The Help America Vote Act of 2002: Well Intentioned Reforms, or Misguided Mandates?

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Introduction

Passed by Congress in 2002, the Help American Vote Act (HAVA) of 2002 was the response to a demonstrated weakness in the county’s voting systems seen during the 2000 elections (U.S Congress Senate 2002). Signed into law by President George W. Bush in October of the same year, the act “embodies the most sweeping overhaul of elections laws since the Voting Rights Act of 1965” (“Help America Vote Act of 2002” para. 1). At the most basic level, HAVA requires that states provide for provisional voting, maintain a statewide database of registered voters, require first time voters to supply identification when registering to vote, meet requirements pertaining to voting machines, standardize a system for dealing with absentee ballots and support administrative complaint procedures. Aside from state requirements, HAVA also established the Election Assistance Commission (EAC) to better help the states in dealing with HAVA mandates and to distribute funds allocated by the bill.

The National Commission on Federal Election Reform, a task force established to look into and prescribe remedies to the dilemmas dealt with in November of 2000, released their recommendations to Congress on July 31st 2001. It was from these findings that HAVA was drafted, passed and set into motion. From here HAVA has had mixed reactions with state election officials. Complaints dealing with HAVA range from minor resource allocation troubles to larger issues dealing with lack of funds and impending deadlines. What was at first seen as the answer to many local government’s prayers, soon turned into dispute after dispute between local, state and federal election officials over the most efficient way to implement new HAVA mandates. In the years following the bills inception, question have been raised as to how effective the bill has been in updating the nation’s voting systems, particularly in instances where states are unable to comply with HAVA deadlines. The research of this paper is aimed at delving
into three of the most controversial areas of the bill including the use of statewide voter
registration databases, provisional voting procedures and new voter identification standards in
order to best highlight the far-reaching change HAVA intended to bring, along with the problems
that may have come with those objectives.

**Review of Relevant Research**

After the chaos that was the 2000 Presidential elections, the United States Congress, in a
huge bipartisan effort passed the Help America Vote Act (HAVA) of 2002. Signed into law on
October 29, 2002, HAVA was enacted in order to reform the nations voting process, making it
more transparent and voter accessible ("The Help America Vote Act of 2002" 2008). It was not
until after the 2000 elections debacle that local, state and federal elections officials and even
citizens began to seriously consider exactly what happened to a ballot once a voter left the voting
booth. In the months that followed the election, the nation disappointingly looked on as they
“learned about the high degree of decentralization merely from watching television reports of the
court actions in more than six Florida counties, all seemingly independent from each other and
from and any significant state control” (Shambon). The PEW Center on the States, a leader in
election reform reporting, summarizes HAVA as a bill that:

- represented a dramatic shift in the relationship between the federal government
- and its state and local counterparts in the area of election reform — namely the
- promise of nearly $4 billion in federal funds tied to a series of federal
- requirements, all to be enforced by a new federal agency. (2007, 3)

How then, has HAVA successfully completed its mission to improve the nation’s voting
systems, increase voter accessibility and transparency in the nation’s elections process in order to
combat the problems seen during the November 2000 elections? This is an intricate question that
will rely on understanding why HAVA was enacted in the first place, what changes and regulations HAVA has mandated and whether or not the states have been able to comply with those regulations in a timely fashion with the funds allotted to them. These questions will be tackled in both a qualitative and quantitative approach in order to show various and complementing ways in which to look at a specific piece of legislation and its effect on the nation as a whole. The PEW Center on the States, GMU Elections Project, The National Conference of State Legislatures and The Brennan Center for Justice are all organizations that supply relevant and insightful information on this issue, and have been used throughout this research to capture the various attitudes surrounding the implementation of HAVA and sound quantitative data used to analyze certain aspects of the bill itself.

Methodology

Research concerning the effectiveness of HAVA is extensive, particularly in the areas of the main provisions mandated in Title III of the bill. These provisions include requiring states to create a statewide database of registered voters, implement standard provisional voting practices, require first time voters registering my mail to furnish one of several forms of acceptable identification, provide guidelines for absentee voting procedures, simplifying administrative complaint procedures along with laying out guidelines for acceptable voting machines and/or voting systems (“Help America Vote Act of 2002 Public Law 107-252” 2002). Over the years these provisions have been challenged on grounds of practicality and legality, slowing down many states down on the road to HAVA compliance. Why has HAVA been so controversial? This complicated question is best understood through examining the underlying reasons the bill was drafted in the first place, in addition to understanding how exactly the bill is laid out and the responsibilities it places on the states themselves. To answer this question and thus lay the
groundwork for the quantitative analysis that will follow, a description of why the bill was drafted and the bill itself will be examined in the two forthcoming sections. A second, popular yet equally daunting question asks: has HAVA been effective? This question, somewhat like the first is best answered in breaking down the bill into three of the most controversial provisions of statewide voter registration databases, provisional voting and voter identification and forming hypotheses concerning specific questions related to each of these provisions. The questions asked in these sections will highlight popular arguments and concerns pertaining to each provision and require different models of analysis to most accurately convey the significance of each claim. For this purpose, SPSS Data Analysis software will be enlisted to produce simple frequency outputs, crosstabulations, tables defining certain measures of association, and logistic regression models in an effort to analyze the effects of certain factors that come into play as states began to implement various provisions of HAVA. Throughout each section pertaining to a different provision of the bill, different questions will be asked and different hypotheses formed in order to gain a more intuitive understanding of what has been seen as the biggest overhaul of voting policy since the Voting Rights Act of 1965 (“Help America Vote Act of 2002” para. 1). **Why HAVA?**

Over fifty-five percent of those eligible to vote in the United States came out on November 4, 2000 to cast their ballots in one of the most controversial elections in the nation’s history (GMU US Elections Project). And while the county had dealt with election controversy in the past, the conflict in 2000 highlighted more than ever the states inability to handle an incredibly close election. What transpired on one day, took Florida over a month to sort out, with all of America scrutinizing the process every step of the way. Slowly but surely the problems with voting machines, registrar’s lists and polling locations came to light in heated debate and
litigation over the fairness of the election. In taking a closer look at the nation's voting systems, it became clear that it was not only Florida that was vulnerable to voter fraud, inconsistencies and poorly handled elections. In their final report of recommendations to Congress, the National Commission on Federal Election Reform states most explicitly their view of the 2000 Presidential elections,

Many aspects of the election process were put under a microscope and viewed by an anxious nation. With dismay and growing anger we saw controversial ballot design; antiquated and error-prone voting machines; subjective and capricious processes for counting votes; voter rolls that let unqualified voters vote in some counties and turned away qualified voters in others; confusion in the treatment of overseas military ballots; and a political process subjected to protracted litigation. ("Final Report of the National Commission on Election Reform" 2001)

Together, these are the problems HAVA was created in order to solve. Not only to help avoid these malfunctions in the future, but also provide the states with guidelines in order to ensure greater uniformity and transparency in the voting process. Before the introduction of HAVA, voting policy had taken a spot in the back of Congress’ mind as they dealt with what seemed to be more important issues. That November things changed in a most drastic fashion, with the November election serving as a focusing event to push voting policy to the head of the agenda. It was well understood after the events of that month, Congress and the Federal Government needed to take a more active role in determining sound national voting policies. Congress took the first step in this direction by establishing a task force to further investigate the events in
Florida, and around the country in order to formulate policy recommendations at the end of their inspection.

At the end of an almost two year study, the National Commission on Federal Election Reform came back with troublesome news about the state of the nation’s voting systems. The commission found that despite years of states carrying out what on the outside may have looked like fair and valid elections; many states were failing in simple areas such as voter registration, poll worker training, and keeping voting machines up to date. In making recommendations for what would eventually become HAVA, the task force laid out six goals that they suggested should be considered when drafting election reform legislation. The first was to “maintain an accurate list of citizens who are qualified to vote,” followed by “encouraging every eligible voter to participate effectively, using equipment that reliably clarifies and registers the voter’s choices, handling close elections in a foreseeable and fair way, operating with equal effectiveness for every citizen and every community and finally, reflecting limited but responsible federal participation” (“Final Report of the National Commission on Election Reform” 2001). These recommendations would be the grounding in which HAVA was drafted, signifying a more active role of the federal government in how federal elections were conducted in the states.

**What Congress Meant by Helping America to Vote**

In the preface to HAVA, it is laid out quite clearly what the act will aim to accomplish through its enactment, specifically the bill was meant

To establish a program to provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration standards for
States and units of local government with responsibility for the administration of Federal elections, and for other purposes. ("Help America Vote Act of 2002 Public Law 107-252" 2002)

At its core, HAVA would supply funds to the states to help uniformly remake each of their voting system in order to achieve and comply with five main goals that aimed to make the United States federal election process absent of combatable error seen in November of 2000. These goals included the establishment of a provisional voting system which would allow voters who believed they were registered, yet whose name did not appear on the registrar’s list to cast a vote, only to be counted when their eligibility was confirmed. A second reform was to require states to maintain a database of eligible voters, helping to not only avoid voter fraud, but also to avoid turning away voters with valid registration. Next, HAVA would outline a basis of requirements for voting equipment that states must have in order to bring some semblance of standardization to what had been a fragmented process. HAVA also stipulated that all first time voters must provide identification in order to become a registered voter, also helping to highlight and avoid voter fraud. Lastly, the bill mandated that each state create and maintain a working list of registered voters in order to foster better record keeping within the states. Together, these programs and procedures were meant to create minimum standards with which the states would have to comply in order to better the nation’s overall federal elections process.

Even in its beginnings, HAVA was the product of a huge bipartisan effort in addition to the input of many interest groups, government officials and others involved in different areas of the bill. In addition a vast number of interest groups were involved in The National Commission on Federal Election Reform task force’s work and their findings including the National Association for the Advancement of Colored Peoples (NAACP), The Collins Center for Public
Policy, The Voting Integrity Project and many others ("Final Report of the National Commission on Election Reform" 2001). When HAVA or H.R. 3295 was making its way through Congress many of these same interest groups, along with Secretaries of State, election officials and other organizations came forth to give testimony on how HAVA would affect them. It was through this process that negotiations took place, compromises were made and HAVA was finally passed in 2002.

In the end, the foundation of HAVA centers on three main sections under Title I of the bill which allocated funds. Title I, Sections 101 and 102 and Title II Section 251 were the sections under which states could receive HAVA funding, while Title III defined more narrowly what exactly the distributed fund could be used for. The first and most broad category of Title I, Section 101 outlines upwards of nine ways in which HAVA funds can be expended, from "improving, acquiring, leasing, modifying or replacing voting systems and technology and methods for casting and counting" to "educating voters about voting procedures, voting rights and voting technology" (Election Assistance Commission, 2005). Title I, Section 102, much narrower in its aim focuses on voting machines, stipulating that funds allotted under this section can only be used "to acquire, via lease or purchase, voting systems to replace punch card or lever voting systems used to administer the November 2000 Federal general elections" (Election Assistance Commission, 2005). Finally, Section 251 of Title II serves as a sort of culmination of the two previous sections allocating funds to reimburse states that had previously worked to update their voting systems before HAVA was enacted and provide funds generally for complying with Title III of the bill. In addition Section 251 lays out five specific guidelines under which states must comply if they are to be eligible for funds under this section. It is through the aforementioned Title III however, that specific regulations mandating the
establishment of provisional voting systems, absentee balloting, new voter identification laws, specific voting system requirements, new standards for keeping lists of registered voters and general guidelines for the implementation of the core provisions of the bill became topics of heated debate as HAVA deadlines began to loom. Throughout the next sections, each of these requirements will be looked at and analyzed closely in order to understand exactly how HAVA strived to revise each state’s voting system to achieve great uniformity in the way American’s vote.

**Statewide Voter Registration Databases**

In an attempt to unify the voter registration process, HAVA required that all states compile a statewide database of registered voters. The creation of these databases was intended to provide each state with an accurate and secure way of keeping track of eligible voters within the state. After the 2000 presidential elections, it became evident that while some states seemed to work hard at keeping accurate registrars lists’, other states did little if any in the realm of recordkeeping. In a PEW Center electiononline.org briefing report entitled “Statewide Voter Registration Databases” the benefits of these databases are highlighted, with the report stating, “Accurate, up-to-date registration lists can help safeguard against disenfranchisement and serve as a guardian against fraud. In short, they can foster confidence in the election system” (electiononline.org, 2002). The report goes on to highlight the problems that can result in poorly kept voter registration records citing Florida as a prime example in which “Hundreds of qualified voters were erroneously removed from their county’s registration lists and, as a result, they were denied the right to cast ballots” (electiononline.org, 2002). This paradox is further examined in a report published by the Brennan Center of Justice in which authors Justin Levitt, Wendy R. Weiser and Ana Munoz examine the two sides to statewide databases, explaining that “While
good policy choices could help the voter registration process run more smoothly than ever, poor policy choices could result in the unwarranted disenfranchisement of millions of eligible citizens attempting to register to vote” (2006, 7)

Congress, along with organizations such as PEW and other voting rights groups look to accurately kept voter registration rolls as the most dependable way to secure the vote of any citizen. And while many localities within states had databases of their own, HAVA stipulated that the database be state wide. The idea of a statewide database is to connect all localities under a unified system that allows specified officials to add and remove voters in order to eliminate voter fraud while guaranteeing the vote of any eligible voter. There are however, no exact requirements or regulations states are obligated to follow when implementing this kind of statewide database. The text of HAVA stipulates only that:

each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State. (“Help America Vote Act of 2002 Public Law 107-252” 2002)

Giving the states the ability to choose the way in which they implement the above system gave a great deal of room for many states, as some would argue to “cut corners” in an effort to save money and have a working system up and running by the HAVA deadline. Although there were two main parts of the bill that allotted money for functions of this sort, Title II, Section 251 was
the main section under which states requested funds to create the required database. In an effort to minimize the possibility that states might use HAVA funds for purposes other than to "improve the administration of elections," the bill itself formulated guidelines, enforced by the EAC that required "a State submit a plan describing how the funds will be used" ("Help America Vote Act of 2002 Public Law 107-252" 2002). These plans were required to describe over ten areas, detailing exactly how the HAVA funds planned on being used from general administrative procedures to "a description of the committee that participated in the development of the State plan" ("Help America Vote Act of 2002 Public Law 107-252" 2002).

Concerns in the development of a statewide voter registration database were plentiful, ranging from monetary arguments to questions of the accuracy and privacy these databases would provide. Especially for states with large populations and therefore large pools of potential voters, this task began to seem quite daunting. In their report to Congress in August of 2001 The National Commission on Federal Election Reform tackled this issue head on saying that:

In recommending the adoption of statewide voter registration systems, we looked at the experience of those states that have adopted them. The outstanding models appear to be Michigan and Kentucky. Michigan deserves particular scrutiny because it is the most populous state to have fully implemented such a system and it is also a state with a larger number of separate election jurisdictions, more than 1600, than any other. (38)

By pointing out the success story in Michigan, a large state with a large voting age population, the idea of a statewide database became a fundamental part of HAVA, with Congress under the assumption that all of the states would work as hard as Kentucky and Michigan in order to
improve their elections processes. Realizing however, that the implementation of a statewide database would prove more daunting for some, Congress allowed those states that believed they met a certain criteria to apply for a waiver of the original January 1, 2004 deadline, pushing the mandatory date of compliance back two years until January 1, 2006. Did this extra time and subsequent extra funding allow states to comply with the new HAVA deadline? This question and a snapshot of the effectiveness of HAVA will be looked into while examining the sum of funds allotted under section 251 for the fiscal years of 2003-2004. Title I, Section 251 will be analyzed because it is the main section under which states could request funds to aid in the implementation of a required database. In a comparison between the sum of these funds and the states that were able to achieve compliance by January 1, 2006, light will be shed on the effectiveness HAVA has had and the effort states have put into accomplishing the bill’s goal to require states to develop a state wide database of registered voters (US Dept of Health and Human Services, 2007).

In order to quantify this possible relationship, two variables; db06_dummy and funds_0304 were examined through linear regression in SPSS in Output 1, found in Appendix A. The variable db06_dummy is a binary variable re-code of the ordinal level variable database06 which originally coded states with databases in place for the 2006 elections as “1” and those states without databases in place as “2” (PEW, 2007). In order to utilize logistic regression test statistics however, database06 was re-coded so states with databases read “1” and those without read “0.” The independent variable, funds_0304 is an interval level variable that consists of the total amount of funds given under Title I, Section 251 for the fiscal years of 2003 and 2004 for each state. Before these variable were run through a logistic regression however, a frequency was run on database06 to give a preliminarily view of the percentage of states without databases that
will be the focal point for understanding if the amount of money awarded to states affected their compliance with this particular HAVA mandate. Looking to this frequency output in Appendix A, SPSS calculates a valid percentage of 21.6 states that did not have a statewide voter registration database in place, and therefore were not complaint with the extended HAVA deadline. The next section in the output reveals the findings from a logistic regression run on db06_dummy vs. funds_0304. To begin, the Nagelkerke R-square value, which can be found in the “Model Summary” table in the output, reads a value of 13.1. This comparatively less conservative r-square statistic relates that 13.1 percent of the variation seen in db06_dummy, or between those states that did and did not have databases can be explained by funds_0304, or how much money a state was awarded. Although not a large percentage, this statistic reveals that at least a small percentage of the variance that is seen between those states that do and do not have statewide databases can be attributed to funds_0304. The calculated p-value of .056 for the Wald statistic, found in “Variables in the Equation” table will also be analyzed on a less conservative scale, using the 0.1 level to determine significance. In doing this, the presence of the variable funds_0304 is seen to have a significant effect on whether or a state has a database. Finally, the most telling statistic that is generated from this logistic regression output is the change in -2 log likelihood value, found in the “Omnibus Tests of Model Coefficients” table in the output. This test statistic, which is the difference in the initial log likelihood and the final step likelihood is calculated to be 4.522, accompanied by a p-value of .033 suggesting that compared with how well one can predict whether or not a state had a database in place at the time of the election without knowing how much money they were awarded, including the funds_0304 as a predictor significantly enhances the performance of the model and allows one to confirm a relationship between the two variables (SPSS).
It is important to recognize that HAVA funds were awarded bases on many factors within particular states including their voting age population, number of precincts and jurisdictions along with the status of their voting systems at the time HAVA was passed. So while there were states that lagged behind others in the initial status of database implementation, the amount of HAVA funds was meant to curb that inequality and provide each state the ability to meet HAVA mandates in a timely fashion. Therefore states receiving large sums of money were most often large states with large voting age populations, or states that had been slow to implement these databases on their own and should have, with these funds been able to meet the extended HAVA deadline of January 1, 2006. Albeit at a less conservative standard than is typically used, the data does in fact show this relationship between the amount of funds a state was given and the presence of a statewide database.

**Provisional Voting**

What happens when a person shows up to the polls on Election Day and their name is said to not appear on the voting rolls? This is a predicament many voters have found themselves in and a problem that was highlighted in the Election Day fiasco of 2000. The concept of provisional voting works to amend what are often clerical errors that unfortunately have been seen to keep many names off the voting rolls at the time of an election. Having the ability to cast a provisional ballot allows a voter who’s name does not appear on the registrars voting list to cast a ballot, conditional on their registration status being confirmed after ballots are cast. This often results in the voter signing an affidavit confirming their status as a registered voter, with their status being determined at a later date. The text of HAVA states that if “the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast
a provisional ballot” (“Help America Vote Act of 2002 Public Law 107-252” 2002). Apart from a handful of states that already had similar provisional voting procedures on the books, this was the first federal law that mandated that all states implement this practice. And while some states had already taken steps to allow for provisional voting, little if any of the system was uniform. In a 2005 electiononline.org briefing entitled Solution or Problem? Provisional Ballots in 2004 the authors highlight this lack of uniformity in state voting systems saying that “a uniform standard was especially stark with provisional ballots, where voters received such ballots under different circumstances and for different reasons” (1). HAVA however, details five guidelines for states to follow in allowing citizens to cast provisional ballots, mainly outlining the specific ways in which a voter can cast a ballot and ways in which their eligibility can be verified. This in turn resulted in many states frantically searching for a happy medium in allowing eligible voters to cast a ballot while still trying to avoid extensive voter fraud. In his article “Provisional Voting: Federal Law and Ohio Practice,” Dan Tokaji an assistant professor at the Mortiz College of Law talks about the balancing act required when dealing with this particular section of HAVA, saying that:

In the course of its deliberations over election reform between 2000 and 2002, Congress recognized the importance of making sure that eligible voters are not wrongly turned away from the polls. At the same time, Congress was also cognizant of the need to ensure that only eligible voters be permitted to cast votes. The provisional voting requirement, enacted as a part of the HAVA, represents Congress' effort to balance these competing considerations. (1)

Despite Congress’ efforts, arguments quickly arose as to how and in what instances a provisional ballot should be counted as a legitimate vote. The five guidelines which HAVA set forth in order
to determine whether or not a provisional ballot should be counted consist of “notification,” or making the voter in question aware that they have a right to cast a provisional ballot; “affirmation,” the declaration on the part of the voter that they are indeed eligible to vote; “transmittal,” the transfer of the ballot or appropriate information from the poll worker to the pertinent election official; “counting,” requiring that if and when the election official validates the eligibility of the voter, their ballot must be counted; and finally “confirmation,” in which a system is established in which the voter who originally cast the provisional ballot is able to verify if their ballot was counted (Tokaji, 1).

Seemingly, these guidelines would work to prevent state’s worries of voter fraud and the concern of turning away eligible voters, however this turned out to be far from the truth as states began to complain about ambiguity and failed to establish viable provisional voting systems by the January 1, 2004 HAVA deadline. Vagueness was seen in the reasons states chose to issue provisional ballots in addition to how they elected to count them. One particular area of divergence among the states is whether the voter in question must be in his or her correct precinct or jurisdiction to have their vote count. This is often a point of contention due to the leeway that many feel is given to a voter who is only required to be in their correct jurisdiction versus being confined to a smaller area in their precinct. As the 2004 general elections loomed, and states rushed to implement sound procedures for which voters could cast provisional ballots, worries mounted as to how HAVA’s provisional ballot mandate would ultimately play out. With the help of the EAC and the PEW Center’s electiononline.org site, a great deal of data is available concerning how many provisional ballots were cast in each state, the percentage of those cast ballots that in the end were actually counted in the 2004 general election in addition to
separating states based on where a voters ballot had to be cast in order to be counted, whether it
was their precinct or jurisdiction.

Although the provisional ballot mandate in HAVA is considered to be one that shares a
great deal of bipartisan support, the room it gives for each state to decide where exactly a ballot
must be cast in order to be counted is often a point of contention. Arguments from each side
often pertain to the validity of voter registration rolls in both precincts and jurisdictions in
conjunction with what percentage of provisional ballots are eventually counted as legitimate
votes. This then revisits the issue previously discussed concerning statewide voter registration
databases. Do states that have working voter registration databases tend to count a greater
percentage of provisional votes? This question is important due to the concern of many election
officials who aim to avoid counting ineligible ballots and deterring voter fraud. It is the general
supposition that if a state has a voter registration database in place they will be able to verify a
larger portion of the voter’s eligibility and therefore ultimately count a larger percentage of the
ballots.

With the help of SPSS, two variables “percprovote,” which codes states either a one, two
or three pertaining to low, moderate and high percentages of counted ballots an “database2004”
which codes states with a one if at the time of the 2004 general elections they had a statewide
voter registration database in place, and a two if there was no database in place (electiononline.org,
2005). Identifying “database2004” as the independent variable and “percprovote” and the
dependent variable, a crosstabulation was run to test the hypothesis; states with voter registration
databases in place at the time of the 2004 general election will tend to count a greater percentage
of provisional ballots.
In looking to Output 2 in Appendix A, one can see a deviation from the stated hypothesis that with voter registration databases would come a higher percentage of counted ballots. This ideology is seen only in the second column, second row in the lowest category of percentage of votes counted. Of those states that had voter registration databases in place for the 2004 elections, 43.8 percent of them (the highest percentage) fall into the lowest category of counted ballots, between 0 and 32 percent. Interestingly it was those states that did not have voter registration databases in place that counted the highest percentage of votes. Looking to third column, second row, one can see that 51.9 percent of those states without database in place counted between 33 and 65 percent of their provisional ballots at eligible votes. This is compared to 37.5 percent of states with databases. Even in the highest category of those states that counted between 66 and 99 percent of their ballots, one can see a higher percentage of states without voter registration database, 25.9 percent compared to 18.8 percent. The lack of this hypothesized connection is also seen when looking to the “Group Statistics” table in the output which reports a higher mean value on the percprovote scale for those states without databases at 2.04 and a lower mean scaled value of 1.75 for those states that in fact did have databases in place at the time of the election. The null hypothesis in this instance asserts that the mean difference of -.287 seen in the “Independent Samples Test” table is the result of random sampling error and because of the calculated p-value of .1105 that assertion cannot be rejected.

Although the implementation of the provisional balloting process was seen as a way to remedy concerns dealing with voter fraud and ineligible voters, the extent to which that can be done, without the help of other practices in place, in this case statewide voter registration databases can be questionable. Many would agree that the concept behind provisional voting is
one that aims to heighten confidence in the nations elections proceedings, however, the degree to
which that confidence is improved is often contingent on other practices being in place.

Voter Identification Requirements

Throughout the process of drafting, editing and voting, HAVA enjoyed a great deal of
bipartisan support, and it was accepted by both parties that the way the United States ran
elections needed to change. The extent of that change and how it was to be achieved however
were points of contention among party members. Voter identification requirements in particular
raised a great deal of debate ranging from questions of practicality to arguments over their
constitutionality. Under Title III, HAVA requires all first time voters registering by mail to
include a valid form of identification with their registration, which can consist of “a copy of a
current and valid photo identification; or a copy of a current utility bill, bank statement,
government check, paycheck, or other government document that shows the name and address of
the voter” (HAVA 50). If unable to do this, the voter in question, upon arrival to their polling
location would be asked to supply this same information to the election official present. In the
case that this was unable to be done, the voter in question would have the option of filling out a
provisional ballot and signing an affidavit affirming their registration status. For what was
considered to be a vastly bipartisan bill, this provision of HAVA raised and continues to raise
some of the most challenging questions for state election officials. Party lines are often split on
their extent to which a state goes in outlining acceptable forms of identification. Because HAVA
only outlined minimum standards, states were free to set more stringent guidelines when it came
to the type of identification they would accept, and whether they would stipulate that only those
voting by mail provide identification or expand the responsibility to all potential voters. In the
very text of HAVA it explains,
The requirements established by this title are minimum requirements and nothing in this title shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this title so long as such State requirements are not inconsistent with the Federal requirements under this title or any law described in section 906 ("Help America Vote Act of 2002 Public Law 107-252" 2002).

And while a large number of states chose to abide by these minimum requirements more states went beyond the basic prerequisites and defined more strict laws pertaining to the form of identification a voter needed to present when arriving to their polling location to cast a ballot. Seen in Output 3 of Appendix A is the frequency output SPSS calculates for voterid, a variable that codes states based on their voter identification requirements. Among the fifty states and Washington, DC, there are five main categories that describe the various voter identification procedures throughout the country. The first and those states that are coded "1" within the variable voterid align with the minimum requirements HAVA mandates. Those states coded "2" are states request all voters to show a valid photo ID, however it is not mandatory. States coded "3" are those states that require all first-time voters to show a valid ID, per the guidelines in HAVA. For those states that require all voters to show a valid form of identification a code of "4" was given, and finally for the most strict regulations regarding voter identification, in which all voters are required to show a valid photo ID before casting a ballot a code of "5" was given.

In examining the highlighted values in the frequency output from SPSS, one will notice that 47.1 percent of states follow the minimum guidelines imposed by HAVA, while a total of 52.9 percent of states require voters to take steps beyond the basics outlined in HAVA. Only three states in the nation require that all potential voters furnish a valid photo ID, all of which have run
into road blocks, most often set by civil rights advocacy groups in trying to implement this section of HAVA. Opponents of voter identification laws, particularly those going beyond the basis laid out in HAVA question the burden such laws place on voters and worry that those having limited access to ways of obtaining certain forms of identification would be consequently disenfranchised. These feelings, shared by many interest groups, election officials and state legislatures came to head in a lawsuit filed in September of 2007 against the Indiana Secretary of State, the head election official in the state and the Marion County Board of Elections. The lawsuit questioned the constitutionality of Indiana’s voter identification law, considered to be the most comprehensive, stipulating that all voters provide a valid photo ID on Election Day in order to cast a ballot. In an amicus curiae brief filed on behalf of the appellant party in Crawford et al. v. Marion County Election Board et al., the Brennan Center for Justice argues that

...by preventing eligible Indiana citizens from exercising their right to vote unless they present a state of federal photo ID, SEA 483 imposes significant burdens on the franchise for low-income, elderly and disabled voters for whom it is difficult of unduly costly to obtain a photo ID... (2006, 11).

Despite concerns from groups such as the Brennan Center, and other civil rights organizations such as the NAACP, the United States Supreme Court upheld Indiana’s voter identification law with a vote of 6-3 in April of 2008. In the opinion for the court, Justice Stevens discounting the claim that the law unduly burdens the voter explaining that

Indiana has a valid interest in participating in a nationwide effort to improve and modernize election procedures criticized as antiquated and inefficient. Indiana also claims a particular interest in preventing voter fraud in response to the problem of voter registration rolls with a large number of names of persons who
are either deceased or no longer live in Indiana (Crawford et al. v. Marion County Election Board et al. 553 U.S. ___ (2008)). This ruling in turn validated voter identification laws in both Florida and Georgia that were very similar to those in Indiana, along with twenty four other states that had passed laws going beyond HAVA’s minimum requirements.

Frequent appearances of interest groups in front of Congress, litigation reaching the Supreme Court and differing laws among the states are all factors that have contributed to politicizing the issue of voter identification laws throughout the nation. Despite bipartisan support for the bill as a whole, the provision implementing voter identification practices has by far incited the fiercest political debate not only in Congress but within the states as well. Most often it is Republican’s who jump on board to extend this provision in HAVA to include more demanding voter identification requirements in order to combat voter fraud. Democrats on the other hand worry that more stringent applications of voter identification laws will disenfranchise voters by requiring forms of identification that are not held by all citizens. Both liberals and conservatives are quick to present their feelings on this issue in front of state legislatures, Congress, through amicus curie briefs and the publishing of critiques on various state practices. In his testimony before the Texas State Senate, Hans A. von Spakovsky, visiting legal scholar for the Center for Legal and Judicial Studies at the Heritage Foundation argues the legitimacy of voter identification requirements in his paper Requiring Identification by Voters quoting former Secretary of State James Baker who argued that:

The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters. Photo identification cards
currently are needed to board a plane, enter federal buildings, and cash a check.

Voting is equally important. (Heritage Foundation, 2009)

Mr. von Spakovsky, who specializes in the study of the legal aspects of elections, goes on to emphasize the importance of voter identification as a way to secure one voter per citizen and discounts rumors that election fraud is rare and infrequent. Criticism of Spakovsky’s assertions often come from his left leaning counterparts that voice concerns about the large pool of potential voters that could be deterred from registering to vote. In the preface to their section on voter identification, The Brennan Center for Justice explains that:

Burdensome photo ID or proof of citizenship requirements for voting could block millions of eligible American voters without addressing any real problem.

Although most Americans have government-issued photo ID, studies show that as many as 12% of eligible voters nationwide do not; the percentage is even higher for seniors, people of color, people with disabilities, low-income voters, and students. http://www.brennancenter.org/content/section/category/voter_id/

These opposing schools of thought are voiced most aggressively near elections, particularly for state legislatures, who will have the final say on election law in the state. And with this comes the idea that those state legislatures in which republicans have control will be more likely to enforce stricter voter identification laws, while those states that are dominated by a democratic legislatures will be more likely to favor less demanding voter identification laws. With the help of SPSS, the relationship between the political affiliation of state legislatures and degree to which they implement voter identification requirements can be examined and tested for significance. The question here will ask whether or not predominantly republican state legislatures will favor more demanding voter identification policies than those states with
predominantly democratic state legislatures, with the accompanying hypothesis looking to validate both of the above claims. Two variables; uhleg2003\(^1\), which describes the make-up of the upper house of states legislatures for the year of 2003 and voterid, a scale that relates five of the most common voter identification policies among the states and was previously discussed in this section. Looking to Output III in Appendix A, the crosstabulation output is present, accompanied by the relevant measures of association. By simply reviewing the crosstabulation seen, it is clear that a higher percentage of republican state legislatures favor more demanding forms of voter identification laws at 65.5 percent compared to a lower percentage of democratic state legislatures that favor less demanding methods for verifying the identity of a voter at 60.0 percent. This same trend is seen in the “Group Statistics” table in which the mean values on voterid are seen in the third column. Here one can see that the mean score on voterid for those states in which a republican upper house legislature is present is 2.86, while the mean score for democratic led state legislatures is nearly one point lower at 1.95. The significance of this relationship however is told through the slim to none chance that one would see a difference in this sample. The p-value, which is achieved by dividing “Sig. (2-tailed)” by two, then equals .0175, less than the .05 standard, telling an observer that the change of the calculated sample difference within the means of .910 would happen just under two times in one hundred.

The significance seen in this relationship points to the politics surrounding the issue of voter identification, and suggests that the political party controlling the state legislature; at least in this case the upper house is seen to have an effect on the nature of voter identification policy within the state.

---

\(^1\) In the vast majority of instances, the upper house of each state legislature carries a term of four years, and those in office in 2003 would have been elected in 2000 and therefore would have been the representatives that voted on voter identification policy in the years following HAVA.
Could the States Have Been Expected to Keep Up?

When HAVA passed in Congress in July of 2002, it passed not only with mandates but with a timeline as well. It is this stringent timeline that one will hear states complain about most often, with programs being established as soon as forty-five days after the bills enactment (Help America Vote Act of 2002 Public Law 107-252” 2002). From the beginning many states voiced concerns about being able comply with certain deadlines despite being allotted funds. And in many cases, these worries were well vested. Although the mandates themselves were somewhat uniform, the voting systems in each state were not, meaning that some states had a great deal more on their plate than others. In an Election Reform Briefing released in March of 2003, conducted by electiononline.org, a PEW Research Center group, the different levels of states initial compliance was documented to show the vast differences between states when it came to implementing HAVA regulations.

Figures 1 through 3 in Appendix B, depict the various levels of state compliance that were seen in the three main areas previously discussed; statewide voter registration databases, provisional voting and voter identification just after the passing of HAVA. These graphs depict varied results that at first glance make one wonder how all fifty states including the District of Colombia could comply with the same mandates under such different conditions. Figure 1 represents the states’ initial compliance levels concerning the use of a statewide database of registered voters, which here seem as though they would prove quite a challenge with only six states meeting all of HAVA’s requirements. Next is Figure 2, which deals with provisional voting compliance. The vast majority of the states (thirty-six) did not meet HAVA guidelines, and while most states complied with at least some of HAVA’s regulations, many other states would find themselves fighting to pass legislation and develop practices consistent with HAVA
before the deadlines. Finally, Figure 3 details what has been described as the most controversial condition of HAVA, voter identification. Here it is seen that at the inception of HAVA only seven states had laws in place that were consistent with the stipulations set forth in HAVA, meaning that the remaining forty-three states would need to pass and/or edit laws with the approval of the state legislature in order to meet HAVA requirements. Even from this simple reading of initial compliance levels, it becomes clear that the far-reaching aims of HAVA put a great deal of stress on a number of states who found themselves non-compliant with various HAVA provisions.

**Conclusion**

A well intentioned bill in its drafting, many view HAVA today as another way in which America has failed to keep up with the ever-changing world around them. Unable to cope with diversity in populations, unable to meet requirements set forth by federal mandates and ultimately unable to circumscribe political conflict in order to formulate sound voting policy. Critics point to poor funding and vague mandates within the bill when citing reoccurring problems within HAVA. In her article “HAVA of HAVOC?” Sarah Tobias explains “HAVA was thwarted from its inception,” going on to argue that poor funding, intricate guidelines and “complex implementation challenges” are what have lead to HAVA’s failure (2005, 69). These challenges are voiced often by states that fall in the higher levels defined in Figures 1-3 in Appendix B and from the beginning were behind the curve when it came to quality voting systems. With a combination of strict deadlines and what many would argue with inadequate funds, the majority of states around the country struggled to reach HAVA compliance.

In covering three of the most controversial issues within HAVA, it becomes clear that a clear answer for the problems seen in the 2000 Elections may have been a farfetched hope for
state election officials and the federal government. Despite the somewhat promising results the analysis of statewide voter registration databases showed, the discrepancy dealt with in the provisional voting section and the vastly political nature of state by state voter identification requirements have hindered the state’s ability to uniformly enact not only these provisions of HAVA, but many other contained in the bill as well. Only time will tell if HAVA will ever be able to accomplish its initial task of creating reliable standards of state voting systems, or increase confidence in the elections process. Thus far however, the outlook on that front seems to be quiet bleak.
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Output 1

Database in place Jan 1st 2006

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<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
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<td>78.4</td>
<td>78.4</td>
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<tr>
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Model Summary

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<th>Cox &amp; Snell R Square</th>
<th>Nagelkerke R Square</th>
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<td>1</td>
<td>48.660&lt;sup&gt;a&lt;/sup&gt;</td>
<td>.085</td>
<td>.131</td>
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</tbody>
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a. Estimation terminated at iteration number 4 because parameter estimates changed by less than .001.

Iteration History<sup>a,b,c,d</sup>

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<th>-2 Log likelihood</th>
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<th>Constant</th>
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<td>1.969</td>
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</table>

a. Method: Enter
b. Constant is included in the model.
c. Initial -2 Log Likelihood: 53.182
d. Estimation terminated at iteration number 4 because parameter estimates changed by less than .001.

Omnibus Tests of Model Coefficients

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<th>Sig.</th>
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<td>.033</td>
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Classification Table

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<tr>
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<td>1</td>
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<td>Overall Percentage</td>
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a. The cut value is .500

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<th>Wald</th>
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(EAC, 2008) (PEW, 2009)

Output 2

Case Processing Summary

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<td>Valid</td>
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</tr>
<tr>
<td></td>
<td>N</td>
<td>Percent</td>
</tr>
<tr>
<td>% of Provisional Vote Counted * Registration Database for 2004 Elections</td>
<td>51</td>
<td>100.0%</td>
</tr>
</tbody>
</table>
### % of Provisional Vote Counted * Registration Database for 2004 Elections Crosstabulation

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<th></th>
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<th></th>
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</thead>
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<tr>
<td>0</td>
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<td>6</td>
<td>13</td>
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<tr>
<td></td>
<td>% within Registration Database for 2004 Elections</td>
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<td>43.8%</td>
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<td>25.5%</td>
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<td></td>
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<td>100.0%</td>
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</tbody>
</table>
## T-Test

### Group Statistics

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<th>% of Provisional Vote Counted</th>
<th>Registration Database for 2004 Elections</th>
<th>N</th>
<th>Mean</th>
<th>Std. Deviation</th>
<th>Std. Error Mean</th>
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</thead>
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### Independent Samples Test

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<th>% of Provisional Vote Counted</th>
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<th>t-test for Equality of Means</th>
<th>90% Confidence Interval of the Difference</th>
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</thead>
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<td>Sig.</td>
<td>df</td>
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<td>29.310</td>
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</table>

(PEW, 2009) (electionline.org, 2008)
## Output 3

<table>
<thead>
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<th>Cases</th>
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<th>Missing</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>Percent</td>
<td>N</td>
</tr>
<tr>
<td>State by State Voter ID Laws/Regulations * Rep. Control of Upper House in State Leg. 2003</td>
<td>51</td>
<td>100.0%</td>
<td>0</td>
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</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Count</td>
<td>Republican Control of Upper House</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>34.5%</td>
<td>61.9%</td>
</tr>
<tr>
<td></td>
<td>% within Rep. Control of Upper House in State Leg. 2003</td>
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</tr>
<tr>
<td></td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>6.9%</td>
<td>9.5%</td>
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<tr>
<td></td>
<td>% within Rep. Control of Upper House in State Leg. 2003</td>
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</tr>
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<td>6.9%</td>
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<tr>
<td></td>
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<td></td>
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<td></td>
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</tr>
<tr>
<td></td>
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### Group Statistics

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<th>Democrat Control of Upper House</th>
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</thead>
<tbody>
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<td>N</td>
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<tr>
<td>Mean</td>
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### Independent Samples Test

<table>
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<tr>
<th>State by State Voter ID Laws/Regulations</th>
<th>Levene's Test for Equality of Variances</th>
<th>t-test for Equality of Means</th>
<th>90% Confidence Interval of the Difference</th>
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<tr>
<td></td>
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<td>t</td>
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</table>

(NCSL, 2006) (electionline.org, 2008)
Figure 1

Voter Registration Database Requirement Compliance

**Level 1:** State complies with all voter registration database requirements of HAVA.

**Level 2:** Sustantial Compliance
The state is in substantial compliance with the voter registration database requirements of HAVA

**Level 3:** The state does not comply.

**Level 4:** The state is exempt from HAVA requirements.

Number of States in Compliance per Level

(PEW, 2009)
Figure 2

Provisional Voting Compliance with HAVA

**Level 1**: The state complies with all HAVA provisional voting requirements.

**Level 2**: The state does not comply with the HAVA provisional voting requirements.

**Level 3**: Not applicable—another system is in place that achieves the goal of provisional voting.

(electionline.org, 2008)
Voter Identification Requirement Compliance

**Level 1:** State is in compliance with HAVA voter identification requirements.

**Level 2:** State is not in compliance with HAVA voter identification requirements

**Level 3:** State is exempt from HAVA requirements

(electiononline.org, 2008)