



Memorandum

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SUBJECT: The Help America Vote Act (HAVA) and Potential Voting Issues in the 2004 General Election

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With passage of the Help America Vote Act in 2002 (P.L. 107-252), states began enacting legislation to comply with new federal provisions concerning the voting process and election administration. Some HAVA requirements are in effect for the November, 2004 election and, in some states, requirements that are not yet mandatory may also be in place. Consequently, voters at polling places across the country are likely to face new procedures and practices when they arrive to cast their ballots on November 2. In addition, even minor changes to polling place procedures can cause confusion for voters and pollworkers alike, especially if training has not been adequate. This memorandum identifies new voting procedures that will be in effect in November, such as a voter identification requirement for those who registered by mail; it identifies other changes to the voting process that may be in place, depending on the state; and it provides some suggestions with respect to what an individual voter might do to avoid any difficulties casting his or her ballot on election day.

Provisional voting (Sec. 302(a))

HAVA required states to establish provisional voting on or after January 1, 2004, and to establish a free access system (such as a toll-free telephone number or website) to permit a voter to ascertain whether the vote was counted or not, and the reason for not counting the ballot if that was the case. (States in which there is no voter registration or which permit a voter to register to vote at the polling place on election day are exempt from this provision; these states are North Dakota, Wisconsin, Minnesota, New Hampshire, Idaho, and Wyoming). The law requires an election official at a polling place to notify a voter that he or she may cast a provisional ballot if:

- the voter's name does not appear on the official list of registered voters for the polling place, but the voter believes he or she is registered and is eligible to vote in an election for federal office;
- an election official asserts that the individual is not eligible to vote.

The voter must execute, before an election official, a written affirmation that states that the individual is a registered voter and he or she is eligible to vote in that election. Once the voter casts the provisional ballot, the polling place official transmits the ballot or the affirmation to the appropriate state or local election official for verification.

Although many states provided some form of provisional voting prior to passage of HAVA, achieving compliance with this section required revision of existing provisional voting statutes or enactment of new legislation in numerous states. A number of issues that may cause confusion with provisional ballots seem apparent.

Potential issues.

Although HAVA requires election officials at every polling place in the country (except for exempted states) to notify an individual voter that he or she may cast a provisional ballot if there is a question about registration status, there is no method of enforcement for this requirement. Proper training of officials would ensure that this requirement is met and also that sufficient provisional ballots and affirmation forms are available.

It has been reported by some sources that a provisional ballot cast in the wrong precinct, even if the voter is duly registered, will not be counted at all.

States follow different procedures for purging voter registration lists of persons who are deceased, have moved, or have been convicted of a felony. Reports of voters having been mistakenly purged from the list of eligible voters are common.

Voters who register at the department of motor vehicles or a social service agency may not have been officially registered if the form was not filled out correctly. Also, HAVA made changes to the federal mail-in registration form that includes a question that asks whether an individual is a citizen or not. If the applicant does not complete this section of the form, it is possible the application will not be processed although the registrar is required to contact the voter and provide an opportunity to complete the registration.

Possible options for voters.

- In order to avoid entirely the necessity of casting a provisional ballot (or a problem with registration), a voter should be certain that he or she is registered to vote before the close of registration (generally 30 days or fewer before the election) and should identify the polling place location prior to election day. Polling place locations are routinely published in a local newspaper before an election; the voter registrar's office can also provide this information over the telephone. It is not uncommon for polling locations to change from one election to the next.
- Because the opportunity to cast a ballot is limited to election day, a voter should be aware that he or she is not to be turned away from a polling place without having voted because of a question about voter registration. The most important document at the polling place is the list of eligible voters, and mistakes and unintentional omissions occur. Although election officials

should be aware of the new federal requirement to provide provisional ballots, an informed voter can be his or her own best advocate in this regard.

- Individuals who register to vote between now and the close of registration before the November election should be advised to provide all information requested on the application. A new registrant who has not received a voter registration card or other confirmation should contact the registrar's office before the close of registration.

Voter identification (Sec. 303 (b))

HAVA included a provision that requires all voters who register by mail (and have not previously voted in the jurisdiction) to provide an acceptable form of identification, either when the registration form is submitted, or at the polling place on election day. States are required to implement the provision in a uniform and nondiscriminatory manner. Acceptable forms of identification are: a copy of a current and valid photo identification; a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter.

Potential issues.

A voter who registers by mail and has not previously voted in the jurisdiction will likely be asked at the polling place to provide one of the acceptable forms of identification (unless the voter provided that identification with the mail-in registration form or provided a driver's license number or the last four digits of the social security number which an election official could have matched to a state identification record with that number and the same name and date of birth as provided in the registration). In order to determine which voters should be asked for identification, the precinct voter registration list presumably must indicate which voters registered by mail; these voters will be required to provide acceptable identification if they have not already done so. Unless every precinct registration list is completely without errors, some voters who provided identification with the mail registration form may be asked to provide that information again in order to vote. The new identification requirements for mail registrants mean that some voters will likely be treated differently than others at the polls.

Furthermore, the federal requirements in HAVA are minimal requirements (the law says that states may establish "election technology and administration requirements that are more strict" than those in HAVA), and some states have passed more stringent measures. As a consequence, all voters in some states will be asked to provide identification when they previously were required only to sign the poll book, state their address, or provide some other information. Such changes can potentially create confusion and misunderstanding. Voters who do not expect to be asked for identification and cannot produce it will need to leave the polling place and start over when they return. In some places, polling station lines can require a considerable investment of time, depending on the length of the ballot, the introduction of new election procedures or voting equipment, the number of voters who

arrive at the polling place at a given time, and pollworker efficiency. Finally, some states permit pollworkers and voters to challenge the identity of individuals at the polling place.

Possible options for voters.

- Voters should be advised to bring one of the following to the polling place on election day: a copy of a current and valid photo identification; a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter. In particular, new voters who registered by mail should be advised that they will likely be asked to produce one of these forms of identification and that other voters in line may not be asked for ID. New voters are likely to be more sensitive to different treatment at the polling place, particularly if pollworkers do not explain that the new federal law requires different standards for voter identification.
- Longtime registrants should be advised that voter identification procedures may have changed since HAVA was passed, and they may be required to provide identification even if they have never been asked to present identification in the past. In some states, universal voter identification is now required to cast a ballot.

Voter information at the polling place (Sec. 302)

For the 2004 election, HAVA requires posting voter information at each polling place that provides a sample ballot for the election, the date and hours for voting, instructions on how to vote or how to cast a provisional ballot, instructions for first-time voters and those who registered by mail, voting rights information with respect to state and federal laws and how to contact appropriate officials if a voter believes these rights have been violated, and information describing prohibited acts of fraud and misrepresentation under state and federal law.

Potential issues.

On election day, voters will likely face new procedures with respect to voter identification and provisional voting and, in some jurisdictions, new voting equipment. Most polling places across the country are staffed by a volunteer force of workers who exercise a public trust in overseeing the voting process. There are, however, no uniform federal standards for training this largely volunteer force, and new procedures may cause confusion on election day.

Possible options for voters.

- A voter can request general assistance from pollworkers on election day, and some polling places provide an opportunity to try out new voting equipment before proceeding to the voting booth. Federally mandated information on voting rights, how to cast a ballot or vote provisionally, and

instructions for new voters and those who registered by mail must be publicly posted in the polling place. Voters should be advised that they are not solely reliant on pollworkers for an explanation of procedures or voting rights, particularly if there is a dispute that concerns voting rights or an issue with the operation of the polling place.

Administrative complaint procedure (Sec. 402)

States are required to establish an administrative complaint procedure to be eligible to receive funds under HAVA, although the state itself provides the certification that it has met this and other requirements for eligibility. The administrative complaint procedure is intended to remedy grievances and must include the following elements:

- the procedure must be uniform and nondiscriminatory;
- the procedure must provide an opportunity for any person to file a complaint that HAVA requirements are being or have been violated;
- complaints must be in writing and be notarized, signed and sworn by the complainant;
- the state may consolidate complaints;
- the complainant may request a public hearing on the record;
- the state must provide a remedy if a violation has occurred, must publish the results of procedures if the complaint is dismissed, and must make a determination within 90 days (or within an additional 60 days, under alternative dispute resolution procedures established for this purpose, if the deadline is not met).

Potential issue.

Administrative complaint procedures are established to adjudicate alleged violations of HAVA's requirements; the November, 2004 election will be the first under the unprecedented, far-reaching national requirements established by the Help America Vote Act.

Possible options for voters.

- A voter who believes a violation of HAVA requirements has occurred should be aware that he or she may file a complaint to resolve the issue. The Justice Department may bring civil action against a state or jurisdiction in U.S. District Court to enforce the new federal requirements; the administrative complaint procedure provides the means for an individual voter who observes a violation to seek a remedy directly from the state.