

**HOUSE JUDICIARY COMMITTEE – SUBCOMMITTEE ON THE CONSTITUTION**

**HEARING APRIL 18, 2012**

**“VOTING WRONGS: OVERSIGHT OF THE JUSTICE DEPARTMENT’S**

**VOTING RIGHTS ENFORCEMENT”**

**TESTIMONY OF CLETA MITCHELL, ESQ.**

**PRESIDENT, REPUBLICAN NATIONAL LAWYERS ASSOCIATION (“RNLA”)**

Mr. Chairman, Members of the Subcommittee:

Thank you for inviting me to appear here today and, most importantly, thanks to the Chairman and the members of the Subcommittee and its staff for organizing today’s hearing on this MOST important topic.

The mere suggestion of “Oversight of the Justice Department’s Voting Rights Enforcement” is incredibly timely and hugely important. It is my hope that today’s hearing is only one of many steps, hearings, questions and demands for information that will be posed to Attorney General Eric Holder, in an ongoing and not sporadic effort to engage in badly needed oversight of this Attorney General and this Dept of Justice.

Attorney General Holder has demonstrated by his actions, his inactions and his public comments that he has departed significantly from his role as America’s chief law enforcement officer and has undertaken a role as a chief political operative for the Democratic National Committee and the Obama re-election campaign.

While the Attorney General has taken an oath to fairly and impartially enforce the laws of the United States, that is not what we are witnessing when it comes to the important issue of voting rights, voter integrity and enforcing America’s laws against election crimes.

Attorney General Holder has made it manifestly clear that he is more committed to the DNC's partisan political agenda than to ensuring the integrity of America’s elections.

This Committee has a constitutional obligation to exercise vigorous oversight of the Executive Branch of Government and this Committee's jurisdiction encompasses the Department of Justice. On behalf of the Republican National Lawyers Association ("RNLA"), which I serve as President, I urge the Committee to make this oversight responsibility a top priority for the rest of this Congress, beginning – but not ending -- with today's hearing.

Despite the almost weekly news reports from across the country of yet another prosecution, investigation or arrest by state or local law enforcement authorities who are engaged in combating voter fraud and election crimes, Attorney General Holder has steadfastly refused even to acknowledge that such cases are happening.

Rather than vigorously investigating or offering assistance from the Department of Justice to other law enforcement authorities in their battle to protect the integrity of elections, Attorney General Holder is, instead, devoting the enormous resources of his office and spending his time denying the existence of such crimes and doing everything in his power to *thwart* and block state efforts to protect the integrity of elections.

The Attorney General seems to believe that he and he alone can decide what the law is and what the Constitution says.

The Attorney General has utterly abandoned the enforcement of federal statutes prohibiting election crimes, and has simply chosen to ignore the Supreme Court's decision that there is no constitutional barrier to a state's decision to require voters to present identification in order to vote. Nor does it matter to the Attorney General that the plain facts confirm that voter fraud and criminal activity involving elections are ongoing in America today.

And rather than doing *anything* to fight these crimes, the Attorney General simply denies that such crimes exist.

In 2008, the United States Supreme Court determined in *Crawford v. Marion County Board of Elections*, affirmed the decisions of the federal District Court and the U.S. Court of Appeals, which rejected the arguments by plaintiffs who, according to the District Court had “not introduced evidence of a single, individual Indiana resident who will be unable to vote as a result of (the voter ID law) or who will have his or her right to vote unduly burdened by its requirements.” Further, the Court rejected “as utterly incredible and unreliable” an expert’s report that up to 989,000 registered voters in Indiana did not possess either a driver’s license or other acceptable photo identification. The Court instead estimated that as of 2005, when the statute was enacted, only around 43,000 Indiana residents lacked a state-issued driver’s license or identification card, such that 99% of Indiana’s voting age population already possessed the necessary photo identification to vote under the requirements of Indiana law. The Court further noted the absence of *any* plaintiffs who claimed that the law would deter them from voting.

The Supreme Court specifically noted with approval the Court of Appeals’ rejection of plaintiffs’ argument that the voter ID law should be considered a poll tax, because the voter identification requirement burden on voters was offset by the benefit of reducing the risk of fraud.

The Attorney General has embarked on a politically motivated, partisan mission to prevent other states from enacting laws virtually identical to the Indiana law upheld by the United States Supreme Court.

The Department of Justice is now engaged in litigation against the states – the people -- of Texas and South Carolina to block those state laws requiring presentation of photo identification in order to vote, thus giving effect to the promise Attorney General Holder made last year when he announced that his Department of Justice would take aggressive measures to block laws that *he* deems to be intended to suppress voting.

As my fellow witness, J. Christian Adams points out in his testimony, the facts simply do not support the claims of the Holder DOJ that either the South Carolina or the Texas laws disproportionately disadvantage minorities.

It is worth noting that like the Indiana case, when opponents of voter ID challenged the Georgia voter ID law in 2005, and despite being given ample opportunity by the Court, the plaintiffs were *never* able to present a single instance of a single voter who was denied the right to vote as a result of the Georgia ID law.

In the two cases that have been completely litigated in the federal and state courts to date, the result has been the same: the facts simply do not match the over-heated rhetoric of the liberal partisans who are intent upon blocking every effort in the states to ensure the integrity of the election process.

The RNLA is dedicated to fair, open and honest elections. We believe, as stated in federal law, that a single illegal vote dilutes a legally cast vote. We have embarked over the past several years to provide support to state leaders who promote laws and procedures to protect the integrity of the elections.

So imagine *our* surprise to hear that Attorney General Holder last week quoted – *misquoted* – the RNLA as a source for his statement that ‘no voter fraud exists’.

We would invite the Attorney General and the members of this Committee to visit the RNLA website, twitter feed, and blog, where we regularly update and catalogue the instances of voter fraud and election crimes from across the country.

<http://www.rnla.org/votefraud.asp>

Visit our site, Mr. Attorney General, click on the map, take a look at the mug shots of vote fraud perpetrators, and then tell us again why you say there *is* no vote fraud and how you could possibly ever quote RNLA as your source for that proposition! In fact, I am attaching as an exhibit and making part of the record of this hearing a copy of the RNLA

website with 8 pages listing various election crimes and voter fraud cases over the past several years from across the nation.

In just the past few weeks, RNLA has posted and written about vote fraud cases, prosecutions and trials involving vote fraud in Iowa,<sup>1</sup> Indiana,<sup>2</sup> North Carolina,<sup>3</sup> New York,<sup>4</sup> West Virginia,<sup>5</sup> Virginia,<sup>6</sup> Texas,<sup>7</sup> Massachusetts,<sup>8</sup> Washington state<sup>9</sup> and Florida.<sup>10</sup> All of these since February of this year!

Where is the Department of Justice in these prosecutions? Nowhere. Every one of these prosecutions has been undertaken by state and local authorities.

That is why the RNLA is urging the Committee to begin immediately to ask questions of the Department of Justice and the Attorney General as to *why* the DOJ is doing *nothing* to assist in prosecuting cases of election crimes. The Committee must demand answers from Eric Holder and his politically motivated DOJ attorneys who have utterly failed to vigorously enforce federal laws barring election crimes.

The Department of Justice is responsible for enforcing the federal statutes defining criminal misconduct related to elections, some of which include:

1. Conspiracy Against Rights. 18 U.S.C. §§ 241 and 242
2. Deprivation of Rights under Color of Law. 18 U.S.C. § 242

---

<sup>1</sup>Tweeted by @TheRepLawyer, Mar. 5, 2012, 7:50 a.m.

<sup>2</sup><http://www.foxnews.com/politics/2012/04/02/4-indiana-dems-charged-with-election-fraud-in-2008/?test=latestnews#ixzz1r4sEiiNI>

<sup>3</sup>Tweeted by @TheRepLawyer, Mar. 10, 2012, 3:55 p.m.

<sup>4</sup><http://www.timesunion.com/local/article/Key-witness-expected-to-testify-in-vote-fraud-3342987.php#ixzz1mxhuwRMC>

<sup>5</sup><http://www.foxnews.com/politics/2012/03/07/former-west-virginia-sheriff-county-clerk-plead-guilty-to-attempting-to-steal/>

<sup>6</sup><http://www2.timesdispatch.com/news/news/2012/apr/03/3/tdmain01-felons-indicted-on-voter-fraud-charges-in-ar-1813803/>

<sup>7</sup><http://cityhallblog.dallasnews.com/archives/2012/02/after-weeklong-trial-break-def.html>

<sup>8</sup>Tweeted by @TheRepLawyer, Feb. 2, 2012, 5:04 p.m.

<sup>9</sup>[http://www.chronline.com/news/local/article\\_f113de72-51f2-11e1-8675-001871e3ce6c.html](http://www.chronline.com/news/local/article_f113de72-51f2-11e1-8675-001871e3ce6c.html)

<sup>10</sup><http://www.nbc-2.com/story/16662854/2012/02/02/nbc2-investigates-voter-fraud>

3. False Information in, and Payments for, Registering and Voting. 42 U.S.C. § 1973i(c)
4. Voting More than Once. 42 U.S.C. § 1973i(e)
5. Intimidation in voting and registering to vote. 42 U.S.C. § 1973gg-10(1).
6. Intimidation of voters. 18 U.S.C. § 594
7. Coercion of political activity. 18 U.S.C. § 610
8. Federally protected activities. 18 U.S.C. § 245(b)(1)(A)
9. Voter Suppression. 18 U.S.C. § 241 and § 242
10. Fraudulent registration. 42 U.S.C. § 1973gg-10(2)(A)
11. Fraudulent voting. § 1973gg-10(2)(B)
12. Voting by Noncitizens. - Fraudulent registration and voting under the NVRA. 42 U.S.C. § 1973gg-10(2)
13. False claims to register or vote. 18 U.S.C. § 1015(f)
14. False claims of citizenship. 18 U.S.C. § 911
15. Voting by aliens. 18 U.S.C. § 611

We know what the Department of Justice did insofar as prosecuting the New Black Panthers for voter intimidation in 2008....NOTHING. DOJ turned a completely blind eye to the clear evidence of criminal misconduct and election crimes.

Where was the Department of Justice when the Bucks County Pennsylvania district attorney found clear evidence of absentee ballot fraud in the congressional race there in 2010. What did the Department of Justice do? Nothing.

The Department of Justice publishes a manual Federal Prosecution of Election Offenses, the Seventh Edition (May 2007) of which is publicly available.

DOJ's obligations under federal law are clearly delineated in the manual. Each of the election crimes listed above is within the jurisdiction and responsibility of the DOJ to aggressively enforce.

The Manual specifically discusses the affirmative steps that DOJ is to take to combat election fraud, including as the first step, “**Publicize your intent to prosecute election fraud**”<sup>11</sup>

What is the Department of Justice ‘publicizing’ instead? The Attorney General’s aggressive efforts to *block* state efforts to protect against election fraud.

The Election Crimes manual describes the requirements and protocols for conducting investigations, comparing signatures on voter registration cards and absentee ballot applications, ensuring that information provided on voter registration and absentee ballot applications is correct and that ballots are cast by the voter who is duly registered.

What is the Department of Justice actually doing? This Committee simply must aggressively inquire and demand of the Department of Justice that it *do its job* and follow the guidelines of its own manual....and *enforce the federal law*.

As the Manual states, “In the United States, as in other democratic societies, it is through the ballot box that the will of the people is translated into government that serves rather than oppresses....[o]ur constitutional system of representative government only works when the worth of honest ballots is not diluted by invalid ballots procured by corruption.”<sup>12</sup>

RNLA couldn’t agree more.

This Committee **MUST** be aggressive in demanding that the DOJ enforce the laws against election crimes and follow its own manual and procedures. The DOJ should be required to tell the American people through this Committee what it is doing to combat voter fraud and election crimes – and what its plans are to protect the integrity of the election in 2012.

---

<sup>11</sup>Federal Prosecution of Election Offenses, Seventh Edition (May, 2007), p. 95.

<sup>12</sup>Id., p. 1

The Manual provides that the Department of Justice is supposed to announce before Election Day how it intends to safeguard the election. This Committee should ensure that that happens.

It is convenient for the Attorney General to refuse to prosecute election crimes or allegations of voter fraud...and then to declare that no such crimes have been committed and voter fraud doesn't exist.

We have news for you, Mr. Attorney General. Vote fraud is alive and unwell in America and you are derelict in your statutory and constitutional duties by turning a blind eye to its existence.

We urge the Committee to rein in this fiercely partisan Attorney General and to insist upon adherence by the Department of Justice to the enforcement of the laws duly enacted by Congress that were passed to ensure the integrity of America's elections. We must work together to protect the cornerstone of our democracy.

We thank you for the opportunity to appear here today. RNLA is an organization of attorneys nationwide committed to election integrity and we will do everything in our power to assist this Committee in badly needed oversight of the Attorney General and the Department of Justice to make sure that they do their jobs and vigorously enforce the election crimes statutes of the United States.

Thank you.

# # #