast a provisional ballot. However, the district court erred in holding that HAVA required that a voter's provisional ballot be counted as a valid ballot if it was cast anywhere in the county in which the voter resided, even if it was cast outside the precinct in which the voter resided.			
Hawkins v. Blunt	United States District Court for the Western District of Missouri	2004 U.S. Dist. LEXIS 21512	October 12, 2004	In an action filed by plaintiffs, voters and a state political party, contending that the provisional voting requirements of Mo. Rev. Stat. § 115.430 conflicted with and was preempted by the Help America Vote Act, plaintiffs and defendants, the	The court held that the text of the HAVA, as well as its legislative history, proved that it could be read to include reasonable accommodations of state precinct voting practices in implementing provisional voting requirements. The court further held that Mo. Rev. Stat. § 115.430.2 was reasonable; to effectuate the HAVA's intent and to protect that interest, it could not be unreasonable to direct a voter to his correct voting place where a full ballot was likely to be cast. The	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (If of Note)	Other Notes	Should the Case be Researched Further
				secretary of state and others, moved for summary judgment.	court also held that plaintiffs' equal protection rights were not violated by the requirement that before a voter would be allowed to cast a provisional ballot, the voter would first be directed to his proper polling place.			
Bay County Democratic Party v. Land	United States District Court for the Eastern District of Michigan	340 F. Supp. 2d 802; 2004 U.S. Dist. LEXIS 20551	October 13, 2004	Plaintiffs, state and county Democratic parties, filed an action against defendant, Michigan secretary of state and the Michigan director of elections, alleging that the state's intended procedure for casting and counting provisional ballots at the upcoming general election would violate the Help America Vote Act and state laws implementing the federal legislation. Defendants filed a motion to transfer venue.	The parties claimed that if the secretary's proposed procedure was allowed to occur, several voters who were members of the parties' respective organizations were likely to be disenfranchised. Defendants moved to transfer venue of the action to the Western District of Michigan claiming that the only proper venue for an action against a state official is the district that encompasses the state's seat of government. Alternatively, defendants sought transfer for the convenience of the parties and witnesses. The court found that defendants' arguments were not supported by the plain language of the current venue statutes. Federal actions against the Michigan secretary of state over rules and practices governing federal elections traditionally were brought in both the Eastern and Western Districts of Michigan. There was no rule that	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holdings	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					required such actions to be brought only in the district in which the state's seat of government was located, and no inconvenience resulting from litigating in the state's more populous district reasonably could be claimed by a state official who had a mandate to administer elections throughout the state and operated an office in each of its counties. Motion denied.			
Bay County Democratic Party v. Land	United States District Court for the Eastern District of Michigan	347 F. Supp. 2d 404; 2004 U.S. Dist. LEXIS 20872	October 19, 2004	Plaintiffs, voter organizations and political parties, filed actions against defendants, the Michigan Secretary of State and her director of elections, challenging directives issued to local election officials concerning the casting and tabulation of provisional ballots. Plaintiffs sought a preliminary injunction and contended that the	The court concluded that (1) plaintiffs had standing to assert their claims; (2) HAVA created individual rights enforceable through 42 U.S.C.S. § 1983; (3) Congress had provided a scheme under HAVA in which a voter's right to have a provisional ballot for federal offices tabulated was determined by state law governing eligibility, and defendants' directives for determining eligibility on the basis of precinct--based residency were inconsistent with state and federal election law; (4) Michigan election law defined voter qualifications in terms of the voter's home jurisdiction, and a person who cast a provisional ballot within his or her jurisdiction was entitled under federal law to have his	No	N/A	No

008746

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				directives violated their rights under the Help America Vote Act.	or her votes for federal offices counted if eligibility to vote in that election could be verified; and (5) defendants' directives concerning proof of identity of first-time voters who registered by mail were consistent with federal and state law.			
Weber v. Shelley	United States Court of Appeals for the Ninth Circuit	347 F.3d 1101; 2003 U.S. App. LEXIS 21979	October 28, 2003	Plaintiff voter brought an suit against defendants, the secretary of state and the county registrar of voters, claiming that the lack of a voter-verified paper trail in the county's newly installed touchscreen voting system violated her rights to equal protection and due process. The United States District Court for the Central District of California granted the secretary and the registrar summary judgment.	On review, the voter contended that use of paperless touch-screen voting systems was unconstitutional and that the trial court erred by ruling her expert testimony inadmissible. The trial court focused on whether the experts' declarations raised genuine issues of material fact about the relative accuracy of the voting systemat issue and excluded references to news-paper articles and unidentified studies absent any indication that experts normally relied upon them. The appellate court found that the trial court's exclusions were not an abuse of discretion and agreed that the admissible opinions which were left did not tend to show that voters had a lesser chance of having their votes counted. It further found that the use of touchscreen voting systems was not subject to strict	No	N/A	No

008747

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				The voter appealed.	scrutiny simply because this particular balloting system might make the possibility of some kinds of fraud more difficult to detect. California made a reasonable, politically neutral and non-discriminatory choice to certify touchscreen systems as an alternative to paper ballots, as did the county in deciding to use such a system. Nothing in the Constitution forbid this choice. The judgment was affirmed.			
Am. Ass'n of People with Disabilities v. Shelley	United States District Court for the Central District of California	324 F. Supp. 2d 1120; 2004 U.S. Dist. LEXIS 12587	July 6, 2004	Plaintiffs, disabled voters and organizations representing those voters, sought to enjoin the directives of defendant California Secretary of State, which decertified and withdrew approval of the use of certain direct recording electronic (DRE) voting systems. One voter applied for a temporary restraining order, or,	The voters urged the invalidation of the Secretary's directives because, allegedly, their effect was to deprive the voters of the opportunity to vote using touch--screen technology. Although it was not disputed that some disabled persons would be unable to vote independently and in private without the use of DREs, it was clear that they would not be deprived of their fundamental right to vote. The Americans with Disabilities Act, did not require accommodation that would enable disabled persons to vote in a manner that was comparable in every way with the voting rights enjoyed by persons without disabilities. Rather, it mandated that voting programs be	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				in the alternative, a preliminary injunction. of a preliminary injunction in a number of ways, including a four-part test that considers (1) likelihood of success on the merits; (2) the possibility of irreparable injury in the absence of an injunction; (3) a balancing of the harms; and (4) the public interest.	made accessible. Defendant's decision to suspend the use of DREs pending improvement in their reliability and security of the devices was a rational one, designed to protect the voting rights of the state's citizens. The evidence did not support the conclusion that the elimination of the DREs would have a discriminatory effect on the visually or manually impaired. Thus, the voters showed little likelihood of success on the merits. The individual's request for a temporary restraining order, or, in the alternative, a preliminary injunction, was denied. Ninth Circuit's tests for a preliminary injunction, although phrased differently, require a court to inquire into whether there exists a likelihood of success on the merits, and the possibility of irreparable injury; a court is also required to balance the hardships.			
Fla. Democratic Party v. Hood	Court of Appeal of Florida, First District	884 So. 2d 1148; 2004 Fla. App. LEXIS 16077	October 28, 2004	Petitioner, the Florida Democratic Party, sought review of an emergency rule adopted by the Florida Department	The Party argued that: (1) the Florida Administrative Code, recast language from the earlier invalidated rule prohibiting a manual recount of overvotes and undervotes cast on a touchscreen machine; (2) the rule did	No	N/A	No

008749

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should this Case be Researched Further?
				<p>of State, contending that the findings of immediate danger, necessity, and procedural fairness on which the rule was based were insufficient under Florida law, which required a showing of such circumstances, and Florida case law. This matter followed.</p>	<p>not call for the manual recount of votes to determine voter intent; and (3) the rule created voters who were entitled to manual recounts in close elections and those who were not. The appeals court disagreed. The Department was clearly concerned with the fact that if no rule were in place, the same confusion and inconsistency in divining a voter's intent that attended the 2000 presidential election in Florida, and the same constitutional problems the United States Supreme Court addressed then, might recur in 2004. It was not the court's responsibility to decide the validity of the rule or whether other means were more appropriate. But, the following question was certified to the Supreme Court: Whether under Fla. Stat. ch. 120.54(4), the Department of State set forth sufficient justification for an emergency rule establishing standards for conducting manual recounts of overvotes and undervotes as applied to touchscreen voting systems? The petition was denied, but a question was certified to the supreme court as a matter of great public importance.</p>			

008750

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Wexler v. Lepore	United States District Court for the Southern District of Florida	342 F. Supp. 2d 1097; 2004 - U.S. Dist. LEXIS 21344	October 25, 2004	Plaintiffs, a congressman, state commissioners, and a registered voter, brought a § 1983 action against defendants, state officials, alleging that the manual recount procedures for the state's touchscreen paperless voting systems violated their rights under U.S. Const. amends. V and XIV. A bench trial ensued.	The officials claimed that the state had established an updated standard for manual recounts in counties using optical scan systems and touchscreen voting systems, therefore, alleviating equal protection concerns. The court held that the rules prescribing what constituted a clear indication on the ballot that the voter had made a definite choice, as well the rules prescribing additional recount procedures for each certified voting system promulgated pursuant to Florida law complied with equal protection requirements under U.S. Const. amends. V and XIV because the rules prescribed uniform, nondifferential standards for what constituted a legal vote under each certified voting system, as well as procedures for conducting a manual recount of overvotes and undervotes in the entire geographic jurisdiction. The court further held that the ballot images printed during a manual recount pursuant to Florida Administrative Code did not violate Florida law because the manual recount scheme properly reflected a voter's choice. Judgment was entered	No	N/A	No

008751

Name of Case	Court	Citation	Date	Facts	Holdings	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					for the officials. The claims of the congressman, commissioners, and voter were denied.			
Spencer v. Blackwell	United States District Court for the Southern District of Ohio	347 F. Supp. 2d 528; 2004 U.S. Dist. LEXIS 22062	November 1, 2004	Plaintiff voters filed a motion for temporary restraining order and preliminary injunction seeking to restrain defendant election officials and intervenor State of Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from being allowed at the polls.	The voters alleged that defendants had combined to implement a voter challenge system at the polls that discriminated against African--American voters. Each precinct was run by its election judges but Ohio law also allowed challengers to be physically present in the polling places in order to challenge voters' eligibility to vote. The court held that the injury asserted, that allowing challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos,	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. The court enjoined all defendants from allowing any challengers other than election judges and other electors into the polling places throughout the state on Election Day.			
MARIAN SPENCER, et al., Petitioners v. CLARA PUGH, et al. (No. 04A360) SUMMIT COUNTY DEMOCRATIC CENTRAL and EXECUTIVE COMMITTEE, et al., Petitioners v. MATTHEW HEIDER, et al. (No. 04A364)	United States Supreme Court	125 S. Ct. 305; 160 L. Ed. 2d 213; 2004 U.S. LEXIS 7400	November 2, 2004	In two separate actions, plaintiffs sued defendant members of a political party, alleging that the members planned to mount indiscriminate challenges in polling places which would disrupt voting. Plaintiffs applied to vacate orders entered by the United States Court of Appeals for the Sixth Circuit which	Plaintiffs contended that the members planned to send numerous challengers to polling places in predominantly African--American neighborhoods to challenge votes in an imminent national election, which would allegedly cause voter intimidation and inordinate delays in voting. A district court ordered challengers to stay out of polling places, and another district court ordered challengers to remain in the polling places only as witnesses, but the appellate court stayed the orders. The United States Supreme Court, acting through a single Circuit Justice, declined to reinstate the injunctions for prudential reasons, despite the few hours left until the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				entered emergency stays of injunctions restricting the members' activities.	upcoming election. While the allegations of abuse were serious, it was not possible to determine with any certainty the ultimate validity of the plaintiffs' claims or for the full Supreme Court to review the relevant submissions, and voting officials would be available to enable proper voting by qualified voters.			
Charles H. Wesley Educ. Found., Inc. v. Cox	United States District Court for the Northern District of Georgia	324 F. Supp. 2d 1358; 2004 U.S. Dist. LEXIS 12120	July 1, 2004	Plaintiffs, a voter, fraternity members, and an organization, sought an injunction ordering defendant, the Georgia Secretary of State, to process the voter registration application forms that they mailed in following a voter registration drive. They contended that by refusing to process the forms defendants violated the National Voter Registration Act and U.S. Const. amends.	The organization participated in numerous non-partisan voter registration drives primarily designed to increase the voting strength of African-Americans. Following one such drive, the fraternity members mailed in over 60 registration forms, including one for the voter who had moved within state since the last election. The Georgia Secretary of State's office refused to process them because they were not mailed individually and neither a registrar, deputy registrar, or an otherwise authorized person had collected the applications as required under state law. The court held that plaintiffs had standing to bring the action. The court held that because the applications were received in accordance with the	No	N/A	No

008754

Name of Case	Court	Citations	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				I, XIV, and XV.	mandates of the NVRA, the State of Georgia was not free to reject them. The court found that: plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Injunction granted.			
Jacksonville Coalition for Voter Prot. v. Hood	United States District Court for the Middle District of Florida	351 F. Supp. 2d 1326; 2004 U.S. Dist. LEXIS 26522	October 25, 2004	Plaintiffs, voter protection coalition, union, and voters, filed an emergency motion for a preliminary injunction and argued that African Americans in the county had less opportunity than other members of the state's electorate to vote in the upcoming election, and that defendants, elections officials',	The coalition, the union, and the voters based their claim on the fact that the county had the largest percentage of African--American registered voters of any major county in the state, and, yet, other similarly-sized counties with smaller African--American registered voter percentages had more early voting sites. Based on that, they argued that African--American voters in the county were disproportionately affected. The court found that while it may have been true that having to drive to an early voting site and having to wait in line may cause people to be inconvenienced, inconvenience did not result in a denial of meaningful access	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Note	Should the Case be Researched Further
				implementation of early voting procedures violated the Voting Rights Act and their constitutional rights.	to the political process. Thus, the coalition, the union, and the voters had not established a likelihood of success on the merits of their claim that the county's implementation of early voting procedures violated § 2 of the Voting Rights Act. Moreover, the coalition, the union, and the voters failed to establish a likelihood of success on the merits of their § 1983 Fourteenth and Fifteenth Amendment claims, which required a higher proof of discriminatory purpose and effect. Injunction denied.			
Taylor v. Howe	United States Court of Appeals for the Eighth Circuit	225 F.3d 993; 2000 U.S. App. LEXIS 22241	August 31, 2000	Plaintiffs, African American voters, poll watchers, and candidates appealed from a judgment of the United States District Court for the Eastern District of Arkansas in favor of defendants, elections commissioners and related individuals, on their § 1983 voting rights claims and contended the	The court of appeals affirmed--in--part, reversed--in--part, and remanded the district court's judgment. The court found that the district court's finding of a lack of intentional discrimination was appropriate as to many defendants. However, as to some of the individual voters' claims for damages, the court held "a definite and firm conviction" that the district court's findings were mistaken. The court noted that the argument that a voter's name was misspelled in the voter register, with a single incorrect letter, was a flimsy pretext and, accordingly, held that the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				district court made erroneous findings of fact and law and failed to appreciate evidence of discriminatory intent.	district court's finding that defendant poll workers did not racially discriminate in denying the vote to this plaintiff was clearly erroneous. Affirmed in part and reversed in part.			
Stewart v. Blackwell	United States District Court for the Northern District of Ohio	356 F. Supp. 2d 791; 2004 U.S. Dist. LEXIS 26897	December 14, 2004	Plaintiffs, including African--American voters, alleged that use of punch card voting and "central--count" optical scanning devices by defendants, the Ohio Secretary of State et al., violated their rights under the Due Process Clause, the Equal Protection Clause, and (African--American plaintiffs) their rights under § 2 of the Voting Rights Act.	The primary thrust of the litigation was an attempt to federalize elections by judicial rule or fiat via the invitation to the court to declare a certain voting technology unconstitutional and then fashion a remedy. The court declined the invitation. The determination of the applicable voting process had always been focused in the legislative branch of the government. While it was true that the percentage of residual or non-voted ballots in the 2000 presidential election ran slightly higher in counties using punch card technology, that fact standing alone was insufficient to declare the use of the system unconstitutional. Moreover, the highest frequency in Ohio of residual voting bore a direct relationship to economic and educational factors, negating the Voting Rights Act claim. The court further stated that local variety in	No	N/A	No

008757

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					voting technology did not violate the Equal Protection Clause, even if the different technologies had different levels of effectiveness in recording voters' intentions, so long as there was some rational basis for the technology choice. It concluded that defendants' cost and security reasons for the use of punch card ballots were plausible.			
Taylor v. Currie	United States District Court for the Eastern District of Michigan	386 F. Supp. 2d 929; 2005 U.S. Dist. LEXIS 20257	September 14, 2005	Plaintiff brought an action against defendants, including a city elections commission, alleging defects in a city council primary election pertaining to absentee balloting. The case was removed to federal court by defendants. Pending before the court was a motion to remand, filed by plaintiff.	This action involved issues pertaining to absentee ballots. Plaintiff alleged that defendants were not complying with state laws requiring certain eligibility checks before issuing absentee ballots. The state court issued an injunction preventing defendants from mailing absentee ballots. Defendants removed the action to federal court and plaintiff sought a remand. Defendants argued that not mailing the absentee ballots would violate the Voting Rights Act, because it would place a restriction only on the City of Detroit, which was predominately African--American. The court ordered the case remanded because it found no basis under 28 U.S.C.S. §§ 1441 or 1443 for federal jurisdiction. Defendants' mere	No	N/A	No

008758

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
					<p>reference to a federal law or federal right was not enough to confer subject matter jurisdiction where the complaint sought to assert only rights arising under state statutes against state officials in relation to a state election. The court stated that it would not allow defendants to take haven in federal court under the guise of providing equal protection for the citizens of Detroit but with a goal of perpetuating their violation of a non-discriminatory state law. Motion to remand granted.</p>			

008759

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Charles H. Wesley Educ. Found., Inc. v. Cox	United States Court of Appeals for the Eleventh Circuit	408 F.3d 1349; 2005 U.S. App. LEXIS 8320	May 12, 2005	Plaintiffs, a charitable foundation, four volunteers, and a registered voter, filed a suit against defendant state officials alleging violations of the National Voter Registration Act and the Voting Rights Act. The officials appealed after the United States District Court for the Northern District of Georgia issued a preliminary injunction enjoining them from rejecting voter registrations submitted by the	The foundation conducted a voter registration drive; it placed the completed applications in a single envelope and mailed them to the Georgia Secretary of State for processing. Included in the batch was the voter's change of address form. Plaintiffs filed the suit after they were notified that the applications had been rejected pursuant to Georgia law, which allegedly restricted who could collect voter registration	No	N/A	No

008760

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				foundation.	forms. Plaintiffs contended that the officials had violated the NVRA, the VRA, and U.S. Const. amends. I, XIV, XV. The officials argued that plaintiffs lacked standing and that the district court had erred in issuing the preliminary injunction. The court found no error. Plaintiffs had sufficiently alleged injuries under the NVRA, arising out of the rejection of the voter registration forms; the allegations in the			

008761

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>complaint sufficiently showed an injury--in--fact that was fairly traceable to the officials' conduct. The injunction was properly issued. There was a substantial likelihood that plaintiffs would prevail as to their claims; it served the public interest to protect plaintiffs' franchise--related rights. The court affirmed the preliminary injunction order entered by the district court.</p>			
McKay v.	United	226 F.3d	September	Plaintiff	The trial court	No	N/A	No

008762

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Thompson	States Court of Appeals for the Sixth Circuit	752; 2000 U.S. App. LEXIS 23387	18, 2000	challenged order of United States District Court for Eastern District of Tennessee at Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.	had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous case law, and could be challenged in state court. The requirement did not violate the Privacy Act of 1974, because it			

008763

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>was grand fathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. The trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and</p>			

008764

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					immunities, and due process claims. Order affirmed because requirement that voters disclose social security numbers as precondition to voter registration did not violate Privacy Act of 1974 or National Voter Registration Act and trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims.			
Nat'l	United	150 F.	July 5,	Plaintiff, national	Defendants	No	N/A	No

008765

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Coalition for Students with Disabilities Educ. & Legal Def. Fund v. Scales	States District Court for the Southern District of Maryland	Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528	2001	organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss the first amended complaint, or in the alternative for summary judgment.	alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not			

008766

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged sufficient facts to confer standing under the NVRA, such allegations were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter</p>			

008767

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>registration services at the initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended</p>			

008763

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					complaint was granted as to the § 1983 claim and denied as to plaintiff's claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion for summary judgment was denied.			
Cunningham v. Chi. Bd. of Election Comm'rs	United States District Court for the Northern District of Illinois	2003 U.S. Dist. LEXIS 2528	February 24, 2003	Plaintiffs, who alleged that they were duly registered voters, six of whom had signed nominating petitions for one candidate and two of whom signed	Plaintiffs argued that objections to their signatures were improperly sustained by defendants, the city board of election commissioners. Plaintiff's argued that they were	No	N/A	No

003769

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>nominating petitions for another candidate. They first asked for a preliminary injunction of the municipal election scheduled for the following Tuesday and suggested, alternatively, that the election for City Clerk and for 4th Ward Alderman be enjoined.</p>	<p>registered voters whose names appeared in an inactive file and whose signatures were therefore, and improperly, excluded. The court ruled that by characterizing the claim as plaintiffs did, they sought to enjoin an election because their signatures were not counted, even though their preferred candidates were otherwise precluded from appearing on the ballot. Without regard to their likelihood of</p>			

003770

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>obtaining any relief, plaintiffs failed to demonstrate that they would be irreparably harmed if an injunction did not issue; the threatened injury to defendants, responsible as they were for the conduct of the municipal election, far outweighed any threatened injury to plaintiffs; and the granting of a preliminary injunction would greatly disserve the public interest. Plaintiffs' petition for</p>			

003771

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					preliminary relief was denied.			
Diaz v. Hood	United States District Court for the Southern District of Florida	342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445	October 26, 2004	Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general election. They alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials	The putative voters sought injunctive relief requiring the election officials to register them to vote. The court first noted that the unions lacked even representative standing, because they failed to show that one of their members could have brought the case in their own behalf. The individual putative voters raised separate issues: the first had failed to verify her mental	No	N/A	No

008772

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>moved to dismiss the complaint for lack of standing and failure to state a claim.</p>	<p>capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter</p>			

008773

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. Motion to dismiss without</p>			

008774

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					prejudice granted.			
Bell v. Marinko	United States District Court for the Northern District of Ohio	235 F. Supp. 2d 772; 2002 U.S. Dist. LEXIS 21753	October 22, 2002	Plaintiff voters sued defendants, a county board of elections, a state secretary of state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.	The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather than permanent residents of the county. The voters claimed that the board hearings did not afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA	No	N/A	No

008775

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to</p>			

003776

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and resolve that challenge, did not contravene the MVA. Defendants' motions for</p>			

008777

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					summary judgment were granted as to all claims with prejudice, except the voters' state-law claim, which was dismissed for want of jurisdiction, without prejudice.			
Bell v. Marinko	United States Court of Appeals for the Sixth Circuit	367 F.3d 588; 2004 U.S. App. LEXIS 8330	April 28, 2004	Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19-3509.21 violated the National Voter Registration Act, and the Equal Protection Clause	The voters contested the challenges to their registration brought under Ohio Code Rev. Ann. § 3505.19 based on Ohio Rev. Code Ann. § 3503.02. Specifically, the voters asserted that § 3503.02---which stated that the place	No	N/A	No

008778

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>of the Fourteenth Amendment. The United States District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.</p>	<p>where the family of a married man or woman resided was considered to be his or her place of residence--- violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote</p>			

008779

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>in the first place. The National Voter Registration Act did not bar the Board's continuing consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code Ann.</p>			

008780

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>§ 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed.</p>			

008781

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Powers v. Donahue	Supreme Court of New York, Appellate Division, First Department	276 A.D.2d 157; 717 N.Y.S.2d 550; 2000 N.Y. App. Div. LEXIS 12644	December 5, 2000	Petitioner appealed an order of the supreme court, which denied his motion to direct the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to count only the absentee ballot listing correct candidates' names.	When the New York County Board of Elections learned some absentee ballots mailed to voters in one district listed the wrong candidates for state senator it sent a second set of absentee ballots to absentee voters informing them the first ballot was defective and requesting they use the second ballot. The board agreed if two ballots were received from the same voter, only the corrected ballot would be counted. Appellant candidate moved in support of the board's determination. Respondent candidate opposed the application, contending that only the first ballot received should have been canvassed. The trial court denied appellant's motion, ruling that pursuant to New York law, where two ballots were received from the same voter, only the ballot with the earlier date was to be accepted. The court found the local board officials should have resolved the dispute as they proposed. The order was modified and the motion granted to the extent of directing the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to accept only the corrected	No	N/A	No

008782

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					ballot postmarked on or before November 7, 2000, and otherwise affirmed.			
Goodwin v. St. Thomas--St. John Bd. of Elections	Territorial Court of the Virgin Islands	43 V.I. 89; 2000 V.I. LEXIS 15	December 13, 2000	Plaintiff political candidate alleged that certain general election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.	Plaintiff alleged that defendants counted unlawful absentee ballots that lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result.	No	N/A	No

008783

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper. Request for declaratory and injunctive relief denied.			
Townson v. Stonicher	Supreme Court of Alabama	2005 Ala. LEXIS 214	December 9, 2005	The circuit court overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross-appealed. In the meantime, the trial court stayed enforcement of its judgment pending resolution of the appeal.	The voters and the incumbent all challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that at least 30 absentee voters who voted for the incumbent provided with their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat "cure" that defect by providing a proper form of identification at the trial of the election contest, because, under those	No	N/A	No

008784

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>circumstances, it was difficult to conclude that those voters made an honest effort to comply with the law. Moreover, to count the votes of voters who failed to comply with the essential requirement of submitting proper identification with their absentee ballots had the effect of disenfranchising qualified electors who choose not to vote but rather than to make the effort to comply with the absentee-voting requirements. Affirmed.</p>			
Gross v. Albany County Bd. of Elections	Supreme Court of New York, Appellate Division, Third Department	10 A.D.3d 476; 781 N.Y.S.2d 172; 2004 N.Y. App. Div. LEXIS 10360	August 23, 2004	Appellant candidates appealed from a judgment entered by the supreme court, which partially granted the candidates' petition challenging the method used by respondent Albany County Board of Elections for counting absentee applications and ballots for the office of Albany County	The candidates argued that the Board violated a federal court order regarding the election. The appellate court held that absentee ballots that were sent to voters for the special general election based solely on their applications for the general election were properly voided. The Board had no authority to issue the ballots without an absentee ballot application for the special general election. Two ballots were properly invalidated as the Board failed to retain the envelopes. Ballots were properly counted for voters who failed to identify their physician on their applications. A ballot was	No	N/A	No

008785

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				Legislator, 26th and 29th Districts, in a special general election required by the federal courts.	properly counted where the Board failed to scrutinize the sufficiency of the reason for the application. A ballot containing two signatures was properly rejected. A ballot was properly rejected due to extraneous marks outside the voting square. A ballot was properly counted despite the failure of the election inspector to witness the voter's signature. A ballot was properly counted as the application stated the date of the voter's absence. A ballot was properly counted as the failure to date the application was cured by a time stamp. Affirmed.			
Erlandson v. Kiffmeyer	Supreme Court of Minnesota	659 N.W.2d 724; 2003 Minn. LEXIS 196	April 17, 2003	Petitioners, representing the Democratic--Farmer--Labor Party, brought an action against respondents, the Minnesota Secretary of State and the Hennepin County Auditor, seeking relief in regard to the election for United States Senator, following	The appellate court found that, while it may have seemed unfair to the replacement candidate to count votes for other candidates from regular absentee ballots on which the replacement candidate did not appear, those were properly cast ballots voting for a properly nominated candidate. Petitioners' request that the Minnesota supreme court order that votes for United States Senator cast on regular absentee ballots not be counted was denied. A key issue was Minn. Stat. § 204B.41 (2002), which provided, in--	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the death of Senator Wellstone. The issue concerned the right of absentee voters to obtain replacement ballots. Individuals intervened on behalf of the Republican Party. The instant court granted review.	part, that official supplemental ballots could not be mailed to absent voters to whom ballots were mailed before the official supplemental ballots were prepared. The supreme court held that, by treating similarly--situated voters differently, § 204B.41 violated equal protection guarantees and could not even survive rational basis review. For voters who cast their regular absentee ballots for Wellstone before the vacancy occurred, but were unable to go to their polling place on election day or pick up a replacement ballot by election day, the prohibition on mailing replacement ballots in § 204B.41 denied them the right to cast a meaningful vote for United States Senator. The petition of petitioners was denied in part, but granted with respect to mailing replacement ballots to all applicants for regular absentee ballots who requested a replacement ballot.			
People v. Deganutti	Appellate Court of Illinois, First District, Third Division	348 Ill. App. 3d 512; 810 N.E.2d 191; 2004 Ill.	May 12, 2004	Defendant appealed from a judgment of the circuit court, which convicted defendant on charges of unlawful	Defendant went to the voters' homes and obtained their signatures on absentee ballot request forms. Once the ballots were mailed to the voters, defendant returned to the homes. With voter one, defendant sat on the couch	No	N/A	No

008787

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		App. LEXIS 518		observation of voting and on charges of absentee ballot violations in connection with the completion and mailing of the absentee ballots of two voters.	with the voter and instructed which numbers to punch on the ballot. With voter two, defendant provided a list a numbers and stood nearby as voter two completed the ballots. Defendant then looked at the ballot and had voter two re--punch a number that had not punched cleanly. Defendant then put the ballots in the mail for the voters. On appeal, she argued insufficient evidence to sustain her convictions. The court affirmed, holding that (1) the circumstantial evidence surrounding defendant's presence as the voters completed their ballots supported the unlawful observation convictions; (2) the fact that defendant knowingly took the voters ballots and mailed them, a violation of Illinois law supported her conviction, and (3) the fact that the statutes defendant was convicted under required only a knowing mental state rather than criminal intent did not violate substantive due process. Affirmed.			
Jacobs v. Seminole County Canvassing Bd.	Supreme Court	773 So. 2d 519; 2000 Fla. LEXIS	December 12, 2000	In an election contest, the First District court of appeal certified a	Prior to the general election, two political parties mailed preprinted requests for absentee ballots to registered voters in Seminole County.	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		2404		trial court order to be of great public importance and to require immediate resolution by the supreme court. The trial court denied appellants' request to invalidate absentee ballot requests in Seminole County in the 2000 presidential election.	Forms mailed by one party failed to include either a space for the voter identification number or the preprinted number. Representatives from that party were allowed to add voter identification numbers to request forms after they were returned, and absentee ballots were sent to the persons named on the request forms. The supreme court affirmed the trial court's refusal to invalidate the ballot requests, and adopted the trial court's reasoning that the information required, which included the voter identification number, was directory rather than mandatory. The trial court properly found that the evidence did not support a finding of fraud, gross negligence, or intentional wrongdoing. Allowing one party to correct ballots did not constitute illegal disparate treatment because there was no need to correct the other party's forms. Affirmed.			
Gross v. Albany County Bd. of Elections	Court of Appeals of New York	3 N.Y.3d 251; 819 N.E.2d 197; 785 N.Y.S.2d 729;	October 14, 2004	Appellant candidates sought review from an order of the Appellate Division, which affirmed a trial court order	Due to a challenge to a redistricting plan, the Board was enjoined from conducting primary and general elections for certain county districts. A special primary election was directed, with a special general election to be	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		2004 N.Y. LEXIS 2412		holding that absentee ballots from a special general election were not to be canvassed because respondent Albany County Board of Elections failed to follow the set procedure for those voters.	held "expeditiously thereafter." Absentee ballot requests for the first special election were based on prior requests, but new requests had to be made for the general election. However, the Board forwarded absentee ballots for that election as well, based on the prior requests. Candidates in two close races thereafter challenged those absentee ballots, as they violated the procedure that was to be followed. The trial court held that the ballots should not be canvassed, which decision was affirmed on appeal. On further review due to dissenting opinions, the court found that the ballots were in violation of the federal court order that directed the procedure to be followed, as well as in violation of New York election law. The court concluded that the Board's error was not technical, ministerial, or inconsequential because it was central to the substantive process, and the voters who used absentee ballots were not determined to be "duly qualified electors." Affirmed.			
In re Canvass of	Supreme Court of	577 Pa.	March 8,	A county elections	The absentee ballots at issue were	No	N/A	No

008790

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Absentee Ballots of Nov. 4, 2003 Gen. Election	Pennsylvania	231; 843 A.2d 1223; 2004 Pa. LEXIS 431	2004	board voided certain absentee ballots cast in the November 4, 2003, general election. The court of common pleas held that absentee ballots delivered by third persons were valid and should be counted. The commonwealth court affirmed the trial court's decision. The state supreme court granted allocatur. Appellants and appellees were certain candidates and voters.	hand-delivered to the county elections board by third persons on behalf of non--disabled voters. On appeal, the issue was whether non--disabled absentee voters could have third persons hand--deliver their ballots to the elections board where the board indicated that the practice was permitted. The state supreme court concluded that the "in person" delivery requirement was mandatory, and that absentee ballots delivered in violation of the provision were invalid, notwithstanding the board's erroneous instructions to the contrary. Under the statute's plain meaning, a non--disabled absentee voter had two choices: send the ballot by mail, or deliver it in person. Third--person hand--delivery of absentee ballots was not permitted. To ignore the law's clear instructions regarding in--person delivery would undermine the statute's very purpose as a safeguard against fraud. The state supreme court concluded that its precedent was clear, and it could not simply ignore substantive provisions of the Pennsylvania Election Code. The judgment of the Commonwealth Court was reversed in so far as it held that			

008791

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					certain absentee ballots delivered on behalf of non--disabled absentee voters were valid.			
In re Canvass of Absentee Ballots of November 4, 2003	Commonwealth Court of Pennsylvania	839 A.2d 451; 2003 Pa. Commw. LEXIS 963	December 22, 2003	The Allegheny County Elections Board did not allow 74 challenged third-party hand--delivered absentee ballots to be counted in the statewide general election. The court of common pleas of Allegheny County reversed the Board's decision and allowed the 74 ballots to be counted. Appellant objecting candidates appealed the trial court's order.	On appeal, the issue was whether non-disabled voters who voted by absentee ballots and had those ballots delivered by third parties to county election boards could have their ballots counted in the statewide general election. First, the appellate court concluded that political bodies had standing to appeal. Also, the trial court did not err by counting the 74 ballots because absentee voters could not be held responsible for following the statutory requirements of Pennsylvania election law where the Board knowingly failed to abide by the statutory language regarding the delivery of absentee ballots, changed its policy to require voters to abide by the language, and then changed its policy back to its original stance that voters did not have to abide by the statutory language, thereby misleading absentee voters regarding delivery requirements. Under the circumstances, it was more important to protect the interest of the voters by not disenfranchising them	No	N/A	No

008792

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					than to adhere to the strict language of the statute. However, one ballot was not counted because it was not delivered to the Board. Affirmed with the exception that one voter's ballot was stricken.			
United States v. Pennsylvania	United States District Court for the Middle District of Pennsylvania	2004 U.S. Dist. LEXIS 21167	October 20, 2004	Plaintiff United States sued defendant Commonwealth of Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of	The testimony of the two witnesses offered by the United States did not support its contention that voters protected by the Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern regarding their ability or right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of	No	N/A	No

008793

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
				candidates so late in the election year.	UOCAVA voters to cast their ballots. Moreover, Pennsylvania had adduced substantial evidence that the requested injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs. Motion for injunctive relief denied.			
Hoblock v. Albany County Bd. of Elections	United States District Court for the Northern District of New York	341 F. Supp. 2d 169; 2004 U.S. Dist. LEXIS 21326	October 25, 2004	Plaintiffs, candidates and voters, sued defendant, the Albany County, New York, Board of Elections, under § 1983, claiming that the Board violated plaintiffs' Fourteenth Amendment rights by refusing to tally the voters' absentee ballots. Plaintiffs moved for a preliminary injunction.	An election for members of the Albany County Legislature had been enjoined, and special primary and general elections were ordered. The order stated that the process for obtaining and counting absentee ballots for the general election would follow New York election law, which required voters to request absentee ballots. However, the Board issued absentee ballots for the general election to all persons who had applied for an absentee ballot for the cancelled election. The voters used absentee ballots to vote; their ballots were later invalidated. A state court determined that automatically sending absentee ballots to those who had not filed an application violated the constitution of	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					New York. The district court found that the candidates' claims could have been asserted in state court and were barred by res judicata, but the voters were not parties to the state court action. The candidates were not entitled to joinder and had not filed a motion to intervene. The voters established a likelihood of success on the merits, as the Board effectively took away their right to vote by issuing absentee ballots and then refusing to count them. The voters' claims involved more than just an "unintended irregularity." The candidates' claims were dismissed, and their request for joinder or to intervene was denied. Plaintiffs' motion for a preliminary injunction preventing the Board from certifying winners of the election was granted.			
Griffin v. Roupas	United States Court of Appeals for the Seventh Circuit	385 F.3d 1128; 2004 U.S. App. LEXIS 21476	October 15, 2004	In a suit brought by plaintiff working mothers against defendants, members of the Illinois State Board of Elections, alleging that the United States	The mothers contended that, because it was a hardship for them to vote in person on election day, the U.S. Constitution required Illinois to allow them to vote by absentee ballot. The district court dismissed the mothers' complaint. On appeal, the court held that the district court's ruling was	No	N/A	No

008795

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				Constitution required Illinois to allow them to vote by absentee ballot, the mothers appealed from a decision of the United States District Court for the Northern District of Illinois, Eastern Division, which dismissed their complaint for failure to state a claim.	correct, because, although it was possible that the problems created by absentee voting might be outweighed by the harm to voters who would lose their vote if they were unable to vote by absentee ballot, the striking of the balance between discouraging fraud and encouraging voter turnout was a legislative judgment with which the court would not interfere unless strongly convinced that such judgment was grossly awry. The court further held that Illinois law did not deny the mothers equal protection of the laws, because the hardships that prevented voting in person did not bear more heavily on working mothers than other classes in the community. Finally, the court held that, although the length and complexity of the Illinois ballot supported an argument for allowing people to vote by mail, such argument had nothing to do with the problems faced by working mothers. It applied to everyone. Affirmed.			
Reitz v. Rendell	United States District Court for the Middle District of	2004 U.S. Dist. LEXIS	October 29, 2004	Plaintiff service members filed an action against defendant state	The court issued an order to assure that service members and other similarly situated service members who were protected by the UOCAVA would not	No	N/A	No

008796

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	Pennsylvania	21813		officials under the Uniformed and Overseas Citizens Absentee Voting Act, alleging that they and similarly situated service members would be disenfranchised because they did not receive their absentee ballots in time. The parties entered into a voluntary agreement and submitted it to the court for approval.	be disenfranchised. The court ordered the Secretary of the Commonwealth of Pennsylvania to take all reasonable steps necessary to direct the county boards of elections to accept as timely received absentee ballots cast by service members and other overseas voters as defined by UOCAVA, so long as the ballots were received by November 10, 2004. The ballots were to be considered solely for purposes of the federal offices that were included on the ballots. The court held that the ballot needed to be cast no later than November 2, 2004 to be counted. The court did not make any findings of liability against the Governor or the Secretary. The court entered an order, pursuant to a stipulation between the parties, that granted injunctive relief to the service members.			
Bush v. Hillsborough County Canvassing Bd.	United States District Court for the Northern District of Florida	123 F. Supp. 2d 1305; 2000 U.S. Dist. LEXIS 19265	December 8, 2000	The matter came before the court on plaintiffs' complaint for declaratory and injunctive relief alleging that defendant county canvassing boards	Plaintiff presidential and vice--presidential candidates and state political party contended that defendant county canvassing boards rejected overseas absentee state ballots and federal write--in ballots based on criteria inconsistent with the Uniformed and Overseas Citizens	No	N/A	No

008797

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>rejected overseas absentee state ballots and federal write--in ballots based on criteria inconsistent with federal law, and requesting that the ballots be declared valid and that they should be counted.</p>	<p>Absentee Voting Act. Because the state accepted overseas absentee state ballots and federal write--in ballots up to 10 days after the election, the State needed to access that the ballot in fact came from overseas. However, federal law provided the method to establish that fact by requiring the overseas absentee voter to sign an oath that the ballot was mailed from outside the United States and requiring the state election officials to examine the voter's declarations. The court further noted that federal law required the user of a federal write--in ballot to timely apply for a regular state absentee ballot, not that the state receive the application, and that again federal law, by requiring the voter using a federal write--in ballot to swear that he or she had made timely application, had provided the proper method of proof. Plaintiffs withdrew as moot their request for injunctive relief and the court granted in part and denied in part plaintiffs' request for declaratory relief, and declared valid all federal write--in ballots that were signed pursuant to the oath provided therein but rejected solely because the ballot envelope did</p>			

008798

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					not have an APO, FPO, or foreign postmark, or solely because there was no record of an application for a state absentee ballot.			
Kolb v. Casella	Supreme Court of New York, Appellate Division, Fourth Department	270 A.D.2d 964; 705 N.Y.S.2d 746; 2000 N.Y. App. Div. LEXIS 3483	March 17, 2000	Both petitioner and respondent appealed from order of supreme court, determining which absentee and other paper ballots would be counted in a special legislative election.	Both petitioner and respondent, presumably representing different candidates, challenged the validity of particular paper ballots, mostly absentee, in a special legislative election. The court affirmed most of the trial court's findings, but modified its order to invalidate ballots improperly marked outside the voting square---ballots where the signature on the envelope differed substantially from the voter registration card signature---and ballots where voters neglected to supply statutorily required information on the envelopes. However, the court, seeking to avoid disenfranchising voters where permissible, held that ballots were not invalid where applications substantially complied with statute, there was no objection to the ballots themselves, and there was no evidence of fraud. Where absentee ballot envelopes contained extra ballots, the ballots were to be placed in a ballot	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					box so that procedures applicable when excess ballots are placed in a ballot box could be followed. Order modified.			
People v. Woods	Court of Appeals of Michigan	241 Mich. App. 545; 616 N.W.2d 211; 2000 Mich. App. LEXIS 156	June 27, 2000	Defendant filed an interlocutory appeal of the decision by the circuit court, which denied defendant's request for a jury instruction on entrapment by estoppel, but stayed the proceedings to allow defendant to pursue the interlocutory appeal, in a criminal action alleging violations of election laws.	Defendant distributed and collected absentee ballots in an election. Because both defendant and his brother were candidates on the ballot, defendant's assistance was illegal under Michigan law. Bound over for trial on election fraud charges, defendant requested a jury instruction on entrapment by estoppel, which was denied. On interlocutory appeal, the appellate court reversed and remanded for an entrapment hearing, holding that defendant should be given the opportunity to present evidence that he unwittingly committed the unlawful acts in reasonable reliance upon the word of the township clerk. The necessary elements of the entrapment defense were: (1) a government official (2) told the defendant that certain criminal conduct was legal; (3) the defendant actually relied on the official's statements; (4) the defendant's reliance was in good faith and reasonable in light of the official's	No	N/A	No

008800

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					identity, the point of law represented, and the substance of the official's statement; and (5) the prosecution would be so unfair as to violate the defendant's right to due process. Denial of jury instruction was reversed because the trial court did not hold an entrapment hearing; remanded for an entrapment hearing where defendant could present elements of the entrapment by estoppel defense.			
Harris v. Florida Elections Canvassing Comm'n	United States District Court for the Northern District of Florida	122 F. Supp. 2d 1317; 2000 U.S. Dist. LEXIS 17875	December 9, 2000	Plaintiffs challenged the counting of overseas absentee ballots received after 7 p.m. on election day, alleging the ballots violated Florida law.	The court found Congress did not intend 3 U.S.C.S. § 1 to impose irrational scheduling rules on state and local canvassing officials, and did not intend to disenfranchise overseas voters. The court held the state statute was required to yield to the Florida Administrative Code, which required the 10-day extension in the receipt of overseas absentee ballots in federal elections because the rule was promulgated to satisfy a consent decree entered by the state in 1982.	No	N/A	No
Weldon v. Berks County Dep't of Election Servs.	United States District Court for the Eastern District of Pennsylvania	2004 U.S. Dist. LEXIS 21948	November 1, 2004	Plaintiffs, a congressman and a state representative, filed a motion seeking a	The congressman and representative sought to have the absentee ballots at issue set aside until a hearing could be held to determine whether any of the straining order denied. CASE	No	N/A	No

003301

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>preliminary injunction or temporary restraining order that would prohibit defendant county department of election services from delivering to local election districts absentee ballots received from any state, county, or city correctional facility.</p>	<p>SUMMARY: PROCEDURAL POSTURE: Plaintiffs, a congressman and a state representative, filed a motion seeking a preliminary injunction or temporary restraining order that would prohibit defendant county department of election services from delivering to local election districts absentee ballots received from any state, county, or city correctional facility as provided in Pa. Stat. Ann. tit. 25, § 3416.6 and Pa. Stat. Ann. tit. 25, § 3416.8. OVERVIEW: The congressman and representative sought to have the absentee ballots at issue set aside until a hearing could be held to determine whether any of the ballots were delivered to the county board of elections by a third party in violation of Pennsylvania law, whether any of the ballots were submitted by convicted incarcerated felons in violation of Pennsylvania law, and whether any of the ballots were submitted by qualified voters who were improperly assisted without the proper declaration required by Pennsylvania law. The court concluded that an ex parte temporary restraining order was not warranted because there</p>			

008802

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					were potential jurisdictional issues, substantial questions concerning the alleged violations, and the complaint did not allege that the department acted or threatened to act in an unlawful manner. The court denied the ex parte motion for a temporary restraining order. The court set a hearing on the motion for preliminary injunction.			
Qualkinbush v. Skubisz	Court of Appeals of Illinois, First District	822 N.E.2d 38; 2004 Ill. App. LEXIS 1546	December 28, 2004	Respondent appealed from an order of the circuit court certifying mayoral election results for a city in which the court declared petitioner mayor.	Respondent first claimed the trial court erred in denying his motion to dismiss with respect to 38 votes the Election Code was preempted by and violated the Voting Rights Act and the Americans with Disabilities Act of 1990 since it restricted the individuals with whom an absentee voter could entrust their ballot for mailing. The appeals court found the trial court did not err in denying the motion to dismiss, as Illinois election law prevented a candidate or his or her agent from asserting undue influence upon a disabled voter and from manipulating that voter into voting for the candidate or the agent's candidate, and was designed to protect the rights of disabled voters. Respondent had not established that the federal legislature	No	N/A	No

008803

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					intended to preempt the rights of state legislatures to restrict absentee voting, and, particularly, who could return absentee ballots. The Election Code did not violate equal protection principles, as the burden placed upon absentee voters by the restriction on who could mail an absentee ballot was slight and nondiscriminatory and substantially contributed to the integrity of the election process. Affirmed.			
Panio v. Sunderland	Supreme Court of New York, Appellate Division, Second Department	14 A.D.3d 627; 790 N.Y.S.2d 136; 2005 N.Y. App. Div. LEXIS 3433	January 25, 2005	In proceedings filed pursuant to New York election law to determine the validity of certain absentee and affidavit ballots tendered for the office of 35th District Senator, appellants, a chairperson of the county Republican committee and the Republican candidate, both sought review of an	The question presented was whether the county election board should count the six categories of ballots that were in dispute. After a review of the evidence presented, the appeals court modified the trial court's order by: (1) deleting an order directing the county elections board (board) to count 160 affidavit ballots tendered by voters who appeared at the correct polling place but the wrong election district, as there were meaningful distinctions between those voters who went to the wrong polling place and those voters who went to the correct polling place but the wrong election district; (2) directing that the board not count 10	No	N/A	No

008804

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				order by the supreme court to count or not count certain ballots. Respondent Democratic candidate cross-- appealed.	affidavit ballots tendered in the wrong election district because of a map error, as there was no evidence that the voters in this category relied on the maps when they went to the wrong election districts; and (3) directing the board to count 45 absentee ballots tendered by poll workers, as it appeared that the workers substantially complied with the statute by providing a written statement that was the functional equivalent of an application for a special ballot. Order modified and judgment affirmed.			
Pierce v. Allegheny County Bd. of Elections	United States District Court for the Western District of Pennsylvania	324 F. Supp. 2d 684; 2003 U.S. Dist. LEXIS 25569	November 13, 2003	Plaintiff voters sought to enjoin defendant election board from allowing three different procedures for third--party absentee ballot delivery, require the set aside of all absentee third--party delivered ballots in connection with the November 2003 election, prohibit those ballots from	Intervenor political committees also moved to dismiss for lack of standing, lack of subject matter jurisdiction, and failure to state a claim, as well as abstention. Inter alia, the court found that abstention was appropriate under the Pullman doctrine because: (1) construction of Pennsylvania election law was not clear regarding whether the absentee ballot provision requiring hand--delivery to be "in person" was mandatory or directory; (2) the construction of the provision by state courts as mandatory or directory could obviate the need to determine whether	No	N/A	No

008805

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				being delivered to local election districts after having been commingled with other absentee ballots, and convert a temporary restraining order to an injunction.	there had been a Fourteenth Amendment equal protection violation; and (3) erroneous construction of the provision could disrupt very important state voting rights policies. However, the court had a continuing duty to consider the motion for temporary restraining order/preliminary injunction despite abstention. The court issued a limited preliminary injunction whereby the 937 hand-delivered absentee ballots at issue were set aside as "challenged" ballots subject to the election code challenge procedure. Any equal protection issues could be heard in state court by virtue of the state court's concurrent jurisdiction.			
Friedman v. Snipes	United States District Court for the Southern District of Florida	345 F. Supp. 2d 1356; 2004 U.S. Dist. LEXIS 23739	November 9, 2004	Plaintiff registered voters sued defendant state and county election officials under § 1983 for alleged violations of their rights under 42 U.S.C.S. § 1971(a)(2)(B) of the Civil Rights Act, and	The voters claimed they timely requested absentee ballots but (1) never received the requested ballot or (2) received a ballot when it was too late for them to submit the absentee ballot. The court held that 42 U.S.C.S. § 1971(a)(2)(B) was not intended to apply to the counting of ballots by those already deemed qualified to vote. The plain meaning of § 1971(a)(2)(B) did not support the voters' claim that it	No	N/A	No

008806

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the First and Fourteenth Amendments to the United States Constitution. The voters moved for a temporary restraining order (TRO) and/or preliminary injunction. The court granted the TRO and held a hearing on the preliminary injunction.	should cover an error or omission on any record or paper or any error or omission in the treatment, handling, or counting of any record or paper. Further, because Florida election law only related to the mechanics of the electoral process, the correct standard to be applied here was whether Florida's important regulatory interests justified the restrictions imposed on their First and Fourteenth Amendment rights. The State's interests in ensuring a fair and honest election and counting votes within a reasonable time justified the light imposition on voting rights. The deadline for returning ballots did not disenfranchise a class of voters. Rather, it imposed a time deadline by which voters had to return their votes. So there was no equal protection violation. Preliminary injunction denied.			
Johnson v. Bush	United States District Court for the Southern District of Florida	214 F. Supp. 2d 1333; 2002 U.S. Dist. LEXIS	July 18, 2002	Plaintiff felons sued defendant state officials for alleged violations of their constitutional rights. The officials moved and the felons cross-	The felons had all successfully completed their terms of incarceration and/or probation, but their civil rights to register and vote had not been restored. They alleged that Florida's disenfranchisement law violated their rights under First, Fourteenth,	No	N/A	No

008807

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		14782		moved for summary judgment.	Fifteenth, and Twenty--Fourth Amendments to the United States Constitution, as well as § 1983 and §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re--enactment of that provision. Although it appeared that there was a disparate impact on minorities, the cause was racially neutral. Finally, requiring the felons to pay their victim restitution before their rights would be restored did not constitute an improper poll tax or wealth qualification. The court granted the officials' motion for summary judgment and implicitly denied the felons' motion. Thus, the court dismissed the lawsuit with prejudice.			
Farrakhan v.	United States	2000	December	Plaintiffs, convicted	The felons alleged that Washington's	No	N/A	No

003808

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
Locke	District Court for the Eastern District of Washington	U.S. Dist. LEXIS 22212	1, 2000	felons who were also racial minorities, sued defendants for alleged violations of the Voting Rights Act. The parties filed cross-motions for summary judgment.	felon disenfranchisement and restoration of civil rights schemes, premised upon Wash. Const. art. VI § 3, resulted in the denial of the right to vote to racial minorities in violation of the VRA. They argued that race bias in, or the discriminatory effect of, the criminal justice system resulted in a disproportionate number of racial minorities being disenfranchised following felony convictions. The court concluded that Washington's felon disenfranchisement provision disenfranchised a disproportionate number of minorities; as a result, minorities were under-represented in Washington's political process. The Rooker-Feldman doctrine barred the felons from bringing any as-applied challenges, and even if it did not bar such claims, there was no evidence that the felons' individual convictions were born of discrimination in the criminal justice system. However, the felons' facial challenge also failed. The remedy they sought would create a new constitutional problem, allowing disenfranchisement only of white felons. Further, the felons did not establish a causal connection between			

008809

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					the disenfranchisement provision and the prohibited result. The court granted defendants' motion and denied the felons' motion for summary judgment.			
Farrakhan v. Washington	United States Court of Appeals for the Ninth Circuit	338 F.3d 1009; 2003 U.S. App. LEXIS 14810	July 25, 2003	Plaintiff inmates sued defendant state officials, claiming that Washington state's felon disenfranchisement scheme constitutes improper race--based vote denial in violation of § 2 of the Voting Rights Act. The United States District Court for the Eastern District of Washington granted of summary judgment dismissing the inmates' claims. The inmates appealed.	Upon conviction of infamous crimes in the state, (that is, crimes punishable by death or imprisonment in a state correctional facility), the inmates were disenfranchised. The inmates claimed that the disenfranchisement scheme violated § 2 because the criminal justice system was biased against minorities, causing a disproportionate minority representation among those being disenfranchised. The appellate court held, inter alia, that the district court erred in failing to consider evidence of racial bias in the state's criminal justice system in determining whether the state's felon disenfranchisement laws resulted in denial of the right to vote on account of race. Instead of applying its novel "by itself" causation standard, the district court should have applied a totality of the circumstances test that included analysis of the inmates' compelling evidence of racial bias in Washington's criminal justice system.	No	N/A	No

008810

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					However, the inmates lacked standing to challenge the restoration scheme because they presented no evidence of their eligibility, much less even allege that they were eligible for restoration, and had not attempted to have their civil rights restored. The court affirmed as to the eligibility claim but reversed and remanded for further proceedings to the bias in the criminal justice system claim.			
Muntaqim v. Coombe	United States Court of Appeals for the Second Circuit	366 F.3d 102; 2004 U.S. App. LEXIS 8077	April 23, 2004	Plaintiff inmate appealed a judgment of the United States District Court for the Northern District of New York, which granted summary judgment in favor of defendants in the inmate's action alleging violation of § 2 of the Voting Rights Act of 1965.	At issue was whether the VRA could be applied to N.Y. Elec. Law § 5--106, which disenfranchised currently incarcerated felons and parolees. The instant court concluded that the Voting Rights Act did not apply to the New York law. Applying the Act to state law would alter the traditional balance of power between the states and the federal government. The court was not convinced that there was a congruence and proportionality between the injury to be prevented or remedied (i.e., the use of vote denial and dilution schemes to avoid the strictures of the VRA), and the means adopted to that end (i.e., prohibition of state felon disenfranchisement law that resulted in	No	N/A	No

008811

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>vote denial or dilution but were not enacted with a discriminatory purpose). Further, there was no clear statement from Congress that the Act applied to state felon disenfranchisement statutes. Inter alia, defendants were entitled to qualified immunity as to claim asserted against them in their personal capacities, and to Eleventh Amendment immunity to the extent the inmate sought damages against defendants in their official capacities. The district court's judgment was affirmed.</p>			
Johnson v. Governor of Fla.	United States Court of Appeals for the Eleventh Circuit	353 F.3d 1287; 2003 U.S. App. LEXIS 25859	December 19, 2003	Plaintiffs, ex--felon citizens of Florida, on their own right and on behalf of others, sought review of a decision of the United States District Court for the Southern District of Florida, which granted summary judgment to defendants, members of the Florida Clemency Board in	The citizens alleged that Fla. Const. art. VI, § 4 (1968) was racially discriminatory and violated their constitutional rights. The citizens also alleged violations of the Voting Rights Act. The court of appeals initially examined the history of Fla. Const. art. VI, § 4 (1968) and determined that the citizens had presented evidence that historically the disenfranchisement provisions were motivated by a discriminatory animus. The citizens had met their initial burden of showing that race was a substantial motivating factor. The state was then required to	No	N/A	No

003812

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>their official capacity. The citizens challenged the validity of the Florida felon disenfranchisement laws.</p>	<p>show that the current disenfranchisement provisions would have been enacted absent the impermissible discriminatory intent. Because the state had not met its burden, summary judgment should not have been granted. The court of appeals found that the claim under the Voting Rights Act, also needed to be remanded for further proceedings. Under a totality of the circumstances, the district court needed to analyze whether intentional racial discrimination was behind the Florida disenfranchisement provisions. The court affirmed the district court's decision to grant summary judgment on the citizens' poll tax claim. The court reversed the district court's decision to grant summary judgment to the Board on the claims under the equal protection clause and for violation of federal voting laws and remanded the matter to the district court for further proceedings.</p>			
Fischer v. Governor	Supreme Court of New Hampshire	145 N.H. 28; 749 A.2d 321;	March 24, 2000	Appellant State of New Hampshire challenged a ruling of the superior court	Appellee was incarcerated at the New Hampshire State Prison on felony convictions. When he requested an absentee ballot to vote from a city	No	N/A	No

008813

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		2000 N.H. LEXIS 16		that the felon disenfranchisement statutes violate N.H. Const. pt. I, Art. 11.	clerk, the request was denied. The clerk sent him a copy of N.H. Rev. Stat. Ann. § 607(A)(2) (1986), which prohibits a felon from voting "from the time of his sentence until his final discharge." The trial court declared the disenfranchisement statutes unconstitutional and ordered local election officials to allow the plaintiff to vote. Appellant State of New Hampshire challenged this ruling. The central issue was whether the felon disenfranchisement statutes violated N.H. Const. pt. I, art. 11. After a review of the article, its constitutional history, and legislation pertinent to the right of felons to vote, the court concluded that the legislature retained the authority under the article to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority, and reversed. Judgment reversed because the court concluded that the legislature retained its authority under the New Hampshire Constitution to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative			

008814

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (If of Note)	Other Notes	Should the Case be Researched Further
Johnson v. Governor of Fla.	United States Court of Appeals for the Eleventh Circuit	405 F.3d 1214; 2005 U.S. App. LEXIS 5945	April 12, 2005	Plaintiff individuals sued defendant members of Florida Clemency Board, arguing that Florida's felon disenfranchisement law, Fla. Const. art. VI, § 4 (1968), violated the Equal Protection Clause and the Voting Rights Act. The United States District Court for the Southern District of Florida granted the members summary judgment. A divided appellate panel reversed. The panel opinion was vacated and a rehearing en banc was granted.	authority. The individuals argued that the racial animus motivating the adoption of Florida's disenfranchisement laws in 1868 remained legally operative despite the reenactment of Fla. Const. art. VI, § 4 in 1968. The subsequent reenactment eliminated any discriminatory taint from the law as originally enacted because the provision narrowed the class of disenfranchised individuals and was amended through a deliberative process. Moreover, there was no allegation of racial discrimination at the time of the reenactment. Thus, the disenfranchisement provision was not a violation of the Equal Protection Clause and the district court properly granted the members summary judgment on that claim. The argument that the Voting Rights Act applied to Florida's disenfranchisement provision was rejected because it raised grave constitutional concerns, i.e., prohibiting a practice that the Fourteenth Amendment permitted the state to maintain. In addition, the legislative history indicated that	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
					Congress never intended the Voting Rights Act to reach felon disenfranchisement provisions. Thus, the district court properly granted the members summary judgment on the Voting Rights Act claim. The motion for summary judgment in favor of the members was granted.			
Mixon v. Commonwealth	Commonwealth Court of Pennsylvania	759 A.2d 442; 2000 Pa. Commw. LEXIS 534	September 18, 2000	Respondents filed objections to petitioners' complaint seeking declaratory relief as to the unconstitutionality of the Pennsylvania Election Code, 25 Pa. Cons. Stat. §§ 2600 – 3591, and the Pennsylvania Voter Registration Act, 25 Pa. Cons. Stat. §§ 961.101–961.5109, regarding felon voting rights.	Petitioner convicted felons were presently or had formerly been confined in state prison. Petitioner elector was currently registered to vote in respondent state. Petitioners filed a complaint against respondent state seeking declaratory relief challenging as unconstitutional, state election and voting laws that excluded confined felons from the definition of qualified absentee electors and that barred a felon who had been released from a penal institution for less than five years from registering to vote. Respondents filed objections to petitioners' complaint. The court sustained respondents' objection that incarcerated felons were not unconstitutionally deprived of qualified absentee elector status because respondent state had broad power to determine the	No	N/A	No

008816

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					conditions under which suffrage could be exercised. However, petitioner elector had no standing and the court overruled objection as to deprivation of ex--felon voting rights. The court sustained respondents' objection since incarcerated felons were not unconstitutionally deprived of qualified absentee elector status and petitioner elector had no standing, but objection that ex--incarcerated felons' voting rights were deprived was overruled since status penalized them.			
Rosello v. Calderon	United States District Court for the District of Puerto Rico	2004 U.S. Dist. LEXIS 27216	November 30, 2004	Plaintiff voters filed a § 1983 action against defendant government officials alleging violations the Due Process and Equal Protection Clauses of the U.S. Const. amend. XIV, resulting from the invalidity of absentee and split ballots in a gubernatorial election.	The voters' § 1983 action against government officials alleged that absentee ballots for a gubernatorial election were untimely mailed and that split votes, which registered two votes for the same office, were null. The court asserted jurisdiction over the disparate treatment claims, which arose under the U.S. Constitution. The court declined to exercise discretionary abstention because the case was not merely a facial attack on the constitutionality of a statute, but was mainly an applied challenge, requiring a hearing in order to develop the record, and because equal protection	No	N/A	No

008817

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>and due process were secured under the state and federal constitutions. The court held that the voters had a fundamental due process right created by Puerto Rico Election Law and suffered an equal protection violation in further violation of the U.S. Const. amend. I right to vote, thereby creating their total disenfranchisement. The court held that the evidence created an inference that the split ballots were not uniformly treated and that it was required to examine a mixed question of fact and constitutional law pursuant to federal guidelines to determine whether potential over votes were invalid. The court asserted jurisdiction over the voters' claims.</p>			
Woodruff v. Wyoming	United States Court of Appeals for the Tenth Circuit	49 Fed. Appx. 199; 2002 U.S. App. LEXIS 21060	October 7, 2002	Plaintiffs, pro se inmates, appealed from an order of the United States District Court for the District of Wyoming, dismissing their complaint brought under § 1983, challenging Wyo. Stat. Ann. § 6-10--	The inmates argued that the statute violated their Eighth Amendment right and their State constitutional right to be free from cruel and unusual punishment, their equal protection rights under the Fourteenth Amendment and State Constitution, and their federal and state rights to due process. One inmate had not paid the appellate filing fee or filed a motion to proceed on appeal without prepayment	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Researched Further
				106, which denied them, as convicted felons, the right to vote. The district court dismissed the action for failure to state a claim upon which relief could be granted and as frivolous.	of costs or fees, and his appeal was dismissed. The court found that U.S. Const. amend. XIV, § 2 had long been held to exclude felons from the right to vote. It could scarcely be unreasonable for a state to decide that perpetrators of serious crimes should not take part in electing the legislators who made the laws, the executives who enforced them, the prosecutors who tried the cases, or the judges who heard their cases. The court also found the dismissed suit constituted a "strike" under 28 U.S.C.S. § 1915(g), although the suit did not challenge prison conditions per se. One inmate's appeal was dismissed; the judgment dismissing the other's complaint was affirmed.			
N.J. State Conf.-NAACP v. Harvey	Superior Court of New Jersey, Appellate Division	381 N.J. Super. 155; 885 A.2d 445; 2005 N.J. Super. LEXIS 316	November 2, 2005	The Superior Court of New Jersey, Chancery Division, Union County, dismissed a complaint filed by plaintiff interested parties to invalidate N.J. Stat. Ann. § 19:4-1(8) on the	The statute at issue prohibited all people on parole or probation for indictable offenses from voting. The interested parties alleged that the criminal justice system in New Jersey discriminated against African-Americans and Hispanics, thereby disproportionately increasing their population among parolees and probationers and diluting their political	No	N/A	No

008819

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				ground that it denied African--Americans and Hispanics equal protection of the law. Defendant, the New Jersey Attorney General, moved to dismiss the complaint for failure to state a claim, and said motion was granted. The interested parties then appealed.	power. As a result, the alleged that enforcement of the statute resulted in a denial of equal protection under the state Constitution. The appeals court disagreed. N.J. Const. art. II authorized the New Jersey Legislature to disenfranchise persons convicted of certain crimes from voting. Moreover, those convicts could not vote unless pardoned or unless otherwise restored by law to the right of suffrage. The statute also limited the period of disenfranchisement during a defendant's actual service on parole or probation. Thus, it clearly complied with this specific constitutional mandate. The judgment was affirmed.			
King v. City of Boston	United States District Court for the District of Massachusetts	2004 U.S. Dist. LEXIS 8421	May 13, 2004	Plaintiff inmate filed a motion for summary judgment in his action challenging the constitutionality of Mass. Gen. Laws ch. 51, § 1, which excluded incarcerated felons from voting while they were	The inmate was convicted of a felony and incarcerated. His application for an absentee ballot was denied on the ground that he was not qualified to register and vote under Mass. Gen. Laws ch. 51, § 1. The inmate argued that the statute was unconstitutional as it applied to him because it amounted to additional punishment for crimes he committed before the statute's enactment and thus violated his due process rights and the prohibition	No	N/A	No

008820

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				imprisoned.	against ex post facto laws and bills of attainder. The court held that the statute was regulatory and not punitive because rational choices were implicated in the statute's disenfranchisement of persons under guardianship, persons disqualified because of corrupt elections practices, persons under 18 years of age, as well as incarcerated felons. Specifically, incarcerated felons were disqualified during the period of their imprisonment when it would be difficult to identify their address and ensure the accuracy of their ballots. Therefore, the court concluded that Mass. Gen. Laws ch. 51, § 1 did not violate the inmate's constitutional rights. The court found the statute at issue to be constitutional and denied the inmate's motion for summary judgment.			
Southwest Voter Registration Educ. Project v. Shelley	United States District Court for the Central District of California	278 F. Supp. 2d 1131; 2003 U.S. Dist. LEXIS	August 15, 2003	Plaintiffs, several groups, brought suit alleging that the proposed use of "punch-card" balloting machines in the California	Plaintiffs claimed voters using punch-card machines would have a comparatively lesser chance of having their votes counted in violation of the Equal Protection Clause and the counties employing punch-card systems had greater minority	No	N/A	No

008821

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
		14413		election would violate the United States Constitution and Voting Rights Act. Plaintiffs moved for an order delaying that election, scheduled for October 7, 2003, until such time as it could be conducted without use of punch-card machines.	populations thereby disproportionately disenfranchising and/or diluting the votes on the basis of race, in violation of § 2 of the Voting Rights Act. While the court did not need to decide the res judicata issue at this juncture, there was ample reason to believe that plaintiffs would have had a difficult time overcoming it as they were seeking to establish the same constitutional violations alleged in prior litigation, but to secure an additional remedy. Plaintiffs failed to prove a likelihood of success on the merits with regard to both of their claims. Even if plaintiffs could show disparate treatment, such would not have amounted to illegal or unconstitutional treatment. The balance of hardships weighed heavily in favor of allowing the election to proceed. The public interests in avoiding wholesale disenfranchisement, and/or not plunging the State into a constitutional crisis, weighed heavily against enjoining the election. Plaintiffs' motion for preliminary injunction (consolidated with plaintiffs' ex parte application for temporary restraining			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Igartua—de la Rosa v. United States	United States Court of Appeals for the First Circuit	417 F.3d 145; 2005 U.S. App. LEXIS 15944	August 3, 2005	Plaintiff, a U.S. citizen residing in Puerto Rico, appealed from an order of the United States District Court for the District of Puerto Rico, that rejected his claim that he was deprived of the constitutional right to vote for President and Vice President of the United States, and was also violative of three treaty obligations of the United States.	order) was denied. The putative voter had brought the same claims twice before. The court pointed out that U.S. law granted to the citizens of states the right to vote for the slate of electors to represent that state. Although modern ballots omitted the names of the electors and listed only the candidates, and in form it appeared that the citizens were voting for President and Vice President directly, they were not, but were voting for electors. Puerto Rico was not a state, and had not been enfranchised as the District of Columbia had by the 23rd Amendment. The franchise for choosing electors was confined to "states" by the Constitution. The court declined to turn to foreign or treaty law as a source to reverse the political will of the country. The judgment of the district court was affirmed.	No	N/A	No
United States v. Rogelio Mejorada-Lopez	Alaska	05-CR-074	December 5, 2005	Mejorada-Lopez, a Mexican citizen, completed several voter registration applications to register to vote in Alaska and voted in		No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the 2000, 2002, and 2004 general elections. He was charged with three counts of voting by a non-citizen in violation of 18 U.S.C. section 611 and pled guilty. Mejrada-Lopez was sentenced to probation for one year.				
United States v. Shah	Colorado	1:04-CR-00458	March 1, 2005	Shah was indicted on two counts of providing false information concerning United States citizenship in order to register to vote in violation of 18 U.S.C. section 911 and 1015(f). Shah was convicted on both counts.		No	N/A	No
United States v. Mohsin Ali	Northern Florida	4:05-CR-47	January 17, 2006	A misdemeanor was filed against Ali charging him with voting by a non-		No	N/A	Yes-need information on the outcome of

008824

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				citizen of 18 U.S.C. section 611. Trial was set for January 17, 2006				the trial.
United States v. Chaudhary	Northern Florida	4:04-CR-00059	May 18, 2005	Chaudhary was indicted for misuse of a social security number in violation of 42 U.S.C. section 408 and for making a false claim of United States citizenship on a 2002 driver's license application in violation of 18 U.S.C. section 911. A superceding indictment was returned, charging Chaudhary with falsely claiming United States citizenship on a driver's license application and on the accompanying voter registration application. He was convicted of the false		No	N/A	No

008825

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
United States v. Velasquez	Southern Florida	1:03-CR-20233	September 9, 2003	<p>citizenship claim on his voter registration application.</p> <p>Velasquez, a former 1996 and 1998 candidate for the Florida legislature, was indicted on charges of misrepresenting United States citizenship in connection with voting and for making false statements to the Immigration and Naturalization Service, in violation of 18 U.S.C. section 911, 1015(f) and 1001. Velasquez was convicted on two counts of making false statements on his naturalization application to the INS concerning his voting history.</p>		No	N/A	No

008926

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
United States v. McKenzie; United States v. Francois; United States v. Exavier; United States v. Lloyd Palmer; United States v. Velrine Palmer; United states v. Shivdayal; United States v. Rickman; United States v. Knight; United States v. Sweeting; United States v. Lubin; United States v. Bennett; United States v. O'Neil; United States v. Torres-Perez; United States v. Phillip; United States v. Bain Knight	Southern Florida	0:04-CR-60160; 1:04-CR-20488; 0:04-CR-60161; 0:04-CR-60159; 0:04-CR-60162; 0:04-CR-60164; 1:04-CR-20491; 1:04-CR-20490; 1:04-CR-20489; 0:04-CR-60163; 1:04-CR-14048; 0:04-CR-60165; 2:04-CR-14046; 9:04-CR-80103; 2:04-CR-14047	July 15, 2004	Fifteen non-citizens were charged with voting in various elections beginning in 1998 in violation of 18 U.S.C. section 611. Four of the defendants were also charged with making false citizenship claims in violation of 18 U.S.C. sections 911 or 1015(f). Ten defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government.		No	N/A	No

008827

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
United States v. Brooks	Southern Illinois	3:03-CR-30201	February 12, 2004	East St. Louis election official Leander Brooks was indicted for submitting fraudulent ballots in the 2002 general election in violation of 42 U.S.C. section 1973i(c), 1973i(e), 1973gg-10(2)(B), and 18 U.S.C. sections 241 and 371. Brooks pled guilty to all charges.		No	N/A	No
United States v. Scott; United States v. Nichols; United States v. Terrance Stith; United States v. Sandra Stith; United States v. Powell, et al.	Southern Illinois	3:05-CR-30040; 3:05-CR-30041; 3:05-CR-30042; 3:05-CR-30043; 3:05-CR-30044	June 29, 2005	Four Democrat precinct committeemen in East St. Louis were charged with vote buying on the 2004 general election in violation of 42 U.S.C. section 1973i(c). All four pled guilty. Also indicted were four additional Democrat committeemen,		No	N/A	No

008828

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>Charles Powell, Jr., Jesse Lewis, Sheila Thomas, Kelvin Ellis, and one precinct worker, Yvette Johnson, on conspiracy and vote buying charges in violation of 18 U.S.C. section 371 and 42 U.S.C. section 1973i(c). All five defendants were convicted. Kelvin Ellis also pled guilty to one count of 18 U.S.C. section 1512(c)(2) relative to a scheme to kill one of the trial witnesses and two counts of 18 U.S.C. section 1503 relative to directing two other witnesses to refuse to testify before the grand jury.</p>				
United States v. McIntosh	Kansas	2:04-CR-20142	December 20, 2004	A felony information was filed against		No	N/A	No

008829

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
				<p>lawyer Leslie McIntosh for voting in both Wyandotte County, Kansas and Jackson County, Missouri, in the general elections of 2000 and 2002 in violation of 42 U.S.C. section 1973i(e). A superseding misdemeanor information was filed, charging McIntosh with causing the deprivation of constitutional rights in violation of 18 U.S.C. section 242, to which the defendant pled guilty.</p>				
<p>United States v. Conley; United States v. Slone; United States v. Madden; United</p>	<p>Eastern Kentucky</p>	<p>7:03-CR-00013; 7:03-CR-00014; 7:03-CR-</p>	<p>March 28, 2003 and April 24, 2003</p>	<p>Ten people were indicted on vote buying charges in connection with the 1998 primary</p>		<p>No</p>	<p>N/A</p>	<p>No</p>

008830

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
States v. Slone et al.; United States v. Calhoun; United States v. Johnson; United States v. Newsome, et al.		00015; 7:03-CR-00016; 7:03-CR-00017; 7:03-CR-00018; 7:03-CR-00019		election in Knott County, Kentucky, in violation of 42 U.S.C. section 1973i(c). Five of the defendants pled guilty, two were convicted, and three were acquitted.				
United States v. Hays, et al.	Eastern Kentucky	7:03-CR-00011	March 7, 2003	Ten defendants were indicted for conspiracy and vote buying for a local judge in Pike County, Kentucky, in the 2002 general election, in violation of 42 U.S.C. section 1973i(c) and 18 U.S.C. section 371. Five defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government.		No	N/A	No

008831

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
United States v. Turner, et al.	Eastern Kentucky	3:05-CR-00002	May 5, 2005	Three defendants were indicted for vote buying and mail fraud in connection with the 2000 elections in Knott, Letcher, Floyd, and Breathitt Counties, Kentucky, in violation of 42 U.S.C. section 1973i(c) and 18 U.S.C. section 341.		No	N/A	Yes-need update on case status.
United States v. Braud	Middle Louisiana	3:03-CR-00019	May 2, 2003	Tyrell Mathews Braud was indicted on three counts of making false declarations to a grand jury in connection with his 2002 fabrication of eleven voter registration applications, in violation of 18 U.S.C. section 1623. Braud pled guilty on all counts.		No	N/A	No
United States v.	Western	6:03-CR-	April 12,	St. Martinsville City		No	N/A	No

008832

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Thibodeaux	Louisiana	60055	2005	Councilwoman Pamela C. Thibodeaux was indicted on two counts of conspiring to submit false voter registration information, in violation of 18 U.S.C. section 371 and 42 U.S.C. section 1973i(c). She pled guilty to both charges.				
United States v. Scherzer; United States v. Goodrich; United States v. Jones; United States v. Martin	Western Missouri	4:04-CR-00401; 4:04-CR-00402; 4:05-CR-00257; 4:05-CR-00258	January 7, 2005; March 28, 2005; September 8, 2005; October 13, 2005	Two misdemeanor informations were filed charging Lorraine Goodrich and James Scherzer, Kansas residents who voted in the 2000 and 2002 general elections on both Johnson County, Kansas and in Kansas City, Missouri. The informations charged deprivation of a		No	N/A	No

008833

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				constitutional right by causing spurious ballots, in violation of 18 U.S.C. sections 242 and 2. Both pled guilty. Additionally, similar misdemeanor informations were filed against Tammy J. Martin, who voted in both Independence and Kansas City, Missouri in the 2004 general election and Brandon E. Jones, who voted both in Raytown and Kansas City, Missouri in the 2004 general election. Both pled guilty.				
United States v. Raymond; United States v. McGee; United States v. Tobin; United States v. Hansen	New Hampshire	04-CR-00141; 04-CR-00146; 04-CR-00216; 04-CR-00054	December 15, 2005	Two informations were filed charging Allen Raymond, former president of a Virginia-based political consulting firm called GOP Marketplace, and		No	N/A	No

008834

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>Charles McGee, former executive director of the New Hampshire State Republican Committee, with conspiracy to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. section 371 and 47 U.S.C. section 223. The charges stem from a scheme to block the phone lines used by two Manchester organizations to arrange drives to the polls during the 2002 general election. Both pled guilty. James Tobin, former New England Regional Director of the Republican National Committee, was indicted on charges of conspiring</p>				

008835

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				<p>to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. section 371 and 47 U.S.C. section 223. An information was filed charging Shaun Hansen, the principal of an Idaho telemarketing firm called MILO Enterprises which placed the harassing calls, with conspiracy and aiding and abetting telephone harassment, in violation of 18 U.S.C. section 371 and 2 and 47 U.S.C. section 223. The information against Hansen was dismissed upon motion of the government. A superseding</p>				

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>indictment was returned against Tobin charging conspiracy to impede the constitutional right to vote for federal candidates, in violation of 18 U.S.C. section 241 and conspiracy to make harassing telephone calls in violation of 47 U.S.C. section 223. Tobin was convicted of one count of conspiracy to commit telephone harassment and one count of aiding and abetting of telephone harassment.</p>				
United States v. Workman	Western North Carolina	1:03-CR-00038	June 30, 2003	<p>A ten-count indictment was returned charging Joshua Workman, a Canadian citizen, with voting and related offenses in</p>		No	N/A	No

008837

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the 200 and 2002 primary and general elections in Avery County, North Carolina, in violation of 18 U.S.C. sections 611, 911, 1001, and 1015(f). Workman pled guilty to providing false information to election officials and to a federal agency.				
United States v. Shatley, et al.	Western North Carolina	5:03-CR-00035	May 14, 2004	A nine-count indictment was returned charging Wayne Shatley, Anita Moore, Valerie Moore, Carlos "Sunshine" Hood and Ross "Toogie" Banner with conspiracy and vote buying in the Caldwell County 2002 general election, in violation of 42 U.S.C. section 1973i(c) and 18		No	N/A	No

008838

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				U.S.C. section 371. Anita and Valerie Moore pled guilty. Shatley, Hood, and Banner were all convicted.				
United States v. Vargas	South Dakota	05-CR-50085	December 22, 2005	An indictment was filed against Rudolph Vargas, for voting more than once at Pine Ridge in the 2002 general election in violation of 42 U.S.C. section 1973i(e). Vargas pled guilty.		No	N/A	No
United States v. Wells; United States v. Mendez; United States v. Porter; United States v. Hrutkay; United States v. Porter; United States v. Stapleton; United States v. Thomas E. Esposito; United	Southern West Virginia	02-CR-00234; 2:04-CR-00101; 2:04-CR-00145; 2:04-CR-00149; 2:04-CR-00173; 2:05-CR-00002; 05-CR-	July 22, 2003; July 19, 2004; December 7, 2004; January 7, 2005; March 21, 2005; October 11, 2005; December 13, 2005	Danny Ray Wells, Logan County, West Virginia, magistrate, was indicted and charged with violating 18 U.S.C. section 1962. Wells was found guilty. A felony indictment was filed against Logan County sheriff Johnny Mendez for conspiracy to		No	N/A	No

008839

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
States v. Nagy; United States v. Adkins; United States v. Harvey		00019; 05-CR-00148; 05-CR-00161		defraud the United States in violation 18 U.S.C section 371. Mendez pled guilty. An information was filed charging former Logan County police chief Alvin Ray Porter, Jr., with making expenditures to influence voting in violation of 18 U.S.C. section 597. Porter pled guilty. Logan County attorney Mark Oliver Hrutkay was charged by information with mail fraud in violation of 18 U.S.C. section 1341. Hrutkay pled guilty. Earnest Stapleton, commander of the local VFW, was charged by information with mail fraud. He pled guilty. An information was filed				

008840

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				<p>charging Thomas E. Esposito, a former mayor of the City of Logan, with concealing the commission of a felony, in violation of 18 U.S.C. section 4. Esposito pled guilty. John Wesley Nagy, Logan County Court marshal, pled guilty to making false statements to a federal agent, a violation of 18 U.S.C. section 1001. An information charging Glen Dale Adkins, county clerk of Logan County, with accepting payment for voting, in violation of 18 U.S.C. section 1973i(c). Adkins pled guilty. Perry French Harvey, Jr., a retired UMW official, pled guilty</p>				

008841

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
United States v. Adkins, et al.	Southern West - Virginia	2:04-CR-00162	December 28 & 30, 2005	<p>to involvement in a conspiracy to buy votes.</p> <p>Jackie Adkins was indicted for vote buying in Lincoln County, West Virginia, in violation of 42 U.S.C. section 1973i(c). A superceding indictment added Wandell "Rocky" Adkins to the indictment and charged both defendants with conspiracy to buy votes in violation of 18 U.S.C. section 371 and vote buying. A second superseding indictment was returned which added three additional defendants, Gegory Brent Stowers,</p>		No	N/A	No

008842

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>Clifford Odell "Groundhog" Vance, and Toney "Zeke" Dingess, to the conspiracy and vote buying indictment. Charges were later dismissed against Jackie Adkins. A third superseding indictment was returned adding two additional defendants, Jerry Allen Weaver and Ralph Dale Adkins. A superseding information was filed charging Vance with expenditures to influence voting, in violation of 18 U.S.C. section 597. Vance pled guilty. Superseding informations were filed against Stowers and Dingess for expenditures to influence voting, in</p>				

008843

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				violation of 18 U.S.C. section 597. Both defendants pled guilty. Weaver also pled guilty. Superseding informations were filed against Ralph and Wandell Adkins for expenditures to influence voting, in violation of 18 U.S.C. section 597. Both defendants pled guilty.				
United States v. Davis; United States v. Byas; United States v. Ocasio; United States v. Prude; United States v. Sanders; United States v. Alicea; United States v. Brooks; United States v. Hamilton; United States v.	Eastern Wisconsin	2:05-MJ-00454; 2:05-MJ-00455; 2:05-CR-00161; 2:05-CR-00162; 2:05-CR-00163; 2:05-CR-00168; 2:05-CR-00170;	September 16, 2005; September 21, 2005; October 5, 2005; October 26, 2005; October 31, 2005, November 10, 2005	Criminal complaints were issued against Brian L. Davis and Theresa J. Byas charging them with double voting, in violation of 42 U.S.C. section 1973i(e). Indictments were filed against convicted felons Milo R. Ocasio and Kimberly Prude, charging them with		No	N/A	Need updated status on Gooden and the Anderson, Cox, Edwards, and Little cases.

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
Little; United States v. Swift; United States v. Anderson; United States v. Cox; United States v. Edwards; United States v. Gooden		2:05-CR-00171; 2:05-CR-00172; 2:05-CR-00177; 2:05-CR-00207; 2:05-CR-00209; 2:05-CR-00211; 2:05-CR-00212		falsely certifying that they were eligible to vote, in violation of 42 U.S.C. section 1973gg-10(2)(B), and against Enrique C. Sanders, charging him with multiple voting, in violation of 42 U.S.C. section 1973i(e). Five more indictments were later returned charging Cynthia C. Alicea with multiple voting in violation of 42 U.S.C. section 1973i(e) and convicted felons Deshawn B. Brooks, Alexander T. Hamilton, Derek G. Little, and Eric L. Swift with falsely certifying that they were eligible to vote in violation of 42 U.S.C. section 1973gg-10(2)(B). Indictments were				

008845

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>filed against Davis and Byas charging them with double voting. Four more indictments were returned charging convicted felons Ethel M. Anderson, Jiyto L. Cox, Correan F. Edwards, and Joseph J. Gooden with falsely certifying that they were eligible to vote. Ocasio and Hamilton pled guilty. Prude was found guilty. A mistrial was declared in the Sanders case. Brooks was acquitted. Byas signed a plea agreement agreeing to plead to a misdemeanor 18 U.S.C. section 242 charge. Swift moved to change his plea. Davis was found incompetent to stand</p>				

008846

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>trial so the government dismissed the case. Gooden is a fugitive. Alicea was acquitted. Four cases are pending ---Anderson, Cox, Edwards, and Little.</p>				
<p>Am. Ass'n of People with Disabilities v. Shelley</p>	<p>United States District Court for the Central District of California</p>	<p>324 F. Supp. 2d 1120; 2004 U.S. Dist. LEXIS 12587</p>	<p>July 6, 2004</p>	<p>Plaintiffs, disabled voters and organizations representing those voters, sought to enjoin the directives of defendant California Secretary of State, which decertified and withdrew approval of the use of certain direct recording electronic voting systems. One voter applied for a temporary restraining order, or, in the alternative, a preliminary</p>	<p>The voters urged the invalidation of the Secretary's directives because, allegedly, their effect was to deprive the voters of the opportunity to vote using touch--screen technology. Although it was not disputed that some disabled persons would be unable to vote independently and in private without the use of DREs, it was clear that they would not be deprived of their fundamental right to vote. The Americans with Disabilities Act did not require accommodation that would enable disabled persons to vote in a manner that was comparable in every way with the voting rights enjoyed by persons without disabilities. Rather, it mandated that voting programs be made accessible. Defendant's decision to suspend the use of DREs pending</p>	<p>No</p>	<p>N/A</p>	<p>No</p>

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				injunction.	improvement in their reliability and security of the devices was a rational one, designed to protect the voting rights of the state's citizens. The evidence did not support the conclusion that the elimination of the DREs would have a discriminatory effect on the visually or manually impaired. Thus, the voters showed little likelihood of success on the merits. The individual's request for a temporary restraining order, or, in the alternative, a preliminary injunction, was denied.			
Am. Ass'n of People with Disabilities v. Hood	United States District Court for the Middle District of Florida	310 F. Supp. 2d 1226; 2004 U.S. Dist. LEXIS 5615	March 24, 2004	Plaintiffs, disabled voters, and a national organization, sued defendants, the Florida Secretary of State, the Director of the Division of Elections of the Florida Department of State, and a county supervisor of elections, under Title II of the Americans With Disabilities Act and Section 504 of	The voters were visually or manually impaired. The optical scan voting system purchased by the county at issue was not readily accessible to visually or manually impaired voters. The voters were unable to vote using the system without third-party assistance. If it was feasible for the county to purchase a readily accessible system, then the voters' rights under the ADA and the RA were violated. The court found that the manually impaired voter's rights were violated. To the extent "jelly switches" and "sip and puff" devices needed to be	No	N/A	No

008848

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				<p>the Rehabilitation Act of 1973. Summary judgment was granted for the Secretary and the Director as to visually impaired voters.</p>	<p>attached to a touch screen machine for it to be accessible, it was not feasible for the supervisor to provide such a system, since no such system had been certified at the time of the county's purchase. 28 C.F.R. § 35.160 did not require that visually or manually impaired voters be able to vote in the same or similar manner as non-disabled voters. Visually and manually impaired voters had to be afforded an equal opportunity to participate in and enjoy the benefits of voting. The voters' "generic" discrimination claim was coterminous with their claim under 28 C.F.R. § 35.151. A declaratory judgment was entered against the supervisor to the extent another voting system would have permitted unassisted voting. The supervisor was directed to have some voting machines permitting visually impaired voters to vote alone. The supervisor was directed to procure another system if the county's system was not certified and/or did not permit mouth stick voting. The Secretary and Director were granted judgment against the voters.</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Troiano v. Lepore	United States District Court for the Southern District of Florida	2003 U.S. Dist. LEXIS 25850	November 3, 2003	Plaintiffs, disabled voters, sued defendant a state county supervisor of elections alleging discrimination pursuant to the Americans With Disability Act, 42 U.S.C.S. § 12132 et seq., § 504 of the Rehabilitation Act, 29 U.S.C.S. § 794 et seq., and declaratory relief for the discrimination. Both sides moved for summary judgment.	The complaint alleged that after the 2000 elections Palm Beach County purchased a certain number of sophisticated voting machines called the "Sequoia." According to the voters, even though such accessible machines were available, the supervisor decided not to place such accessible machines in each precinct because it would slow things down too much. The court found that the voters lacked standing because they failed to show that they had suffered an injury in fact. The voters also failed to show a likely threat of a future injury because there was no reasonable grounds to believe that the audio components of the voting machines would not be provided in the future. The voters also failed to state an injury that could be redressed by a favorable decision, because the supervisor was already using the Sequoia machines and had already trained poll workers on the use of the machines. Finally, the action was moot because the Sequoia machines had been provided and there was no reasonable expectation that the machines would not have audio components available in the future.	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					The supervisor's motion for summary judgment was granted. The voters' motion for summary judgment was denied.			
Troiano v. Supervisor of Elections	United States Court of Appeals for the Eleventh Circuit	382 F.3d 1276; 2004 U.S. App. LEXIS 18497	September 1, 2004	Plaintiff visually impaired registered voters sued defendant county election supervisor, alleging that the failure to make available audio components in voting booths to assist persons who were blind or visually impaired violated state and federal law. The United States District Court for the Southern District of Florida entered summary judgment in favor of the election supervisor. The voters appealed.	The district court granted the election supervisor summary judgment on the grounds that the voters did not have standing to assert their claims and the claims were moot. The appellate court agreed that the case was moot because the election supervisor had furnished the requested audio components and those components were to be available in all of the county's voting precincts in upcoming elections. Specifically, the election supervisor had ceased the allegedly illegal practice of limiting access to the audio components prior to receiving notice of the litigation. Moreover, since making the decision to use audio components in every election, the election supervisor had consistently followed that policy and taken actions to implement it even prior to the litigation. Thus, the appellate court could discern no hint that she had any intention of removing the accessible voting machines in the future. Therefore, the voters' claims	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					were moot, and the district court's dismissal was affirmed for lack of subject matter jurisdiction. The decision was affirmed.			
Am. Ass'n of People with Disabilities v. Smith	United States District Court for the Middle District of Florida	227 F. Supp. 2d 1276; 2002 U.S. Dist. LEXIS 21373	October 16, 2002	Plaintiff organization of people with disabilities and certain visually and manually impaired voters filed an action against defendant state and local election officials and members of a city council, claiming violation of the Americans with Disabilities Act, 42 U.S.C.S. § 12101 et seq., and the Rehabilitation Act of 1973, and Fla. Const. art. VI, § 1. Defendants filed motions to dismiss.	Individual plaintiffs were unable to vote unassisted with the equipment currently used in the county or the equipment the county had recently purchased. In order to vote, the impaired individuals relied on the assistance of third parties. The court held that it could not say that plaintiffs would be unable to prove any state of facts that would satisfy the ripeness and standing requirements. The issue of whether several Florida statutory sections were violative of the Florida Constitution were so intertwined with the federal claims that to decline supplemental jurisdiction be an abuse of discretion. Those statutes which provided for assistance in voting did not violate Fla. Const. art. VI, § 1. Because plaintiffs may be able to prove that visually and manually impaired voters were being denied meaningful access to the service, program, or activity, the court could not say with certainty that they would	No	N/A	No

008852

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (If Of Note)	Other Notes	Should the Case be Researched Further
					not be entitled to relief under any state of facts which could be proved in support of their claims. Defendant council members were entitled to absolute legislative immunity. The state officials' motion to dismiss was granted in part such that the counts were dismissed with prejudice to the extent plaintiffs asserted that they had been excluded from or denied the benefits of a program of direct and secret voting and in part was dismissed with leave to amend. The local officials motion to dismiss was granted in part such that all counts against the city council members were dismissed.			
Jenkins v. Williamson-Butler	Court of Appeal of Louisiana, Fourth Circuit	883 So. 2d 537; 2004 La. App. LEXIS 2433	October 8, 2004	Petitioner, a candidate for a parish juvenile court judgeship, failed to qualify for a runoff election. She filed suit against defendant, the clerk of criminal court for the parish seeking a new election, based on grounds of substantial	The trial court found that the voting machines were not put into service until two, four, and, in many instances, eight hours after the statutorily mandated starting hour which constituted serious irregularities so as to deprive voters from freely expressing their will. It was impossible to determine the number of voters that were affected by the late start up or late arrival of voting machines, making it impossible to determine the result. The appellate court agreed that the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				irregularities. The district court ruled in favor of the candidate and ordered the holding of a restricted citywide election. The clerk appealed.	irregularities were so serious that the trial court's voiding the election and calling a new election was the proper remedy. Judgment affirmed.			
Hester v. McKeithen	Court of Appeal of Louisiana, Fourth Circuit	882 So. 2d 1291; 2004 La. App. LEXIS 2429	October 8, 2004	Petitioner, school board candidate, filed suit against defendants, Louisiana Secretary of State and district court clerk, contesting the school board election results. The trial court rendered judgment against the candidate, finding no basis for the election to be declared void. The candidate appealed.	The candidate argued that the trial court erred in not setting aside the election, even after acknowledging in its reasons for judgment numerous irregularities with the election process. The appellate court ruled that had the irregularities not occurred the outcome would have been exactly the same. Judgment affirmed.	No	N/A	No
In re Election Contest of Democratic Primary Election	Supreme Court of Ohio	88 Ohio St. 3d 258; 2000	March 29, 2000	Appellant sought review of the judgment of the court of common	Appellant contended that an election irregularity occurred when the board failed to meet and act by majority vote on another candidate's withdrawal,	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Held May 4, 1999		Ohio 325; 725 N.E.2d 271; 2000 Ohio LEXIS 607		pleas denying his election contest challenging an opponent's nomination for election irregularity.	instead permitting its employees to make decisions. Appellant had to prove by clear and convincing evidence that one or more election irregularities occurred and it affected enough votes to change or make uncertain the result of the election. Judgment affirmed. The appellant did not establish election irregularity by the board's actions on the candidate's withdrawal, the board acted diligently and exercised its discretion in keeping the candidate's name on the ballot and notifying electors of his withdrawal.			
In re Election Contest As to Watertown Special Referendum Election	Supreme Court of South Dakota	2001 SD 62; 628 N.W.2d 336; 2001 S.D. LEXIS 66	May 23, 2001	Appellant sought review of the judgment of the circuit court declaring a local election valid and declining to order a new election.	The burden was on appellants to show not only that voting irregularities occurred, but also show that those irregularities were so egregious that the will of the voters was suppressed. Appellants did not meet their burden, as mere inconvenience or delay in voting was not enough to overturn the election. Judgment affirmed.	No	N/A	No
Jones v. Jessup	Supreme Court of Georgia	279 Ga. 531; 615 S.E.2d 529; 2005 Ga. LEXIS	June 30, 2005	Defendant incumbent appealed a judgment by the trial court that invalidated an election for the	After the candidate lost the sheriff's election to the incumbent, he contested the election, asserting that there were sufficient irregularities to place in doubt the election results. The state supreme court held that the candidate	No	N/A	No

008855

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (If of Note)	Other Notes	Should the Case be Researched Further
		447		position of sheriff and ordered that a new election be held based on plaintiff candidate's election contest.	failed to prove substantial error in the votes cast by the witnesses adduced at the hearing who voted at the election. Although the candidate's evidence reflected the presence of some irregularities, not every irregularity invalidated the vote. The absentee ballots were only to be rejected where the electors failed to furnish required information. Because the ballots cast by the witnesses substantially complied with all of the essential requirements of the form, the trial court erred by finding that they should not have been considered. The candidate failed to establish substantial error in the votes. Judgment reversed.			
Toliver v. Thompson	Supreme Court of Oklahoma	2000 OK 98; 17 P.3d 464; 2000 Okla. LEXIS 101	December 21, 2000	Petitioner challenged an order of the district court denying his motion to compel a recount of votes from an election.	The court held a recount of votes cast in an election could occur when the ballots had been preserved in the manner prescribed by statute. The trial court noted when the ballots had not been preserved in such a manner, no recount would be conducted. The court further noted a petition alleging irregularities in an election could be based upon an allegation that it was impossible to determine with mathematical certainty which	No	N/A	No

008856

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
					<p>candidate was entitled to be issued a certificate of election. The Oklahoma supreme court held petitioner failed to show that the actual votes counted in the election were tainted with irregularity, and similarly failed to show a statutory right to a new election based upon a failure to preserve the ballots. Judgment affirmed.</p>			
Adkins v. Huckabay	Supreme Court of Louisiana	755 So. 2d 206; 2000 La. LEXIS 504	February 25, 2000	<p>Plaintiff candidate challenged judgment of court of appeal, second circuit, which reversed the lower court's judgment and declared defendant candidate winner of a runoff election for sheriff.</p>	<p>The issue presented for the appellate court's determination was whether the absentee voting irregularities plaintiff candidate complained of rendered it impossible to determine the outcome of the election for sheriff. The Louisiana supreme court concluded that the lower court had applied the correct standard, substantial compliance, to the election irregularities, but had erred in its application by concluding that the contested absentee ballots substantially complied with the statutory requirements. The supreme court found that in applying substantial compliance to five of the ballot irregularities, the trial court correctly vacated the general election and set it aside because those absentee ballots should have been disqualified. Because of the</p>	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (If of Note)	Other Notes	Should the Case be Researched Further
					constitutional guarantee to secrecy of the ballot and the fact that the margin of victory in the runoff election was three votes, it was impossible to determine the result of the runoff election. Thus, the supreme court ordered a new general election. <i>Judgment of the court of appeals reversed.</i>			
In re Gray-- Sadler	Supreme Court of New Jersey	164 N.J. 468; 753 A.2d 1101; 2000 N.J. LEXIS 668	June 30, 2000	Appellants, write--in candidates for the offices of mayor and borough council, appealed the judgment of the superior court, appellate division reversing the trial court's decision to set aside the election results for those offices due to irregularities related to the write--in instructions and defective voting machines.	The New Jersey supreme court held that the votes that were rejected by election officials did not result from the voters' own errors, but from the election officials' noncompliance with statutory requirements. In other words, the voters were provided with patently inadequate instructions and defective voting machines. Moreover, appellants met the statutory requirement for successfully contesting the election results by showing that enough qualified voters were denied the right to cast write--in votes as to affect the outcome of the election. Judgment reversed and the state trial court's decision reinstated.	No	N/A	No
Goodwin v. St. Thomas--St.	Territorial Court of the Virgin	43 V.I. 89; 2000	December 13, 2000	Plaintiff political candidate alleged	Plaintiff alleged that defendants counted unlawful absentee ballots that	No	N/A	No

008358

Name of Case	Court	Citation	Date	Basis	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
John Bd. of Elections	Islands	V.I. LEXIS 15		that certain general election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.	lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The territorial court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper.			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
Johnson v. Lopez--Torres	Supreme Court of New York, Appellate Division, Second Department	2005 NY Slip Op 7825; 2005 N.Y. App. Div. LEXIS 11276	October 21, 2005	In a proceeding for a re--canvass of certain affidavit ballots cast in the Democratic Party primary election for the public office of surrogate, the supreme court denied appellant candidate's petition requesting the same and declared appellee opponent the winner of that election.	Finding that the candidate had waived her right to challenge the affidavit ballots and had not sufficiently established her claim of irregularities to warrant a hearing, the trial court denied her petition and declared the opponent the winner of the primary. However, on appeal, the appellate division held that no waiver occurred. Moreover, because hundreds of apparently otherwise eligible voters failed to fill in their party enrollment and/or prior address, it could be reasonably inferred that these voters were misled thereby into omitting the required information. Finally, the candidate failed to make a sufficient showing of voting irregularities in the machine vote to require a hearing on that issue. Judgment reversed.			
Ex parte Avery	Supreme Court of Alabama	843 So. 2d 137; 2002 Ala. LEXIS 239	August 23, 2002	Petitioner probate judge moved for a writ of mandamus directing a circuit judge to vacate his order requiring the probate judge to transfer all election materials to the	The issuance of a writ of mandamus was appropriate. The district attorney had a right to the election materials because he was conducting a criminal investigation of the last election. Furthermore, the circuit judge had no jurisdiction or authority to issue an order directing that the election materials be given to the clerk. The	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>circuit clerk and holding him in contempt for failing to do so. The probate judge also requested that said material be turned over to the district attorney, pursuant to an outstanding subpoena.</p>	<p>district attorney received several claims of irregularities in the election, some of which could constitute voter fraud. Petition granted and writ issued.</p>			
<p>Harpole v. Kemper County Democratic Exec. Comm.</p>	<p>Supreme Court of Mississippi</p>	<p>908 So. 2d 129; 2005 Miss. LEXIS 463</p>	<p>August 4, 2005</p>	<p>After his loss in a primary election for the office of sheriff, appellant candidate sued appellees, a political party's executive committee and the incumbent sheriff, alleging irregularities in the election. The circuit court dismissed the candidate's petition for judicial review with prejudice. He appealed.</p>	<p>The candidate alleged the sheriff had his deputies transport prisoners to the polls, felons voted, and the absentee voter law was breached. The committee agreed with the last contention and threw out the absentee ballots (seven percent of votes cast); after a recount, the sheriff still prevailed. The trial court dismissed the case due to alleged defects in the petition; in the alternative, it held that the candidate failed to sufficiently allege violations and irregularities in the election. The supreme court held that the petition was not defective. Disqualification of seven percent of the total votes was not substantial enough so as to cause the will of the voters to</p>	<p>No</p>	<p>N/A</p>	<p>No</p>

008861

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				levels.	That argument also failed. Defendant next argued that the district court erred by applying the vulnerable--victim enhancement under U.S. Sentencing Guidelines Manual § 3A1.1(b)(1). He acknowledged that he knew the mentally ill people who sold their votes were vulnerable, but maintained they were not victims because they received \$50 for their votes. The vote sellers were not victims for Guidelines purposes. The district court erred. Defendant's appeal of conviction was dismissed. Defendant's sentence was vacated, and the case was remanded for resentencing.			
United States v. Sloe	United States Court of Appeals for the Sixth Circuit	411 F.3d 643; 2005 U.S. App. LEXIS 10137	June 3, 2005	Defendant pled guilty to vote buying in a federal election. The United States District Court for the Eastern District of Kentucky sentenced defendant to 10 months in custody and recommended that the sentence be served at an institution that could	Defendant offered to pay voters for voting in a primary election. Defendant claimed that the vote buying statute did not apply to him because his conduct related solely to a candidate for a county office. Alternatively, defendant asserted that the statute was unconstitutional because it exceeded Congress' enumerated powers. Finally, defendant argued that the district court erred when it failed to consider his medical condition as a ground for a downward departure at sentencing. The	No	N/A	No

008863

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				accommodate defendant's medical needs. Defendant appealed his conviction and sentence.	appellate court found that the vote buying statute applied to all elections in which a federal candidate was on the ballot, and the government need not prove that defendant intended to affect the federal component of the election by his corrupt practices. The facts admitted by defendant at his guilty-plea hearing established all of the essential elements of an offense. The Elections Clause and the Necessary and Proper Clause combined to provide Congress with the power to regulate mixed federal and state elections even when federal candidates were running unopposed. There was no error in the district court's decision on departure under U.S. Sentencing Guidelines Manual § 5H1.4. Defendant's conviction and sentence were affirmed.			
United States v. Smith	United States Court of Appeals for the Sixth Circuit	139 Fed. Appx. 681; 2005 U.S. App. LEXIS 14855	July 18, 2005	Defendants were convicted of vote buying and conspiracy to buy votes. The United States District Court for the Eastern District of Kentucky entered judgment on	One of the defendants was a state representative who decided to run for an elected position. Defendants worked together and with others to buy votes. During defendants' trial, in addition to testimony regarding vote buying, evidence was introduced that two witnesses had been threatened. The appellate court found that defendants	No	N/A	No

008864

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>the jury verdict and sentenced defendants. Defendants appealed.</p>	<p>failed to show evidence of prejudice with regard to denial of the motion for severance. Threat evidence was not excludable under Fed. R. Evid. 404(b) because it was admissible to show consciousness of guilt without any inference as to the character of defendants. Admission of witnesses' testimony was proper because each witness testified that he or she was approached by a member of the conspiracy and offered money for his or her vote. The remaining incarcerated defendant's challenges to his sentence had merit because individuals who sold their votes were not "victims" for the purposes of U.S. Sentencing Guidelines Manual § 3 A1.1. Furthermore, application of U.S. Sentencing Guidelines Manual § 3B1.1(b) violated defendant's Sixth Amendment rights because it was based on facts that defendant did not admit or prove to the jury beyond a reasonable doubt. Defendants' convictions were affirmed. The remaining incarcerated defendant's sentence was vacated and his case was remanded for resentencing in accordance with Booker.</p>			

008865

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
Nugent v. Phelps	Court of Appeal of Louisiana, Second Circuit	816 So. 2d 349; 2002 La. App. LEXIS 1138	April 23, 2002	Plaintiff incumbent police chief sued defendant challenger, the winning candidate, to have the election nullified and a new election held based on numerous irregularities and unlawful activities by the challenger and his supporters. The challenger won the election by a margin of four votes. At the end of the incumbent's case, the district court for the dismissed his suit. The incumbent appealed.	The incumbent argued that: (1) the number of persons who were bribed for their votes by the challenger's worker was sufficient to change the outcome of the election; (2) the trial judge failed to inform potential witnesses that they could be given immunity from prosecution for bribery of voters if they came forth with truthful testimony; (3) the votes of three of his ardent supporters should have been counted because they were incarcerated for the sole purpose of keeping them from campaigning and voting; and (4) the district attorney, a strong supporter of the challenger, abused his power when he subpoenaed the incumbent to appear before the grand jury a week preceding the election. The appellate court held no more than two votes would be subtracted, a difference that would be insufficient to change the election result or make it impossible to determine. The appellate court found the trial judge read the immunity portion of the statute to the potential witnesses. The appellate court found the arrests of the three supporters were the result of grand jury indictments, and there was no manifest error in	No	N/A	No

008866

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					holding that the incumbent failed to prove a scheme by the district attorney. The judgment of the trial court was affirmed.			
Eason v. State	Court of Appeals of Mississippi	2005 Miss. App. LEXIS 1017	December 13, 2005	Defendant appealed a decision of circuit court convicting him of one count of conspiracy to commit voter fraud and eight counts of voter fraud.	Defendant was helping with his cousin's campaign in a run-off election for county supervisor. Together, they drove around town, picking up various people who were either at congregating spots or their homes. Defendant would drive the voters to the clerk's office where they would vote by absentee ballot and defendant would give them beer or money. Defendant claimed he was entitled to a mistrial because the prosecutor advanced an impermissible "sending the message" argument. The court held that it was precluded from reviewing the entire context in which the argument arose because, while the prosecutor's closing argument was in the record, the defense counsel's closing argument was not. Also, because the prosecutor's statement was incomplete due to defense counsel's objection, the court could not say that the statement made it impossible for defendant to receive a fair trial. Furthermore, the trial judge did not	No	N/A	No

008867

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					abuse his discretion when he did not allow defendant to ask the individual whether she wanted to see defendant go to prison because the individual's potential bias was shown by the individual's testimony that she expected the prosecution to recommend her sentence. The court affirmed defendant's conviction.			
United States v. Turner	United States District Court for the Eastern District of Kentucky	2005 U.S. Dist. LEXIS 31709	November 30, 2005	Defendants were charged with committing mail fraud and conspiracy to commit mail fraud and vote--buying. First defendant filed a motion to recuse. Second defendant's motion to join the motion to recuse was granted. First defendant moved to compel the Government to grant testimonial use immunity to second defendant and moved to sever	Defendants argued that recusal was mandated by 28 U.S.C.S. § 455(a) and (b)(1). The court found no merit in defendants' arguments. The fact that the judge's husband was the commissioner of the Kentucky Department of Environmental Protection, a position to which he was appointed by the Republican Governor, was not relevant. The judge's husband was neither a party nor a witness. The court further concluded that no reasonable person could find that the judge's spouse had any direct interest in the instant action. As for issue of money donated by the judge's husband to Republican opponents of first defendant, the court could not discern any reason why such facts warranted recusal. First defendant asserted that	No	N/A	No

008868

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Note	Should the Case be Researched further
				defendants.	second defendant should have been granted use immunity based on a belief that second defendant would testify that first defendant did not agree to, possess knowledge of, engage in, or otherwise participate in any of the illegal activity alleged in the indictment. The court found the summary of expected testimony to be too general to grant immunity. In addition, it was far from clear whether the court had the power to grant testimonial use immunity to second defendant. Defendants' motion to recuse was denied. First defendant's motions to compel and to sever were denied.			
Ways v. Shively	Supreme Court of Nebraska	264 Neb. 250; 646 N.W.2d 621; 2002 Neb. LEXIS 158	July 5, 2002	Appellant felon filed a writ of mandamus, which sought to compel appellee Election Commissioner of Lancaster County, Nebraska, to permit him to register to vote. The District Court for Lancaster County denied the	The felon was discharged from the Nebraska State Penitentiary in June 1998 after completing his sentences for the crimes of pandering, carrying a concealed weapon and attempting to possess a controlled substance. The commissioner asserted that as a result of the felon's conviction, the sentence for which had neither been reversed nor annulled, he had lost his right to vote. The commissioner contended that the only method by which the felon's	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				felon's petition for writ of mandamus and dismissed the petition. The felon appealed.	right to vote could be restored was through a warrant of discharge issued by the Nebraska Board of Pardons---a warrant of discharge had not been issued. The supreme court ruled that the certificate of discharge issued to the felon upon his release did not restore his right to vote. The supreme court ruled that as a matter of law, the specific right to vote was not restored to the felon upon his discharge from incarceration at the completion of his sentences. The judgment was affirmed.			
Fischer v. Governor	Supreme Court of New Hampshire	145 N.H. 28; 749 A.2d 321; 2000 N.H. LEXIS 16	March 24, 2000	Appellant State of New Hampshire challenged a ruling of the superior court that the felon disenfranchisement statutes violate N.H. Const. pt. I, Art. 11.	Appellee was incarcerated at the New Hampshire State Prison on felony convictions. When he requested an absentee ballot to vote from a city clerk, the request was denied. The clerk sent him a copy of N.H. Rev. Stat. Ann. § 607(A)(2) (1986), which prohibits a felon from voting "from the time of his sentence until his final discharge." The trial court declared the disenfranchisement statutes unconstitutional and ordered local election officials to allow the plaintiff to vote. Appellant State of New Hampshire challenged this ruling. The central issue was whether the felon	No	N/A	No

008870

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>disenfranchisement statutes violated N.H. Const. pt. I, art. 11. After a review of the article, its constitutional history, and legislation pertinent to the right of felons to vote, the court concluded that the legislature retained the authority under the article to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority, and reversed. Judgment reversed because the court concluded that the legislature retained its authority under the New Hampshire Constitution to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority.</p>			
Mixon v. Commonwealth	Commonwealth Court of Pennsylvania	759 A.2d 442; 2000 Pa. Commw. LEXIS 534	September 18, 2000	Respondents filed objections to petitioners' complaint seeking declaratory relief as to the unconstitutionality of the Pennsylvania Election Code, 25 Pa. Cons. Stat. §§	Petitioner convicted felons were presently or had formerly been confined in state prison. Petitioner elector was currently registered to vote in respondent state. Petitioners filed a complaint against respondent state seeking declaratory relief challenging as unconstitutional, state election and voting laws that excluded confined felons from the definition of qualified	No	N/A	No

008871

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				2600 -- 3591, and the Pennsylvania Voter Registration Act, 25 Pa. Cons. Stat. §§ 961.101--961.5109, regarding felon voting rights.	absentee electors and that barred a felon who had been released from a penal institution for less than five years from registering to vote. Respondents filed objections to petitioners' complaint. The court sustained respondents' objection that incarcerated felons were not unconstitutionally deprived of qualified absentee elector status because respondent state had broad power to determine the conditions under which suffrage could be exercised. However, petitioner elector had no standing and the court overruled objection as to deprivation of ex--felon voting rights. The court sustained respondents' objection since incarcerated felons were not unconstitutionally deprived of qualified absentee elector status and petitioner elector had no standing, but objection that ex--incarcerated felons' voting rights were deprived was overruled since status penalized them.			
NAACP Philadelphia Branch v. Ridge	United States District Court for the Eastern District of Pennsylvania	2000 U.S. Dist. LEXIS 11520	August 14, 2000	Plaintiffs moved for a preliminary injunction, which the parties agreed to consolidate with the	Plaintiffs, ex--felon, unincorporated association, and others, filed a civil rights suit against defendant state and local officials, contending that the Pennsylvania Voter Registration Act,	No	N/A	No

008872

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				merits determination for a permanent injunction, in plaintiffs' civil rights suit contending that the Pennsylvania Voter Registration Act, offended the Equal Protection Clause of U.S. Const. amend. XIV.	violated the Equal Protection Clause by prohibiting some ex--felons from voting during the five year period following their release from prison, while permitting other ex--felons to vote. Plaintiffs conceded that one plaintiff lacked standing, and the court assumed the remaining plaintiffs had standing. The court found that all that all three of the special circumstances necessary to invoke the Pullman doctrine were present in the case, but found that abstention was not appropriate under the circumstances since it did not agree with plaintiffs' contention that the time constraints caused by the upcoming election meant that the option of pursuing their claims in state court did not offer plaintiffs an adequate remedy. Plaintiff's motion for permanent injunction denied; the court abstained from deciding merits of plaintiffs' claims under the Pullman doctrine because all three of the special circumstances necessary to invoke the doctrine were present in the case; all further proceedings stayed until further order.			
Farrakhan v.	United States	2000	December	Plaintiffs, convicted	The felons alleged that Washington's	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Locke	District Court for the Eastern District of Washington	U.S. Dist. LEXIS 22212	1, 2000	felons who were also racial minorities, sued defendants for alleged violations of the Voting Rights Act. The parties filed cross-motions for summary judgment.	felon disenfranchisement and restoration of civil rights schemes, premised upon Wash. Const. art. VI § 3, resulted in the denial of the right to vote to racial minorities in violation of the VRA. They argued that race bias in, or the discriminatory effect of, the criminal justice system resulted in a disproportionate number of racial minorities being disenfranchised following felony convictions. The court concluded that Washington's felon disenfranchisement provision disenfranchised a disproportionate number of minorities; as a result, minorities were under-represented in Washington's political process. The Rooker-Feldman doctrine barred the felons from bringing any as-applied challenges, and even if it did not bar such claims, there was no evidence that the felons' individual convictions were born of discrimination in the criminal justice system. However, the felons' facial challenge also failed. The remedy they sought would create a new constitutional problem, allowing disenfranchisement only of white felons. Further, the felons did not establish a causal connection between			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					the disenfranchisement provision and the prohibited result. The court granted defendants' motion and denied the felons' motion for summary judgment.			
Johnson v. Bush	United States District Court for the Southern District of Florida	214 F. Supp. 2d 1333; 2002 U.S. Dist. LEXIS 14782	July 18, 2002	Plaintiff felons sued defendant state officials for alleged violations of their constitutional rights. The officials moved and the felons cross-moved for summary judgment.	The felons had all successfully completed their terms of incarceration and/or probation, but their civil rights to register and vote had not been restored. They alleged that Florida's disenfranchisement law violated their rights under First, Fourteenth, Fifteenth, and Twenty-Fourth Amendments to the United States Constitution, as well as § 1983 and §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on minorities, the	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					cause was racially neutral. Finally, requiring the felons to pay their victim restitution before their rights would be restored did not constitute an improper poll tax or wealth qualification. The court granted the officials' motion for summary judgment and implicitly denied the felons' motion. Thus, the court dismissed the lawsuit with prejudice.			
King v. City of Boston	United States District Court for the District of Massachusetts	2004 U.S. Dist. LEXIS 8421	May 13, 2004	Plaintiff inmate filed a motion for summary judgment in his action challenging the constitutionality of Mass. Gen. Laws ch. 51, § 1, which excluded incarcerated felons from voting while they were imprisoned.	The inmate was convicted of a felony and incarcerated. His application for an absentee ballot was denied on the ground that he was not qualified to register and vote under Mass. Gen. Laws ch. 51, § 1. The inmate argued that the statute was unconstitutional as it applied to him because it amounted to additional punishment for crimes he committed before the statute's enactment and thus violated his due process rights and the prohibition against ex post facto laws and bills of attainder. The court held that the statute was regulatory and not punitive because rational choices were implicated in the statute's disenfranchisement of persons under guardianship, persons disqualified	No	N/A	No

008876

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					because of corrupt elections practices, persons under 18 years of age, as well as incarcerated felons. Specifically, incarcerated felons were disqualified during the period of their imprisonment when it would be difficult to identify their address and ensure the accuracy of their ballots. Therefore, the court concluded that Mass. Gen. Laws ch. 51, § 1 did not violate the inmate's constitutional rights. The court found the statute at issue to be constitutional and denied the inmate's motion for summary judgment.			
Hayden v. Pataki	United States District Court for the Southern District of New York	2004 U.S. Dist. LEXIS 10863	June 14, 2004	In a 42 U.S.C.S. § 1983 action filed by plaintiffs, black and latino convicted felons, alleging that N.Y. Const. art. II, § 3 and N.Y. Elec. Law § 5--106(2) were unconstitutional, defendants, New York's governor and the chairperson of the board of elections, moved for	The felons sued defendants, alleging that N.Y. Const. art. II, § 3 and N.Y. Elec. Law § 5--106(2) unlawfully denied suffrage to incarcerated and paroled felons on account of their race. The court granted defendants' motion for judgment on the pleadings on the felons' claims under U.S. Const. amend. XIV, XV because their factual allegations were insufficient from which to draw an inference that the challenged provisions or their predecessors were enacted with discriminatory intent, and because denying suffrage to those who received	No	N/A	No

003377

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				judgment on the pleadings under Fed. R. Civ. P. 12(c).	more severe punishments, such as a term of incarceration, and not to those who received a lesser punishment, such as probation, was not arbitrary. The felons' claims under 42 U.S.C.S. § 1973 were dismissed because § 1973 could not be used to challenge the legality of N.Y. Elec. Law § 5--106. Defendants' motion was granted as to the felons' claims under 42 U.S.C.S. § 1971 because § 1971 did not provide for a private right of action, and because the felons were not "otherwise qualified to vote." The court also granted defendants' motion on the felons' U.S. Const. amend. I claim because it did not guarantee a felon the right to vote. Defendants' motion for judgment on the pleadings was granted in the felons' § 1983 action.			
Farrakhan v. Washington	United States Court for Appeals for the Ninth Circuit	338 F.3d 1009; 2003 U.S. App. LEXIS 14810	July 25, 2003	Plaintiff inmates sued defendant state officials, claiming that Washington state's felon disenfranchisement scheme constitutes improper race--based vote denial in	Upon conviction of infamous crimes in the state, (that is, crimes punishable by death or imprisonment in a state correctional facility), the inmates were disenfranchised. The inmates claimed that the disenfranchisement scheme violated § 2 because the criminal justice system was biased against minorities, causing a disproportionate	No	N/A	No

008873

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
				violation of § 2 of the Voting Rights Act. The United States District Court for the Eastern District of Washington granted of summary judgment dismissing the inmates' claims. The inmates appealed.	minority representation among those being disenfranchised. The appellate court held, inter alia, that the district court erred in failing to consider evidence of racial bias in the state's criminal justice system in determining whether the state's felon disenfranchisement laws resulted in denial of the right to vote on account of race. Instead of applying its novel "by itself" causation standard, the district court should have applied a totality of the circumstances test that included analysis of the inmates' compelling evidence of racial bias in Washington's criminal justice system. However, the inmates lacked standing to challenge the restoration scheme because they presented no evidence of their eligibility, much less even allege that they were eligible for restoration, and had not attempted to have their civil rights restored. The court affirmed as to the eligibility claim but reversed and remanded for further proceedings to the bias in the criminal justice system claim.			
In re Phillips	Supreme Court of Virginia	265 Va. 81; 574	January 10, 2003	The circuit court, entered a judgment	More than five years earlier, the former felon was convicted of the felony of	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		S.E.2d 270; 2003 Va. LEXIS 10		in which it declined to consider petitioner former felon's petition for approval of her request to seek restoration of her eligibility to register to vote. The former felon appealed.	making a false written statement incident to a firearm purchase. She then petitioned the trial court asking it to approve her request to seek restoration of her eligibility to register to vote. Her request was based on Va. Code Ann. § 53.1--231.2, allowing persons convicted of non-violent felonies to petition a trial court for approval of a request to seek restoration of voting rights. The trial court declined. It found that Va. Code Ann. § 53.1--231.2 violated constitutional separation of powers principles since it gave the trial court powers belonging to the governor. It also found that even if the statute was constitutional, it was fundamentally flawed for not providing notice to respondent Commonwealth regarding a petition. After the petition was denied, the state supreme court found the separation of powers principles were not violated since the statute only allowed the trial court to determine if an applicant met the requirements to have voting eligibility restored. It also found the statute was not fundamentally flawed since the Commonwealth was not an interested			

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					party entitled to notice. OUTCOME: The judgment was reversed and the case was remanded for further proceedings.			
Howard v. Gilmore	United States Court of Appeals for the Fourth Circuit	2000 U.S. App. LEXIS 2680	February 23, 2000	Appellant challenged the United States District Court for the Eastern District of Virginia's order summarily dismissing his complaint, related to his inability to vote as a convicted felon, for failure to state a claim upon which relief can be granted.	Appellant was disenfranchised by the Commonwealth of Virginia following his felony conviction. He challenged that decision by suing the Commonwealth under the U.S. Const. amends. I, XIV, XV, XIX, and XXIV, and under the Voting Rights Act of 1965. The lower court summarily dismissed his complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. Appellant challenged. The court found U.S. Const. amend. I created no private right of action for seeking reinstatement of previously canceled voting rights, U.S. Const. amends. XIV, XV, XIX, and the VRA required either gender or race discrimination, neither of which appellant asserted, and the U.S. Const. amend. XXIV, while prohibiting the imposition of poll taxes, did not prohibit the imposition of a \$10 fee for reinstatement of appellant's civil rights, including the right to vote. Consequently, appellant failed to state a claim. The court affirmed, finding	No	N/A	No

008881

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					that none of the constitutional provisions appellant relied on were properly pled because appellant failed to assert that either his race or gender were involved in the decisions to deny him the vote. Conditioning reestablishment of his civil rights on a \$10 fee was not unconstitutional.			
Johnson v. Governor of Fla.	United States Court of Appeals for the Eleventh Circuit	353 F.3d 1287; 2003 U.S. App. LEXIS 25859	December 19, 2003	Plaintiffs, ex--felon citizens of Florida, on their own right and on behalf of others, sought review of a decision of the United States District Court for the Southern District of Florida, which granted summary judgment to defendants, members of the Florida Clemency Board in their official capacity. The citizens challenged the validity of the Florida felon disenfranchisement	The citizens alleged that Fla. Const. art. VI, § 4 (1968) was racially discriminatory and violated their constitutional rights. The citizens also alleged violations of the Voting Rights Act. The court initially examined the history of Fla. Const. art. VI, § 4 (1968) and determined that the citizens had presented evidence that historically the disenfranchisement provisions were motivated by a discriminatory animus. The citizens had met their initial burden of showing that race was a substantial motivating factor. The state was then required to show that the current disenfranchisement provisions would have been enacted absent the impermissible discriminatory intent. Because the state had not met its burden, summary judgment should not have been granted. The court found	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				laws.	that the claim under the Voting Rights Act, also needed to be remanded for further proceedings. Under a totality of the circumstances, the district court needed to analyze whether intentional racial discrimination was behind the Florida disenfranchisement provisions, in violation of the Voting Rights Act. The court affirmed the district court's decision to grant summary judgment on the citizens' poll tax claim. The court reversed the district court's decision to grant summary judgment to the Board on the claims under the equal protection clause and for violation of federal voting laws and remanded the matter to the district court for further proceedings.			
State v. Black	Court of Appeals of Tennessee	2002 Tenn. App. LEXIS 696	September 26, 2002	In 1997, petitioner was convicted of forgery and sentenced to the penitentiary for two years, but was immediately placed on probation. He subsequently petitioned the circuit court for restoration	The appellate court's original opinion found that petitioner had not lost his right to hold public office because Tennessee law removed that right only from convicted felons who were "sentenced to the penitentiary." The trial court's amended judgment made it clear that petitioner was in fact sentenced to the penitentiary. Based upon this correction to the record, the appellate court found that petitioner's	No	N/A	No

008883

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				of citizenship. The trial court restored his citizenship rights. The State appealed. The appellate court issued its opinion, but granted the State's motions to supplement the record and to rehear its decision.	sentence to the penitentiary resulted in the forfeiture of his right to seek and hold public office by operation of Tenn. Code Ann. § 40-20--114. However, the appellate court concluded that this new information did not requires a different outcome on the merits of the issue of restoration of his citizenship rights, including the right to seek and hold public office. The appellate court adhered to its conclusion that the statutory presumption in favor of the restoration was not overcome by a showing, by a preponderance of the evidence, of good cause to deny the petition for restoration of citizenship rights. The appellate court affirmed the restoration of petitioner's right to vote and reversed the denial of his right to seek and hold public office. His full rights of citizenship were restored.			
Johnson v. Governor of Fla.	United States Court of Appeals for the Eleventh Circuit	405 F.3d 1214; 2005 U.S. App. LEXIS 5945	April 12, 2005	Plaintiff individuals sued defendant members of Florida Clemency Board, arguing that Florida's felon disenfranchisement	The individuals argued that the racial animus motivating the adoption of Florida's disenfranchisement laws in 1868 remained legally operative despite the reenactment of Fla. Const. art. VI, § 4 in 1968. The subsequent reenactment eliminated any	No	N/A	No

008884

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				<p>law, Fla. Const. art. VI, § 4 (1968), violated the Equal Protection Clause and 42 U.S.C.S. § 1973. The United States District Court for the Southern District of Florida granted the members summary judgment. A divided appellate panel reversed. The panel opinion was vacated and a rehearing en banc was granted.</p>	<p>discriminatory taint from the law as originally enacted because the provision narrowed the class of disenfranchised individuals and was amended through a deliberative process. Moreover, there was no allegation of racial discrimination at the time of the reenactment. Thus, the disenfranchisement provision was not a violation of the Equal Protection Clause and the district court properly granted the members summary judgment on that claim. The argument that 42 U.S.C.S. § 1973 applied to Florida's disenfranchisement provision was rejected because it raised grave constitutional concerns, i.e., prohibiting a practice that the Fourteenth Amendment permitted the state to maintain. In addition, the legislative history indicated that Congress never intended the Voting Rights Act to reach felon disenfranchisement provisions. Thus, the district court properly granted the members summary judgment on the Voting Rights Act claim. The motion for summary judgment in favor of the members was granted.</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Hileman v. McGinness	Appellate Court of Illinois, Fifth District	316 Ill. App. 3d 868; 739 N.E.2d 81; 2000 Ill. App. LEXIS 845	October 25, 2000	Appellant challenged the circuit court's declaration that that the result of a primary election for county circuit clerk was void.	In a primary election for county circuit clerk, the parties agreed that 681 absentee ballots were presumed invalid. The ballots had been commingled with the valid ballots. There were no markings or indications on the ballots which would have allowed them to be segregated from other ballots cast. Because the ballots could not have been segregated, apportionment was the appropriate remedy if no fraud was involved. If fraud was involved, the election would have had to have been voided and a new election held. Because the trial court did not hold an evidentiary hearing on the fraud allegations, and did not determine whether fraud was in issue, the case was remanded for a determination as to whether fraud was evident in the electoral process. Judgment reversed and remanded.	No	N/A	No
Eason v. State	Court of Appeals of Mississippi	2005 Miss. App. LEXIS 1017	December 13, 2005	Defendant appealed a decision of the circuit court convicting him of one count of conspiracy to commit voter fraud	Defendant was helping with his cousin's campaign in a run-off election for county supervisor. Together, they drove around town, picking up various people who were either at congregating spots or their homes. Defendant would drive the	No	N/A	No

008886

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				and eight counts of voter fraud.	voters to the clerk's office where they would vote by absentee ballot and defendant would give them beer or money. Defendant claimed he was entitled to a mistrial because the prosecutor advanced an impermissible "sending the message" argument. The court held that it was precluded from reviewing the entire context in which the argument arose because, while the prosecutor's closing argument was in the record, the defense counsel's closing argument was not. Also, because the prosecutor's statement was incomplete due to defense counsel's objection, the court could not say that the statement made it impossible for defendant to receive a fair trial. Judgment affirmed.			
Wilson v. Commonwealth	Court of Appeals of Virginia	2000 Va. App. LEXIS 322	May 2, 2000	Defendant appealed the judgment of the circuit court which convicted her of election fraud.	At trial, the Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter registration form that she was living at a residence in the 51st House District. The evidence included records showing electricity and water usage, records from the Department of Motor	No	N/A	No

008887

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Vehicles and school records. Thus, the evidence was sufficient to support the jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed in order for her to be a candidate for office in the primary in question. Judgment affirmed.			
Townson v. Stonicher	Supreme Court of Alabama	2005 Ala. LEXIS 214	December 9, 2005	The circuit court overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross-appealed. In the meantime, the trial court stayed enforcement of its judgment pending resolution of the appeal.	The voters and the incumbent all challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that at least 30 absentee voters who voted for the incumbent provided with their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat "cure" that defect by providing a proper form of identification at the trial of the election contest, because, under those	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>circumstances, it was difficult to conclude that those voters made an honest effort to comply with the law. Moreover, to count the votes of voters who failed to comply with the essential requirement of submitting proper identification with their absentee ballots had the effect of disenfranchising qualified electors who choose not to vote but rather than to make the effort to comply with the absentee--voting requirements. The judgment declaring the incumbent's opponent the winner was affirmed. The judgment counting the challenged votes in the final tally of votes was reversed, and said votes were subtracted from the incumbents total, and the stay was vacated. All other arguments were rendered moot as a result.</p>			
<p>ACLU of Minn. v. Kiffmeyer</p>	<p>United States District Court for the District of Minnesota</p>	<p>2004 U.S. Dist. LEXIS 22996</p>	<p>October 29, 2004</p>	<p>Plaintiffs, voters and associations, filed for a temporary restraining order pursuant to Fed. R. Civ. P. 65, against defendant, Minnesota Secretary</p>	<p>Plaintiffs argued that Minn. Stat. § 201.061 was inconsistent with the Help America Vote Act because it did not authorize the voter to complete registration either by a "current and valid photo identification" or by use of a current utility bill, bank statement, government check, paycheck, or other</p>	<p>No</p>	<p>N/A</p>	<p>No</p>

008889

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				of State, concerning voter registration.	government document that showed the name and address of the individual. The Secretary advised the court that there were less than 600 voters who attempted to register by mail but whose registrations were deemed incomplete. The court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic tribal identification card by American Indians who do not reside on their tribal reservations. Also, the court found that plaintiffs demonstrated that they were likely to succeed on their claims that Minn. R. 8200.5100, violated the Equal Protection Clause of the United States Constitution. A temporary restraining order was entered.			
League of Women Voters v. Blackwell	United States District Court for the Northern District of Ohio	340 F. Supp. 2d 823; 2004	October 20, 2004	Plaintiff organizations filed suit against defendant, Ohio's	The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
		U.S. Dist. LEXIS 20926		Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote Act. The Secretary filed a motion to dismiss.	documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the last four digits of his social security number. If he did not know either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive, even if the cost, in terms of uncounted ballots, was regrettable. The court granted the Secretary's motion to dismiss.			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
New York v. County of Del.	United States District Court for the Northern District of New York	82 F. Supp. 2d 12; 2000 U.S. Dist. LEXIS 1398	February 8, 2000	Plaintiffs brought a claim in the district court under the Americans With Disabilities Act and filed a motion for a preliminary injunction and motion for leave to amend their complaint, and defendants were ordered to show cause why a preliminary injunction should not be issued.	In their complaint plaintiffs alleged that defendants violated the ADA by making the voting locations inaccessible to disabled persons and asked for a preliminary injunction requiring defendants to come into compliance before the next election. The court found that defendants were the correct parties, because pursuant to New York election law defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, due to the alleged facts, the court found plaintiffs would likely succeed on the merits. Consequently, the court granted plaintiffs' motion for a preliminary injunction. The court granted plaintiffs' motion for a preliminary injunction and granted plaintiffs' motion for leave to amend their complaint.	No	N/A	No
New York v. County of Schoharie	United States District Court for the Northern	82 F. Supp. 2d 19; 2000	February 8, 2000	Plaintiffs brought a claim in the district court under the	In their complaint, plaintiffs alleged defendants violated the ADA by allowing voting locations to be	No	N/A	No

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Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	District of New York	U.S. Dist. LEXIS 1399		Americans With Disabilities Act and filed a motion for a preliminary injunction and a motion for leave to amend their complaint, and defendants were ordered to show cause why a preliminary injunction should not be issued.	inaccessible for disabled persons and asked for a preliminary injunction requiring defendants to come into compliance before the next election. The court found that defendants were the correct party, because pursuant to New York election law, defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, the court found that plaintiffs would likely succeed on the merits of their case. Consequently, the court granted plaintiffs' motion for a preliminary injunction. The court granted plaintiffs' motion for a preliminary injunction because plaintiffs showed irreparable harm and proved likely success on the merits and granted plaintiff's motion for leave to amend the complaint.			
Westchester Disabled on the Move, Inc. v. County of	United States District Court for the Southern District of New	346 F. Supp. 2d 473; 2004	October 22, 2004	Plaintiffs sued defendant county, county board of elections, and	The inability to vote at assigned locations on election day constituted irreparable harm. However, plaintiffs could not show a likelihood of success	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Westchester	York	U.S. Dist. LEXIS 24203		election officials pursuant to 42 U.S.C.S. §§ 12131--12134, N.Y. Exec. Law § 296, and N.Y. Elec. Law § 4--1--4. Plaintiffs moved for a preliminary injunction, requesting (among other things) that the court order defendants to modify the polling places in the county so that they were accessible to disabled voters on election day. Defendants moved to dismiss.	on the merits because the currently named defendants could not provide complete relief sought by plaintiffs. Although the county board of elections was empowered to select an alternative polling place should it determine that a polling place designated by a municipality was "unsuitable or unsafe," it was entirely unclear that its power to merely designate suitable polling places would be adequate to ensure that all polling places used in the upcoming election actually conformed with the Americans with Disabilities Act. Substantial changes and modifications to existing facilities would have to be made, and such changes would be difficult, if not impossible, to make without the cooperation of municipalities. Further, the court could order defendants to approve voting machines that conformed to the ADA were they to be purchased and submitted for county approval, but the court could not order them to purchase them for the voting districts in the county. A judgment issued in the absence of the municipalities would be inadequate. Plaintiffs' motion for preliminary			

008894

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Nat'l Org. on Disability v. Tartaglione	United States District Court for the Eastern District of Pennsylvania	2001 U.S. Dist. LEXIS 16731	October 11, 2001	Plaintiffs, disabled voters and special interest organizations, sued defendants, city commissioners, under the Americans with Disabilities Act and § 504 of the Rehabilitation Act of 1973, and regulations under both statutes, regarding election practices. The commissioners moved to dismiss for failure (1) to state a cause of action and (2) to join an indispensable party.	<p>injunction was denied, and defendants' motion to dismiss was granted.</p> <p>The voters were visually impaired or wheelchair bound. They challenged the commissioners' failure to provide talking voting machines and wheelchair accessible voting places. They claimed discrimination in the process of voting because they were not afforded the same opportunity to participate in the voting process as non-disabled voters, and assisted voting and voting by alternative ballot were substantially different from, more burdensome than, and more intrusive than the voting process utilized by non-disabled voters. The court found that the complaint stated causes of actions under the ADA, the Rehabilitation Act, and 28 C.F.R. §§ 35.151 and 35.130. The court found that the voters and organizations had standing to raise their claims. The organizations had standing through the voters' standing or because they used significant resources challenging the commissioners' conduct. The plaintiffs failed to join the state official who would need to approve any talking</p>	No	N/A	Yes-see if the case was refiled

008895

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					voting machine as a party. As the court could not afford complete relief to the visually impaired voters in that party's absence, it granted the motion to dismiss under Fed. R. Civ. P. 12(b)(7) without prejudice. The court granted the commissioners' motion to dismiss in part, and denied it in part. The court granted the motion to dismiss the claims of the visually impaired voters for failure to join an indispensable party, without prejudice, and with leave to amend the complaint.			
TENNESSEE, Petitioner v. GEORGE LANE et al.	United States Supreme Court	541 U.S. 509; 124 S. Ct. 1978; 158 L. Ed. 2d 820; 2004 U.S. LEXIS 3386	May 17, 2004	Respondent paraplegics sued petitioner State of Tennessee, alleging that the State failed to provide reasonable access to court facilities in violation of Title II of the Americans with Disabilities Act of 1990. Upon the grant of a writ of certiorari, the State appealed the judgment of the	The state contended that the abrogation of state sovereign immunity in Title II of the ADA exceeded congressional authority under U.S. Const. amend XIV, § 5, to enforce substantive constitutional guarantees. The United States Supreme Court held, however, that Title II, as it applied to the class of cases implicating the fundamental right of access to the courts, constituted a valid exercise of Congress's authority. Title II was responsive to evidence of pervasive unequal treatment of persons with disabilities in the administration of state services and programs, and such disability discrimination was thus	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				United States Court of Appeals for the Sixth Circuit which denied the State's claim of sovereign immunity.	an appropriate subject for prophylactic legislation. Regardless of whether the State could be subjected to liability for failing to provide access to other facilities or services, the fundamental right of access to the courts warranted the limited requirement that the State reasonably accommodate disabled persons to provide such access. Title II was thus a reasonable prophylactic measure, reasonably targeted to a legitimate end. The judgment denying the State's claim of sovereign immunity was affirmed.			
Bell v. Marinko	United States Court of Appeals for the Sixth Circuit	367 F.3d 588; 2004 U.S. App. LEXIS 8330	April 28, 2004	Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19--3509.21 violated the National Voter Registration Act, and the Equal Protection Clause of the Fourteenth Amendment. The United States	The voters asserted that § 3503.02---- which stated that the place where the family of a married man or woman resided was considered to be his or her place of residence----violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place. The National Voter Registration Act did not bar the Board's continuing	No	N/A	No

008897

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.	consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code Ann. § 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed.			
Wilson v. Commonwealth	Court of Appeals of Virginia	2000 Va. App. LEXIS 322	May 2, 2000	Defendant appealed the judgment of the circuit court which convicted her of election fraud.	On appeal, defendant argued that the evidence was insufficient to support her conviction because it failed to prove that she made a willfully false statement on her voter registration form and, even if the evidence did prove that she made such a statement, it did not prove that the voter registration form was the form required by Title 24.2. At trial, the Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter	No	N/A	No

008898

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>registration form that she was living at a residence in the 51st House District. The evidence included records showing electricity and water usage, records from the Department of Motor Vehicles and school records. Thus, the evidence was sufficient to support the jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed by Title 24.2 in order for her to be a candidate for office in the primary in question. Judgment of conviction affirmed. Evidence, including records showing electricity and water usage, records from the Department of Motor Vehicles and school records, was sufficient to support jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed in order for her to be a candidate for office in the primary in question.</p>			
<p>ACLU of Minn. v. Kiffmeyer</p>	<p>United States District Court for the District of Minnesota</p>	<p>2004 U.S. Dist. LEXIS 22996</p>	<p>October 29, 2004</p>	<p>Plaintiffs, voters and associations, filed for a temporary restraining order pursuant to Fed. R. Civ. P. 65, against</p>	<p>Plaintiffs argued that Minn. Stat. § 201.061 was inconsistent with the Help America Vote Act because it did not authorize the voter to complete registration either by a "current and valid photo identification" or by use of</p>	<p>No</p>	<p>N/A</p>	<p>No</p>

008899

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>defendant, Minnesota Secretary of State, concerning voter registration.</p>	<p>a current utility bill, bank statement, government check, paycheck, or other government document that showed the name and address of the individual. The Secretary advised the court that there were less than 600 voters who attempted to register by mail but whose registrations were deemed incomplete. The court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic tribal identification card by American Indians who do not reside on their tribal reservations. Also, the court found that plaintiffs demonstrated that they were likely to succeed on their claims that Minn. R. 8200.5100, violated the Equal Protection Clause of the United States Constitution. A temporary restraining order was entered.</p>			
<p>Kalsson v. United States</p>	<p>United States District Court for</p>	<p>356 F. Supp. 2d</p>	<p>February 16, 2005</p>	<p>Defendant Federal Election</p>	<p>The individual claimed that his vote was diluted because the NVRA</p>	<p>No</p>	<p>N/A</p>	<p>No</p>

008900

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
FEC	the Southern District of New York	371; 2005 U.S. Dist. LEXIS 2279		Commission filed a motion to dismiss for lack of subject matter jurisdiction plaintiff individual's action, which sought a declaration that the National Voter Registration Act was unconstitutional on the theories that its enactment was not within the enumerated powers of the federal government and that it violated Article II of the United States Constitution.	resulted in more people registering to vote than otherwise would have been the case. The court held that the individual lacked standing to bring the action. Because New York was not obliged to adhere to the requirements of the NVRA, the individual did not allege any concrete harm. If New York simply adopted election day registration for elections for federal office, it would have been entirely free of the NVRA just as were five other states. Even if the individual's vote were diluted, and even if such an injury in other circumstances might have sufficed for standing, any dilution that he suffered was the result of New York's decision to maintain a voter registration system that brought it under the NVRA, not the NVRA itself. The court granted the motion to dismiss for lack of subject matter jurisdiction.			
Peace & Freedom Party v. Shelley	California Court of Appeal, Third Appellate District	114 Cal. App. 4th 1237; 8 Cal. Rptr. 3d 497; 2004 Cal.	January 15, 2004	Plaintiff political party appealed a judgment from the superior court which denied the party's petition for writ of	The trial court ruled that inactive voters were excluded from the primary election calculation. The court of appeals affirmed, observing that although the election had already taken place, the issue was likely to recur and	No	N/A	No

008901

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		App. LEXIS 42		mandate to compel defendant, the California Secretary of State, to include voters listed in the inactive file of registered voters in calculating whether the party qualified to participate in a primary election.	was a matter of continuing public interest and importance; hence, a decision on the merits was proper, although the case was technically moot. The law clearly excluded inactive voters from the calculation. The statutory scheme did not violate the inactive voters' constitutional right of association because it was reasonably designed to ensure that all parties on the ballot had a significant modicum of support from eligible voters. Information in the inactive file was unreliable and often duplicative of information in the active file. Moreover, there was no violation of the National Voter Registration Act because voters listed as inactive were not prevented from voting. Although the Act prohibited removal of voters from the official voting list absent certain conditions, inactive voters in California could correct the record and vote. Affirmed.			
McKay v. Thompson	United States Court of Appeals for the Sixth Circuit	226 F.3d 752; 2000 U.S. App.	September 18, 2000	Plaintiff challenged order of United States District Court for Eastern District of Tennessee at	The trial court had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required	No	N/A	No

008902

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
		LEXIS 23387		Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.	plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous caselaw, and could be challenged in state court. The requirement did not violate the Privacy Act because it was grand fathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. Plaintiff could not enforce § 1971 as it was enforceable only by the United States Attorney General. The trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims. Although the trial court arguably erred in denying certification of the case to the USAG under 28 U.S.C.S. § 2403(a), plaintiff suffered no harm from the technical violation. Order affirmed because requirement that voters disclose social security numbers as precondition to voter registration did not violate Privacy Act of 1974 or National Voter			

008903

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					Registration Act and trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims.			
Lucas County Democratic Party v. Blackwell	United States District Court for the Northern District of Ohio	341 F. Supp. 2d 861; 2004 U.S. Dist. LEXIS 21416	October 21, 2004	Plaintiff organizations brought an action challenging a memorandum issued by defendant, Ohio's Secretary of State, in December 2003. The organizations claimed that the memorandum contravened provisions of the Help America Vote Act and the National Voter Registration Act. The organizations moved for a preliminary injunction.	The case involved a box on Ohio's voter registration form that required a prospective voter who registered in person to supply an Ohio driver's license number or the last four digits of their Social Security number. In his memorandum, the Secretary informed all Ohio County Boards of Elections that, if a person left the box blank, the Boards were not to process the registration forms. The organizations did not file their suit until 18 days before the national election. The court found that there was not enough time before the election to develop the evidentiary record necessary to determine if the organizations were likely to succeed on the merits of their claim. Denying the organizations' motion would have caused them to suffer no irreparable harm. There was no appropriate remedy available to the organizations at the time. The likelihood that the organizations could	No	N/A	No

008904

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					have shown irreparable harm was, in any event, slight in view of the fact that they waited so long before filing suit. Moreover, it would have been entirely improper for the court to order the Boards to re--open in--person registration until election day. The public interest would have been ill--served by an injunction. The motion for a preliminary injunction was denied sua sponte.			
Nat'l Coalition for Students with Disabilities Educ. & Legal Def. Fund v. Scales	United States District Court for the District of Maryland	150 F. Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528	July 5, 2001	Plaintiff, national organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss the first amended complaint, or in the	Defendants alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged sufficient facts to confer standing under the NVRA, such allegations	No	N/A	No

008905

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				alternative for summary judgment.	were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter registration services at the initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended complaint was granted as to the § 1983 claim and denied as to plaintiff's claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion for summary judgment was denied.			
People v. Disimone	Court of Appeals of Michigan	251 Mich. App. 605; 650 N.W.2d 436; 2002 Mich. App.	July 11, 2002	Defendant was charged with attempting to vote more than once in the 2000 general election. The circuit court granted defendant's motion that the State had to	Defendant was registered in the Colfax township for the 2000 general election. After presenting what appeared to be a valid voter's registration card, defendant proceeded to vote in the Grant township. Defendant had voted in the Colfax township earlier in the day. Defendant moved the court to issue an order that the State had to find	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		LEXIS 826		prove specific intent. The State appealed.	that he had a specific intent to vote twice in order to be convicted. The appellate court reversed the circuit court judgment and held that under the rules of statutory construction, the fact that the legislature had specifically omitted certain trigger words such as "knowingly," "willingly," "purposefully," or "intentionally" it was unlikely that the legislature had intended for this to be a specific intent crime. The court also rejected the defendant's argument that phrases such as "offer to vote" and "attempt to vote" should be construed as synonymous terms, as when words with similar meanings were used in the same statute, it was presumed that the legislature intended to distinguish between the terms. The order of the circuit court was reversed.			
Diaz v. Hood	United States District Court for the Southern District of Florida	342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445	October 26, 2004	Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general	The putative voters sought injunctive relief requiring the election officials to register them to vote. The court first noted that the unions lacked even representative standing, because they failed to show that one of their members could have brought the case in their own behalf. The individual	No	N/A	No

008907

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (Y or No)	Other Notes	Should the Case be Researched Further
				<p>election. They alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials moved to dismiss the complaint for lack of standing and failure to state a claim.</p>	<p>putative voters raised separate issues: the first had failed to verify her mental capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. The motions to dismiss the complaint were granted without prejudice.</p>			
Charles H. Wesley Educ.	United States District Court for	324 F. Supp. 2d	July 1, 2004	Plaintiffs, a voter, fraternity members,	The organization participated in numerous non-partisan voter	No	N/A	No

008908

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Found., Inc. v. Cox	the Northern District of Georgia	1358; 2004 U.S. Dist. LEXIS 12120		and an organization, sought an injunction ordering defendant, the Georgia Secretary of State, to process the voter registration application forms that they mailed in following a voter registration drive. They contended that by refusing to process the forms defendants violated the National Voter Registration Act and U.S. Const. amends. I, XIV, and XV.	registration drives primarily designed to increase the voting strength of African--Americans. Following one such drive, the fraternity members mailed in over 60 registration forms, including one for the voter who had moved within state since the last election. The Georgia Secretary of State's office refused to process them because they were not mailed individually and neither a registrar, deputy registrar, or an otherwise authorized person had collected the applications as required under state law. The court held that plaintiffs had standing to bring the action. The court held that because the applications were received in accordance with the mandates of the NVRA, the State of Georgia was not free to reject them. The court found that: plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Plaintiffs' motion for a preliminary injunction			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>was granted. Defendants were ordered to process the applications received from the organization to determine whether those registrants were qualified to vote. Furthermore, defendants were enjoined from rejecting any voter registration application on the grounds that it was mailed as part of a "bundle" or that it was collected by someone not authorized or any other reason contrary to the NVRA.</p>			
Moseley v. Price	United States District Court for the Eastern District of Virginia	300 F. Supp. 2d 389; 2004 U.S. Dist. LEXIS 850	January 22, 2004	Plaintiff alleged, that defendants' actions in investigating his voter registration application constituted a change in voting procedures requiring § 5 preclearance under the Voting Rights Act, which preclearance was never sought or received. Plaintiff claimed he withdrew from the race for Commonwealth	The court concluded that plaintiff's claim under the Voting Rights Act lacked merit. Plaintiff did not allege, as required, that any defendants implemented a new, uncleared voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting. Here, the existing practice or procedure in effect in the event a mailed registration card was returned was to "resend the voter card, if address verified as correct." This was what precisely occurred. Plaintiff inferred, however, that the existing voting rule or practice was to resend the voter card "with no adverse consequences" and that the county's	No	N/A	No

008910

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				Attorney because of the investigation. Defendants moved to dismiss the complaint.	initiation of an investigation constituted the implementation of a change that had not been pre-cleared. The court found the inference wholly unwarranted because nothing in the written procedure invited or justified such an inference. The court opined that common sense and state law invited a different inference, namely that while a returned card had to be resent if the address was verified as correct, any allegation of fraud could be investigated. Therefore, there was no new procedure for which preclearance was required. The court dismissed plaintiff's federal claims. The court dismissed the state law claims without prejudice.			
Thompson v. Karben	Supreme Court of New York, Appellate Division, Second Department	295 A.D.2d 438; 743 N.Y.S.2d 175; 2002 N.Y. App. Div. LEXIS 6101	June 10, 2002	Respondents filed a motion seeking the cancellation of appellant's voter registration and political party enrollment on the ground that appellant was unlawfully registered to vote in	Respondents alleged that appellant was unlawfully registered to vote from an address at which he did not reside and that he should have voted from the address that he claimed as his residence. The appellate court held that respondents adduced insufficient proof to support the conclusion that appellant did not reside at the subject address. On the other hand, appellant submitted copies of his 2002 vehicle registration,	No	N/A	No

008911

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				a particular district. The Supreme Court, Rockland County, New York, ordered the cancellation of appellant's voter registration and party enrollment. Appellant challenged the trial court's order.	2000 and 2001 federal income tax returns, 2002 property tax bill, a May 2001 paycheck stub, and 2000 and 2001 retirement account statements all showing the subject address. Appellant also testified that he was a signatory on the mortgage of the subject address and that he kept personal belongings at that address. Respondents did not sustain their evidentiary burden. The judgment of the trial court was reversed.			
Nat'l Coalition v. Taft	United States District Court for the Southern District of Ohio	2002 U.S. Dist. LEXIS 22376	August 2, 2002	Plaintiffs, a nonprofit public interest group and certain individuals, sued defendants, certain state and university officials, alleging that they violated the National Voter Registration Act in failing to designate the disability services offices at state public colleges and universities as voter registration sites.	The court found that the disability services offices at issue were subject to the NVRA because the term "office" included a subdivision of a government department or institution and the disability offices at issue were places where citizens regularly went for service and assistance. Moreover, the Ohio Secretary of State had an obligation under the NVRA to designate the disability services offices as voter registration sites because nothing in the law superceded the NVRA's requirement that the responsible state official designate disability services offices as voter registration sites. Moreover, under	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case Be Researched Further
				The group and individuals moved for a preliminary injunction.	Ohio Rev. Code Ann. § 3501.05(R), the Secretary of State's duties expressly included ensuring compliance with the NVRA. The case was not moot even though the Secretary of State had taken steps to ensure compliance with the NVRA given his position to his obligation under the law. The court granted declaratory judgment in favor of the nonprofit organization and the individuals. The motion for a preliminary injunction was granted in part and the Secretary of State was ordered to notify disabled students who had used the designated disability services offices prior to the opening day of the upcoming semester or who had pre-registered for the upcoming semester as to voter registration availability.			
Lawson v. Shelby County	United States Court of Appeals for the Sixth Circuit	211 F.3d 331; 2000 U.S. App. LEXIS 8634	May 3, 2000	Plaintiffs who were denied the right to vote when they refused to disclose their social security numbers, appealed a judgment of the United States	Plaintiffs attempted to register to vote in October, and to vote in November, but were denied because they refused to disclose their social security numbers. A year after the election date they filed suit alleging denial of constitutional rights, privileges and immunities, the Privacy Act of 1974	No	N/A	No

008913

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				District Court for the Western District of Tennessee at Memphis dismissing their amended complaint for failure to state claims barred by U.S. Const. amend. XI.	and § 1983. The district court dismissed, finding the claims were barred by U.S. Const. amend. XI, and the one year statute of limitations. The appeals court reversed, holding the district court erred in dismissing the suit because U.S. Const. amend. XI immunity did not apply to suits brought by a private party under the Ex Parte Young exception. Any damages claim not ancillary to injunctive relief was barred. The court also held the statute of limitations ran from the date plaintiffs were denied the opportunity to vote, not register, and their claim was thus timely. Reversed and remanded to district court to order such relief as will allow plaintiffs to vote and other prospective injunctive relief against county and state officials; declaratory relief and attorneys' fees ancillary to the prospective injunctive relief, all permitted under the Young exception to sovereign immunity, to be fashioned.			
Curtis v. Smith	United States District Court for the Eastern District of Texas	145 F. Supp. 2d 814; 2001	June 4, 2001	Plaintiffs, representatives of several thousand retired persons who	Before a general election, three persons brought an action alleging the Escapees were not bona fide residents of the county, and sought to have their	No	N/A	No

008914

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the case be Researched Further
		U.S. Dist. LEXIS 8544		called themselves the "Escapees," and who spent a large part of their lives traveling about the United States in recreational vehicles, but were registered to vote in the county, moved for preliminary injunction seeking to enjoin a Texas state court proceeding under the All Writs Act.	names expunged from the rolls of qualified voters. The plaintiffs brought suit in federal district court. The court issued a preliminary injunction forbidding county officials from attempting to purge the voting. Commissioner contested the results of the election, alleging Escapees' votes should be disallowed. Plaintiffs brought present case assertedly to prevent the same issue from being relitigated. The court held, however, the issues were different, since, unlike the case in the first proceeding, there was notice and an opportunity to be heard. Further, unlike the first proceeding, the plaintiff in the state court action did not seek to change the prerequisites for voting registration in the county, but instead challenged the actual residency of some members of the Escapees, and such challenge properly belonged in the state court. The court further held that an election contest under state law was the correct vehicle to contest the registration of Escapees. The court dissolved the temporary restraining order it had previously entered and denied plaintiffs' motion for preliminary			

008915

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					injunction of the state court proceeding.			
Pepper v. Darnell	United States Court of Appeals for the Sixth Circuit	24 Fed. Appx. 460; 2001 U.S. App. LEXIS 26618	December 10, 2001	Plaintiff individual appealed from a judgment of the district court, in an action against defendant state officials seeking relief under § 1983 and the National Voter Registration Act, for their alleged refusal to permit individual to register to vote. Officials had moved for dismissal or for summary judgment, and the district court granted the motion.	Individual argued on appeal that the district court erred in finding that the registration forms used by the state did not violate the NVRA and in failing to certify a class represented by individual. Individual lived in his automobile and received mail at a rented box. Officials refused to validate individual's attempt to register to vote by mail. Tennessee state law forbade accepting a rented mail box as the address of the potential voter. Individual insisted that his automobile registration provided sufficient proof of residency under the NVRA. The court upheld the legality of state's requirement that one registering to vote provide a specific location as an address, regardless of the transient lifestyle of the potential voter, finding state's procedure faithfully mirrored the requirements of the NVRA as codified in the Code of Federal Regulations. The court also held that the refusal to certify individual as the representative of a class for purposes of this litigation was not an abuse of	No	N/A	No

008916

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					discretion; in this case, no representative party was available as the indigent individual, acting in his own behalf, was clearly unable to represent fairly the class. The district court's judgment was affirmed.			
Miller v. Blackwell	United States District Court for the Southern District of Ohio	348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894	October 27, 2004	Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion for a temporary restraining order (TRO). Two individuals filed a motion to intervene as defendants.	Plaintiffs alleged that the timing and manner in which defendants intended to hold hearings regarding pre-election challenges to their voter registration violated both the Act and the Due Process Clause. The individuals, who filed pre-election voter eligibility challenges, filed a motion to intervene. The court held that it would grant the motion to intervene because the individuals had a substantial legal interest in the subject matter of the action and time constraints would not permit them to bring separate actions to protect their rights. The court further held that it would grant plaintiffs' motion for a TRO because plaintiffs made sufficient allegations in their complaint to establish standing and because all four factors to consider in issuing a TRO weighed heavily in favor of doing so. The court found that plaintiffs	No	N/A	No

008917

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					demonstrated a likelihood of success on the merits because they made a strong showing that defendants' intended actions regarding pre-election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the other factors to consider in granting a TRO automatically weighed in plaintiffs' favor. The court granted plaintiffs' motion for a TRO. The court also granted the individuals' motion to intervene.			
Miller v. Blackwell	United States District Court for the southern District of Ohio	348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894	October 27, 2004	Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion	Plaintiffs alleged that the timing and manner in which defendants intended to hold hearings regarding pre-election challenges to their voter registration violated both the Act and the Due Process Clause. The individuals, who filed pre-election voter eligibility challenges, filed a motion to intervene. The court held that it would grant the motion to intervene because the individuals had a substantial legal interest in the subject matter of the action and time constraints would not permit them to bring separate actions to protect their	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				for a temporary restraining order. Two individuals filed a motion to intervene as defendants.	rights. The court further held that it would grant plaintiffs' motion for a TRO because plaintiffs made sufficient allegations in their complaint to establish standing and because all four factors to consider in issuing a TRO weighed heavily in favor of doing so. The court found that plaintiffs demonstrated a likelihood of success on the merits because they made a strong showing that defendants' intended actions regarding pre-election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the other factors to consider in granting a TRO automatically weighed in plaintiffs' favor. The court granted plaintiffs' motion for a TRO. The court also granted the individuals' motion to intervene.			
Spencer v. Blackwell	United States District Court for the Southern District of Ohio	347 F. Supp. 2d 528; 2004 U.S. Dist. LEXIS	November 1, 2004	Plaintiff voters filed a motion for temporary restraining order and preliminary injunction seeking to restrain defendant	The voters alleged that defendants had combined to implement a voter challenge system at the polls that discriminated against African-American voters. Each precinct was run by its election judges but Ohio law also allowed challengers to be	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		22062		<p>election officials and intervenor State of Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from being allowed at the polls.</p>	<p>physically present in the polling places in order to challenge voters' eligibility to vote. The court held that the injury asserted, that allowing challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos, delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. Because the voters had shown a substantial likelihood of success on the merits on the ground that the application of Ohio's statute allowing challengers at polling places was</p>			

008920

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					unconstitutional and the other factors governing the issuance of an injunction weighed in their favor, the court enjoined all defendants from allowing any challengers other than election judges and other electors into the polling places throughout the state on Election Day.			
Charfauros v. Bd. of Elections	United States Court of Appeals for the Ninth Circuit	2001 U.S. App. LEXIS 15083	May 10, 2001	Defendants, board of elections and related individuals, appealed from an order of the Supreme Court of the Commonwealth of the Northern Mariana Islands reversing a lower court's grant of summary judgment in favor of defendants on the ground of qualified immunity.	Plaintiffs, disqualified voters, claimed that individual members of the Commonwealth of the Northern Mariana Islands Board of Elections violated § 1983 by administering pre-election day voter challenge procedures which precluded a certain class of voters, including plaintiffs, from voting in a 1995 election. The CNMI Supreme Court reversed a lower court's grant of summary judgment and defendants appealed. The court of appeals held that the Board's pre-election day procedures violated the plaintiffs' fundamental right to vote. The federal court reasoned that the right to vote was clearly established at the time of the election, and that a reasonable Board would have known that that treating voters differently based on their political party would	No	N/A	No

003921

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					violate the Equal Protection Clause. Further the court added that the allegations of the complaint were sufficient to support liability of the Board members in their individual capacities. Finally, the composition of the CNMI Supreme Court's Special Judge panel did not violate the Board's right to due process of law. The decision of Commonwealth of the Northern Mariana Islands Supreme Court was affirmed where defendants' pre--election day voter challenge procedures violated plaintiffs' fundamental right to vote.			
Wit v. Berman	United States Court of Appeals for the Second Circuit	306 F.3d 1256; 2002 U.S. App. LEXIS 21301	October 11, 2002	Appellant voters who established residences in two separate cities sued appellees, state and city election officials, alleging that provisions of the New York State Election Law unconstitutionally prevented the voters from voting in local elections in both	Under state election laws, the voters could only vote in districts in which they resided, and residence was limited to one place. The voters contended that, since they had two lawful residences, they were denied constitutional equal protection by the statutory restriction against voting in the local elections of both of the places of their residences. The appellate court held, however, that no constitutional violation was shown since the provisions of the New York State Election Law imposed only reasonable,	No	N/A	No

008922

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				cities where they resided. The voters appealed the order of the United States District Court for the Southern District of New York which granted appellees' motion to dismiss the complaint.	nondiscriminatory restrictions which advanced important state regulatory interests. While the voters may have interests in electoral outcomes in both cities, any rule permitting voting based on such interests would be unmanageable and subject to potential abuse. Further, basing voter eligibility on domicile, which was always over- or under-inclusive, nonetheless had enormous practical advantages, and the voters offered no workable standard to replace the domicile test. Finally, allowing the voters to choose which of their residences was their domicile for voting purposes could not be deemed discriminatory. Affirmed.			
Curtis v. Smith	United States District Court for the Eastern District of Texas	121 F. Supp. 2d 1054; 2000 U.S. Dist. LEXIS 17987	November 3, 2000	Plaintiffs sought a preliminary injunction to prohibit defendant tax assessor-collector from mailing confirmation letters to approximately 9,000 persons who were registered voters in Polk	Plaintiffs sought to prohibit defendant from mailing confirmation letters to approximately 9,000 persons, self-styled "escapees" who traveled a major portion of each year in recreational vehicles, all of whom were registered to vote in Polk County, Texas. In accordance with Texas law, three resident voters filed affidavits challenging the escapees' residency. These affidavits triggered defendant's action in sending confirmation notices	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				County, Texas.	to the escapees. The court determined, first, that because of the potential for discrimination, defendant's action required preclearance in accordance with § 5 of the Voting Rights Act and, second, that such preclearance had not been sought or obtained. Accordingly, the court issued a preliminary injunction prohibiting defendant from pursuing the confirmation of residency of the escapees, or any similarly situated group, under the Texas Election Code until the process had been submitted for preclearance in accordance with § 5. The action was taken to ensure that no discriminatory potential existed in the use of such process in the upcoming presidential election or future election. Motion for preliminary injunction was granted, and defendant was enjoined from pursuing confirmation of residency of the 9,000 "escapees," or any similarly situated group, under the Texas Election Code, until the process had been submitted for preclearance under § 5 of the Voting Rights Act.			
Peace & Freedom Party	Court of Appeal of California,	114 Cal. App. 4th	January 15, 2004	Plaintiff political party appealed a	The trial court ruled that inactive voters were excluded from the primary	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
v. Shelley	Third Appellate District	1237; 8 Cal. Rptr. 3d 497; 2004 Cal. App. LEXIS 42		judgment from the superior court which denied the party's petition for writ of mandate to compel defendant, the California Secretary of State, to include voters listed in the inactive file of registered voters in calculating whether the party qualified to participate in a primary election.	election. The court of appeals affirmed, observing that although the election had already taken place, the issue was likely to recur and was a matter of continuing public interest and importance; hence, a decision on the merits was proper, although the case was technically moot. The law clearly excluded inactive voters from the calculation. The statutory scheme did not violate the inactive voters' constitutional right of association because it was reasonably designed to ensure that all parties on the ballot had a significant modicum of support from eligible voters. Information in the inactive file was unreliable and often duplicative of information in the active file. Moreover, there was no violation of the National Voter Registration Act because voters listed as inactive were not prevented from voting. Although the Act prohibited removal of voters from the official voting list absent certain conditions, inactive voters in California could correct the record and vote as provided the Act. The court affirmed the denial of a writ of mandate.			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Bell v. Marinko	United States District Court for the Northern District of Ohio	235 F. Supp. 2d 772; 2002 U.S. Dist. LEXIS 21753	October 22, 2002	Plaintiff voters sued defendants, a county board of elections, a state secretary of state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.	The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather than permanent residents of the county. The voters claimed that the board hearings did not afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and resolve that challenge, did not	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					contravene the MVA. Defendants' motions for summary judgment were granted as to all claims with prejudice, except the voters' state-law claim, which was dismissed for want of jurisdiction, without prejudice.			
Charles H. Wesley Educ. Found., Inc. v. Cox	United States Court of Appeals for the Eleventh Circuit	408 F.3d 1349; 2005 U.S. App. LEXIS 8320	May 12, 2005	Plaintiffs, a charitable foundation, four volunteers, and a registered voter, filed a suit against defendant state officials alleging violations of the National Voter Registration Act and the Voting Rights Act. The officials appealed after the United States District Court for the Northern District of Georgia issued a preliminary injunction enjoining them from rejecting voter registrations submitted by the	The foundation conducted a voter registration drive; it placed the completed applications in a single envelope and mailed them to the Georgia Secretary of State for processing. Included in the batch was the voter's change of address form. Plaintiffs filed the suit after they were notified that the applications had been rejected pursuant to Georgia law, which allegedly restricted who could collect voter registration forms. Plaintiffs contended that the officials had violated the NVRA, the VRA, and U.S. Const. amends. I, XIV, XV. The officials argued that plaintiffs lacked standing and that the district court had erred in issuing the preliminary injunction. The court found no error. Plaintiffs had sufficiently alleged injuries under the NVRA, arising out of the rejection of the voter registration forms; the allegations in the complaint	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				foundation.	sufficiently showed an injury--in--fact that was fairly traceable to the officials' conduct. The injunction was properly issued. There was a substantial likelihood that plaintiffs would prevail as to their claims; it served the public interest to protect plaintiffs' franchise--related rights. The court affirmed the preliminary injunction order entered by the district court.			
McKay v. Thompson	United States Court of Appeals for the Sixth Circuit	226 F.3d 752; 2000 U.S. App. LEXIS 23387	September 18, 2000	Plaintiff challenged order of United States District Court for Eastern District of Tennessee at Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.	The trial court had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous case law, and could be challenged in state court. The requirement did not violate the Privacy Act of 1974, because it was grandfathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. The trial	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims. Order affirmed because requirement that voters disclose social security numbers as precondition to voter registration did not violate Privacy Act of 1974 or National Voter Registration Act and trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims.			
Nat'l Coalition for Students with Disabilities Educ. & Legal Def. Fund v. Scales	United States District Court for the Southern District of Maryland	150 F. Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528	July 5, 2001	Plaintiff, national organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss	Defendants alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged	No	N/A	No

008929

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				the first amended complaint, or in the alternative for summary judgment.	sufficient facts to confer standing under the NVRA, such allegations were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter registration services at the initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended complaint was granted as to the § 1983 claim and denied as to plaintiff's claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion for summary judgment was denied.			
Cunningham v. Chi. Bd. of Election Comm'rs	United States District Court for the Northern District of Illinois	2003 U.S. Dist. LEXIS 2528	February 24, 2003	Plaintiffs, who alleged that they were duly registered voters, six of whom had signed nominating petitions for one candidate	Plaintiffs argued that objections to their signatures were improperly sustained by defendants, the city board of election commissioners. Plaintiff's argued that they were registered voters whose names appeared in an inactive file and whose signatures were	No	N/A	No

008930

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				and two of whom signed nominating petitions for another candidate. They first asked for a preliminary injunction of the municipal election scheduled for the following Tuesday and suggested, alternatively, that the election for City Clerk and for 4th Ward Alderman be enjoined.	therefore, and improperly, excluded. The court ruled that by characterizing the claim as plaintiffs did, they sought to enjoin an election because their signatures were not counted, even though their preferred candidates were otherwise precluded from appearing on the ballot. Without regard to their likelihood of obtaining any relief, plaintiffs failed to demonstrate that they would be irreparably harmed if an injunction did not issue; the threatened injury to defendants, responsible as they were for the conduct of the municipal election, far outweighed any threatened injury to plaintiffs; and the granting of a preliminary injunction would greatly dissuade the public interest. Plaintiffs' petition for preliminary relief was denied.			
Diaz v. Hood	United States District Court for the Southern District of Florida	342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445	October 26, 2004	Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general election. They	The putative voters sought injunctive relief requiring the election officials to register them to vote. The court first noted that the unions lacked even representative standing, because they failed to show that one of their members could have brought the case in their own behalf. The individual putative voters raised separate issues:	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials moved to dismiss the complaint for lack of standing and failure to state a claim.</p>	<p>the first had failed to verify her mental capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. Motion to dismiss without prejudice granted.</p>			
Bell v. Marinko	United States District Court for the Northern District of Ohio	235 F. Supp. 2d 772; 2002	October 22, 2002	Plaintiff voters sued defendants, a county board of elections, a state secretary of	The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather	No	N/A	No

008932

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		U.S. Dist. LEXIS 21753		state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.	than permanent residents of the county. The voters claimed that the board hearings did not afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and resolve that challenge, did not contravene the MVA. Defendants' motions for summary judgment were granted as to all claims with prejudice, except the voters' state-law claim,			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					which was dismissed for want of jurisdiction, without prejudice.			
Bell v. Marinko	United States Court of Appeals for the Sixth Circuit	367 F.3d 588; 2004 U.S. App. LEXIS 8330	April 28, 2004	Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19--3509.21 violated the National Voter Registration Act, and the Equal Protection Clause of the Fourteenth Amendment. The United States District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.	The voters contested the challenges to their registration brought under Ohio Code Rev. Ann. § 3505.19 based on Ohio Rev. Code Ann. § 3503.02. Specifically, the voters asserted that § 3503.02----which stated that the place where the family of a married man or woman resided was considered to be his or her place of residence----violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place. The National Voter Registration Act did not bar the Board's continuing consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code	No	N/A	No

008934

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Ann. § 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed.			
Hileman v. McGinness	Court of Appeals of Illinois, Fifth District	316 Ill. App. 3d 868; 739 N.E.2d 81; 2000 Ill. App. LEXIS 845	October 25, 2000	Appellant challenged the circuit court declaration that that the result of a primary election for county circuit clerk was void.	In a primary election for county circuit clerk, the parties agreed that 681 absentee ballots were presumed invalid. The ballots had been commingled with the valid ballots. There were no markings or indications on the ballots which would have allowed them to be segregated from other ballots cast. Because the ballots could not have been segregated, apportionment was the appropriate remedy if no fraud was involved. If fraud was involved, the election would have had to have been voided and a new election held. Because the trial court did not hold an evidentiary hearing on the fraud allegations, and did not determine whether fraud was in issue, the case was remanded for a determination as to whether fraud was evident in the electoral process. The court reversed the declaration of the	No	N/A	No

008935

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					trial court, holding that a determination as to whether fraud was involved in the election was necessary to a determination of whether or not a new election was required.			
DeFabio v. Gummersheimer	Supreme Court of Illinois	192 Ill. 2d 63; 733 N.E.2d 1241; 2000 Ill. LEXIS 993	July 6, 2000	Appellant challenged the judgment of the appellate court, which affirmed the trial court's decision granting appellee's summary judgment motion in action brought by appellee to contest the results of the election for the position of county coroner in Monroe County.	Appellee filed a petition for election contest, alleging that the official results of the Monroe County coroners election were invalid because none of the 524 ballots cast in Monroe County's second precinct were initialed by an election judge, in violation of Illinois law. The trial court granted appellee's motion for summary judgment, and the appellate court affirmed the judgment. The Illinois supreme court affirmed, noting that statutes requiring election judges to initial election ballots were mandatory, and uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or corruption. Thus, the supreme court held that the trial court properly invalidated all of the ballots cast in Monroe County's second precinct. The court reasoned that none of the ballots contained the requisite initialing, and neither party argued that any of the	No	N/A	No

008936

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					uninitialed ballots could have been distinguished or identified as absentee ballots. The supreme court affirmed the judgment because the Illinois statute requiring election judges to initial election ballots was mandatory, and uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or corruption. Additionally, none of the ballots in Monroe County's second precinct contained the requisite initialing.			
Gilmore v. Amityville Union Free Sch. Dist.	United States District Court for the Eastern District of New York	305 F. Supp. 2d 271; 2004 U.S. Dist. LEXIS 3116	March 2, 2004	Plaintiffs, two school board candidates, filed a class action complaint against defendants, a school district, the board president, and other district agents or employees, challenging a school board election. Defendants moved to dismiss.	During the election, a voting machine malfunctioned, resulting in votes being cast on lines that were blank on the ballot. The board president devised a plan for counting the machine votes by moving each tally up one line. The two candidates, who were African American, alleged that the president's plan eliminated any possibility that an African American would be elected. The court found that the candidates failed to state a claim under § 1983 because they could not show that defendants' actions were done or approved by a person with final policymaking authority, nor was there	No	N/A	No

008937

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					a showing of intentional or purposeful discrimination on defendants' part. The vote-counting method applied equally to all candidates. The candidates' claims under § 2000a and 2000c-8 failed because schools were not places of public accommodation, as required under § 2000a, and § 2000c-8 applied to school segregation. Their claim under § 1971 of deprivation of voting rights failed because § 1971 did not provide for a private right of action. The court declined to exercise supplemental jurisdiction over various state law claims. Defendants' motion to dismiss was granted with respect to the candidates' federal claims; the state law claims were dismissed without prejudice.			
State ex rel. Mackey v. Blackwell	Supreme Court of Ohio	106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005	September 28, 2005	Appellants, a political group and county electors who voted by provisional ballot, sought review of a judgment from the court of appeals, which dismissed appellants' complaint, seeking a	The Secretary of State issued a directive to all Ohio county boards of elections, which specified that a signed affirmation statement was necessary for the counting of a provisional ballot in a presidential election. During the election, over 24,400 provisional ballots were cast in one county. The electors' provisional ballots were not counted. They, together with a political	No	N/A	No

008938

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
		Ohio LEXIS 2074		writ of mandamus to prevent appellees, the Ohio Secretary of State, a county board of elections, and the board's director, from disenfranchisement of provisional ballot voters.	activist group, brought the mandamus action to compel appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted constitutional and statutory law was relied on in support of the complaint. The court dismissed the complaint, finding that no clear legal right was established under Ohio law and the federal claims could be adequately raised in an action under § 1983. On appeal, the Ohio supreme court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election--contest actions were the exclusive remedy to challenge election results. An adequate remedy existed under § 1983 to raise the federal--law claims. Affirmed.			
Touchston v. McDermott	United States District Court for the Middle District of Florida	120 F. Supp. 2d 1055; 2000 U.S. Dist. LEXIS	November 14, 2000	In action in which plaintiffs, registered voters in Brevard County, Florida, filed suit against defendants, members of several	In their complaint, plaintiffs challenged the constitutionality of § 102.166(4), asserting that the statute violated their rights under the Equal Protection and Due Process Clauses of U.S. Const. amend. XIV. Based on these claims, plaintiffs sought an order	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		20091		County Canvassing Boards and the Secretary of the Florida Department of State, challenging the constitutionality of Fla. Stat. Ann. § 102.166(4) (2000), before the court was plaintiffs' emergency motion for temporary restraining order and/or preliminary injunction.	from the court stopping the manual recount of votes. The court found that plaintiffs had failed to set forth a valid basis for intervention by federal courts. They had not alleged that the Florida law was discriminatory, that citizens were being deprived of the right to vote, or that there had been fraudulent interference with the vote. Moreover, plaintiffs had not established a likelihood of success on the merits of their claims. Plaintiffs' motion for temporary restraining order and/or preliminary injunction denied; plaintiffs had not alleged that the Florida law was discriminatory, that citizens were being deprived of the right to vote, or that there had been fraudulent interference with the vote.			
Siegel v. LePore	United States District Court for the Southern District of Florida	120 F. Supp. 2d 1041; 2000 U.S. Dist. LEXIS 16333	November 13, 2000	Plaintiffs, individual Florida voters and Republican Party presidential and vice-presidential candidates, moved for a temporary restraining order and preliminary injunction to enjoin	The court addressed who should consider plaintiffs' serious arguments that manual recounts would diminish the accuracy of vote counts due to ballot degradation and the exercise of discretion in determining voter intent. The court ruled that intervention by a federal district court, particularly on a preliminary basis, was inappropriate. A federal court should not interfere	No	N/A	No

008940

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case Be Researched Further
				defendants, canvassing board members from four Florida counties, from proceeding with manual recounts of election ballots.	except where there was an immediate need to correct a constitutional violation. Plaintiffs neither demonstrated a clear deprivation of a constitutional injury or a fundamental unfairness in Florida's manual recount provision. The recount provision was reasonable and non-discriminatory on its face and resided within the state's broad control over presidential election procedures. Plaintiffs failed to show that manual recounts were so unreliable as to constitute a constitutional injury, that plaintiffs' alleged injuries were irreparable, or that they lacked an adequate state court remedy. Injunctive relief denied because plaintiffs demonstrated neither clear deprivation of constitutional injury or fundamental unfairness in Florida's manual recount provision to justify federal court interference in state election procedures.			
Gore v. Harris	Supreme Court of Florida	773 So. 2d 524; 2000 Fla. LEXIS 2474	December 22, 2000	In a contest to results of the 2000 presidential election in Florida, the United States Supreme Court	The state supreme court had ordered the trial court to conduct a manual recount of 9000 contested Miami--Dade County ballots, and also held that uncounted "undervotes" in all Florida counties were to be manually counted.	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				reversed and remanded a Florida Supreme Court decision that had ordered a manual recount of certain ballots.	The trial court was ordered to use the standard that a vote was "legal" if there was a clear indication of the intent of the voter. The United States Supreme Court released an opinion on December 12, 2000, which held that such a standard violated equal protection rights because it lacked specific standards to ensure equal application, and also mandated that any manual recount would have to have been completed by December 12, 2000. On remand, the state supreme court found that it was impossible under that time frame to adopt adequate standards and make necessary evaluations of vote tabulation equipment. Also, development of a specific, uniform standard for manual recounts was best left to the legislature. Because adequate standards for a manual recount could not be developed by the deadline set by the United States Supreme Court, appellants were afforded no relief.			
Goodwin v. St. Thomas--St. John Bd. of	Territorial Court of the Virgin Islands	43 V.I. 89; 2000 V.I.	December 13, 2000	Plaintiff political candidate alleged that certain general	Plaintiff alleged that defendants counted unlawful absentee ballots that lacked postmarks, were not signed or	No	N/A	No

008942

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
Elections		LEXIS 15		election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.	notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper. Plaintiff's request for declaratory and injunctive			

008943

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					relief was denied. Invalidation of absentee ballots was not required since the irregularities asserted by plaintiff involved ballots which were in fact valid, were not tabulated by defendants, or were insufficient to change the outcome of the election.			
Shannon v. Jacobowitz	United States Court of Appeals for the Second Circuit	394 F.3d 90; 2005 U.S. App. LEXIS 259	January 7, 2005	Plaintiffs, voters and an incumbent candidate, sued defendants, a challenger candidate, a county board of election, and commissioners, pursuant to § 1983 alleging violation of the Due Process Clause of the Fourteenth Amendment. The United States District Court for the Northern District of New York granted summary judgment in favor of plaintiffs. Defendants appealed.	Local election inspectors noticed a problem with a voting machine. Plaintiffs asserted that their votes were not counted due to the machine malfunction. Rather than pursue the state remedy of quo warranto, by requesting that New York's Attorney General investigate the machine malfunction and challenge the election results in state court, plaintiffs filed their complaint in federal court. The court of appeals found that United States Supreme Court jurisprudence required intentional conduct by state actors as a prerequisite for a due process violation. Neither side alleged that local officials acted intentionally or in a discriminatory manner with regard to the vote miscount. Both sides conceded that the recorded results were likely due to an unforeseen malfunction with the voting machine.	No	N/A	No

008944

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched
					Because no conduct was alleged that would indicate an intentional deprivation of the right to vote, there was no cognizable federal due process claim. The proper remedy was to assert a quo warranto action to challenge the outcome of a general election based on an alleged voting machine malfunction. The district court's grant of summary judgment was reversed and its injunctions were vacated. The case was remanded for further proceedings consistent with this opinion.			
GEORGE W. BUSH v. PALM BEACH COUNTY CANVASSING BOARD, ET AL.	United States Supreme Court	531 U.S. 70; 121 S. Ct. 471; 148 L. Ed. 2d 366; 2000 U.S. LEXIS 8087	December 4, 2000	Appellant Republican presidential candidate's petition for writ of certiorari to the Florida supreme court was granted in a case involving interpretations of Fla. Stat. Ann. §§ 102.111, 102.112, in proceedings brought by appellees Democratic	The Supreme Court vacated the state court's judgment, finding that the state court opinion could be read to indicate that it construed the Florida Election Code without regard to the extent to which the Florida Constitution could, consistent with U.S. Const. art. II, § 1, cl. 2, circumscribe the legislative power. The judgment of the Florida Supreme Court was vacated and remanded for further proceedings. The court stated the judgment was unclear as to the extent to which the state court saw the Florida constitution as circumscribing the legislature's	No	N/A	No

008945

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (If of Note)	Other Notes	Should the Case be Researched Further
				<p>presidential candidate, county canvassing boards, and Florida Democratic Party regarding authority of the boards and respondent Florida Secretary of State as to manual recounts of ballots and deadlines.</p>	<p>authority under Article II of the United States Constitution, and as to the consideration given the federal statute regarding state electors.</p>			
<p>Touchston v. McDermott</p>	<p>United States Court of Appeals for the Eleventh Circuit</p>	<p>234 F.3d 1130; 2000 U.S. App. LEXIS 29366</p>	<p>November 17, 2000</p>	<p>Plaintiff voters appealed from judgment of the United States District Court for the Middle District of Florida, which denied their emergency motion for an injunction pending appeal against defendant county election officials. Plaintiffs sought to enjoin defendants from conducting manual</p>	<p>Plaintiff voters sought an emergency injunction pending appeal to enjoin defendant county election officials from conducting manual ballot recounts or to enjoin defendants from certifying the results of the Presidential election which contained any manual recounts. The district court denied the emergency injunction and plaintiffs appealed. Upon review, the emergency motion for injunction pending appeal was denied without prejudice. Florida had adequate election dispute procedures, which had been invoked and were being implemented in the forms of administrative actions by state officials and actions in state court.</p>	<p>No</p>	<p>N/A</p>	<p>No</p>

008946

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				ballot recounts or to enjoin defendants from certifying results of the presidential election that contained any manual recounts.	Therefore, the state procedures were adequate to preserve for ultimate review in the United States Supreme Court any federal questions arising out of the state procedures. Moreover, plaintiffs failed to demonstrate a substantial threat of an irreparable injury that would warrant granting the extraordinary remedy of an injunction pending appeal. Denial of plaintiff's petition for emergency injunction pending appeal was affirmed. The state procedures were adequate to preserve any federal issue for review, and plaintiffs failed to demonstrate a substantial threat of an irreparable injury that would have warranted granting the extraordinary remedy of the injunction.			
Gore v. Harris	Supreme Court of Florida	772 So. 2d 1243; 2000 Fla. LEXIS 2373	December 8, 2000	The court of appeal certified as being of great public importance a trial court judgment that denied all relief requested by appellants, candidates for President and Vice	Appellants contested the certification of their opponents as the winners of Florida's electoral votes. The Florida supreme court found no error in the trial court's holding that it was proper to certify election night returns from Nassau County rather than results of a machine recount. Nor did the trial court err in refusing to include votes that the Palm Beach County	No	N/A	No

008947

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further?
				<p>President of the United States, in appellants' contest to certified election results.</p>	<p>Canvassing Board found not to be legal votes during a manual recount. However, the trial court erred in excluding votes that were identified during the Palm Beach County manual recount and during a partial manual recount in Miami--Dade County. It was also error to refuse to examine Miami--Dade County ballots that registered as non--votes during the machine count. The trial court applied an improper standard to determine whether appellants had established that the result of the election was in doubt, and improperly concluded that there was no probability of a different result without examining the ballots that appellants claimed contained rejected legal votes. The judgment was reversed and remanded; the trial court was ordered to tabulate by hand Miami-Dade County ballots that the counting machine registered as non--votes, and was directed to order inclusion of votes that had already been identified during manual recounts. The trial court also was ordered to consider whether manual recounts in other counties were necessary.</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Reitz v. Rendell	United States District Court for the Middle District of Pennsylvania	2004 U.S. Dist. LEXIS 21813	October 29, 2004	Plaintiff service members filed an action against defendant state officials under the Uniformed and Overseas Citizens Absentee Voting Act alleging that they and similarly situated service members would be disenfranchised because they did not receive their absentee ballots in time. The parties entered into a voluntary agreement and submitted it to the court for approval.	The court issued an order to assure that the service members and other similarly situated service members who were protected by the UOCAVA would not be disenfranchised. The court ordered the Secretary of the Commonwealth of Pennsylvania to take all reasonable steps necessary to direct the county boards of elections to accept as timely received absentee ballots cast by service members and other overseas voters as defined by UOCAVA, so long as the ballots were received by November 10, 2004. The ballots were to be considered solely for purposes of the federal offices that were included on the ballots. The court held that the ballot needed to be cast no later than November 2, 2004 to be counted. The court did not make any findings of liability against the Governor or the Secretary. The court entered an order, pursuant to a stipulation between the parties, that granted injunctive relief to the service members.	No	N/A	No
United States v. Pennsylvania	United States District Court for the Middle	2004 U.S. Dist.	October 20, 2004	Plaintiff United States sued defendant	The testimony of the two witnesses offered by the United States did not support its contention that voters	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis of Note	Other Notes	Should the Case be Researched Further
	district of Pennsylvania	LEXIS 21167		Commonwealth of Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of candidates so late in the election year.	protected by the Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern regarding their ability or right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of UOCAVA voters to cast their ballots. Moreover, Pennsylvania had adduced substantial evidence that the requested injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs. must consider the following four factors: (1)			

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					<p>the likelihood that the applicant will prevail on the merits of the substantive claim; (2) the extent to which the moving party will be irreparably harmed in the absence of injunctive relief; (3) the extent to which the nonmoving party will suffer irreparable harm if the court grants the requested injunctive relief; and (4) the public interest. District courts should only grant injunctive relief after consideration of each of these factors. Motion for injunctive relief denied.</p>			
<p>Bush v. Hillsborough County Canvassing Bd.</p>	<p>United States District Court for the Northern District of Florida</p>	<p>123 F. Supp. 2d 1305; 2000 U.S. Dist. LEXIS 19265</p>		<p>The matter came before the court on plaintiffs' complaint for declaratory and injunctive relief alleging that defendant county canvassing boards rejected overseas absentee state ballots and federal write--in ballots based on criteria inconsistent with federal law, and requesting that the ballots be declared</p>	<p>Plaintiff presidential and vice--presidential candidates and state political party contended that defendant county canvassing boards rejected overseas absentee state ballots and federal write--in ballots based on criteria inconsistent with the Uniformed and Overseas Citizens Absentee Voting Act. Because the state accepted overseas absentee state ballots and federal write--in ballots up to 10 days after the election, the State needed to access that the ballot in fact came from overseas. However, federal law provided the method to establish that fact by requiring the overseas</p>	<p>No</p>	<p>N/A</p>	<p>No</p>

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Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				valid and that they should be counted.	absentee voter to sign an oath that the ballot was mailed from outside the United States and requiring the state election officials to examine the voter's declarations. The court further noted that federal law required the user of a federal write--in ballot to timely apply for a regular state absentee ballot, not that the state receive the application, and that again federal law, by requiring the voter using a federal write--in ballot to swear that he or she had made timely application, had provided the proper method of proof. Plaintiffs withdrew as moot their request for injunctive relief and the court granted in part and denied in part plaintiffs' request for declaratory relief, and relief GRANTED in part and declared valid all federal write--in ballots that were signed pursuant to the oath provided therein but rejected solely because the ballot envelope did not have an APO, FPO, or foreign postmark, or solely because there was no record of an application for a state absentee ballot.			
Harris v. Florida Elections Canvassing	United States District Court for the Northern	122 F. Supp. 2d 1317;	December 9, 2000	Plaintiffs challenged the counting of overseas absentee	In two separate cases, plaintiff electors originally sued defendant state elections canvassing commission and	No	N/A	No

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Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Researched Further
Comm'n	District of Florida	2000 U.S. Dist. LEXIS 17875		ballots received after 7 p.m. on election day, alleging the ballots violated Florida election law.	state officials in Florida state circuit court, challenging the counting of overseas absentee ballots received after 7 p.m. on election day. Defendant governor removed one case to federal court. The second case was also removed. The court in the second case denied plaintiff's motion for remand and granted a motion to transfer the case to the first federal court under the related case doctrine. Plaintiffs claimed that the overseas ballots violated Florida election law. Defendants argued the deadline was not absolute. The court found Congress did not intend 3 U.S.C.S. § 1 to impose irrational scheduling rules on state and local canvassing officials, and did not intend to disenfranchise overseas voters. The court held the state statute was required to yield to Florida Administrative Code, which required the 10-day extension in the receipt of overseas absentee ballots in federal elections because the rule was promulgated to satisfy a consent decree entered by the state in 1982. Judgment entered for defendants because a Florida administrative rule requiring a 10--day extension in the receipt of			

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					overseas absentee ballots in federal elections was enacted to bring the state into compliance with a federally ordered mandate; plaintiffs were not entitled to relief under any provision of state or federal law.			
Romeu v. Cohen	United States District Court for the Southern District of New York	121 F. Supp. 2d 264; 2000 U.S. Dist. LEXIS 12842	September 7, 2000	Plaintiff territorial resident and plaintiff-intervenor territorial governor moved for summary judgment and defendant federal, state, and local officials moved to dismiss the complaint that alleged that the Voting Rights Amendments of 1970, the Uniform Overseas Citizens Absentee Voting Act, and New York election law were unconstitutional since they denied plaintiff's right to receive an absentee	Plaintiff argued that the laws denied him the right to receive a state absentee ballot in violation of the right to vote, the right to travel, the Privileges and Immunities Clause, and the Equal Protection Clause. Plaintiff-intervenor territorial governor intervened on behalf of similarly situated Puerto Rican residents. Defendants' argued that: 1) plaintiff lacked standing; 2) a non-justiciable political question was raised; and 3) the laws were constitutional. The court held that: 1) plaintiff had standing because he made a substantial showing that application for the benefit was futile; 2) whether or not the statutes violated plaintiff's rights presented a legal, not political, question, and there was no lack of judicially discoverable and manageable standards for resolving the matter; and 3) the laws were constitutional and only a constitutional amendment or	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if any)	Other Notes	Should the Case be Researched Further
				ballot for the upcoming presidential election.	grant of statehood would enable plaintiff to vote in a presidential election. The court granted defendants' motion to dismiss because the laws that prohibited territorial residents from voting by state absentee ballot in presidential elections were constitutional.			
Romeu v. Cohen	United States Court of Appeals for the Second Circuit	265 F.3d 118; 2001 U.S. App. LEXIS 19876	September 6, 2001	Plaintiff territorial resident sued defendants, state and federal officials, alleging that the Uniformed and Overseas Citizens Absentee Voting Act unconstitutionally prevented the territorial resident from voting in his former state of residence. The resident appealed the judgment of the United States District Court for the Southern District of New York, which dismissed the	The territorial resident contended that the UOCAVA unconstitutionally distinguished between former state residents residing outside the United States, who were permitted to vote in their former states, and former state residents residing in a territory, who were not permitted to vote in their former states. The court of appeals first held that the UOCAVA did not violate the territorial resident's right to equal protection in view of the valid and not insubstantial considerations for the distinction. The territorial resident chose to reside in the territory and had the same voting rights as other territorial residents, even though such residency precluded voting for federal offices. Further, the resident had no constitutional right to vote in his former state after he terminated his	No	N/A	No

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Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				complaint.	residency in such state, and the consequences of the choice of residency did not constitute an unconstitutional interference with the right to travel. Finally, there was no denial of the privileges and immunities of state citizenship, since the territorial resident was treated identically to other territorial residents. The judgment dismissing the territorial resident's complaint was affirmed.			
Igartua de la Rosa v. United States	United States District Court for the District of Puerto Rico	107 F. Supp. 2d 140; 2000 U.S. Dist. LEXIS 11146	July 19, 2000	Defendant United States moved to dismiss plaintiffs' action seeking a declaratory judgment allowing them to vote, as U.S. citizens residing in Puerto Rico, in the upcoming and all subsequent Presidential elections. Plaintiffs urged, among other claims, that their right to vote in Presidential elections was	The court denied the motion of defendant United States to dismiss the action of plaintiffs, two groups of Puerto Ricans, seeking a declaratory judgment allowing them to vote in Presidential elections. One group always resided in Puerto Rico and the other became ineligible to vote in Presidential elections upon taking up residence in Puerto Rico. Plaintiffs contended that the Constitution and the International Covenant on Civil and Political Rights, guaranteed their right to vote in Presidential elections and that the Uniformed and Overseas Citizens Absentee Voting Act, was unconstitutional in disallowing Puerto Rican citizens to vote by considering	No	N/A	No

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Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				guaranteed by the Constitution and the International Covenant on Civil and Political Rights.	them to be within the United States. The court concluded that UOCAVA was constitutional under the rational basis test, and violation of the treaty did not give rise to privately enforceable rights. Nevertheless, the Constitution provided U.S. citizens residing in Puerto Rico the right to participate in Presidential elections. No constitutional amendment was needed. The present political status of Puerto Rico was abhorrent to the Bill of Rights. The court denied defendant United States' motion to dismiss plaintiffs' action seeking a declaratory judgment allowing them to vote in Presidential elections as citizens of the United States and of Puerto Rico. The court held that the United States Constitution itself provided plaintiffs with the right to participate in Presidential elections.			
James v. Bartlett	Supreme Court of North Carolina	359 N.C. 260; 607 S.E.2d 638; 2005 N.C. LEXIS	February 4, 2005	Appellant candidates challenged elections in the superior court through appeals of election protests before the North Carolina State Board	The case involved three separate election challenges. The central issue was whether a provisional ballot cast on election day at a precinct other than the voter's correct precinct of residence could be lawfully counted in final election tallies. The superior court held	No	N/A	No

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		146		of Elections and a declaratory judgment action in the superior court. The court entered an order granting summary judgment in favor of appellees, the Board, the Board's executive director, the Board's members, and the North Carolina Attorney General. The candidates appealed.	that it could be counted. On appeal, the supreme court determined that state law did not permit out-of-precinct provisional ballots to be counted in state and local elections. The candidates failure to challenge the counting of out-of-precinct provisional ballots before the election did not render their action untimely. Reversed and remanded.			
Sandusky County Democratic Party v. Blackwell	United States Court of Appeals for the Sixth Circuit	387 F.3d 565; 2004 U.S. App. LEXIS 22320	October 26, 2004	Defendant state appealed from an order of the U.S. District Court for the Northern District of Ohio which held that the Help America Vote Act required that voters be permitted to cast provisional ballots upon affirming their registration to vote	The district court found that HAVA created an individual right to cast a provisional ballot, that this right is individually enforceable under 42 U.S.C.S. § 1983, and that plaintiffs unions and political parties had standing to bring a § 1983 action on behalf of Ohio voters. The court of appeals agreed that the political parties and unions had associational standing to challenge the state's provisional voting directive. Further, the court determined that HAVA was	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				in the county in which they desire to vote and that provisional ballots must be counted as valid ballots when cast in the correct county.	quintessentially about being able to cast a provisional ballot but that the voter casts a provisional ballot at the peril of not being eligible to vote under state law; if the voter is not eligible, the vote will then not be counted. Accordingly, the court of appeals reversed the district court and held that "provisional" ballots cast in a precinct where a voter does not reside and which would be invalid under state law, are not required by the HAVA to be considered legal votes. Affirmed in part and reversed in part.			
State ex rel. Mackey v. Blackwell	Supreme Court of Ohio	106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005 Ohio LEXIS 2074	September 28, 2005	Appellants, a political group and county electors who voted by provisional ballot, sought review of a judgment from the court of appeals which dismissed appellants' complaint, seeking a writ of mandamus to prevent appellees, the Ohio Secretary of State, a county board of elections,	The Secretary of State issued a directive to all Ohio county boards of elections, which specified that a signed affirmation statement was necessary for the counting of a provisional ballot in a presidential election. During the election, over 24,400 provisional ballots were cast in one county. The electors' provisional ballots were not counted. They, together with a political activist group, brought the mandamus action to compel appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted	No	N/A	No

008959

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				and the board's director, from disenfranchisement of provisional ballot voters.	constitutional and statutory law was relied on in support of the complaint. The trial court dismissed the complaint, finding that no clear legal right was established under Ohio law and the federal claims could be adequately raised in an action under 42 U.S.C.S. § 1983. On appeal, the Ohio Supreme Court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election--contest actions were the exclusive remedy to challenge election results. An adequate remedy existed under § 1983 to raise the federal--law claims. Affirmed.			
Fla. Democratic Party v. Hood	United States District Court for the Northern District of Florida	342 F. Supp. 2d 1073; 2004 U.S. Dist. LEXIS 21720	October 21, 2004	Plaintiff political party sought injunctive relief under the Help America Vote Act, claiming that the election system put in place by defendant election officials violated HAVA because it did not allow	The political party asserted that a prospective voter in a federal election had the right to cast a provisional ballot at a given polling place, even if the local officials asserted that the voter was at the wrong polling place; second, that voter had the right to have that vote counted in the election, if the voter otherwise met all requirements of state law. The court noted that the right to vote was clearly protectable as a civil right, and a primary purpose of	No	N/A	No

008960

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further?
				provisional voting other than in the voter's assigned precinct. The officials moved for judgment on the pleadings.	the HAVA was to preserve the votes of persons who had incorrectly been removed from the voting rolls, and thus would not be listed as voters at what would otherwise have been the correct polling place. The irreparable injury to a voter was easily sufficient to outweigh any harm to the officials. Therefore, the court granted relief as to the first claim, allowing the unlisted voter to cast a provisional ballot, but denied relief as to the second claim, that the ballot at the wrong place must be counted if it was cast at the wrong place, because that result contradicted State law. The provisional ballot could only be counted if it was cast in the proper precinct under State law.			
League of Women Voters v. Blackwell	United States District Court for the Northern District of Ohio	340 F. Supp. 2d 823; 2004 U.S. Dist. LEXIS 20926	October 20, 2004	Plaintiff organizations filed suit against defendant, Ohio's Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote	The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the last four digits of his social security number. If he did not know	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				Act. The Secretary filed a motion to dismiss.	either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive, even if the cost, in terms of uncounted ballots, was regrettable.			
Sandusky County Democratic Party v. Blackwell	United States Court of Appeals for the Sixth Circuit	386 F.3d 815; 2004 U.S. App. LEXIS 28765	October 23, 2004	Defendant Ohio Secretary of State challenged an order of the United States District Court for the Northern District of Ohio, which held	On appeal, the court held that the district court correctly ruled that the right to cast a provisional ballot in federal elections was enforceable under 42 U.S.C.S. § 1983 and that at least one plaintiff had standing to enforce that right in the district court.	No	N/A	No

008962

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				that Ohio Secretary of State Directive 2004--33 violated the federal Help America Vote Act. In its order, the district court directed the Secretary to issue a revised directive that conformed to HAVA's requirements.	The court also held that Ohio Secretary of State Directive 2004--33 violated HAVA to the extent that it failed to ensure that any individual affirming that he or she was a registered voter in the jurisdiction in which he or she desired to vote and eligible to vote in a federal election was permitted to cast a provisional ballot. However, the district court erred in holding that HAVA required that a voter's provisional ballot be counted as a valid ballot if it was cast anywhere in the county in which the voter resided, even if it was cast outside the precinct in which the voter resided.			
Hawkins v. Blunt	United States District Court for the Western District of Missouri	2004 U.S. Dist. LEXIS 21512	October 12, 2004	In an action filed by plaintiffs, voters and a state political party, contending that the provisional voting requirements of Mo. Rev. Stat. § 115.430 conflicted with and was preempted by the Help America Vote Act, plaintiffs and defendants, the	The court held that the text of the HAVA, as well as its legislative history, proved that it could be read to include reasonable accommodations of state precinct voting practices in implementing provisional voting requirements. The court further held that Mo. Rev. Stat. § 115.430.2 was reasonable; to effectuate the HAVA's intent and to protect that interest, it could not be unreasonable to direct a voter to his correct voting place where a full ballot was likely to be cast. The	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				secretary of state and others, moved for summary judgment.	court also held that plaintiffs' equal protection rights were not violated by the requirement that before a voter would be allowed to cast a provisional ballot, the voter would first be directed to his proper polling place.			
Bay County Democratic Party v. Land	United States District Court for the Eastern District of Michigan	340 F. Supp. 2d 802; 2004 U.S. Dist. LEXIS 20551	October 13, 2004	Plaintiffs, state and county Democratic parties, filed an action against defendant, Michigan secretary of state and the Michigan director of elections, alleging that the state's intended procedure for casting and counting provisional ballots at the upcoming general election would violate the Help America Vote Act and state laws implementing the federal legislation. Defendants filed a motion to transfer venue.	The parties claimed that if the secretary's proposed procedure was allowed to occur, several voters who were members of the parties' respective organizations were likely to be disenfranchised. Defendants moved to transfer venue of the action to the Western District of Michigan claiming that the only proper venue for an action against a state official is the district that encompasses the state's seat of government. Alternatively, defendants sought transfer for the convenience of the parties and witnesses. The court found that defendants' arguments were not supported by the plain language of the current venue statutes. Federal actions against the Michigan secretary of state over rules and practices governing federal elections traditionally were brought in both the Eastern and Western Districts of Michigan. There was no rule that	No	N/A	No

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					required such actions to be brought only in the district in which the state's seat of government was located, and no inconvenience resulting from litigating in the state's more populous district reasonably could be claimed by a state official who had a mandate to administer elections throughout the state and operated an office in each of its counties. Motion denied.			
Bay County Democratic Party v. Land	United States District Court for the Eastern District of Michigan	347 F. Supp. 2d 404; 2004 U.S. Dist. LEXIS 20872	October 19, 2004	Plaintiffs, voter organizations and political parties, filed actions against defendants, the Michigan Secretary of State and her director of elections, challenging directives issued to local election officials concerning the casting and tabulation of provisional ballots. Plaintiffs sought a preliminary injunction and contended that the	The court concluded that (1) plaintiffs had standing to assert their claims; (2) HAVA created individual rights enforceable through 42 U.S.C.S. § 1983; (3) Congress had provided a scheme under HAVA in which a voter's right to have a provisional ballot for federal offices tabulated was determined by state law governing eligibility, and defendants' directives for determining eligibility on the basis of precinct--based residency were inconsistent with state and federal election law; (4) Michigan election law defined voter qualifications in terms of the voter's home jurisdiction, and a person who cast a provisional ballot within his or her jurisdiction was entitled under federal law to have his	No	N/A	No

008965

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				directives violated their rights under the Help America Vote Act.	or her votes for federal offices counted if eligibility to vote in that election could be verified; and (5) defendants' directives concerning proof of identity of first-time voters who registered by mail were consistent with federal and state law.			
Weber v. Shelley	United States Court of Appeals for the Ninth Circuit	347 F.3d 1101; 2003 U.S. App. LEXIS 21979	October 28, 2003	Plaintiff voter brought an suit against defendants, the secretary of state and the county registrar of voters, claiming that the lack of a voter-verified paper trail in the county's newly installed touchscreen voting system violated her rights to equal protection and due process. The United States District Court for the Central District of California granted the secretary and the registrar summary judgment.	On review, the voter contended that use of paperless touch--screen voting systems was unconstitutional and that the trial court erred by ruling her expert testimony inadmissible. The trial court focused on whether the experts' declarations raised genuine issues of material fact about the relative accuracy of the voting systemat issue and excluded references to news--paper articles and unidentified studies absent any indication that experts normally relied upon them. The appellate court found that the trial court's exclusions were not an abuse of discretion and agreed that the admissible opinions which were left did not tend to show that voters had a lesser chance of having their votes counted. It further found that the use of touchscreen voting systems was not subject to strict	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				The voter appealed.	scrutiny simply because this particular balloting system might make the possibility of some kinds of fraud more difficult to detect. California made a reasonable, politically neutral and non-discriminatory choice to certify touchscreen systems as an alternative to paper ballots, as did the county in deciding to use such a system. Nothing in the Constitution forbid this choice. The judgment was affirmed.			
Am. Ass'n of People with Disabilities v. Shelley	United States District Court for the Central District of California	324 F. Supp. 2d 1120; 2004 U.S. Dist. LEXIS 12587	July 6, 2004	Plaintiffs, disabled voters and organizations representing those voters, sought to enjoin the directives of defendant California Secretary of State, which decertified and withdrew approval of the use of certain direct recording electronic (DRE) voting systems. One voter applied for a temporary restraining order, or,	The voters urged the invalidation of the Secretary's directives because, allegedly, their effect was to deprive the voters of the opportunity to vote using touch--screen technology. Although it was not disputed that some disabled persons would be unable to vote independently and in private without the use of DREs, it was clear that they would not be deprived of their fundamental right to vote. The Americans with Disabilities Act, did not require accommodation that would enable disabled persons to vote in a manner that was comparable in every way with the voting rights enjoyed by persons without disabilities. Rather, it mandated that voting programs be	No	N/A	No

008967

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				in the alternative, a preliminary injunction. of a preliminary injunction in a number of ways, including a four-part test that considers (1) likelihood of success on the merits; (2) the possibility of irreparable injury in the absence of an injunction; (3) a balancing of the harms; and (4) the public interest.	made accessible. Defendant's decision to suspend the use of DREs pending improvement in their reliability and security of the devices was a rational one, designed to protect the voting rights of the state's citizens. The evidence did not support the conclusion that the elimination of the DREs would have a discriminatory effect on the visually or manually impaired. Thus, the voters showed little likelihood of success on the merits. The individual's request for a temporary restraining order, or, in the alternative, a preliminary injunction, was denied. Ninth Circuit's tests for a preliminary injunction, although phrased differently, require a court to inquire into whether there exists a likelihood of success on the merits, and the possibility of irreparable injury; a court is also required to balance the hardships.			
Fla. Democratic Party v. Hood	Court of Appeal of Florida, First District	884 So. 2d 1148; 2004 Fla. App. LEXIS 16077	October 28, 2004	Petitioner, the Florida Democratic Party, sought review of an emergency rule adopted by the Florida Department	The Party argued that: (1) the Florida Administrative Code, recast language from the earlier invalidated rule prohibiting a manual recount of overvotes and undervotes cast on a touchscreen machine; (2) the rule did	No	N/A	No

008968

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>of State, contending that the findings of immediate danger, necessity, and procedural fairness on which the rule was based were insufficient under Florida law, which required a showing of such circumstances, and Florida case law. This matter followed.</p>	<p>not call for the manual recount of votes to determine voter intent; and (3) the rule created voters who were entitled to manual recounts in close elections and those who were not. The appeals court disagreed. The Department was clearly concerned with the fact that if no rule were in place, the same confusion and inconsistency in divining a voter's intent that attended the 2000 presidential election in Florida, and the same constitutional problems the United States Supreme Court addressed then, might recur in 2004. It was not the court's responsibility to decide the validity of the rule or whether other means were more appropriate. But, the following question was certified to the Supreme Court: Whether under Fla. Stat. ch. 120.54(4), the Department of State set forth sufficient justification for an emergency rule establishing standards for conducting manual recounts of overvotes and undervotes as applied to touchscreen voting systems? The petition was denied, but a question was certified to the supreme court as a matter of great public importance.</p>			

008969

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if on Note)	Other Notes	Should the Case be Researched Further
Wexler v. Lepore	United States District Court for the Southern District of Florida	342 F. Supp. 2d 1097; 2004 U.S. Dist. LEXIS 21344	October 25, 2004	Plaintiffs, a congressman, state commissioners, and a registered voter, brought a § 1983 action against defendants, state officials, alleging that the manual recount procedures for the state's touchscreen paperless voting systems violated their rights under U.S. Const. amends. V and XIV. A bench trial ensued.	The officials claimed that the state had established an updated standard for manual recounts in counties using optical scan systems and touchscreen voting systems, therefore, alleviating equal protection concerns. The court held that the rules prescribing what constituted a clear indication on the ballot that the voter had made a definite choice, as well the rules prescribing additional recount procedures for each certified voting system promulgated pursuant to Florida law complied with equal protection requirements under U.S. Const. amends. V and XIV because the rules prescribed uniform, nondifferential standards for what constituted a legal vote under each certified voting system, as well as procedures for conducting a manual recount of overvotes and undervotes in the entire geographic jurisdiction. The court further held that the ballot images printed during a manual recount pursuant to Florida Administrative Code did not violate Florida law because the manual recount scheme properly reflected a voter's choice. Judgment was entered	No	N/A	No

008970

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					for the officials. The claims of the congressman, commissioners, and voter were denied.			
Spencer v. Blackwell	United States District Court for the Southern District of Ohio	347 F. Supp. 2d 528; 2004 U.S. Dist. LEXIS 22062	November 1, 2004	Plaintiff voters filed a motion for temporary restraining order and preliminary injunction seeking to restrain defendant election officials and intervenor State of Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from being allowed at the polls.	The voters alleged that defendants had combined to implement a voter challenge system at the polls that discriminated against African-American voters. Each precinct was run by its election judges but Ohio law also allowed challengers to be physically present in the polling places in order to challenge voters' eligibility to vote. The court held that the injury asserted, that allowing challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos,	No	N/A	No

048971

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the case be researched further?
					<p>delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. The court enjoined all defendants from allowing any challengers other than election judges and other electors into the polling places throughout the state on Election Day.</p>			
<p>MARIAN SPENCER, et al., Petitioners v. CLARA PUGH, et al. (No. 04A360) SUMMIT COUNTY DEMOCRATIC CENTRAL and EXECUTIVE COMMITTEE, et al., Petitioners v. MATTHEW HEIDER, et al. (No. 04A364)</p>	<p>United States Supreme Court</p>	<p>125 S. Ct. 305; 160 L. Ed. 2d 213; 2004 U.S. LEXIS 7400</p>	<p>November 2, 2004</p>	<p>In two separate actions, plaintiffs sued defendant members of a political party, alleging that the members planned to mount indiscriminate challenges in polling places which would disrupt voting. Plaintiffs applied to vacate orders entered by the United States Court of Appeals for the Sixth Circuit which</p>	<p>Plaintiffs contended that the members planned to send numerous challengers to polling places in predominantly African--American neighborhoods to challenge votes in an imminent national election, which would allegedly cause voter intimidation and inordinate delays in voting. A district court ordered challengers to stay out of polling places, and another district court ordered challengers to remain in the polling places only as witnesses, but the appellate court stayed the orders. The United States Supreme Court, acting through a single Circuit Justice, declined to reinstate the injunctions for prudential reasons, despite the few hours left until the</p>	<p>No</p>	<p>N/A</p>	<p>No</p>

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				entered emergency stays of injunctions restricting the members' activities.	upcoming election. While the allegations of abuse were serious, it was not possible to determine with any certainty the ultimate validity of the plaintiffs' claims or for the full Supreme Court to review the relevant submissions, and voting officials would be available to enable proper voting by qualified voters.			
Charles H. Wesley Educ. Found., Inc. v. Cox	United States District Court for the Northern District of Georgia	324 F. Supp. 2d 1358; 2004 U.S. Dist. LEXIS 12120	July 1, 2004	Plaintiffs, a voter, fraternity members, and an organization, sought an injunction ordering defendant, the Georgia Secretary of State, to process the voter registration application forms that they mailed in following a voter registration drive. They contended that by refusing to process the forms defendants violated the National Voter Registration Act and U.S. Const. amends.	The organization participated in numerous non-partisan voter registration drives primarily designed to increase the voting strength of African-Americans. Following one such drive, the fraternity members mailed in over 60 registration forms, including one for the voter who had moved within state since the last election. The Georgia Secretary of State's office refused to process them because they were not mailed individually and neither a registrar, deputy registrar, or an otherwise authorized person had collected the applications as required under state law. The court held that plaintiffs had standing to bring the action. The court held that because the applications were received in accordance with the	No	N/A	No

008973

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				I, XIV, and XV.	mandates of the NVRA, the State of Georgia was not free to reject them. The court found that: plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Injunction granted.			
Jacksonville Coalition for Voter Prot. v. Hood	United States District Court for the Middle District of Florida	351 F. Supp. 2d 1326; 2004 U.S. Dist. LEXIS 26522	October 25, 2004	Plaintiffs, voter protection coalition, union, and voters, filed an emergency motion for a preliminary injunction and argued that African Americans in the county had less opportunity than other members of the state's electorate to vote in the upcoming election, and that defendants, elections officials,	The coalition, the union, and the voters based their claim on the fact that the county had the largest percentage of African--American registered voters of any major county in the state, and, yet, other similarly-sized counties with smaller African--American registered voter percentages had more early voting sites. Based on that, they argued that African--American voters in the county were disproportionately affected. The court found that while it may have been true that having to drive to an early voting site and having to wait in line may cause people to be inconvenienced, inconvenience did not result in a denial of meaningful access	No	N/A	No

008974

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				implementation of early voting procedures violated the Voting Rights Act and their constitutional rights.	to the political process. Thus, the coalition, the union, and the voters had not established a likelihood of success on the merits of their claim that the county's implementation of early voting procedures violated § 2 of the Voting Rights Act. Moreover, the coalition, the union, and the voters failed to establish a likelihood of success on the merits of their § 1983 Fourteenth and Fifteenth Amendment claims, which required a higher proof of discriminatory purpose and effect. Injunction denied.			
Taylor v. Howe	United States Court of Appeals for the Eighth Circuit	225 F.3d 993; 2000 U.S. App. LEXIS 22241	August 31, 2000	Plaintiffs, African American voters, poll watchers, and candidates appealed from a judgment of the United States District Court for the Eastern District of Arkansas in favor of defendants, elections commissioners and related individuals, on their § 1983 voting rights claims and contended the	The court of appeals affirmed--in--part, reversed--in--part, and remanded the district court's judgment. The court found that the district court's finding of a lack of intentional discrimination was appropriate as to many defendants. However, as to some of the individual voters' claims for damages, the court held "a definite and firm conviction" that the district court's findings were mistaken. The court noted that the argument that a voter's name was misspelled in the voter register, with a single incorrect letter, was a flimsy pretext and, accordingly, held that the	No	N/A	No

008975

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
				district court made erroneous findings of fact and law and failed to appreciate evidence of discriminatory intent.	district court's finding that defendant poll workers did not racially discriminate in denying the vote to this plaintiff was clearly erroneous. Affirmed in part and reversed in part.			
Stewart v. Blackwell	United States District Court for the Northern District of Ohio	356 F. Supp. 2d 791; 2004 U.S. Dist. LEXIS 26897	December 14, 2004	Plaintiffs, including African--American voters, alleged that use of punch card voting and "central--count" optical scanning devices by defendants, the Ohio Secretary of State et al., violated their rights under the Due Process Clause, the Equal Protection Clause, and (African--American plaintiffs) their rights under § 2 of the Voting Rights Act.	The primary thrust of the litigation was an attempt to federalize elections by judicial rule or fiat via the invitation to the court to declare a certain voting technology unconstitutional and then fashion a remedy. The court declined the invitation. The determination of the applicable voting process had always been focused in the legislative branch of the government. While it was true that the percentage of residual or non-voted ballots in the 2000 presidential election ran slightly higher in counties using punch card technology, that fact standing alone was insufficient to declare the use of the system unconstitutional. Moreover, the highest frequency in Ohio of residual voting bore a direct relationship to economic and educational factors, negating the Voting Rights Act claim. The court further stated that local variety in	No	N/A	No

008976

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					voting technology did not violate the Equal Protection Clause, even if the different technologies had different levels of effectiveness in recording voters' intentions, so long as there was some rational basis for the technology choice. It concluded that defendants' cost and security reasons for the use of punch card ballots were plausible.			
Taylor v. Currie	United States District Court for the Eastern District of Michigan	386 F. Supp. 2d 929; 2005 U.S. Dist. LEXIS 20257	September 14, 2005	Plaintiff brought an action against defendants, including a city elections commission, alleging defects in a city council primary election pertaining to absentee balloting. The case was removed to federal court by defendants. Pending before the court was a motion to remand, filed by plaintiff.	This action involved issues pertaining to absentee ballots. Plaintiff alleged that defendants were not complying with state laws requiring certain eligibility checks before issuing absentee ballots. The state court issued an injunction preventing defendants from mailing absentee ballots. Defendants removed the action to federal court and plaintiff sought a remand. Defendants argued that not mailing the absentee ballots would violate the Voting Rights Act, because it would place a restriction only on the City of Detroit, which was predominately African--American. The court ordered the case remanded because it found no basis under 28 U.S.C.S. §§ 1441 or 1443 for federal jurisdiction. Defendants' mere	No	N/A	No

008977

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched further
					<p>reference to a federal law or federal right was not enough to confer subject matter jurisdiction where the complaint sought to assert only rights arising under state statutes against state officials in relation to a state election. The court stated that it would not allow defendants to take haven in federal court under the guise of providing equal protection for the citizens of Detroit but with a goal of perpetuating their violation of a non-discriminatory state law. Motion to remand granted.</p>			

008978

**2004**  
**EAC Sunshine Notices**

008979



Election Assistance Commission  
800 N. Capitol St., N.W.  
Washington, D.C. 20002

SUNSHINE ACT NOTICES

AGENCY: United States Election Assistance Commission

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DATE & TIME: Tuesday, March 23, 2004, at 10:00 A.M.

PLACE: 1201 CONSTITUTION AVE, N.W., WASHINGTON, D.C.  
(EPA EAST BUILDING, ROOM 1153)

STATUS: THIS MEETING WILL BE OPEN TO THE PUBLIC.

NOTE: EARLY ARRIVAL: THOSE ATTENDING ARE ADVISED TO  
ARRIVE EARLY FOR REGISTRATION AND SECURITY CHECK

PURPOSE: Organizational plans for the newly established United States  
Election Assistance Commission.

\*\*\*\*\*

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 694-1095

008980



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICES**

**AGENCY:** United States Election Assistance Commission

\*\*\*\*\*

**DATE & TIME:** Wednesday, May 5, 2004, at 9:00 A.M

**PLACE:** U.S. Environmental Protection Agency Headquarters  
1200 Pennsylvania Ave, N.W.  
Room 3000, Rachel L. Carson Great Hall  
Ariel Rios North Building  
Washington, D.C

(Metro Riders: Take the Orange or Blue Line to Federal Triangle Metro Stop)

**STATUS:** This Meeting Will Be Open To The Public.

**NOTE:** Early Arrival: Those Attending Are Advised To Arrive Early For Registration And Security Check

**PURPOSE:** To Conduct a Public Hearing on the Present Status of Computerized Electronic Voting Systems.

The Following Witness Panels Will Be Presented: Technology Panel, Vendor Panel, Election Administrator Panel, Research Panel and Advocacy Organization Panel

\*\*\*\*\*

**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

0089S1



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICES**

**AGENCY:** United States Election Assistance Commission

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**DATE & TIME:** Thursday, June 3, 2004, at 9:00 A.M

**PLACE:** Loyola University  
Water Tower Campus  
25 East Pearson  
Chicago, IL 60611  
15<sup>th</sup> Floor  
Kasbeer Hall

**STATUS:** This Meeting Will Be Open to the Public.

**NOTE:** Early Arrival: Those Attending Are Advised to Arrive Early for Registration and Security Check

**PURPOSE:** To Conduct a Public Hearing to Identify Best Practices, Problems and Transition Issues Associated with Optical Scan, Punch Card, and Lever Machine Voting Systems and the Success and Problems Identified with the Use of Provisional Voting.

The Following Witness Panels Will Be Presented:  
Punchcard Panel, Lever Machine Panel, Optical Scan Panel and Provisional Vote Panel

\*\*\*\*\*

**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

008982



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICES

AGENCY: United States Election Assistance Commission

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DATE & TIME: Monday, June 28, 2004, at 12:00 NOON.

PLACE: SHERATON SUITES HOUSTON, 2400 WEST LOOP SOUTH,  
HOUSTON, TX 77027

NAME: U.S. ELECTION ASSISTANCE COMMISSION BOARD OF  
ADVISORS

STATUS: THE BOARD MEETING IS OPEN TO THE PUBLIC DEPENDING  
ON AVAILABLE SPACE

PURPOSE: Organizational plans for the newly established U.S. Election Assistance Commission (EAC) Board of Advisors. As required by the Help America Vote Act of 2002, the Board will present its views on issues in the administration of Federal elections, and formulate recommendations to the EAC.

Under 41 CFR 102-3.150(b), the EAC finds that exceptional circumstances require less than fifteen days notice of this meeting. Specifically, given the pendency of the general election, and given public comments and testimony suggesting heightened urgency with regard to the issues on which the Board of Advisors will advise the EAC, the EAC concludes that the impact on the timely accomplishment of the agency's mission and the financial implications that would result from delaying the meeting justify shortened notice in this case.

Any member of the public may file a written statement with the Board before, during, or after the meeting. To the extent that time permits, the Board may allow public presentation or oral statements at the meeting.

\*\*\*\*\*

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

008983



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICES

AGENCY: United States Election Assistance Commission

\*\*\*\*\*

DATE & TIME: Tuesday, June 29, 2004, at 9:00 A.M.

PLACE: SHERATON SUITES HOUSTON, 2400 WEST LOOP SOUTH,  
HOUSTON, TX 77027

NAME: U.S. ELECTION ASSISTANCE COMMISSION STANDARDS  
BOARD

STATUS: THE BOARD MEETING IS OPEN TO THE PUBLIC DEPENDING  
ON AVAILABLE SPACE

PURPOSE: Organizational plans for the newly established U.S. Election Assistance Commission (EAC) Standards Board. As required by the Help America Vote Act of 2002, the Board will present its views on issues in the administration of Federal elections, and formulate recommendations to the EAC.

Under 41 CFR 102-3.150(b), the EAC finds that exceptional circumstances require less than fifteen days notice of this meeting. Specifically, given the pendency of the general election, and given public comments and testimony suggesting heightened urgency with regard to the issues on which the Standards Board will advise the EAC, the EAC concludes that the impact on the timely accomplishment of the agency's mission and the financial implications that would result from delaying the meeting justify shortened notice in this case.

Any member of the public may file a written statement with the Board before, during, or after the meeting. To the extent that time permits, the Board may allow public presentation or oral statements at the meeting.

\*\*\*\*\*

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

008984



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting For The Newly Established Technical Guidelines Development Committee

**DATE & TIME:** Friday, July 9, 2004. 9:00 a.m. to 3:00 p.m.

**PLACE:** U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

**STATUS:** This Meeting Will Be Open To The Public.

**SUMMARY:** The Technical Guidelines Development Committee (the "Development Committee") has scheduled an organizational meeting for July 9, 2004. The Committee was established pursuant to 42 U.S.C. § 15361(b)(1), to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The purpose of this first meeting of the Committee will be to convene the Committee, and discuss its purpose, and begin developing a plan to establish voluntary voting system guidelines.

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**CONTACT INFORMATION:** Adam Ambroggi, 202-566-3105. If a member of the public would like to submit written comments concerning the Committee's affairs at any time before and after the meeting, written comments should be addressed to the contact person indicated above, or [TGDCinfo@eac.gov](mailto:TGDCinfo@eac.gov).

008985



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting

DATE & TIME: Tuesday, July 13, 2004 at 1:00 p.m.

PLACE: U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

STATUS: This Meeting Will Be Open To The Public.

SUMMARY: The purpose of this meeting will be to receive general updates and reports on the following: EAC Administration, EAC Requirements Payments to States, the EAC Standards Board and Board of Advisors, the EAC Technical Guidelines and Development Committee and the Commission's two public hearings conducted on May 5<sup>th</sup> and June 3<sup>rd</sup>. The Commission will also review recommendations on the following: Best Practices, a Grant to the National Student and Parent Mock Election, the National Voter Registration Form, a Public Hearing on Poll Worker Recruitment and Training, Electronic Voting Security Resolution and the November Election Research Project. The Commission will also receive the following presentations: U.S. Department of Justice Election Crimes Branch and the National Software Reference Library for the National Institute of Standards and Technology.

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PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

008996



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice: Additional Item for Discussion at Meeting

**DATE & TIME:** Tuesday, July 13, 2004 at 1:00 p.m.

**PLACE:** U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

**STATUS:** This Meeting Will Be Open To The Public.

**SUMMARY:** In addition to the items previously published June 29, 2004, the Commission will also receive an update on The Help America Vote College Program.

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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008987



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting Agenda

**DATE & TIME:** Tuesday, August 10, 2004, 10:00 A.M. – 12:00 Noon.

**PLACE:** U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

**AGENDA** The purpose of this meeting will be to receive updates and reports on the following: the Federal Voting Assistance Program Best Practices for Military and Overseas Voting, the EAC November Election Research Project, the EAC National Poll Worker Initiative and other general updates since the last public meeting. The Commission will also review recommendations on the National Voter Registration Form and the HAVA College Program.

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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008988



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting

**DATE & TIME:** Monday, September 13, 2004, 10:00 A.M. – 12:00 Noon

**PLACE:** U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

**AGENDA** The Commission will receive updates and reports on the following: Title II Requirements Payments Update; Military and Overseas Voters Best Practice Report; HAVA College Program Update; Polling Place Access for Individuals with Disabilities Update – U.S. Department of Health and Human Services; National Voter Registration Week Kickoff; EAC Management Update. The Commission will also receive the following presentation: National Poll Worker Initiative Panel Presentation. Panelists will include Ms. Rebecca Vigil-Giron - Secretary of State of New Mexico and President of the National Association of Secretaries of State (NASS); Ms. Barbara Jackson, Election Director, Baltimore City, Maryland; Ms. Rose MarcAntonio, Poll Worker, Savannah, Georgia; Ms. Nancy Tate, Executive Director, League of Women Voters of the U.S.

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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008989



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

### SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Technical Guidelines Development Committee (TGDC)  
Announcement of TGDC Subcommittee Public Meetings

DATE & TIME: The subcommittee meetings will be held September 20th  
(Transparency and Security), 21<sup>st</sup> (Core Requirements and  
Testing) and 22<sup>nd</sup> (Human Factors and Privacy), 2004 from 9 am  
until 5 pm.

ADDRESS & REGISTRATION:

The meetings will be held at the National Institute of Standards  
and Technology North Campus, 820 West Diamond Avenue,  
Room 152, Gaithersburg, MD 20899. Due to security requirements  
advance registration is required at <http://vote.nist.gov>.  
Registration will be available until 5:00 p.m., E.S.T., on  
Wednesday, September 15, 2004. There is no fee.

STATUS: This Meeting Will Be Open To The Public.

SUMMARY: Public Law 107-252, the Help America Vote Act of 2002 (HAVA),  
establishes a 15-member Technical Guidelines Development  
Committee (TGDC) to assist the Executive Director of the Election  
Assistance Commission (EAC) in the development of voluntary  
voting system guidelines. HAVA names the Director of the  
National Institute of Standards and Technology (NIST) to chair the  
TGDC and requires NIST to provide the TGDC with technical  
support necessary to carry out its duties. The TGDC met on July  
9, 2004, and resolved to establish three five-member  
subcommittees, each to be chaired by a member. The EAC  
subsequently approved formation of the subcommittees. The  
subcommittees are named: 1) Security and Transparency, 2)  
Human Factors and Privacy, and 3) Core Requirements and  
Testing.

008990

The duties of the TGDC include the gathering and analysis of data and information related to the security of computers, human factors, voter privacy, and methods to detect and prevent fraud. The purpose of the subcommittee meetings is to provide an opportunity for the election community to offer testimony on technical issues related to the TGDC's voluntary voting standards development process. Each meeting will be chaired by the respective subcommittee chair, and will consist of the presentation of panels of experts by technical subject matter. One hour will be reserved at the conclusion of each day for members of the public to provide up to five minutes of testimony. Members of the public intending to present testimony are requested to indicate this on the advance registration form. Relevant issues include security, transparency, human factors, privacy, core standards requirements and testing of voting systems. Further information on the hearings, including listings of subcommittee members and panel topics, is available at <http://vote.nist.gov>.

FOR FURTHER INFORMATION CONTACT: Allan Eustis, Project Director, Technical Guidelines Development Committee, 100 Bureau Drive / MS 8900, Gaithersburg, MD 20899-8900, phone 301-975-5099 or email [voting@nist.gov](mailto:voting@nist.gov).

**SUPPLEMENTARY INFORMATION:**

U.S. Election Assistance Commission  
Technical Guidelines Development Subcommittee Meetings  
September 20, 21 and 22, 2004  
9:00 a.m.

**AGENDA (Same for all three days)**

Call To Order

Pledge of Allegiance

Roll Call

Adoption of Agenda

Introductions

Remarks by Commissioners

Panel One

Panel Two

Panel Three

008991

Panel Four

Public Comment Period

Adjournment

Note: Composition and detailed subject matter for each of the various panels is under development. As information becomes available, these details will be posted at <http://vote.nist.gov>.

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008992



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting Agenda

**DATE & TIME:** Thursday, September 30, 2004, 10:00 A.M. – 12:00 Noon.

**PLACE:** U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

**AGENDA** The Commission will receive updates on the following: Title II Requirements Payments, HAVA College Program; proceedings at the Technical Guidelines Development Committee Subcommittee meetings at the National Institute of Standards and Technology. The Commission will also receive presentations from panel participants in a discussion regarding the administration of provisional ballots.

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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008993



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting Agenda

DATE & TIME: Tuesday, October 26, 2004, 10:00 A.M. – 12:00 Noon.

PLACE: U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

AGENDA The Commission will receive presentations from other federal agencies regarding Election Day procedures. The Commission will also review the following: State preparations for the November 2<sup>nd</sup> election; the status of State administration of provisional voting; information gathered from on site visits to States and meetings with State election officials since January; tools in place for communicating with election officials to monitor Election Day developments; Election Day schedules of Commissioners. The Commission will also receive updates on the following: November Election Day Research Project; Title II Requirements Payments, HAVA College Program; EAC Poll Worker Initiative; EAC management topics.

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PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

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008994



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting Agenda

**DATE & TIME:** Tuesday, November 23, 2004, 10:00 A.M. – 12:00 Noon.

**PLACE:** U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

**AGENDA** The Commission will receive updates and reports on the following:  
Title II Requirements Payments; Court Case Update; Results from  
the HAVA College Poll Worker Program; Election Day Data  
Collection Update. The Commission will also receive  
presentations on EAC Election Day Activities and other items.  
Presentations will include: Election Day at the EAC Office;  
Election Day Reports from the Field; Election Day Summary; EAC  
Plan of Action for 2005.

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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008995



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting Agenda

**DATE & TIME:** Tuesday, December 14, 2004, 10:00 A.M. – 12:00 Noon.

**PLACE:** U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

**AGENDA** The Commission will receive updates and reports on the following:  
Title II Requirements Payments; Budget Update; EAC's 2005  
HAVA Implementation Action Plan; Other Programmatic Updates  
and Administrative Matters.

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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008996

**2005**  
**EAC Sunshine Notices**



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

### SUNSHINE ACT NOTICE

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting for the Technical Guidelines Development Committee

**DATE & TIME:** Tuesday January 18, 2005 9 am-5 pm and  
Wednesday January 19, 2005 9 am-5 pm

**PLACE:** National Institute of Standards and Technology  
100 Bureau Drive, Building 101  
Gaithersburg, Maryland 20899-8900.

**STATUS:** This Meeting Will Be Open To The Public. Due to security requirements advance registration is required. Registration information is available at <http://vote.nist.gov>. Advance reservation is available until January 12, 2005. There is no fee to attend.

**SUMMARY:** The Technical Guidelines Development Committee (the "Development Committee") has scheduled a plenary meeting for January 18 & 19, 2005. The Committee was established pursuant to 42 U.S.C. § 15361(b)(1), to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The Committee held its first organizational meeting on July 9<sup>th</sup>, 2004. The purpose of this second meeting of the Committee will be to review and approve an outline plan to establish recommendations for voluntary voting system guidelines.

**CONTACT INFORMATION:** Allan Eustis 301-975-5099. If a member of the public would like to submit written comments concerning the Committee's affairs at any time before and after the meeting, written comments should be addressed to the contact person indicated above, or to [Voting@nist.gov](mailto:Voting@nist.gov).

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008998



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting Agenda

DATE & TIME: Thursday, January 27, 2005, 10:00 A.M. – 12:00 Noon.

PLACE: U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

AGENDA The Commission will receive reports on the following: Updates on Title II Requirements Payments. The Commission will receive presentations on the following: State Reports on HAVA Expenditures; Single Audits of HAVA Expenditures; Other Audit Authority under HAVA. The Commission will consider whether to institute a special audit concerning California's use of HAVA funds.

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PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

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008999



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting for EAC Standards Board

**DATE & TIME:** Wednesday, February 2, 2005, 2:00 P.M. – 5:30 P.M. and  
Thursday, February 3, 2005, 8:30 A.M. – 3:00 P.M.

**PLACE:** Hyatt Regency Capitol Hill  
400 New Jersey Avenue, NW  
Washington, D.C. 20005

(Metro Stop: Union Station)

**TOPICS:** The U.S. Election Assistance Commission (EAC) Standards Board, as required by the Help America Vote Act of 2002, will meet to present its views on issues in the administration of federal elections, and formulate recommendations to the EAC.

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting

**DATE & TIME:** Wednesday, February 23, 2005, 10:00 A.M. – 11:30 A.M.

**PLACE:** Michael E. Moritz College of Law  
The Ohio State University  
55 W. 12th Ave., Saxbe Auditorium  
Columbus, OH 43210-1391

**AGENDA** The Commission will receive reports on the following: Updates on Title II Requirements Payments and other administrative or programmatic matters. The Commission will receive presentations on the following: Transition of the Voting System Certification Process to EAC and the Transition of The Lab Certification Process to NIST and EAC.

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009001



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting (Amended)

**DATE & TIME:** Wednesday, February 23, 2005, 10:00 A.M. – 11:30 A.M.

**PLACE:** Michael E. Moritz College of Law  
The Ohio State University  
55 W. 12th Ave., Saxbe Auditorium  
Columbus, OH 43210-1391

**AGENDA** The Commission will receive reports on the following: Updates on Title II Requirements Payments and other administrative or programmatic matters. The Commission will receive presentations on the following: Transition of the Voting System Qualification Process to EAC and the Transition of The Lab Accreditation Process to NIST and EAC.

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009002



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Hearing

**DATE & TIME:** Wednesday, February 23, 2005, 1:00 P.M. – 5:00 P.M.

**PLACE:** Michael E. Moritz College of Law  
The Ohio State University  
55 W. 12th Ave., Saxbe Auditorium  
Columbus, OH 43210-1391

**AGENDA** The Commission will conduct a public hearing to identify the successes and problems involved with the use of provisional voting.

The following witness panels will be presented: Election Officials, Advocacy Organizations/Non-government Sector and Academics.

All public comments will be taken in writing via email at [testimony@eac.gov](mailto:testimony@eac.gov), or at the meeting or via mail addressed to the U.S. Election Assistance Commission 1225 New York Ave, N.W., Suite 1100, Washington, DC 20005.

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009003



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

### SUNSHINE ACT NOTICE

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting for the Technical Guidelines Development Committee

**DATE & TIME:** Wednesday, March 9, 2005, 8:30 AM to 5:30 PM

**PLACE:** National Institute of Standards and Technology  
100 Bureau Drive, Building 101  
Gaithersburg, Maryland 20899-8900.

**STATUS:** This meeting will be open to the public. There is no fee to attend, but, due to security requirements, advance registration is required. Registration information is available at:  
[https://rproxy.nist.gov/CRS/conf\\_ext.cfm?conf\\_id=1392](https://rproxy.nist.gov/CRS/conf_ext.cfm?conf_id=1392). Please make sure you provide special needs in the space allotted on the registration form. Also, on the form, leave the amount due at 0\$. (Note: Advance registration closes March 2, 2005).

**SUMMARY:** The Technical Guidelines Development Committee (the "Development Committee") has scheduled a plenary meeting for March 9, 2005. The Committee was established pursuant to 42 U.S.C. § 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The Development Committee held its first meeting on July 9th, 2004 and its second meeting on January 18 and 19, 2005. The purpose of the third meeting of the Committee will be to review and approve progress on technical work tasks defined in resolutions adopted at the January plenary meeting and to consider further resolutions if proposed. The Committee's adopted resolutions are available for public review at:  
<http://www.vote.nist.gov/Official%20w-o%20signature.doc>.

**SUPPLEMENTARY INFORMATION:**

009004

The Technical Guidelines Development Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather information and public input on relevant issues. The information gathered by the working groups was analyzed at the second meeting of the Development Committee January 18 & 19, 2005. Thirty-one resolutions were adopted by the TGDC at the January plenary session. The resolutions defined technical work tasks for NIST that will assist the TGDC in developing recommendations for voluntary voting system guidelines. The guidelines are due to the Election Assistance Commission in April 2005.

CONTACT INFORMATION: Allan Eustis 301-975-5099. If a member of the public would like to submit written comments concerning the Committee's affairs at any time before or after the meeting, written comments should be addressed to the contact person indicated above, or to [voting@nist.gov](mailto:voting@nist.gov).

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting Agenda

**DATE & TIME:** Tuesday, March 22, 2005, 10:00 A.M. – 12:00 Noon.

**PLACE:** U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

**AGENDA:** The Commission will receive reports on the following: Title II Requirements Payments Update; Technical Guidelines Development Committee Update; Election Day Survey Analysis Update; Other Administrative Matters. The Commission will receive presentations on the following: The Role of the United States Election Assistance Commission as a Clearinghouse.

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009006



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

### SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting for the Technical Guidelines  
Development Committee

DATE & TIME: Wednesday, April 20, 2005, 9:00 A.M. to 5:00 P.M. and  
Thursday, April 21, 2005, 9:00 A.M. to 5:00 P.M.

PLACE: National Institute of Standards and Technology  
100 Bureau Drive, Building 101  
Gaithersburg, Maryland 20899-8900.

STATUS: This meeting will be open to the public. There is no fee to attend,  
but, due to security requirements, advance registration is  
required. Registration information will be available at  
<http://vote.nist.gov> by March 31st, 2005.

SUMMARY: The Technical Guidelines Development Committee (the  
"Development Committee") has scheduled a plenary meeting for  
April 20-21, 2005. The Committee was established to act in the  
public interest to assist the Executive Director of the Election  
Assistance Commission in the development of the voluntary  
voting system guidelines. The Development Committee held  
previous meetings on July 9th, 2004; January 18 and 19, 2005;  
and March 9th, 2005. The purpose of the fourth meeting of the  
Development Committee will be to review and approve a draft of  
the recommendations for voluntary voting system guidelines. The  
draft document will respond to tasks defined in resolutions passed  
at previous Technical Guideline Development Committee  
meetings

#### SUPPLEMENTARY INFORMATION:

The Technical Guidelines Development Committee (the  
"Development Committee") has scheduled a plenary meeting for

009007

April 20-21, 2005. The Committee was established pursuant to 42 U.S.C. § 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The Technical Guidelines Development Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather information and public input on relevant issues. The information gathered by the working groups was analyzed at the second meeting of the Development Committee January 18 & 19, 2005. Resolutions were debated and adopted by the TGDC at the January plenary session. The resolutions defined technical work tasks for NIST that will assist the TGDC in developing recommendations for voluntary voting system guidelines. At the March 9, 2005 meeting, NIST scientists presented preliminary reports on technical work tasks defined in resolutions adopted at the January plenary meeting and adopted one additional resolution. The Development Committee will review a draft document of initial recommendations for voluntary voting system guidelines at the April 20th & 21st, 2005 meeting

**CONTACT INFORMATION:** Allan Eustis 301-975-5099. If a member of the public would like to submit written comments concerning the Committee's affairs at any time before or after the meeting, written comments should be addressed to the contact person indicated above, or to [voting@nist.gov](mailto:voting@nist.gov).

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009008



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

### SUNSHINE ACT NOTICE

**AGENCY:** United States Election Assistance Commission

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**ACTION:** REVISED Notice of Public Meeting for US Election Assistance Commission Board of Advisors

**DATE & TIME:** Tuesday, April 26, 2005, 6:30 P.M. – 8:30 P.M.,  
Wednesday, April 27, 2005, 8:30 A.M. – 4:30 P.M. and  
Thursday, April 28, 2005, 8:30 A.M. – Noon.

**PLACE:** Boston Marriott Cambridge  
2 Cambridge Center  
(Broadway & 3rd Street)  
Cambridge, MA 02142

(Massachusetts Bay Transit Station Stop: Kendall Square)

**PURPOSE:** The U.S. Election Assistance Commission (EAC) Board of Advisors, as required by the Help America Vote Act of 2002, will meet to present its views on issues regarding the administration of federal elections, and formulate recommendations to the EAC.

The Board will receive an update on recent EAC activities. It will also discuss Voting System Guidelines, EAC proposed Voluntary Guidance on the Implementation of Statewide Voter Registration Lists, overseas voting issues, EAC's research agenda and other relevant matters pertaining to the administration of federal elections. Further, the Board of Advisors will hear reports from its various subcommittees, to include a report from the Executive Director Search Committee. Additionally, the Board will take administrative actions necessary for its efficient operation, including the election of its officers and adoption of bylaws.

Any member of the public may file a written statement with the Board before, during, or after the meeting. To the extent that time permits, the Board may allow public presentation or oral statements at the meeting.

STATEMENT OF PARTIAL CLOSURE:

009009

A portion of this public meeting will be closed to the public. The report of the Executive Director Search Committee to the Board of Advisors will not be open to the public, as this subcommittee will discuss information of a personal nature involving applicants for a federal position where disclosure would constitute a clearly unwarranted invasion of personal privacy. Closure of this portion of the meeting is consistent with 5 USC § 552b(c)(6).

STATEMENT OF EXCEPTIONAL CIRCUMSTANCES:

This revised notice of a meeting will not be published in the Federal Register 15 days prior to the meeting dates. Late notice was unavoidable due to a recent addition to the meeting's agenda, the report of the Executive Director Search Committee. This report must not be delayed, as it is a necessary step in the eventual appointment of an EAC Executive Director. This position must be filled at the earliest possible date.

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PERSON TO CONTACT FOR INFORMATION:

Bryan Whitener  
Telephone: (202) 566-3100

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting Agenda

**DATE & TIME:** Tuesday, April 26, 2005, 10:00 A.M. – 11:30 A.M.

**PLACE:** Massachusetts Institute of Technology (MIT)  
Bartos Theater  
20 Ames Street (lower level)  
Cambridge, MA 02142-1308

(Massachusetts Bay Transit Station Stop: Kendall Square)

**AGENDA** The Commission will receive reports on the following: Title II Requirements Payments Update and Other Administrative Matters. The Commission will receive presentations on the following: Technical Guidelines Development Committee (TGDC) Recommendations and Guidelines Adoption Process.

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009011



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Hearing Agenda

DATE & TIME: Tuesday, April 26, 2005, 12:30 P.M. – 4:30 P.M.

PLACE: Massachusetts Institute of Technology (MIT)  
Bartos Theater  
20 Ames Street (lower level)  
Cambridge, MA 02142-1308  
  
(Massachusetts Bay Transit Station Stop: Kendall Square)

AGENDA The Commission will conduct a public hearing to present proposed voluntary guidance to the states on implementing statewide voter registration databases and to solicit comments on that guidance from members of the election community and public.

The Commission will hear presentations by a panel of persons involved with the development of voter registration databases as well as a panel of persons who will use guidance on the databases.

EAC will provide a one-hour public comment period. Members of the public who wish to speak should contact EAC via email at [testimony@eac.gov](mailto:testimony@eac.gov), or via mail addressed to the U.S. Election Assistance Commission 1225 New York Ave, N.W., Suite 1100, Washington, DC 20005, or by fax at 202/566-3127. Comments will be strictly limited to 3 minutes per person or organization to assure that all constituent or stakeholder groups are represented. All speakers will be contacted prior to the hearing.

EAC also encourages members of the public to submit written testimony via email, mail or fax. All public comments will be taken in writing via email at [testimony@eac.gov](mailto:testimony@eac.gov), or via mail addressed to the U.S. Election Assistance Commission 1225 New York Ave, N.W., Suite 1100, Washington, DC 20005, or by fax at 202/566-3127.

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PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

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009012



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting Agenda

**DATE & TIME:** Tuesday, May 24, 2005, 10:00 A.M. – 12:00 Noon.

**PLACE:** U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

**AGENDA** The Commission will receive the following reports: Title II Requirements Payments Update; Statewide Voter Registration List Guidance Update; Provisional Voting and Voter Identification Study Update; Election Day Survey Analysis Update; Military and Overseas Citizens Survey Update; California Audit Update; Voluntary Voting System Guidelines Update; and updates on other administrative matters. The Commission will receive presentations on the following topic: Setting an Effective Date for the Voluntary Voting System Guidelines.

**THIS MEETING WILL BE OPEN TO THE PUBLIC**

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009013



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting

**DATE & TIME:** Thursday, June 30, 2005, 9:30 A.M. – 10:30 A.M.

**PLACE:** New York Marriott Marquis  
1535 Broadway  
16th Floor Sky Lobby  
New York, NY 10036  
(212) 398-1900

(Subway Stop: MTA 42nd Street)

**AGENDA** The Commission will receive reports on the following: Title II Requirements Payments; Proposed Voluntary Voting System Guidelines; Statewide Voter Registration List Guidance and updates on other administrative matters.

**THIS MEETING WILL BE OPEN TO THE PUBLIC**

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009014



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Hearing Agenda

DATE & TIME: Thursday, June 30, 2005,  
11:00 A.M. – 5:00 P.M.

PLACE: New York Marriott Marquis  
1535 Broadway  
New York, NY 10036  
(212) 398-1900

(Metro Stop: MTA 42nd Street)

AGENDA The Commission will conduct a public hearing on the proposed voluntary voting system guidelines. The commission will receive presentations regarding the proposed guidelines from representatives of testing laboratories and equipment vendors. The Commission will also hear comments specifically related to the Voter Verifiable Paper Audit Trail (VVPAT) testing guidelines from state and local election officials whose state law requires VVPAT, academics and advocates.

EAC will provide a public comment period to receive comments from the public regarding the voluntary voting system guidelines. Members of the public who wish to speak should contact EAC via email at [testimony@eac.gov](mailto:testimony@eac.gov), or via mail addressed to the U.S. Election Assistance Commission 1225 New York Ave, N.W., Suite 1100, Washington, DC 20005, or by fax at 202/566-3127. Comments will be strictly limited to 3 minutes per person or organization to assure that all constituent or stakeholder groups are represented. All speakers will be contacted prior to the hearing. EAC also encourages members of the public to submit written testimony via email, mail or fax. All public comments will be taken in writing via email at [testimony@eac.gov](mailto:testimony@eac.gov), or via mail addressed to the U.S. Election Assistance Commission 1225 New York Ave, N.W., Suite 1100, Washington, DC 20005, or by fax at 202/566-3127.

THIS HEARING WILL BE OPEN TO THE PUBLIC

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PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

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009015



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting Agenda

**DATE & TIME:** Thursday, July 28, 2005, 10:00 A.M. – 12:00 Noon

**PLACE:** California Institute of Technology  
Baxter Humanities Building  
Baxter Lecture Hall (Third Floor)  
1200 East California Blvd.  
Pasadena, CA 91125

**AGENDA** The Commission will receive the following reports: Title II Requirements Payments Update, Statewide voter registration list guidance, and updates on other administrative matters. The Commission will receive presentations regarding the voter identification provisions of the Help America Vote Act of 2002 (HAVA).

**THIS MEETING WILL BE OPEN TO THE PUBLIC**

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009016



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Hearing Agenda

**DATE & TIME:** Thursday, July 28, 2005, 1:00 P.M. – 5:00 P.M.

**PLACE:** California Institute of Technology  
Baxter Humanities Building  
Baxter Lecture Hall (Third Floor)  
1200 East California Blvd.  
Pasadena, CA 91125

**AGENDA** The Commission will conduct a public hearing on the proposed voluntary voting system guidelines. The commission will receive presentations regarding the proposed guidelines from state election officials and academicians. The Commission will also hear comments specifically related to the wireless capabilities testing guidelines.

EAC will provide a public comment period to receive comments from the public regarding the voluntary voting system guidelines. Members of the public who wish to speak should contact EAC via email at [testimony@eac.gov](mailto:testimony@eac.gov), or via mail addressed to the U.S. Election Assistance Commission 1225 New York Ave, N.W., Suite 1100, Washington, DC 20005, or by fax at 202/566-3127. Comments will be strictly limited to 3 minutes per person or organization to assure that all constituent or stakeholder groups are represented. All speakers will be contacted prior to the hearing. EAC also encourages members of the public to submit written testimony via email, mail or fax. All public comments will be taken in writing via email at [testimony@eac.gov](mailto:testimony@eac.gov), or via mail addressed to the U.S. Election Assistance Commission 1225 New York Ave, N.W., Suite 1100, Washington, DC 20005, or by fax at 202/566-3127.

**THIS HEARING WILL BE OPEN TO THE PUBLIC**

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009017



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting for US Election Assistance Commission Board of Advisors

**DATE & TIME:** Wednesday, August 3, 2005, 6:30 P.M. – 8:30 P.M.,  
Thursday, August 4, 2005, 8:30 A.M. – 5:00 P.M. and  
Friday, August 5, 2005, 8:30 A.M. – 5:00 P.M.

**PLACE:** Portland Marriot City Center  
520 Southwest Broadway  
Portland, OR 97205

**PURPOSE:** The U.S. Election Assistance Commission (EAC) Board of Advisors, as required by the Help America Vote Act of 2002, will meet to consider and receive presentations on the Voluntary Voting System Guidelines proposed by EAC, to receive a presentation on the statewide voter registration list guidance adopted by EAC, to formulate recommendations to EAC, and to handle other administrative matters.

Any member of the public may file a written statement with the Board before, during, or after the meeting. To the extent that time permits, the Board may allow public presentation or oral statements at the meeting.

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009018



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting Agenda

**DATE & TIME:** Tuesday, August 23, 2005, 10:00 A.M. – 12:00 Noon.

**PLACE:** Adam's Mark Hotel  
1550 Court Place  
Denver, CO 80202  
(303) 893-3333

**AGENDA** The Commission will receive updates on the following items: Title II Requirements Payments; public comments received regarding the proposed Voluntary Voting System Guidelines; and updates on other administrative matters. The Commission will receive presentations on the Voting System Certification and Laboratory Accreditation Processes.

**THIS MEETING WILL BE OPEN TO THE PUBLIC**

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009019



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Hearing Agenda

DATE & TIME: Tuesday, August 23, 2005, 1:00 – 5:00 P.M.

PLACE: Adam's Mark Hotel  
1550 Court Place  
Denver, CO 80202  
(303) 893-3333

AGENDA The Commission will conduct a public hearing on the proposed voluntary voting system guidelines. The Commission will receive presentations regarding the proposed guidelines from local election officials, community interest groups and accessibility specialists.

EAC will provide a public comment period to receive comments from the public regarding the voluntary voting system guidelines. Members of the public who wish to speak should contact EAC via email at [testimony@eac.gov](mailto:testimony@eac.gov), or via mail addressed to the U.S. Election Assistance Commission 1225 New York Ave, N.W., Suite 1100, Washington, DC 20005, or by fax at 202/566-3127. Comments will be strictly limited to 3 minutes per person or organization to assure that all constituent or stakeholder groups are represented. All speakers will be contacted prior to the hearing. EAC also encourages members of the public to submit written testimony via email, mail or fax. All public comments will be taken in writing via email at [testimony@eac.gov](mailto:testimony@eac.gov), or via mail addressed to the U.S. Election Assistance Commission 1225 New York Ave, N.W., Suite 1100, Washington, DC 20005, or by fax at 202/566-3127.

THIS HEARING WILL BE OPEN TO THE PUBLIC

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PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

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009020



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting for the Executive Board of the EAC Standards Board (Amended)

**DATE & TIME:** Tuesday, August 23, 2005, 6:30 P.M. – 8:30 P.M.

**PLACE:** Adam's Mark Hotel  
1550 Court Place  
Denver, CO 80202

**TOPICS:** The Executive Board of the U.S. Election Assistance Commission (EAC) Standards Board will meet to plan and prepare for the meeting of Standards Board, to plan and prepare a presentation of recommendations to the Standards Board on the Voluntary Voting System Guidelines proposed by EAC, and to handle other administrative matters.

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting for EAC Standards Board

**DATE & TIME:** Wednesday, August 24, 2005, 8:30 A.M. – 5:00 P.M. and  
Thursday, August 25, 2005, 8:30 A.M. – 5:00 P.M.

**PLACE:** Adam's Mark Hotel  
1550 Court Place  
Denver, CO 80202

**TOPICS:** The U.S. Election Assistance Commission (EAC) Standards Board, as required by the Help America Vote Act of 2002, will meet to consider and adopt bylaws, to consider and receive presentations on the Voluntary Voting System Guidelines proposed by EAC, to formulate recommendations to EAC, and to handle other administrative matters.

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting Agenda

DATE & TIME: Tuesday, September 27, 2005, 10:00 A.M. – 12:00 Noon.

PLACE: U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

AGENDA The Commission will receive the following reports: Title II Requirements Payments Update; public comments received regarding the proposed Voluntary Voting System Guidelines; and updates on other administrative matters. The Commission will receive presentations on the Election Day Survey Report.

THIS MEETING WILL BE OPEN TO THE PUBLIC

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PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

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009023



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

### SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting for the Technical Guidelines  
Development Committee

DATE & TIME: Thursday, September 29, 2005, 9:00 A.M. to 5:00 P.M. (MDT)

PLACE: National Institute of Standards and Technology  
325 Broadway  
Boulder, Colorado 80305-3328

STATUS: This meeting will be open to the public. There is no fee to attend,  
but, due to security requirements, advance registration is required.  
Registration information will be available at <http://vote.nist.gov>.

SUMMARY: The Technical Guidelines Development Committee (the  
"Development Committee") has scheduled a plenary meeting for  
September 29, 2005. The Development Committee was  
established to act in the public interest to assist the Executive  
Director of the Election Assistance Commission in the  
development of the voluntary voting system guidelines. The  
Development Committee held four previous meetings on July 9,  
2004; January 18 and 19, 2005; March 9, 2005; and April 20 and  
21, 2005. The proceedings of these meetings are available for  
public review at  
<http://vote.nist.gov/PublicHearingsandMeetings.html>. On May 9,  
2005, the Development Committee delivered initial  
recommendations for voluntary voting system guidelines to the  
Election Assistance Commission (EAC). The purpose of this fifth  
meeting of the Development Committee will be to review and  
approve a work plan for future voluntary voting system guidelines  
recommendations to the EAC. The work plan responds to tasks  
defined in resolutions passed at Technical Guideline Development  
Committee meetings.

SUPPLEMENTARY INFORMATION:

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The Technical Guidelines Development Committee (the "Development Committee") has scheduled a plenary meeting for September 29, 2005. The Committee was established pursuant to 42 U.S.C. § 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The Technical Guidelines Development Committee held its first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather information and public input on relevant issues. The information gathered by the working groups was analyzed at the second meeting of the Development Committee January 18 and 19, 2005. Resolutions were adopted by the Development Committee at the January plenary session. The resolutions defined technical work tasks for NIST that would assist the Development Committee in developing recommendations for voluntary voting system guidelines. At the March 9, 2005 meeting, NIST scientists presented preliminary reports on technical work tasks defined by resolutions adopted at the January plenary meeting and one additional resolution was adopted by the Development Committee. The Development Committee approved with edits initial recommendations for voluntary voting system guidelines at the April 20 and 21, 2005 meeting. The document, Voluntary Voting System Guidelines Version 1: Initial Report was submitted by the Development Committee to the EAC as required by HAVA on May 9, 2005. The EAC is currently accepting public comment on proposed voluntary voting system guidelines thru September 30, 2005. Proposed guidelines and public comment procedures are available at: <http://www.eac.gov>.

CONTACT INFORMATION: Allan Eustis, 100 Bureau Drive, Mail Stop 8900, Gaithersburg, MD. 20899-8900, phone 301-975-5099. Written comments concerning the Development Committee's operations should be addressed to the contact person indicated above, or to [voting@nist.gov](mailto:voting@nist.gov).

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting Agenda

**DATE & TIME:** Tuesday, October 25, 2005, 10:00 A.M. – 2:30 P.M.

**PLACE:** U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

**AGENDA** The Commission will receive the following reports: Title II Requirements Payments Update; Voluntary Voting System Guidelines Update; and updates on other administrative matters. The Commission will receive presentations on the Timely Return of Voter Registration Applications.

**THIS MEETING WILL BE OPEN TO THE PUBLIC**

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009026



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting Agenda

DATE & TIME: Tuesday, December 13, 2005, 10:00 A.M. – 12:00 Noon.

PLACE: U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

AGENDA The Commission will receive the following reports: Title II Requirements Payments Update; FY 2006 Appropriations update; and updates on other administrative matters. The Commission will elect the Chair and Vice Chair of the Commission for 2006. The Commission will receive presentations on the Voluntary Voting System Guidelines (VMSG) and consider the VMSG for adoption.

THIS MEETING WILL BE OPEN TO THE PUBLIC

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PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

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**2006**  
**EAC Sunshine Notices**



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting Agenda

**DATE & TIME:** Thursday, February 2, 2006, 10:00 A.M. – 1:00 P.M.

**PLACE:** Hyatt Regency (Valley Forge Room)  
400 New Jersey Avenue, N.W.  
Washington, D.C. 20001

(Metro Stop: Union Station)

**AGENDA** The Commission will receive the following reports: Title II Requirements Payments Update; and updates on other administrative matters. The Commission will receive presentations on the following topics: Implementation of the EAC Voting System Certification Program.

**THIS MEETING WILL BE OPEN TO THE PUBLIC**

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting Agenda

**DATE & TIME:** Tuesday, March 14, 2006, 10:00 A.M. – 1:00 P.M.

**PLACE:** U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

**AGENDA** The Commission will receive presentations on the National Voter Registration Act and will receive updates on other administrative matters.

**THIS MEETING WILL BE OPEN TO THE PUBLIC**

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**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009030



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

### SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting for the Technical Guidelines  
Development Committee

DATE & TIME: Wednesday, March 29, 2006, 8:30 AM to 5:30 PM

PLACE: National Institute of Standards and Technology  
100 Bureau Drive, Building 101, Red Auditorium.  
Gaithersburg, Maryland 20899-8900.

STATUS: This meeting will be open to the public. There is no fee to attend,  
but, due to security requirements, advance registration is  
required. Registration information will be available at  
<http://www.vote.nist.gov> by March 6, 2006.

SUMMARY: The Technical Guidelines Development Committee (the  
"Development Committee") has scheduled a plenary meeting for  
March 29, 2006. The Committee was established to act in the

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public interest to assist the Executive Director of the U.S. Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. The Development Committee held previous meetings on July 9, 2004; January 18 and 19, 2005; March 9, 2005; April 20 and 21, 2005; and September 29, 2005. The purpose of the sixth meeting of the Development Committee will be to review and approve draft documents that will form the bases for recommendations for future voluntary voting system guidelines to the EAC. The draft documents respond to tasks defined in resolutions passed at previous Technical Guideline Development Committee meetings.

#### SUPPLEMENTARY INFORMATION:

The Technical Guidelines Development Committee (the "Development Committee") has scheduled a plenary meeting for March 29, 2006. The Committee was established pursuant to 42 U.S.C. § 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The Technical Guidelines Development Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather

information and public input on relevant issues. The information gathered by the working groups was analyzed at the second meeting of the Development Committee January 18 & 19, 2005. Resolutions were debated and adopted by the TGDC at the January plenary session. The resolutions defined technical work tasks for NIST that will assist the TGDC in developing recommendations for voluntary voting system guidelines. At the March 9, 2005 meeting, NIST scientists presented preliminary reports on technical work tasks defined in resolutions adopted at the January plenary meeting and adopted one additional resolution. The Development Committee approved initial recommendations for voluntary voting system guidelines at the April 20th & 21st, 2005 meeting. The Development Committee began consideration of future recommendations for voluntary voting system guidelines at the September 29, 2005 meeting. At the March 29th, 2006 meeting, the Development Committee will review and approve draft technical guidance documents that will form the bases for recommendations for future voluntary voting system guidelines.

CONTACT INFORMATION: Allan Eustis 301-975-5099. If a member of the public would like to submit written comments concerning the Committee's affairs at any time before or after the meeting, written comments should be addressed to the contact person indicated above, or to [voting@nist.gov](mailto:voting@nist.gov).

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting Agenda

DATE & TIME: Thursday, April 20, 2006, 10:00 A.M. – 12:00 Noon.

PLACE: Seattle Hilton  
1301 6th Avenue and University Street  
Seattle, WA 98101-2304  
(206) 624-0500

AGENDA The Commission will receive presentations on the following topic:  
"Vote Counting and Recounting". The Commission will hear from  
election officials and election researchers on experiences with  
recounting and procedures for counting votes. The Commission  
will receive updates on other administrative matters.

THIS MEETING WILL BE OPEN TO THE PUBLIC

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PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

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009034



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting for the Executive Board of the EAC  
Standards Board

**DATE & TIME:** Monday, May 22, 2006, 7:00 – 9:00 P.M.

**PLACE:** Hamilton Crowne Plaza  
1001 14 Street, NW (14th & K Streets, NW)  
Washington, DC 20005  
(202) 682-0111

**TOPICS:** The Executive Board of the U.S. Election Assistance Commission  
(EAC) Standards Board will meet to plan and prepare for the  
meeting of Standards Board, and to handle other administrative  
matters.

**THIS MEETING WILL BE OPEN TO THE PUBLIC**

**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009035



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

### SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting for EAC Standards Board

DATE & TIME: Tuesday, May 23, 2006, 12:00 Noon – 5:30 P.M. and  
Wednesday, May 24, 2006, 8:30 A.M. – 5:00 P.M.

PLACE: Hamilton Crowne Plaza  
1001 14 Street, NW (14th & K Streets, NW)  
Washington, DC 20005  
(202) 682-0111

TOPICS: The U.S. Election Assistance Commission (EAC) Standards Board, as required by the Help America Vote Act of 2002, will meet and receive updates on EAC research projects and activities and discuss other relevant matters pertaining to the administration of federal elections. The Board will receive an update regarding recent work conducted by the National Institute of Standards and Technology (NIST) on the voluntary voting system guidelines. The Board will receive and consider the proposed permanent

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bylaws and elect a member to fill a vacancy on the executive board. The Board will receive reports of committees and discuss other administrative matters.

THIS MEETING WILL BE OPEN TO THE PUBLIC

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting for EAC Board of Advisors

DATE & TIME: Tuesday, May 23, 2006, 12:00 Noon – 5:30 P.M. and  
Wednesday, May 24, 2006, 8:30 A.M. – 5:00 P.M.

PLACE: Hamilton Crowne Plaza  
1001 14 Street, NW (14th & K Streets, NW)  
Washington, DC 20005  
(202) 682-0111

PURPOSE: The U.S. Election Assistance Commission (EAC) Board of Advisors, as required by the Help America Vote Act of 2002, will meet and receive updates on EAC research projects and activities and discuss other relevant matters pertaining to the administration of federal elections. The Board will receive an update regarding recent work conducted by the National Institute of Standards and Technology (NIST) on the voluntary voting system guidelines. The Board will elect officers and consider the appointment of a proxy committee and the appointment of a resolutions committee.

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The Board will receive reports of committees and discuss other administrative matters.

THIS MEETING WILL BE OPEN TO THE PUBLIC

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting

DATE & TIME: Thursday, May 25, 2006, 10:00 A.M. – 1:00 P.M.

PLACE: Hamilton Crowne Plaza  
1001 14 Street, NW (14th & K Streets, NW)  
Washington, DC 20005  
(202) 682-0111

AGENDA The Commission will receive presentations on the poll worker recruitment and training project and will receive presentations on college poll worker recruitment and training from election officials and grantees of the HAVA College Poll Worker Initiative. The Commission will receive reports on other administrative matters. The Commission will consider adopting an Ex Parte Communications policy.

THIS MEETING WILL BE OPEN TO THE PUBLIC

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

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009040



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting

DATE & TIME: Thursday, June 15, 2006, 10:00 A.M. – 12:00 Noon.

PLACE: U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

AGENDA The Commission will receive presentations on developing management guidelines for implementing new voting systems and administering elections. The Commission will receive reports on other administrative matters.

THIS MEETING WILL BE OPEN TO THE PUBLIC

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

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009041



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting

**DATE & TIME:** Thursday, July 13, 2006, 9:30 A.M. – 12:30 P.M. (MDT)

**PLACE:** Hilton Santa Fe Historic Plaza – Mesa C.  
100 Sandoval Street  
Santa Fe, NM 87501  
(505) 988-2811

**AGENDA** The Commission will receive presentations on effective ballot design and effective polling place signage. The Commission will receive reports on other administrative matters.

**THIS MEETING WILL BE OPEN TO THE PUBLIC**

**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009042



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting

**DATE & TIME:** Thursday, September 21, 2006, 9:30 A.M. – 3:30 P.M. (CDT)

**PLACE:** University of Missouri – St. Louis

Millenium Center

One University Boulevard

St. Louis, MO 63121-4400

(314) 516-5000

**AGENDA** The Commission will receive presentations on the following topics:  
voter information access portals and military and overseas voting.

The Commission will consider other administrative matters.

**THIS MEETING WILL BE OPEN TO THE PUBLIC**

**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009043



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

### SUNSHINE ACT NOTICE

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting and Hearing Agenda

**DATE & TIME:** Thursday, October 26, 2006, 10:00 A.M. – 4:00 P.M.

**PLACE:** U.S. Election Assistance Commission (EAC)  
1225 New York Ave, N.W., Suite 1100  
Washington, D.C. 20005

(Metro Stop: Metro Center)

**AGENDA** The Commission will conduct a public meeting and hearing on EAC's post-election voting system testing and certification program. The Commission will receive presentations by representatives of the National Institute of Standards and Technology (NIST), representatives of testing laboratories, equipment manufacturers, election officials, community interest groups and Commission staff members. The Commission will also meet to consider other administrative matters.

EAC will provide a public comment period to receive comments from the public regarding the voting system testing and certification program. Members of the public who wish to speak must contact EAC via email at [testimony@eac.gov](mailto:testimony@eac.gov), or via mail addressed to the U.S. Election Assistance Commission 1225 New York Ave, N.W., Suite 1100, Washington, DC 20005, or by fax at 202/566-3127. Comments will be strictly limited to 3 minutes per person or organization to ensure the fullest participation possible. All speakers will be contacted prior to the hearing. EAC also encourages members of the public to submit written testimony via email, mail or fax. All public comments will be taken in writing via email at [testimony@eac.gov](mailto:testimony@eac.gov), or via mail addressed to the U.S. Election Assistance Commission 1225 New York Ave, N.W., Suite 1100, Washington, DC 20005, or by fax at 202/566-3127.

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting for the Technical Guidelines  
Development Committee

DATE & TIME: Monday, December 4, 2006, 9:00 AM to 5:30 PM EST  
Tuesday, December 5, 2006, 8:30 AM to 2:00 PM EST

PLACE: National Institute of Standards and Technology  
100 Bureau Drive, Building 101, Green Auditorium  
Gaithersburg, Maryland 20899-8900.

STATUS: This meeting will be open to the public. There is no fee to attend,  
but, due to security requirements, advance registration is required.  
Registration information will be available at  
<http://www.vote.nist.gov> by November 4, 2006.

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**SUMMARY:**

The Technical Guidelines Development Committee (the "Development Committee") has scheduled a plenary meeting for December 4th & 5th, 2006. The Committee was established to act in the public interest to assist the Executive Director of the U.S. Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. The Development Committee held previous meetings on July 9, 2004; January 18 and 19, 2005; March 9, 2005; April 20 and 21, 2005; September 29, 2005 and March 29, 2006. The purpose of the seventh meeting of the Development Committee will be to review and approve draft documents that will form the bases for recommendations for future voluntary voting system guidelines to the EAC. The draft documents respond to tasks defined in resolutions passed at previous Technical Guideline Development Committee meetings.

**SUPPLEMENTARY INFORMATION:**

The Technical Guidelines Development Committee (the "Development Committee") has scheduled a plenary meeting for December 4th & 5th, 2006. The Committee was established pursuant to 42 U.S.C. § 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The Technical Guidelines Development Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three

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working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather information and public input on relevant issues. The information gathered by the working groups was analyzed at the second meeting of the Development Committee January 18 & 19, 2005. Resolutions were debated and adopted by the TGDC at the January plenary session. The resolutions defined technical work tasks for NIST that will assist the TGDC in developing recommendations for voluntary voting system guidelines. At the March 9, 2005 meeting, NIST scientists presented preliminary reports on technical work tasks defined in resolutions adopted at the January plenary meeting and adopted one additional resolution. The Development Committee approved initial recommendations for voluntary voting system guidelines at the April 20th & 21st, 2005 meeting. The Development Committee began consideration of future recommendations for voluntary voting system guidelines at the September 29, 2005 meeting. At the March 29th, 2006 meeting, the Development Committee approved draft technical guidance documents that will form the bases for recommendations for future voluntary voting system guidelines and passed an additional resolution. The Committee will review additional technical guidance documents for recommendations for future voluntary voting system guidelines at the December 4th & 5th, 2006 meeting.

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CONTACT INFORMATION: Allan Eustis 301-975-5099. If a member of the public would like to submit written comments concerning the Committee's affairs at any time before or after the meeting, written comments should be addressed to the contact person indicated above, or to [Voting@nist.gov](mailto:Voting@nist.gov).

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009048



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

### SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting (Amended)

DATE & TIME: Thursday, December 7, 2006, 10:00 A.M. – 3:30 P.M.

PLACE: U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 150  
Washington, D.C. 20005

(Metro Stop: Metro Center)

AGENDA The Commission will receive presentations on public comments received for the DRAFT Procedural Manual for Voting System Testing and Certification Program and the proposed final document will be considered for approval. The Commission will receive presentations from election officials, community interest groups, academicians and technology experts regarding the 2006 election. The Commission will elect officers for 2007 and consider other administrative matters. In addition, the Commission will consider the adoption of a voter fraud and intimidation report and the adoption of an administrative policy and procedures manual.

009049

THIS MEETING WILL BE OPEN TO THE PUBLIC

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

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009050

**2007**  
**EAC Sunshine Notices**



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

### SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Teleconference Meetings for the Working  
Subcommittees of the Technical Guidelines Development  
Committee

DATES & TIMES: Tuesday, January 9, 2007, 10:30AM EST  
Thursday, January 11, 2007, 11:00 AM EST  
Friday, January 12, 2007, 11:00 AM EST  
Tuesday, January 23, 2007, 10:30AM EST  
Friday, January 26, 2007, 11:00 AM EST  
Thursday, February 1, 2007, 11:00 AM EST  
Tuesday, February 6, 2007, 10:30AM EST  
Friday, February 9, 2007, 11:00 AM EST  
Thursday, February 15, 2007, 11:00 AM EST  
Tuesday, February 20, 2007, 10:30AM EST  
Friday, February 23, 2007, 11:00 AM EST  
Thursday, March 1, 2007, 11:00 AM EST  
Friday, March 2, 2007, 11:00 AM EST  
Tuesday, March 6, 2007, 10:30 AM EST

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Friday, March 9, 2007, 11:00 AM EST

Thursday, March 15, 2007, 11:00 AM EDT

Friday, March 16, 2007, 11:00 AM EDT

Tuesday, March 20, 2007, 10:30 AM EDT

**STATUS:** Audio recordings of working subcommittee teleconferences are available upon conclusion of each meeting at:  
[http://vote.nist.gov/subcomm\\_mtgs.htm](http://vote.nist.gov/subcomm_mtgs.htm) . Agendas for each teleconference will be posted one week in advance of each meeting at the above website.

**SUMMARY:** The Technical Guidelines Development Committee (the "Development Committee") was established to act in the public interest to assist the Executive Director of the U.S. Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. The Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather and analyze information on relevant issues. These working subcommittees propose resolutions to the TGDC on best practices, specifications and standards. Specifically, NIST staff and Committee members will meet via the above scheduled teleconferences to review and discuss progress on tasks defined in resolutions passed at Development Committee plenary meetings. The resolutions define

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technical work tasks for NIST that will assist the Committee in developing recommendations for voluntary voting system guidelines. The Committee met in its seventh plenary session on December 4-5, 2007. Documents and transcriptions of Committee proceedings are available at:

<http://vote.nist.gov/PublicHearingsandMeetings.html>

**SUPPLEMENTARY INFORMATION:**

The Technical Guidelines Development Committee (the "Development Committee") was established pursuant to 42 U.S.C. § 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The information gathered and analyzed by the working subcommittees during their teleconference meetings will be reviewed at future Development Committee plenary meetings.

**CONTACT INFORMATION:** Allan Eustis 301-975-5099. If a member of the public would like to submit written comments concerning the Committee's affairs at any time before or after subcommittee teleconference meetings, written comments should be addressed to the contact person indicated above, or to [voting@nist.gov](mailto:voting@nist.gov).

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009054



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting for EAC Board of Advisors

**DATE & TIME:** Monday, January 22, 2007, 9:00 A.M. – 5:00 P.M. and  
Tuesday, January 23, 2007, 8:30 A.M. – 3:00 P.M.

**PLACE:** Four Points Sheraton  
1201 K Street NW (12th & K Streets, NW)  
Washington, DC 20005  
(202) 289-7600

**PURPOSE:** The U.S. Election Assistance Commission (EAC) Board of Advisors, as required by the Help America Vote Act of 2002 (HAVA), will meet and receive updates on EAC projects and activities and discuss other relevant matters pertaining to the administration of federal elections. The Board will receive updates on the following subjects: EAC's voting system certification and laboratory accreditation program; activities of the Technical Guidelines Development Committee (TGDC) regarding the voluntary voting system guidelines; HAVA financial reporting

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schedules; EAC's audit process; EAC's Election Day survey and  
EAC's Uniformed and Overseas Citizens Absentee Voting Act  
(UOCAVA) survey. The Board will also discuss other election  
administration and administrative matters.

THIS MEETING WILL BE OPEN TO THE PUBLIC

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

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009056



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting (Amended)

DATE & TIME: Thursday, February 8, 2007, 10:00 A.M. – 1:00 P.M.

PLACE: U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 150  
Washington, D.C. 20005

(Metro Stop: Metro Center)

AGENDA The Commission will receive an update on the Interim Voting System Laboratory Accreditation Program; The Commission will consider whether to terminate the interim program and will receive an update on the full Voting System Laboratory Accreditation Program; The Commission will receive an update on the EAC audit process and hear presentations from state officials on their experiences with the audit process; The Commission will receive a presentation of the research findings regarding voter identification requirements. The Commission will consider other administrative matters.

THIS MEETING WILL BE OPEN TO THE PUBLIC

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PERSON TO CONTACT FOR INFORMATION:

Bryan Whitener  
Telephone: (202) 566-3100

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009058



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting

**DATE & TIME:** Wednesday, February 21, 2007, 8:00 A.M. – 8:30 A.M.

**PLACE:** Ritz-Carlton Atlanta  
191 Peachtree Street, NE  
Ballroom Pre-Function III/IV  
Atlanta, Georgia 30303  
(404) 659-0400

**AGENDA** The Commission will consider accrediting iBeta Quality Assurance and SysTest Labs LLC. to receive federal approval to test voting systems against federal voting system standards and guidelines based upon the recommendations of the National Institute of Standards and Technology (NIST) as required by the Help America Vote Act (HAVA).

**THIS MEETING WILL BE OPEN TO THE PUBLIC**

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**STATEMENT OF EXCEPTIONAL CIRCUMSTANCES:**

This notice of a meeting will not be published in the Federal Register 7 days prior to the meeting date. Late notice was unavoidable due to the combination of two factors: (1) the time required for EAC to properly evaluate the January 18, 2007 recommendations EAC received from NIST to federally accredit two voting system test laboratories and (2) to serve the public interest by having the two federally accredited labs in place immediately in order to begin testing voting systems against federal voting system standards and guidelines. With the 2008 elections schedule fast approaching, it is most critical that the federal voting system testing process begin at the earliest possible date.

**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009060



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting for EAC Standards Board

**DATE & TIME:** Tuesday, February 20, 2007, 6:30 P.M. – 9:00 P.M.  
Wednesday, February 21, 2007, 8:30 A.M. – 6:00 P.M.  
Thursday, February 22, 2007, 9:00 A.M. – 5:00 P.M.  
Friday, February 23, 2007, 8:30 A.M. – 11:00 A.M.

**PLACE:** Ritz-Carleton Atlanta  
191 Peachtree Street, NE  
Atlanta, GA 30303  
(404) 659-0400

**PURPOSE:** The U.S. Election Assistance Commission (EAC) Standards Board, as required by the Help America Vote Act of 2002 (HAVA), will meet and receive updates on EAC projects and activities and discuss other relevant matters pertaining to the administration of federal elections. The Board will receive updates on the following subjects: EAC's voting system certification and laboratory accreditation program and activities of the Technical Guidelines

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Development Committee (TGDC) regarding the voluntary voting system guidelines. The business portion of the meeting will include an election for three vacancies on the Executive Board and the presentation of redrafted bylaws.

THIS MEETING WILL BE OPEN TO THE PUBLIC

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener  
Telephone: (202) 566-3100

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009062



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting for the Technical Guidelines  
Development Committee

DATE & TIME: Thursday, March 22, 2007, 9:00 AM to 5:30 PM EST  
Friday, March 23, 2007, 8:30 AM to 2:00 PM EST

PLACE: National Institute of Standards and Technology  
100 Bureau Drive, Building 101, Employees Lounge  
Gaithersburg, Maryland 20899-8900.

STATUS: This meeting will be open to the public. There is no fee to attend,  
but, due to security requirements, advance registration is required.  
Registration and additional meeting information will be available at  
<http://www.vote.nist.gov> by March 1, 2007. This meeting will be  
web cast.

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**SUMMARY:**

The Technical Guidelines Development Committee (the "Development Committee") has scheduled a plenary meeting for March 22nd and 23rd, 2007. The Committee was established in 2004 to act in the public interest to assist the Executive Director of the U.S. Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. The Development Committee has held seven previous meetings. The proceedings of these plenary sessions are available at <http://vote.nist.gov>. The purpose of the eighth meeting of the Development Committee will be to review and approve a draft of recommendations for future voluntary voting system guidelines to the EAC. The draft recommendations respond to tasks defined in resolutions passed at the previous Technical Guideline Development Committee meetings.

**SUPPLEMENTARY INFORMATION:**

The Technical Guidelines Development Committee (the "Development Committee") has scheduled a plenary meeting for March 22nd and 23rd, 2007. The Committee was established pursuant to 42 U.S.C. § 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The Technical Guidelines Development Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three

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working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather information and review preliminary reports on issues pertinent to voluntary voting standard recommendations. At subsequent plenary sessions, additional resolutions were debated and adopted by the TGDC. The resolutions define technical work tasks for NIST that assist the TGDC in developing recommendations for voluntary voting system guidelines. The Development Committee approved initial recommendations for voluntary voting system guidelines at the April 20th & 21st, 2005 meeting. The recommendations were formally delivered to the EAC in May 2005 for their review. In September of 2005, the Development Committee began review of preliminary technical reports for the next iteration of voluntary voting system guidelines. The Committee will review and debate draft recommendations for the next iteration of voluntary voting system guidelines at the March 22nd and 23rd, 2007 meeting.

CONTACT INFORMATION: Allan Eustis 301-975-5099. If a member of the public would like to submit comments concerning the Committee's affairs at any time before or after the meeting, written comments should be addressed to the contact person indicated above, c/o NIST, 100 Bureau Drive, Mail Stop 8970, Gaithersburg, Md. 20899 or to [voting@nist.gov](mailto:voting@nist.gov).

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Teleconference Meetings for the Working  
Subcommittees of the Technical Guidelines Development  
Committee

DATES & TIMES: Tuesday, April 3, 2007 at 10:30 AM ET  
Thursday, April 5 at 11AM ET  
Thursday, April 5 at 1 PM ET  
Tuesday, April 10, 2007 at 10:30AM ET  
Thursday, April 12 at 11AM ET  
Friday, April 13 at 11AM ET  
Tuesday, April 17, 2007 at 10:30AM ET  
Thursday, April 19 at 11AM ET  
Friday, April 20 at 11AM ET  
Tuesday, April 24, 2007 at 10:30AM ET  
Thursday, April 26 at 11AM ET  
Thursday, April 26 at 1 PM ET  
Tuesday, May 1, 2007 at 10:30AM ET  
Thursday, May 3 at 11AM ET

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Friday, May 4 at 11AM ET

Tuesday, May 8, 2007 at 10:30AM ET

Thursday, May 10 at 11AM ET

Friday, May 11 at 11AM ET

Tuesday, May 15, 2007 at 10:30AM ET

Thursday, May 17 at 11AM ET

Friday, May 18 at 11AM ET

Tuesday, May 22, 2007 at 10:30 AM ET

Friday, May 25 at 11AM ET

**STATUS:**

Audio recordings of working subcommittee teleconferences are available upon conclusion of each meeting at:

[http://vote.nist.gov/subcomm\\_mtgs.htm](http://vote.nist.gov/subcomm_mtgs.htm) . Agendas for each teleconference will be posted one week in advance of each meeting at the above website.

**SUMMARY:**

The Technical Guidelines Development Committee (the "Development Committee") was established to act in the public interest to assist the Executive Director of the U.S. Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. The Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather and analyze information on relevant issues. These working subcommittees

propose resolutions to the TGDC on best practices, specifications and standards. Specifically, NIST staff and Committee members will meet via the above scheduled teleconferences to review and discuss progress on tasks defined in resolutions passed at Development Committee plenary meetings. The resolutions define technical work tasks for NIST that will assist the Committee in developing recommendations for voluntary voting system guidelines. The Committee met in its eighth plenary session on March 22-23, 2007. Documents and transcriptions of Committee proceedings are available at:

<http://vote.nist.gov/PublicHearingsandMeetings.html>

**SUPPLEMENTARY INFORMATION:**

The Technical Guidelines Development Committee (the "Development Committee") was established pursuant to 42 U.S.C. § 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The information gathered and analyzed by the working subcommittees during their teleconference meetings will be reviewed at future Development Committee plenary meetings.

**CONTACT INFORMATION:** Allan Eustis 301-975-5099. If a member of the public would like to submit written comments concerning the Committee's affairs at any time before or after subcommittee teleconference meetings,

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written comments should be addressed to the contact person indicated  
above, or to [voting@nist.gov](mailto:voting@nist.gov).

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT AMENDED NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting

**DATE & TIME:** Wednesday, April 18, 2007, 1:00 – 4:00 P.M.

**PLACE:** Westin Crown Center  
Room: Washington Park 3  
One East Pershing Road  
Kansas City, Missouri 64108  
(816) 474-4400

**AGENDA** The Commission will receive a presentation on and consider adopting a Spanish translation glossary of election terminology. The Commission will elect a vice-chair and will receive a presentation on the development of its election management guidelines. The Commission will also consider other administrative matters.

**THIS MEETING WILL BE OPEN TO THE PUBLIC**

**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009070



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**SUNSHINE ACT NOTICE**

**AGENCY:** United States Election Assistance Commission

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**ACTION:** Notice of Public Meeting

**DATE & TIME:** Thursday, May 17, 2007, 10:00 A.M. – 1:00 P.M.

**PLACE:** U.S. Election Assistance Commission  
1225 New York Ave, N.W., Suite 150  
Washington, D.C. 20005  
(Metro Stop: Metro Center)

**AGENDA** The Commission will receive updates on the activities of the following: The EAC Standards Board; the EAC Board of Advisors; and the EAC Technical Guidelines Development Committee (TGDC). The Commission will consider other administrative matters.

**THIS MEETING WILL BE OPEN TO THE PUBLIC**

**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener  
Telephone: (202) 566-3100

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009071



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

SUNSHINE ACT NOTICE

AGENCY: United States Election Assistance Commission

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ACTION: Notice of Public Meeting for the Technical Guidelines  
Development Committee

DATE & TIME: Monday, May 21, 2007, 9:00 AM to 5:30 PM EST  
Tuesday, May 22, 2007, 8:30 AM to 2:00 PM EST

PLACE: National Institute of Standards and Technology  
100 Bureau Drive, Building 101, Employees Lounge  
Gaithersburg, Maryland 20899-8900.

STATUS: This meeting will be open to the public. There is no fee to attend,  
but, due to security requirements, advance registration is required.  
Registration and additional meeting information will be available at  
<http://www.vote.nist.gov> by May 1, 2007. This meeting will be web  
cast.

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**SUMMARY:**

The Technical Guidelines Development Committee (the "Development Committee") has scheduled a plenary meeting for May 21st and 22nd, 2007. The Development Committee was established in 2004 to act in the public interest to assist the Executive Director of the U.S. Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. The Development Committee has held eight previous meetings. The proceedings of these plenary sessions are available at <http://vote.nist.gov>. The purpose of the ninth meeting of the Development Committee will be to review and approve a revised draft of recommendations for future voluntary voting system guidelines to the EAC. The draft recommendations respond to tasks defined in resolutions passed at the previous Development Committee meetings as well as a review of an initial draft of recommendations presented at the March 2007 plenary meeting.

**SUPPLEMENTARY INFORMATION:**

The Technical Guidelines Development Committee (the "Development Committee") has scheduled a plenary meeting for May 21st and 22nd, 2007. The Committee was established pursuant to 42 U.S.C. § 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The Technical Guidelines Development Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three

working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather information and review preliminary reports on issues pertinent to voluntary voting standard recommendations. At subsequent plenary sessions, additional resolutions were debated and adopted by the TGDC. The resolutions define technical work tasks for NIST that assist the TGDC in developing recommendations for voluntary voting system guidelines. The Development Committee approved initial recommendations for voluntary voting system guidelines at the April 20th & 21st, 2005 meeting. The recommendations were formally delivered to the EAC in May 2005 for their review. In September of 2005, the Development Committee began review of preliminary technical reports for the next iteration of voluntary voting system guidelines. The Committee will review, debate and approve draft recommendations for the next iteration of voluntary voting system guidelines at the May 21st and 22nd, 2007 meeting.

CONTACT INFORMATION: Allan Eustis 301-975-5099. If a member of the public would like to submit comments concerning the Committee's affairs at any time before or after the meeting, written comments should be addressed to the contact person indicated above, c/o NIST, 100 Bureau Drive, Mail Stop 8970, Gaithersburg, Md. 20899 or to [voting@nist.gov](mailto:voting@nist.gov).

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