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October 22, 2004

The Honorable Chester J. Culver  
Iowa Secretary of State  
State Capitol Building  
Des Moines, Iowa 50319

Dear Secretary Culver:

On October 12, 2004, you submitted a request for an opinion addressing two issues concerning the impact of the Help America Vote Act upon Iowa election practices. Because resolution of each of these issues has the potential to have a significant impact on procedures for the upcoming November 2, 2004, general election, we provide an expedited response through informal advice. This letter addresses only your second inquiry regarding provisional voting.

Section 302(a) of HAVA requires election officials to notify all individuals who appear at the polls that they may cast a provisional ballot if they declare that "they are registered voters of the jurisdiction in which they desire to vote" and that they "are eligible to vote in an election for Federal office." 42 U.S.C. 15482(a)(1). Individuals who sign a written affirmation indicating that they are registered in the jurisdiction and eligible to vote in the election must be allowed to cast a provisional ballot at that polling place. 42 U.S.C. 15482(a)(2). If upon review state or local officials determine "that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law." 42 U.S.C. 15482(a)(4). In interpreting HAVA, it is important to further the purposes of the Act – to make it easier to vote and harder to cheat in elections.

The concept of provisional voting is not new to Iowa election law. For nearly thirty years, Iowa law has allowed voters whose names do not appear upon the election register for the precinct polling place at which the voters appear and voters whose qualification to vote are otherwise challenged to cast provisional ballots. These ballots have historically been referred to as challenged or special ballots. See 1975 Iowa Acts (66 G.A.) ch. 81, §§ 77-80. Under current Iowa law, a provisional ballot is available to: (1) "a person whose name does not appear on the