

State of Wisconsin\Government Accountability Board

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A Report Of The Government Accountability Board

A Statistical Analysis of HAVA Checks in Wisconsin
August 6, 2008 through January 4, 2009

and

A Uniform Protocol
For Conducting Retroactive HAVA Checks of Voter Records
Commencing January 1, 2006

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Elections Division Administrator

January 15, 2009
Madison, WI

“One of the key provisions of the Voting Rights Act of 1965 is this: “No person, acting under color of state law, shall deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under state law to vote in such election.”

Excerpt from

“J.B. Van Hollen, A.G., et al. v. G.A.B., et al., 08-CV-4085, Dane County Circuit Court, Order and Transcript October 23, 2008, page 12.”

Report and Protocol Prepared for the
Government Accountability Board

by

Sarah Whitt

Functional Team Lead
Statewide Voter Registration System
Government Accountability Board

Executive Summary

"Nothing in state or federal law requires that there be a data match as a condition on the right to vote. HAVA does not supplant Wisconsin's constitutionally protected right to establish its own voter eligibility standards."

Excerpt from

"J.B. Van Hollen, A.G., et al. v. G.A.B., et al., 08-CV-4085, Dane County Circuit Court, Order and Transcript October 23, 2008, page 15."

At the August 2008 meeting of the Government Accountability Board, the Board directed staff to prepare a statistical report analyzing the non-match facts that resulted from the newly implemented comparison between the Statewide Voter Registration System's (SVRS) voter data and the Wisconsin Department of Transportation (DOT), and Social Security Administration (SSA).

There are several key findings from this statistical report:

1. The majority of HAVA Checks result in a match. Ninety-one percent (91%) of HAVA Checks sent to DOT have come back with a match. Ninety percent (90%) of voters overall who received a HAVA Check currently show a match. Eighty-eight percent (88%) of voters match on their very first HAVA Check.
2. The number of HAVA Check non-matches is decreasing due to the efforts of Wisconsin's clerks. The non-match rate for a voter's initial first-time HAVA Check started at 25% in August and is now down to 12%. The overall HAVA Check non-match rate after corrections are made is 10%. This percentage is considerably lower than the non-match rates reported by other states or the national average..
3. Preliminary numbers show the non-match rate for Election Day Registrations at the November 4, 2008, General and Presidential Election is as low as 9%. This figure indicates that Election Day Registrations do not result in a higher number of non-matches, or higher probability of potential voter fraud, as compared to other methods of voter registration.
4. The two most common reasons for non-matches are problems with names and driver license numbers. These two categories account for 92% of all the non-matches with the DOT database. This conclusion supports the comments made by clerks that name variations and typographical errors with the driver license number are the most common problems.
5. There is not enough statistical information to conclusively determine that the number of HAVA Check non-matches are due to voters willfully giving false or fraudulent information versus HAVA Check non-matches that are due to some sort of error (name variation, typographical error, unclear handwriting, errors on the form).
6. Between 18,000 and 24,000 voters would have been required to show Proof of Residence or vote on a Provisional Ballot at the November 2008 Election if the Board had imposed a consequence for a HAVA Check non-match. This would have been 78 times as many provisional ballots as the number cast in the November 2006 election, or a 7,709% increase.

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A Statistical Analysis of HAVA Checks in Wisconsin

August 6, 2008 through January 4, 2009

“In accordance with HAVA’s explicit provision that specific choices on the methods of complying with its requirements fall within the discretion of the state, the state, through the Government Accountability Board, has exercised that discretion...That is exactly the kind of discretionary decision-making the Government Accountability Board was created to do. It is exactly the kind of discretion HAVA left with states in HAVA §15485.”

Excerpt from

“J.B. Van Hollen, A.G., et al. v. G.A.B., et al., 08-CV-4085, Dane County Circuit Court, Order and Transcript October 23, 2008, page 15.”

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A Statistical Analysis of HAVA Checks in Wisconsin

August 6, 2008 through January 4, 2009

"The constitution {Wisconsin Constitution} vests and warrants the right to vote at the time of the election, and everyone having the constitutional qualifications then may go to the polls vested with this franchise, of which no statutory condition precedent may deprive him."

Excerpt from

"J.B. Van Hollen, A.G., et al. v. G.A.B., et al., 08-CV-4085, Dane County Circuit Court, Order and Transcript October 23, 2008, page 7."

The Help America Vote Act (HAVA) of 2002 and state statutes require the State to conduct voter data comparisons with the Wisconsin Department of Transportation (DOT) and Federal Social Security Administration (SSA) -- hereafter referred to as "HAVA Checks" -- on registered electors. These HAVA Checks are facilitated by Wisconsin's Statewide Voter Registration System (SVRS).

During the August 27, 2008, meeting of the Government Accountability Board (G.A.B.), the Board directed staff to gather statistics and facts and prepare a report analyzing the non-matches identified between August 6 and the November 4 General and Presidential Election. In accordance with the Board's August 27, 2008, directive, staff prepared the following statistical report that provides facts related to HAVA Checks that have been run since August 6, 2008 through January 4, 2009 (when the report was prepared).

Based on staff's report, the Board committed to revisit its August 28, 2008, ruling on the HAVA Check process and determine the best course of action for Wisconsin, including whether to implement a uniform statewide procedure for improving the quality of voter data for voters who registered prior to August 6, 2008, with the DOT and Social Security databases. The Retroactive HAVA Check Protocol which accompanies this report (attached in the appendices) outlines a proposal for the Board's consideration regarding the retroactive HAVA Checks.

Assumptions and Notes Related to this Report

The following points should be taken into consideration when reviewing this report:

1. This report includes all voters who were entered into SVRS from August 6, 2008 through January 4, 2009.
2. The HAVA Check can be run from two different places in the SVRS: the voter application and the voter record. When a voter is first entered into SVRS, the HAVA Check is run from the voter application. Once the voter application has been completed in SVRS, the voter application is approved, which stores the voter application (including

the initial HAVA Check result) for historical purposes, and a new voter record is created (or the existing voter record is updated if the voter was already registered at another location). After the application is approved, all updates (including future HAVA Checks) are made directly to the voter record.

The voter record is updated each time the HAVA Check is run, and will always show the most recent HAVA Check result. This allows clerks to update the voter's information and rerun the HAVA Check from the voter record as many times as necessary to correct a non-match, while still preserving the initial HAVA Check result on the voter application. For this reason, statistics in this report that relate to a voter's initial HAVA Check result were pulled from the voter application. Statistics relating to a voter's current HAVA Check result were pulled from the voter record.

3. The HAVA Check process became available in SVRS on August 6, 2008, and was made mandatory in the SVRS for all new voter applications on August 23, 2008. Before the HAVA Check was made mandatory on all voter applications, some voter applications were processed without a HAVA Check being run. These voters were later identified, and the HAVA Check was run from the voter record. For those voters whose initial HAVA Check was run from the voter record, we can only determine their current HAVA Check values, and do not have a record of the initial HAVA Check result.
4. HAVA Checks can only be run if the voter provides three critical pieces of information. The voter must provide their name, date of birth, and one of the following identifying numbers: driver license number, state ID card number, or last four digits of Social Security Number. If all three pieces of information are not provided, (such as if the voter provides their name and date of birth, but does not have a driver license, state ID card or a social security number) a HAVA Check cannot be run. For this reason, there are voters who registered on or after August 6, 2008 but have not undergone a HAVA Check.
5. HAVA Check values on voter records in SVRS are still being updated by clerks as they continue to run and rerun HAVA Checks and enter November 2008 Election Day Registrations. Voter records and HAVA Check values were updated while the statistics for this report were being extracted. Therefore, discrepancies between numbers may be seen in this report. For example, the sum of the subcategories may equal more or less than the total, depending on when the subcategory statistics were extracted relative to when the totals were extracted. This is normal, and indicates that clerks continue to work on the HAVA Checks.
6. A small number of voters had their HAVA Check in Pending status when this report was prepared. These voters are included in the totals, but are not further broken down. This can also account for discrepancies between the sum of subcategories and the total.
7. This report excludes voter records that have been merged into another voter record due to duplicate matching. In the case of merged voter records, only the final record that remains after the merge is counted for statistical purposes. This report also excludes any voter records or voter applications that were created in SVRS but then deleted by the user (this normally occurs if the record was added by mistake). This report DOES include voters who are marked as inactive or cancelled.

Overall Statistics

There are an estimated 4,583,907 voter records in Wisconsin as of January 4, 2009. Of this number, 3,767,847 electors are currently registered to vote (Refer to the Summary of Wisconsin's Voter Registration Information at the beginning of this report). A total of 736,048 of these 3,767,847 voters were entered into SVRS from August 6, 2008 through January 4, 2009. 724,646 (99%) of these voters had their initial HAVA Check run from the voter application at the time the record was entered into SVRS. The remaining 1% needed to have their HAVA Check run later from the voter record. 2,048 (0.3%) of the total voters entered have not had a HAVA Check run, either because they were marked inactive or cancelled before the HAVA Check was run, or because they did not provide a driver license number, state ID card number, or last 4 digits of their social security number when they registered.

421,110 (57%) of the voters entered from August 6, 2008, through January 4, 2009, were voters who registered on Election Day for the November 4, 2008, General and Presidential Election. Please note that approximately 200 of Wisconsin's 1,851 municipalities were still in the process of entering their November 2008 Election Day registrations (EDRs) into SVRS when this report was generated, including some larger cities, so the number of Election Day Registrations will continue to grow.

Table 1
Overall Statistics

| Number of: | Statistic | Percent |
|---|------------------|----------------|
| voters who registered on or after August 6, 2008 | 736,048 | |
| voters who received a HAVA Check | 733,999 | 99.7% |
| voters who did not receive a HAVA Check | 2,048 | 0.3% |
| voters who were initially checked from voter application | 724,646 | 99% |
| voters who were initially checked from the voter record | 9,353 | 1% |
| | | |
| EDRs for the November 2008 election ¹ | 421,110 | 57% |
| Municipalities still entering November 2008 EDR's in SVRS (approximate) | 200 | |

Matching Rates

The result of the initial first-time HAVA Check for a voter is stored in SVRS for the 724,646 voters who had the HAVA Check run from their voter application. For these voters, 635,812 (88%) matched on their first HAVA Check attempt. 88,278 (12%) did not match the first time, and needed some further investigation and follow-up.

Table 2
Matching Rates for Initial HAVA Check
(from voter application)

| Number of: | Statistic | Percent |
|--|------------------|----------------|
| Initial HAVA Checks that resulted in a match | 635,812 | 88% |
| Initial HAVA Checks that resulted in a non-match | 88,278 | 12% |
| Initial HAVA Checks that were still pending when the report was prepared | 556 | 0.08% |

¹ This refers to Election Day Registrations entered into SVRS as of January 4, 2009

At the August 2008 meeting of the Government Accountability Board, staff reported that preliminary HAVA Check statistics for the month of August showed an initial HAVA Check non-match rate as high as 22%. Reviewing the final statistics, August had the highest non-match rate, with 6,018 (25%) non-matches out of the 23,799 HAVA Checks run. Subsequent months showed a non-match rate of 11% or 12%, which aligns with the overall initial HAVA Check non-match rate of 12% shown above.

Table 3
Non-Match Rates for Initial HAVA Checks Month by Month
(from voter application)

| Month | HAVA Checks | Matches | Non-Matches | Match Percent | Non-Match Percent |
|----------------------|-------------|---------|-------------|---------------|-------------------|
| August ² | 23,799 | 17,654 | 6,018 | 74% | 25% |
| September | 38,150 | 33,604 | 4,535 | 88% | 12% |
| October ³ | 192,861 | 169,099 | 23,356 | 88% | 12% |
| November | 294,745 | 261,690 | 33,046 | 89% | 11% |
| December | 172,516 | 151,434 | 21,077 | 88% | 12% |
| January ⁴ | 2,594 | 2,342 | 250 | 90% | 10% |

SVRS also shows the current HAVA Check result (from the voter record) for all voters who have received a HAVA Check. The current HAVA Check result shows the result at the time the statistics were collected, which takes into consideration the fact that many voters have had their records corrected and updated, and had their HAVA Check rerun. Of the 733,999 voters who have received a HAVA Check, 662,244 (90%) currently show a match, and 71,449 (10%) still show a non-match.

Table 4
Current HAVA Check Matching Rates
(from voter record)

| Number of: | Statistic | Percent |
|--|-----------|---------|
| Voters that currently show a match | 662,244 | 90% |
| Voters that currently show a non-match | 71,449 | 10% |
| Voters that currently show pending | 306 | 0.04% |

Given that the non-match rate for initial first-time HAVA Check is 12%, and the current non-match rate is 10%, this indicates that clerks have been able to successfully correct some of the initial non-matches. A reasonable conclusion can be made that the current HAVA Check non-match rate could continue to drop as clerks continue to research and correct errors related to the November 2008 Election Day registrations.

Non-Match Rates for DOT versus SSA

HAVA Checks are sent to DOT if the voter provides a driver license or state ID number, or sent to SSA if the voter provides the last four digits of their social security number. The

² This includes August 6 through August 31 only

³ Note that due to data entry errors, October 2008 had a higher than normal number of HAVA Check results that show "pending" which appear in the total but do not appear as a match or a non-match. This accounts for the discrepancy between the sum of the matches and non-matches versus the total.

⁴ This includes January 1 through January 4 only

majority of HAVA Checks were sent to DOT. Of the 733,999 voters who received a HAVA Check, 658,004 (90%) went through DOT, and 75,409 (10%) went through SSA.

The non-match rate for HAVA Checks sent to SSA is considerably higher than the non-match rate for HAVA Checks sent to DOT. Of the 75,409 checks sent to SSA, 11,153 (15%) currently show a non-match. Of the 658,004 checks sent to DOT, 60,027 (only 9%) currently show a non-match⁵.

Table 5
Non-match Rates for DOT versus SSA
(from voter record)

| Number of: | Statistic | Percent |
|--|------------------|----------------|
| HAVA Checks sent to DOT | 658,004 | 90% |
| HAVA Checks sent to SSA | 75,409 | 10% |
| | | |
| DOT checks that currently show match | 597,970 | 91% |
| DOT checks that currently show non-match | 60,027 | 9% |
| | | |
| SSA checks that currently show match | 64,256 | 85% |
| SSA checks that currently show non-match | 11,153 | 15% |

Reasons for Non-Matches

When HAVA Checks are sent to DOT, DOT provides information back to SVRS regarding the reason for a non-match:

- Of the 60,027 non-matches that came back from DOT, most of them, 35,280 (59%), did not match because the name in SVRS did not match the name at DOT. This means that the driver license number and date of birth were valid and matched, but the name did not.
- 19,744 (33%) did not match due to a discrepancy in the driver license number, or the number provided was not valid.
- 4,390 (7%) did not match due to the date of birth. This means that the driver license number and name were valid and matched, but the date of birth did not.
- 792 (1%) did not match due to the name and date of birth -- both did not match. This means that the driver license number provided was a valid number, but it did not match the name and date of birth provided.

Of the 35,280 voters that non-matched with DOT because the name did not match, 4,722 (13%) had an apostrophe, hyphen, or space somewhere in their name. Names with special characters such as these are challenging to match with DOT because of the many variables in how they can be spelled and what characters are accepted by the different databases.

⁵ Anecdotal information from other states, along with reports provided by the Election Assistance Commission and the Brennan Center indicate that the non-match rate for SSA is higher than anticipated nationwide. It is not yet known what accounts for the higher non-match rate at SSA.

SSA does not provide a reason for a non-match. Of the 11,153 non-matches that came back from SSA, 11,062 (99.2%) showed that no match was found. The remaining 91 (0.8%) non-matches were due to invalid data submitted.

Table 6
Reasons for Non-Matches
(from voter record)

| Number of: | Statistic | Percent |
|---|------------------|----------------|
| DOT non-matches because the name does not match or invalid name | 35,280 | 59% |
| DOT non-matches because no record of DL# | 19,744 | 33% |
| DOT non-matches because DOB does not match | 4,390 | 7% |
| DOT non-matches because name and DOB both do not match | 792 | 1% |
| | | |
| DOT non-matches due to name mismatch that have a space, hyphen or apostrophe in first, middle, or last name | 4,722 | 13% |
| | | |
| SSA non-matches that show no match found | 11,062 | 99.2% |
| SSA non-matches that show Invalid Data Submitted | 91 | 0.8% |

Clerks' Comments Regarding Reasons for Non-Matches

Clerks were asked to put comments on the voter record when investigating HAVA Check non-matches to assist G.A.B. staff in determining how many HAVA Checks did not match due to typographical errors, or errors on the form that were corrected by contacting the voter. These comments would be added to the voter record if the clerk identified a data entry error or if the voter responded to the clerk when notified that their information did not match. Therefore, not all HAVA Checks that resulted in a non-match would have a comment on the voter record.

Also, the process of adding these comments was done manually and that required an additional step in the HAVA Check process. Clerks entered these comments as they remembered to and as time permitted. Therefore, the number of comments on the voter record is not sufficient to offer conclusive or definitive results. Please also note that extracting statistical information based on the comments was difficult as the comment field is a free-form text field and there was a wide degree of variability in the wording of the comments. G.A.B. staff made a best effort to identify and extract all comments from voter records that related to HAVA Checks.

Approximately 5,539 voters currently show one or more comments related to a HAVA Check. This represents 1% of the 733,999 total voters who received a HAVA Check. 3,992 (72%) of these voters have comments indicating that the voter information needed to be corrected and the HAVA Check rerun due to a data entry error. 1,133 (20%) have comments indicating that the HAVA Check was corrected and rerun because the voter responded to a letter from the clerk notifying them of the non-match. 518 (9%) have comments indicating that the voter verified that the information in SVRS is correct, and yet the HAVA Check still did not match⁶. More research is needed on this 9% category of voters.

⁶ If the voter verifies that their information is correct but the HAVA Check still results in a non-match, the clerk can contact the G.A.B. Help Desk and G.A.B. will follow up with DOT to determine why the HAVA Check failed. If there is a problem with the information in SVRS, it is corrected and the HAVA Check is rerun. If there is a problem with the information at DOT, the voter would need to correct their information at DOT in order for the HAVA Check to result in a match.

Please note that some voters have more than one comment, and could appear in multiple categories (i.e. data entry AND voter verified) if the clerk made multiple corrections.

Table 7
HAVA Comments from Voter Record

| Number of: | Statistic | Percent |
|--|------------------|----------------|
| Voters with a HAVA comment on their voter record | 5,539 | 1% |
| Voters with a Data Entry comment | 3,992 | 72% |
| Voters with a Letter Response comment | 1,133 | 20% |
| Voters with a Voter Verified comment | 518 | 9% |

Clerks have also provided much anecdotal information to the G.A.B. regarding reasons for HAVA Check non-matches. Based on comments clerks have made to G.A.B. staff, the most common reasons for HAVA Check non-matches are:

1. Typographical errors, particularly with the driver license number, most likely, due to the length of the number and the ease of transposing digits within that number.
2. Variations in names in SVRS versus DOT, particularly with names that include a space, apostrophe, or hyphen. Examples include "Robert" versus "Bob," or "Olson-Brown" versus "Olson Brown."
3. Voters who have a middle initial at DOT but not in SVRS, and vice versa.

Clerks have also reported that they have a higher number of voter verified non-matches with SSA. These are voters whose HAVA Check comes back from SSA as no match found, but the voter verifies that all information in SVRS is correct. More research needs to be done with SSA to determine why the non-match rate with SSA is higher than that of DOT, particularly in the case of voters who verify that their information is correct.

The G.A.B. has not been informed of any voter fraud investigations that resulted from HAVA Check non-matches. At the time that its report was prepared, HAVA Check results have been provided to the Milwaukee County District Attorney's office as part of on-going voter fraud and voter registration fraud investigations.

Potential Election Day Impact

One of the options presented to the Board at the July and August 2008 meetings included marking voters whose HAVA Check resulted in a non-match on the poll book, and requiring them to show Proof of Residence at the polling place. If the voter could not provide Proof of Residence, he or she would be required to vote on a Provisional Ballot. The Board did not adopt this policy, in part due to concerns regarding the anticipated high number of voters who would have been required to cast Provisional Ballots.

G.A.B. staff reviewed some additional statistics to attempt to determine the potential impact this policy could have had at the November 4, 2008 Election. G.A.B. staff reviewed the number of voters who registered after August 6, 2008, but prior to November 4, 2008, who resulted in a HAVA Check non-match and would have been subject to this policy:

- 35,030 voters who registered during this period and had their initial HAVA Check run from the voter application resulted in a non-match. 24,393 of these voters voted in the November 2008 Election.
- At the time this report was generated, 28,320 of these voters still had records showing a HAVA non-match. 17,932 of these voters voted in the November Election.

Table 8

Voters Who Registered Since August 6 but Prior to the November Election

| Number of: | Did not Match | Voted |
|--|----------------------|--------------|
| Voters who showed a non-match on their initial HAVA Check (from the voter application) | 35,030 | 24,393 |
| Voters who currently still show a HAVA Check non-match (from the voter record) | 28,320 | 17,932 |

It is not possible to determine the exact number of voters that had a HAVA Check non-match at the time their poll book was printed, so an exact number of voters who would have been impacted cannot be determined. However, it can safely be stated that between 18,000 and 24,000 voters would have been required to show Proof of Residence or vote on a Provisional Ballot at the November Election if that alternative had been approved by the G.A.B.

Only 271 provisional ballots were issued at the November 2006 General Election. If provisional ballots had been required for the HAVA Check non-matches in the November 2008 election, there would have been approximately 21,163 additional provisional ballots⁷. This equates to a 7,709% increase in provisional ballots (78 times more ballots) than the number of provisional ballots issued in the 2006 General Election, and corresponding cost, work-load, and stress increase for Wisconsin's clerks and poll workers.

Table 9

Provisional Ballots

| Number of: | Statistic | Percent Increase |
|--|------------------|-------------------------|
| Provisional Ballots issued in November 2006 Election | 271 | |
| Projected Provisional Ballots for November 2008 Election if provisional ballots were required for non-matches ⁸ | 21,163 | 7,709% |

Election Day Registrations

G.A.B. staff also looked at the HAVA Check statistics specifically for those voters who registered on Election Day at the November 4, 2009 Election.

Of the 421,110 November Election Day registrations recorded in SVRS as of January 4, 2009, 379,409 (90%) currently showed a HAVA Check match on their voter record. 39,365 (9%) had a non-match. 1,421 (0.3%) are currently pending, and 914 (0.2%) could not be run because they did not have a driver license, state ID, nor social security number.

⁷ This is an average of the low and high number in the projected range

⁸ This is an average of the low and high number in the projected range

Table 10

Election Day Registrations for November 2008 Election
(from voter record)

| Number of: | Statistic | Percent |
|--|------------------|----------------|
| November 2008 EDRs who currently show a HAVA Check match | 379,409 | 90% |
| November 2008 EDRs who currently show a non-match | 39,365 | 9% |
| November 2008 EDRs who currently show pending | 1,421 | 0.3% |
| November 2008 EDRs with no HAVA Check run | 914 | 0.2% |

Retroactive HAVA Checks

Based a review of the HAVA Check facts that this statistical report provides, in August 2008, the G.A.B. committed to considering implementing a uniform procedure for improving the quality of the voter data for voters who were entered in SVRS prior to August 6, 2008.

Preliminary queries indicate that approximately 872,014 voters registered on or after January 1, 2006, but have not received a HAVA Check. Of these, 785,412 (90%) registered using their driver license number, and 64,236 (7%) used their social security number (last 4 digits). 22,366 (3%) did not use either document when registering, and will therefore not be able to have a HAVA Check run.

Based on the initial first-time HAVA Check non-match rate, it is anticipated that approximately 101,958 (12%) of these records will not match and, based on our current research and findings, it is reasonable to conclude that the most likely culprit for the majority of the non-matches will be due to typographical errors and variations in names. Follow-up after the initial HAVA Check will likely be necessary.

Table 11

Potential Impact of Retroactive HAVA Checks

| Number of: | Statistic | Percent |
|--|------------------|----------------|
| Voters who registered on or after January 1, 2006 and have not yet received a HAVA Check | 872,014 | |
| Voters who registered with a Driver License or State ID Card | 785,412 | 90% |
| Voters who registered a with Social Security Number | 64,236 | 7% |
| Voters who registered with neither | 22,366 | 3% |
| | | |
| Projected # of initial mismatches | 101,958 | 12% |

Major Findings

1. 733,999 voters have received a HAVA Check between August 6, 2008 and January 4, 2009.⁹
2. The current overall non-match rate (including DOT and SSA) is only 10%.
3. The non-match rate for November 2008 Election Day Registrations is 9%.
4. The current overall non-match rate for HAVA Checks sent to DOT is 9%.

⁹ Of voters who registered between August 6, 2008 and January 4, 2009

5. 92% of HAVA Check non-matches from DOT were due to the name not matching or the driver license number being incorrect. (59% and 33% respectively).
6. The non-match rate for initial first-time HAVA Checks has decreased from 25% in August to 12% in December, and 12% over the reporting period.

Analysis and Conclusions

There are several things that can be concluded from the statistics in this report:

1. The current overall match rate with DOT is 91%. (See Table 5). This is much higher than the national average (based on anecdotal information).
2. The number of current overall HAVA Check non-matches is decreasing due to the follow-up efforts of clerks. The initial first-time non-match rate (from the voter application) started at 25% in August, and is now 12% overall. The current non-match rate (from the voter record) is only 10%. (See Tables 2, 3, and 4).

It is reasonable to conclude that the initial first-time non-match rate will continue to decrease as clerks take greater care during data entry. It is also reasonable to conclude that the current overall non-match rate will continue to fall as more HAVA Checks non-matches are investigated.

3. The non-match rate for Election Day Registrations at the November 2008 Election is actually lower than the overall current non-match rate (9% versus 10%). (See Table 10). This indicates that Election Day registrations do not result in a higher number of mismatches, and does not indicate potential higher fraud with Election Day Registrations, as some have speculated.
4. The two most common reasons for non-matches are problems with names, and problems with the driver license number. These two categories account for the vast majority of the non-matches. (See Table 6). This supports the anecdotal information from clerks, and the comments on the voter record, that name variations and typographical errors with the driver license are the most common complaints. (See Table 7).
5. The least common reason for a non-match was that both the name and date of birth do not match the driver license number provided (792 or 1% of the total non-matches), which means that a valid driver license was provided, but the neither the name nor the date of birth provided matched. (See Table 6).

Of the non-match categories, this category on its face could appear to be the category most likely to raise concerns regarding voter fraud, due to the fact that the driver license number is valid (and therefore less likely to be a typographical error) but the other provided information does not match. Given that this is the lowest reason for a non-match, this also supports the lack of anecdotal information on any voter fraud investigations resulting specifically from HAVA Check non-matches.

6. The non-match rate for SSA is significantly higher than that for DOT (15% versus 9%). However, the vast majority of HAVA Checks are going through DOT which mitigates

some of the impact. (See Table 5). More investigation should be done with SSA to determine why the non-match rate is higher, specifically for voters who have verified that their information is correct.

7. There is not enough statistical information to conclusively determine the number of HAVA Check non-matches that are due to voters willfully giving false or fraudulent information versus HAVA Check non-matches that are due to some sort of error (name variation, typographical error, unclear handwriting, errors on the form).
8. Between 18,000 and 24,000 voters would have been required to show Proof of Residence or vote on a Provisional Ballot at the November 2008 Election if the Board had opted to impose a consequence for a HAVA Check non-match. (See Table 8). This presents a 7,709% increase over, or 78 times as many, provisional ballots as the number issued in November 2006 General Election.

Appendices

1. Protocol for Conducting Retroactive HAVA Checks of Voter Records
2. A Legal Analysis: HAVA Checks and Voter Eligibility Requirements

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KEVIN J. KENNEDY
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Government Accountability Board's Protocol Retroactive HAVA Checks of Voter Records

The Help America Vote Act (HAVA) of 2002 and state statutes require the State to conduct voter data comparisons with the databases of either the Wisconsin Department of Transportation (DOT) or the Federal Social Security Administration (SSA) -- hereafter referred to as "HAVA Checks" -- on registered electors. These HAVA Checks are facilitated by Wisconsin's Statewide Voter Registration System (SVRS).

A common misconception is that HAVA Checks are intended to confirm a voter's eligibility to vote. In reality, HAVA Checks were not designed or intended to prove or affect voter eligibility. Rather, HAVA Checks are performed for the purpose of improving the quality of voter data and to facilitate list maintenance. A voter's eligibility is determined by verifying information contained on the Wisconsin Voter Registration Application, EB-131 Form and related documents.

During the August 27, 2008 meeting of the Government Accountability Board (G.A.B.), the Board directed staff to gather statistics and facts and prepare a report analyzing HAVA Checks that resulted in a non-match identified between August 6 and the November 4 General and Presidential Election. Based on staff's report, the Board committed to revisit the policies surrounding the HAVA Check process and determine the best course of action for Wisconsin, including whether to implement a statewide uniform procedure for improving the quality of voter data for voters registered preceding August 6, 2008, with the DOT and Social Security databases. On August 27, 2008, specifically, the G.A.B. ruled that county and municipal clerks and the G.A.B. staff should:

"Continue with the 'HAVA Check' procedure in effect as of August 6, 2008, through the fall election, **and correct the SVRS database later**. A mismatch with Wisconsin DOT data, in and of itself, shall not result in disqualification of a voter." (official/approved excerpted minutes from the G.A.B. August 27, 2008 Meeting).

We now have the benefit of gathering voter data from the November 4 General and Presidential Election that is still being HAVA Checked, in addition to the Circuit Court's decision upholding the Board's previous action. In accordance with the Board's August 27 decision, staff is proceeding in consultation with clerks to develop a method and guidance on how to improve data quality for voters who were registered prior to August 6, 2008.

Issues

1. On what date should retroactive HAVA Checks commence?
2. Who should conduct retroactive HAVA Checks, clerks or G.A.B. staff?
3. For quality control and consistency, what uniform standards and procedures should be applied and implemented?

What is Needed

In order to ensure consistency and quality control, a uniform process and procedure needs to be developed and applied. Standard criteria will be utilized statewide for conducting retroactive HAVA Checks on voters who registered after January 1, 2006, but before the HAVA Check process became available on August 6, 2008. The Help America Vote Act required states to be in compliance by January 1, 2004. Wisconsin received a waiver to January 1, 2006 to be in compliance.

Background

HAVA requires that voters' information be compared with records at the DOT or SSA when registering to vote. The HAVA Check process became available in SVRS on August 6, 2008, and became mandatory in SVRS for all new voter applications as of August 23, 2008. G.A.B. is considering the most efficient and effective process and procedure to improve the quality of the data in the statewide voter database for voters who registered on or after January 1, 2006, but prior to August 6, 2008. The following background information is helpful to frame the issue and understand the dynamic factors that must be considered.

HAVA Compliance Milestones: HAVA required states to be compliant by January 1, 2004, with the option to file a waiver to be compliant by January 1, 2006. Wisconsin was granted the waiver to January 1, 2006, at which point Wisconsin was partially compliant. Approximately one third of Wisconsin's counties were using the SVRS as of that date. The remainder of the State was brought into SVRS and went "live" during the summer of 2006, resulting in all Wisconsin municipalities using the SVRS for the first election in 2006 (the September Partisan Primary). The HAVA Check process was first available in the SVRS on August 6, 2008. On August 23, 2008, the process became mandatory for all new voter applications entered into the system.

Current HAVA Check Process: HAVA Checks are currently "run" by local election officials on all new voter applications that are entered into the SVRS. The result of the check usually comes back the following day. If the result is a non-match (no match, partial match, or problem completing HAVA Check), the clerk should take the following steps:

1. Review the paper voter registration application and compare it to SVRS to determine if there is a typographical error. If so, correct the error and "rerun" the HAVA Check.
2. If no typographical error is found, send the DMV Ping Notification letter to the voter, notifying the voter that the information does not match and instructing the voter to contact the clerk to correct any data errors or inconsistencies.

3. If the voter responds to the letter, validate the relevant information in SVRS with the voter. Make any appropriate updates to the voter record in SVRS and “rerun” the HAVA Check.

If the voter confirms that all information matches SVRS and the HAVA Check still results in a non-match, the clerk should contact the G.A.B. Help Desk. Staff will investigate the reason for failure with DOT or SSA. Non-matches can occur due to special characters such as apostrophes, hyphens, spaces in names, or variations of names. The clerk should attempt the HAVA Check on different variations of the name (i.e. Bill versus William), or with or without the hyphen, apostrophe, or space in order to resolve the non-match.

The outcome of a HAVA Check Non-match: There are several reasons a HAVA Check may result in a non-match. The most serious reason could be that a voter gave false information when registering to vote. However, the data that have been analyzed to date, show that the overwhelming reason for a non-match is that the information is incorrectly inputted into SVRS, or there are differences in a voter’s name format or name variation in the three databases.

On August 27, 2008, the Board ruled that a non-match with Wisconsin DOT data, in and of itself, shall not result in the disqualification or disenfranchisement of a voter. However, the Board decided that additional information was needed before deciding what, if any, the next step may be. The Board asked staff to collect specific data regarding the HAVA Checks that were “run” from August 6, 2008 when the HAVA Check process became available, and November 4, 2008 (the date of the 2008 Presidential and General Election).

Discussion

The G.A.B. has several critical factors to consider for developing a sound and defensible policy for retroactive HAVA Checks.

1. What is the appropriate pool of voters for the retroactive HAVA Check process?

Significant considerations in this decision are:

- A. Should the Board require HAVA Checks on all voters who were entered into the SVRS since January 1, 2006, who have not yet received a HAVA Check?
- B. Should the Board perform HAVA Checks on voters who registered after January 1, 2006, but before the SVRS went “live” in the voter’s region?
- C. Can the Board rely on data that was converted into SVRS from local municipal voter registration systems to determine when those voters actually registered?

2. What is the intent and purpose of the HAVA Check Process?

The purpose of the HAVA Check process is to improve the quality of the data in SVRS by comparing the voter information in SVRS to another data source (DOT or SSA). The HAVA Check process was never intended to determine a voter's eligibility to vote. Voter eligibility is based on factors such as whether a voter has resided at their residence at least 10 days with no present intent to move; whether the voter is eighteen years of age or older; and, whether the voter is not currently serving a sentence related to a felony conviction.

Clearly the HAVA Checks do not verify any of these eligibility requirements. However, the HAVA Checks are very useful in detecting and correcting data quality issues such as typographical errors, a voter's name format, or name variation within databases that were not designed with the intent to facilitate perfect data matches. These data "corrections" improve the quality and integrity of the voter registration list.

3. How much work should be required of local election officials related to these checks?

Due to the volume of voters that would be checked retroactively (872,014), this process could place a significant burden on local election officials. Implementing the HAVA Check process requires time-consuming steps in order to resolve a non-match. Paper registration forms for voters who registered in 2006 or 2007 may no longer be readily available to clerks if they are stored offsite. Currently, the HAVA Check process in SVRS may only be "run" one voter at a time which is not an efficient use of personnel and other resources.

Recommendations

G.A.B. staff makes the following recommendations regarding the retroactive HAVA Check Process:

1. In order to obtain the best quality voter data, perform the HAVA Check on voters who registered on or after January 1, 2006, but who have not yet had a HAVA Check. Include records that were converted into SVRS from local municipal voter registration systems, using the most reliable information that is available to determine when they actually registered.

Rationale: This ensures that the HAVA Check process is completed for voters for whom it is required; thereby, ensuring the best available quality of data are maintained in SVRS.

2. G.A.B. will conduct statewide HAVA Checks on voter records between January 1, 2006 and August 5, 2008. The capability is being developed in SVRS that will enable G.A.B. staff to "run" the retroactive HAVA Checks in batches/bundles.

Rationale: Having G.A.B. staff "run" HAVA Checks will ensure uniformity and consistency across-the-board, statewide. Plus, this single point of operation alleviates the need for local election officials to have to manually conduct each HAVA Check individually, one voter at a time.

3. Commence performing retroactive HAVA Checks on May 1, 2009, and complete the process by December 1, 2009 (7 months).

Rationale: Even with G.A.B. conducting the HAVA Checks in bulk, there is still a significant burden of follow-up work that local clerks may need to complete. It is not practical or feasible for clerks to perform this work while performing the election-related tasks for the February Primary and April Spring Election, as well as attend to their other clerk duties.

G.A.B.'s HAVA Check Process

1. On behalf of all municipalities, G.A.B. staff will send an appropriately worded WI DMV Ping Notification Letter to voters whose HAVA Check results in a non-match. The letter will include return contact information for the G.A.B. (not the municipal clerk), and request the voter to contact G.A.B. within 30 days to verify their information. The G.A.B. will validate the voters' information and "rerun" the HAVA Check.
2. The G.A.B. will provide reports to clerks (both county and municipal) listing which voters were impacted by a non-match during the retroactive HAVA checks. Municipalities will be given the option to have Ping letters sent immediately after the retroactive HAVA Checks are "run", or sent 60 days after the checks are "run", giving municipalities the opportunity to clean up errors prior to having the letters sent.

Rationale for both Steps 1 and 2: This procedure helps alleviate much of the burden of follow-up work for the local clerks. Given that these voters registered as much as two years ago, it may not be practical or feasible for all municipalities to validate the data against the original voter application. The expense of sending the appropriately worded WI DMV Ping Notification Letter to all voters who result in a non-match is less than the expense in staff time required for clerks to find and pull original registration forms and validate the information.

3. The August 27, 2008, ruling of the Government Accountability Board continues in effect (refer to G.A.B.'s August 27 ruling on page one of this Protocol).

Rationale: Many of the voters who will be affected by the retroactive HAVA Check process have been registered for several years, and most have already voted in one or more elections. Since, the HAVA Check does not determine voter eligibility, and these voters have clearly been voting, it would be inappropriate to apply any penalty against voters merely because their data in two different databases do not match.

G.A.B. must ensure that voters are not disqualified or disenfranchised simply because their name is spelled or formatted differently or varied in two different state databases. However, if a clerk suspects voter fraud as a result of the retroactive HAVA Check process, the G.A.B. staff and the District Attorney should be notified. The HAVA Check is simply an additional tool that clerks can use to compare voter data. It is not an "across the board" fraud detection tool.

Proposed Timeline and Activities

The G.A.B. proposes the following general timeline (**May 1 - December 1, 2009**) and activities for completing the retroactive HAVA Check process. Note it is anticipated that this timeline will vary. The timeframes below are intended to be general and are expected to overlap.

1. **May 1, 2009 - June 30, 2009**

G.A.B. Staff “runs” HAVA Checks.

- A. Throughout this period of time, G.A.B. staff will conduct retroactive HAVA Checks on a county-by-county basis -- in population order -- beginning in descending order, with the largest population counties. This will be done on a rolling basis as the HAVA Checks are performed.
- B. This process allows those municipalities with the greatest number of HAVA Checks the longest amount of time to follow up. Running checks by counties also makes the follow up process simpler for providers because all their municipalities will be “run” at approximately the same time.
- C. Once the HAVA Checks are “run” for a given county, reports of voters with a non-match status will be sent to both the county clerks and the appropriate municipal clerks within the respective counties.
- D. Clerks are encouraged to make a determination as soon as possible if they wish to follow up with voters through telephone contacts to attempt to correct the non-matches, or if they wish to have G.A.B. send out Ping Letters.

2. **July 1 – September 1, 2009**

During this timeframe, clerks are given the opportunity to follow-up with voters to attempt to correct the non-matches, or ask G.A.B. staff to send Ping Letters to voters.

- A. Clerks are given the opportunity to follow up with voters to attempt to correct the non-matches. If clerks wish to follow up with voters to attempt to correct the non-matches, they will have from July 1 – September 1, 2009, to do so.
- B. If clerks do not wish to conduct follow up telephone calls, they should make this decision as soon as possible, but no later than September 1, 2009. G.A.B. will then send out Ping Letters to those affected voters.
- C. Clerks who choose to follow up with voters to attempt to correct the non-matches should inform G.A.B. staff as soon as possible, but no later than September 1, 2009, of the voters who did not respond to telephone contacts.

3. **September 1- October 31, 2009**

During this timeframe, G.A.B. staff will mail Ping Letters on behalf of clerks.

- A. In an appropriately worded Ping Letter, voters will be asked to respond to G.A.B. within 30 days.
- B. G.A.B. staff will compile county-by-county reports of the outcome of the Ping letter mailing and send to both county and municipal clerks.

4. **November 1 - December 1, 2009**

During this time, G.A.B. staff will develop a report of the 2009 Retroactive HAVA Check Process, to present to the Government Accountability Board during its December 14, 2009 regular meeting.

5. **December 14, 2009: G.A.B. Board Meeting.** G.A.B. staff will provide a final report on the retroactive HAVA Check process to the Board at its December 14, 2009, meeting.

Communication Plan

It is critical that G.A.B. remains in close communication with local election officials throughout this retroactive HAVA Check process. Communication is intended to take place in the following ways:

1. G.A.B. staff met with the SVRS Standards Committee on November 24, 2008, to review preliminary recommendations and gather feedback for further development of uniform standards and procedures for conducting retroactive HAVA Check of voter records.
2. G.A.B. staff posted the draft protocol on the G.A.B.'s website on November 28, 2008, and sent it to county and municipal clerks for review on December 1, 2008.
3. G.A.B. staff presented an interim report to the G.A.B. at its December 17, 2008 meeting for information or consideration.
4. Between the December 17, 2008, G.A.B. meeting, G.A.B. staff continued to ask clerks to provide feedback on the proposed protocol.
5. Present the Protocol to the G.A.B. at its January 15, 2009 meeting for formal acceptance and approval. Clerks have been invited and encouraged to attend the Board's January 15, 2009 meeting.
6. Share the retroactive voter record protocol with the two major political ballot parties, state agencies (Department of Transportation and the Department of Administration's Division of Enterprise Technology), the Federal Social Security Administration, county, labor and community groups.
7. Following the January 15, 2009 G.A.B. meeting, share G.A.B.'s ruling on the retroactive voter record protocol with the Legislature, all municipalities, clerks and the general public.
8. Prepare a timeline with communication milestones based on the G.A.B. decision, keep the Legislature, municipalities, clerks and the general public duly informed before, during, and after the actual retroactive HAVA Check processing.

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

DATE: For the January 15, 2009, Meeting

TO: Members, Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

Prepared and Presented by:
Michael Haas and Shane Falk
Staff Counsel

SUBJECT: A Legal Analysis: HAVA Checks and Voter Eligibility Requirements

This memorandum outlines the legal qualifications for an individual to be an eligible voter in Wisconsin, and the relationship between those qualifications and the mandates of the Help America Vote Act of 2002 (HAVA). As the Board has discussed and determined on several occasions, the requirements of HAVA to compare the names of voters on the State's official voter registration list against the databases of the Department of Transportation (DOT) and the Social Security Administration (SSA) are tools to update and maintain the quality of voter data on the official list. The process of conducting a HAVA Check for a voter is separate from determining voter eligibility. Whether a HAVA Check results in a match or non-match as compared to the other databases has no direct impact on an individual's eligibility to vote.

The U.S. Constitution and federal statutes secure the rights of adult citizens to vote and prohibit denial of that right based on race, color, and gender. The Wisconsin constitution is the basis of requirements for voter eligibility in the State. Article III, Section 1 of the Constitution states simply that "Every United States citizen age 18 or older who is a resident of an election district in the state is a qualified elector of that district." Article III, Section 2 further authorizes the Legislature to enact laws defining residency, providing for registration of electors and absentee voting, and excluding as eligible voters incompetent individuals or those convicted of a felony, unless their civil rights have been restored.

Consistent with federal law and the Wisconsin Constitution, the Legislature has codified voter qualifications in Wis. Stats. §§6.02 and 6.03. Under Wisconsin law, therefore, an individual is qualified to vote who:

- 1) Is a U.S. citizen,
- 2) Is age 18 or older,
- 3) Has resided in the election district or ward where he or she offers to vote for 10 days,
- 4) Has not been adjudged incompetent, and
- 5) Has not been convicted of treason, felony, or bribery, unless the person's right to vote has been restored through pardon or completion of the sentence.

As noted by Dane County Circuit Court Judge Sumi in the Court decision in J.B. Van Hollen et. al v. Government Accountability Board et. al, Dane County Court Case 08 CV 4085, none of the provisions of HAVA affect the fundamental voter eligibility qualifications. HAVA mandates action by States with regard to voting systems, accessibility for individuals with disabilities, and establishment and maintenance of the official statewide voter registration list. HAVA establishes no additional voter qualifications, except in the limited case of a first-time voter who registered by mail and who must either provide a photo identification or current proof of residence, or else must vote by provisional ballot. A successful HAVA match eliminates this additional requirement.

Section 303 of HAVA establishes the requirement to conduct HAVA Checks. That section mandates the creation of a computerized list containing the name and registration information of every legally registered voter in the State, which shall serve as the official voter registration list for federal and state elections. *HAVA §303(a)(1)(A)(ii) and (vii)*. HAVA requires that individuals, upon registering to vote, provide a current driver's license number, if they have one, or last four digits of their Social Security Number, for those who do not. Voters who have neither a driver's license nor a Social Security Number are assigned a separate identification number for purposes of the official registration list. *HAVA §303(a)(5)(A)*.

Once a voter registers, HAVA requires the State to compare the voter information with that in the State's department of motor vehicles or the Social Security Administration databases. HAVA requires the State to conduct the match to the extent required to verify the accuracy of the information provided on the voter registration application. *HAVA §303(a)(5)(B)(i)*. HAVA also granted to the States, and therefore to the G.A.B., discretion regarding the methods of complying with the HAVA Check requirements. *HAVA §305*.

HAVA clearly does not mandate the imposition of a consequence or penalty for a voter whose voter registration data does not precisely match information contained in the DOT or SSA databases. The HAVA match process also does not alter the voter eligibility requirements established by state law. As Judge Sumi noted, "Notably, though, there is no requirement in Wisconsin law there be a driver's license or a Social Security number for registration. There is no state law requirement that data in a voter list must match data kept by any other agency as a precondition to voting." *Order in Dane County Court Case 08CV4085 at 10*.

In her decision, Judge Sumi also emphasized that HAVA must be read in the context of the Voting Rights Act of 1965 and its prohibition on official government action denying the right to vote "because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under state law to vote in such election." *Court Order at 12*.

In its comparison and reference to the Voting Rights Act of 1965, the Court recognized that the results of the HAVA Check process is a factor that is not material in determining whether an individual is qualified to vote under state law. In fact, as demonstrated by the review and analysis completed by G.A.B. staff, HAVA Checks of many eligible voters have resulted in non-matches. Conversely, it is entirely possible for a HAVA Check of an ineligible voter to result in a match, if, for example, the voter has recently moved out of a ward without updating his or her motor vehicle record.

The decision of the Dane County Circuit Court crystallized and confirmed the conclusion that under the federal and state constitutions and statutes, the G.A.B. properly exercised its discretion in upholding the right to vote in the case of HAVA Check non-matches, and in recognizing the distinction between the results of a HAVA Check and the fundamental requirements for voter eligibility in Wisconsin.

In short, the purpose of HAVA Checks is to assist in improving the quality of voter data in the State's official voter registration list on an ongoing basis, not to convert an otherwise qualified voter into an ineligible voter. By enacting and implementing HAVA, neither Congress nor the Legislature has altered the longstanding basic voter eligibility requirements, namely U.S. citizenship, age and residency, along with an absence of disqualifying factors such as a felony conviction or a finding of incompetency.