

**U.S. House Committee on the Judiciary  
Subcommittee on the Constitution, Civil Rights and Civil Liberties  
Oversight Hearing on Voter Suppression**

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2141 Rayburn House Office Building  
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Thank you, Chairman Conyers, and members of the committee for inviting me to testify at this hearing. My name is Lori Minnite. I am an Assistant Professor in the Department of Political Science at Barnard College in New York City. I teach courses on American government, including a course on Participation and Democracy, as well as courses on urban politics and policy. I am a fellow at Demos, a national public policy and advocacy organization that works on issues of economic inequality, democratic renewal and social justice; and I have worked with other organizations like Project Vote that are dedicated to expanding electoral participation, especially among the poor.

These are my interests and they explain my research project which I will report on to you today. For the last six years I have conducted research on the prominence of voter fraud in much of the discourse on American electoral arrangements. I wanted to know, is voter fraud a threat to the integrity of American elections? how much fraud is there? how many cases of voter fraud occur in any given state and local or federal election? what are the types of fraud and how does it occur? My concern is access to the ballot. From my study of American history and politics, I could see how political responses to voter fraud have led to campaigns to change election law and administration in ways that narrow access. As I am committed to widening access, I wanted to know: was voter fraud a real problem, does it justify restricting access to the ballot?

The short answer is that voter fraud is rare, and the cure is worse than the disease. To explain to you how I've arrived at this conclusion, I will discuss my research effort, methodology and findings.

The first stage of the research was to define my terms. When I speak of 'voter fraud,' I mean corruption of the electoral process by voters. If American elections are being regularly corrupted by this kind of fraud, it would be important to know how it is being committed. Solutions to the problem of fraud are best framed by analyses which illuminate where the integrity of the electoral process is breaking down and where the system is vulnerable. In my research, therefore, I make distinctions among types of fraud, for example, vote-buying, ballot box stuffing, registration fraud, and illegal voting; and types of perpetrators of fraud where the most important distinction is between voters and officials.

The next stage of the research was to collect the data. Neither the federal nor state governments routinely collect and publish data on voter fraud, so I conducted original research to compile statistics. In July 2005, I submitted a Freedom of Information Act request to four different units of the Justice Department for records related to the Department's Ballot Access and Voting Integrity Initiative. This program was initiated by the Attorney General in 2001 to combat voter fraud and voter intimidation.

In addition to looking for data at the federal level, I made an effort to collect data from the states. I wrote letters under states' open records laws to every Attorney General and Secretary of State in the country, and to every county or district attorney - all 2,700 of them - requesting records or statistics on voter fraud.

My research has involved a qualitative dimension, as well. I've conducted interviews in Seattle, Milwaukee, St. Louis, New Orleans and Washington, D.C., and read thousands of newspaper articles. I've reviewed the election codes of all of the states - in addition to reviewing all the scholarly literature on this subject, of which there is little.

Neither the Justice Department nor all of the states have been especially helpful to my research, though some have gone out of their way to cooperate and provide information. A document summarizing federal law enforcement activity with respect to election crimes was produced by the Justice Department's Criminal Division for a congressional field hearing on the issue of "Non-citizen Voting," conducted in New Mexico on June 22, 2006, by the House Administration Committee. It consists of all cases - 95 indictments - brought by the federal government under the Ballot Access and Voting Integrity Initiative between October 2002 and September 2005.

I researched the outcomes of these indictments and compiled the results which are presented in the table below.

[ Insert table 1 about here ]

The information in table 1 is classified using the Justice Department's own characterization of the type of crime involved, and my analysis of the type of person charged with the crime. The government won convictions or guilty pleas against 70 of the 95 defendants, a 76 percent conviction rate. However, if we dig into the data, we find that only 40 of these people were voters, the others were government officials, party or campaign workers, or election workers. Of the 40 voters charged, only 26 were convicted or pleaded guilty, yielding an average of eight to nine people a year, and a conviction rate of 65 percent. The convicted included: one person for registration fraud, resulting in the defendant's deportation to Pakistan; five people for multiple or double voting; and 20 people for voting while ineligible to vote, including 15 non-citizens and five citizens with felony convictions who had not yet had their civil rights restored.

According to the U.S. Election Commission's 2006 report, *Election Crimes: An Initial Review and Recommendations for Future Study*, under the Ballot Access and Voting Integrity Initiative, the Justice Department initiated three pilot programs "to determine what works in

developing the cases and obtaining convictions and what works with juries in such matters to gain convictions." The pilot projects reflect the implementation of a policy change initiated by Attorney General Ashcroft in 2001 to pursue cases of voter fraud involving individual incidents. Again, according to the EAC's election crimes report,

"Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought against conspiracies to corrupt the process rather than individual offenders acting alone. For deterrence purposes, the Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once. Prior to this, the Department did not go after individual isolated instances of fraud or cases which would not have a big impact and therefore, a deterrent effect."

The head of the Elections Crime Branch of the Criminal Division's Public Integrity Section told the researchers for the EAC report that the pilot projects focused on: 1) felon voters in Milwaukee; 2) alien voters in the Southern District of Florida; and 3) and double voters in a variety of jurisdictions. The Department's record of indictments fits this description: 35 of the 40 voters indicted between October 2002 and September 2005 are among the three groups targeted by the pilot projects: 1) 10 alleged felon voters in Milwaukee; 2) 16 alleged alien voters in the Southern District of Florida; and 3) and nine alleged double voters, including four people in Milwaukee, and five in Missouri and Kansas.

There is another pattern evident in the prosecution records which I find troubling. According to press releases and statements by the Attorney General, the Ballot Access and Voting Integrity Initiative to which I've referred was put in place to respond to the complaints of voting irregularities made to the Justice Department by thousands of citizens experiencing problems in the 2000 election. It was to have two components focusing on prevention and prosecution, and a dual approach to prosecuting both fraud and voter intimidation.

In at least two important ways, the prosecution record for the first three years of this new program raises serious questions about its effectiveness. First, although the program was trumpeted as a balanced approach to preventing election crime, only two of the 95 indictments I studied involved what the Department labeled "intimidation." My research into these cases suggests to me that, in fact, they were not cases of voter intimidation - they involved public corruption in the Western District of Pennsylvania where a public official sought to compel employees to donate to a political campaign. Another three indictments were for what the Department called "civil rights" violations in what is now a well-known case of phone-jamming during the 2002 New Hampshire midterm elections by operatives of the Republican Party.

The second troubling issue raised by the record concerns the effectiveness and value of pursuing cases of individual voter fraud in which there is no conspiracy to steal an election or corrupt the

process. First of all, a third of the 40 people indicted for felon voting, alien voting and double voting were not guilty of the charges, and some of those convicted have maintained that their convictions were for actions they did not know were illegal. This raises the question of what purpose the program is serving. It has turned up very little individual voter fraud, and one wonders whether generating publicity for a federal government crackdown on fraud in order to create the appearance of a problem, in fact, might have been the real motive.

I'd like to close with the stories of two people indicted in Milwaukee that illustrate the way in which the aggressive prosecution of individuals for isolated instances of "fraud" have the effect of suppressing voting. These stories are excerpted from the book I am writing on the politics of voter fraud:

*Derek Little*

Derek Little sat on the couch in his aunt's tiny wooden frame house in Milwaukee. It was November and cold. Derek was 44 years old, an intelligent man but with only a tenth grade education, life had been hard on him. He looked much older than his 44 years. That day, Election Day, November 2, 2004, he'd come back a little tired from his job hauling junk at a junkyard and was resting when his aunt returned from voting wearing a big yellow sticker that said, "I Voted!" "You better get yourself on over there, Derek, and vote," she told him, "they're about to close the polls. Take an ID and something showing you're living here now and hurry up." Derek was a regular voter, having cast his first ballot at the age of 18 and voting in every presidential election since until a felony conviction on a state drug charge interrupted his life and sent him to prison. Serving out the end of his sentence on probation, this was the first presidential election he thought he could vote in since he'd gotten out of jail.

'OK, I'll go,' he said to himself, 'but what kind of ID can I use?' He didn't drive so he couldn't use a driver's license because he didn't have one. He remembered that he kept the ID card they gave him while he was in prison. 'I'll use that.' He rifled through his things and fished out the plastic card he had to wear while in jail. It was issued by the Wisconsin Department of Corrections, it had his picture on it, his name and date of birth, and indicated his height, weight, eye and hair color. 'That ought to do,' he thought. It also said 'OFFENDER' in big, bold, black lettering. In fact, no text on the card was larger or stood out more than that word, 'OFFENDER,' which appeared above his prison ID number and his name. He grabbed a letter from his state probation officer addressed to him at his aunt's house as further proof of who he was and where he lived and walked over to a local school to vote.

When Derek got there he had to wait in line. The poll worker asked him if he was registered to vote. Because he had moved since the last time he voted, she told him they'd fill out a new registration card for him. The poll worker asked him a couple of questions - name? address? -- which she filled in for him on a green "City of Milwaukee On-Site Registration Card," checking off "New Voter in Milwaukee" and writing in his district and ward. Derek handed her his prison ID card and the clerk filled in the prison ID number on the line marked, "WI Dept. of Transportation-issued driver's license or identification card number."

She then filled in the last four-digits of Derek's Social Security number even though the instruction on the card said it was required only if the person did not have a Wisconsin driver's license or ID. Derek attested to being a U.S. citizen and that he was at least 18 years of age by signing his name on the bottom of the card. No one told him that as a probationer he was ineligible to vote in Wisconsin, and nowhere on the voter registration card did it indicate that a person still under state supervision for a felony conviction was prohibited from voting. Derek saw no sign on the wall of the polling site with this information and says in his entanglement with the prison and criminal justice systems, if anybody ever told him that he couldn't vote while he was on probation, he didn't remember it.

Derek cast his ballot and went home.

On a morning in July, seven months later, Derek was eating his breakfast when two detectives approached the house and knocked on the door. A family member answered the door and yelled the police were there for him. 'What? What'd I do now? Oh, no.' Derek looked up from his pancakes and saw the two law enforcement officers standing there. "My appetite was shot," he later recalled, "them pancakes was done." The detectives told him he was facing five years in the federal penitentiary for voting. 'For voting?' He was going to get a summons in the mail and he had better pay attention to it. Then they left. Derek couldn't eat for three days. When he finally got the summons in the mail he went down to the courthouse for his arraignment. That's when he met Nancy Joseph.

Nancy Joseph is a tall, striking young woman with an open face, an easy smile and a determined, quiet confidence you can feel as she walks toward you. She'd been an attorney for fourteen years when she first met Mr. Little (which is how she always addresses him) as his court-appointed attorney.

For the past eight years Nancy has worked for Federal Defender Services, Inc. of Wisconsin, a non-profit legal organization providing legal services to people accused of federal crimes who lack the means to hire a private defense attorney. On the eve of Derek Little's trial, Nancy discovered that Derek had registered to vote using his Wisconsin prison ID and a letter from his state probation officer addressed to him at his current residence. And yet Derek was being charged by the federal government for having "knowingly and willfully deprived, defrauded, and attempted to deprive and defraud the residents of the State of Wisconsin of a fair and impartially conducted election process by casting a ballot that he knew to be materially false and fraudulent under Wisconsin law."

Once the fact became known that Derek Little registered to vote presenting an ID card that should have raised questions about his eligibility, the charges against him were dropped. But in my interview with Mr. Little and his attorney, he asserted that because of this experience he plans to never vote again. Nancy Joseph has told me that she was completely surprised by Mr. Little's statement, and in fact, when he made the statement to me in her presence, Nancy reminded him that it was his right to vote. But Mr. Little remained firm, he said he would not put himself in this situation ever again, distrustful that the government was going to "change the rules" on him one more time.

*Ethel Anderson*

Ethel Anderson was indicted by the federal government for voter fraud in the fall of 2005. She had been charged with the same crime as Derek Little, a violation of Title 42 United States code Section 1973gg-10(2)(B) - an amendment of the Voting Rights Act of 1965; and Title 18, United States Code, Section 2, for voting while on probation for a felony battery charge. "That [battery charge] was my first case," she told me when I interviewed her last summer. "I'd never been arrested before. I was with a guy. We were in a car and coming from a party when we got into a fight. He was choking me, so I grabbed a bottle and hit him over the head. I'm the one who called the police." When the police arrived they found Ethel with the man's blood on her hands and clothes. They arrested her for battery and took her to jail where she stayed for about a week before she was released. Upon her release she was processed and sent to see a probation officer, given some papers to sign, then sent to another office where she signed the same papers again. She then met with a probation officer.

Ethel had decided not to contest the battery charge. She didn't hide the fact that she struck the man, but she knew she was the victim and she hit him in self-defense. An evaluation by a domestic violence counselor later found this to be true. Nevertheless, she pleaded guilty. She didn't want to go to trial because she couldn't afford to lose anymore time from her job as a machine operator. She'd already lost enough time over the week she'd been detained. For the last seven years she's worked at a factory that makes electrical parts for all kinds of machines, engines, elevators, "you name it, we make it," she said. It's a good job and she needs the money because she is single mother of four with two teenagers still at home to look after.

On Election Day, November 2, 2004, a friend of Ethel's picked her up at the factory at the end her shift. The friend was wearing a bright yellow "I Voted!" sticker and asked Ethel if she wanted to be dropped off at the polls so that she could vote. Ethel was tired, she really didn't feel like standing in that line, but she usually voted in presidential elections and she thought, well, OK, I'll vote. She walked into her polling place, waited in line and when it was her turn, the poll worker behind the table helped her fill out a new voter registration card. The worker asked her her name and address, whether she was a citizen and then pushed the card toward her for her signature. She didn't read the card, she figured the poll worker knew what she was doing. Ethel signed the card, the poll worker wrote a ballot number on it and handed Ethel the ballot. She voted and went home.

Months passed. Ethel made every appointment with her probation officer. She violated none of the many rules she agreed to abide by every time she met her probation officer and signed another set of forms. Then one day in September 2005, her probation officer came to see her at home. He had a copy of the newspaper in his hand. He asked her if she had something she wanted to tell him. Ethel wondered why he was standing in front of her asking her such a strange question. "No," she said, she didn't have anything she wanted to tell him. "Are you sure?" he asked again, "You don't have anything you want to tell me," he reiterated. "No, no I don't have anything I want to tell you." The

probation officer handed Ethel the newspaper. "Look," he said, "look there," and pointed to a story about people being indicted for voter fraud in the City of Milwaukee. In big black letters was her name.

"I was blown away," Ethel remembered. "I mean, wow. I looked at my probation officer, and I asked him, is this serious? Do I have something to worry about?" He told her yes, this is serious, this is very serious and you do have something to worry about. He wanted her side of the story and he wanted it in writing. So Ethel wrote out a short statement saying that she did vote, but that she didn't know that she was not permitted to vote. She didn't know she'd done anything wrong. The probation officer told her that some time soon the police would come to take her down to the station to fill out papers. Two or three weeks later, the sheriff delivered a letter to her door. One of her kids answered the door and gave Ethel the letter. It informed her that she had been indicted and that she was to call a number for more information. She called and was told when and where to show up for her arraignment.

The trial lasted two days. Ethel testified repeating what she told her probation officer: that she voted, but that she did not know that she was not permitted to vote while on probation for the battery charge. The jury convicted her. "I was blown away, I was just kinda shocked when they came back guilty. I don't sugar-coat things. I don't have any reason to lie about voting. I wasn't going to pretend I didn't vote, I just didn't know I was doing anything wrong. I didn't see any sign saying if you are on probation you are not eligible to vote, but even if I did I still would have voted because I didn't classify myself as a felon. I never went to jail so I didn't think of myself as a felon."

Ethel was sentenced to four months of house arrest and fourteen months of probation for casting a fraudulent vote. She used her real name, her real address and she only voted once, but because of the felony battery charge, in Wisconsin, Ethel Anderson had committed voter fraud. House arrest meant she could only leave her house to go to work, except for four hours every Saturday when she was allowed out of the house to do her shopping and errands. Throughout the four months of house arrest Ethel wore an ankle bracelet that monitored her whereabouts. "That part was nerve-wracking," she later said, "I had to get everything I needed to get done in those four hours." But otherwise, she didn't let the confinement bother her too much. "It's not like I ever went out to bars or hung out anyway. My time was always limited because I'm a mother and I have to work."

I asked Ethel how this episode made her feel about voting. "I'll never vote again," she replied, "never. Because going through this trial, my name being in the paper for everybody to see - not once, but twice - first with the indictment, and then when they convicted me, another article with my name in bold print, it was humiliating. I had never heard of anybody who's ever been prosecuted for voting. It was a shock to me to read my name in the paper. I had no say so. No reporter ever called me up for my side of the story. I felt like scum, like I was a really bad person when I thought what I was doing was my God-given, constitutional right. No, I'll never vote again."

On the day I interviewed Ethel, her probation had finally come to an end. "If you hadn't called," she told me, "this being my last day of probation, I never would have thought about all this again." She was just happy to be free. "Yes, I'm happy now because I can leave town. All my family is in Chicago. I might just go there this weekend, just to get out of here."

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We are all committed to making our democracy better by incorporating more of our citizens into the electorate. We know from political science that our election administration could be better, but also, that it has always been impeded by the mythic threat of voter fraud. I believe my research supports the conclusion that in the United States today, voter fraud - that is, fraud committed by voters - is very rare. The federal government's needless pursuit of individuals who have technically violated laws they didn't know existed and who in no way intended to deprive the American people of their right to a fair and impartially conducted election is causing more harm than good. As Nancy Joseph asked the jury in Ethel Anderson's trial, "Is that what Ethel Anderson was doing when she got up at five in the morning to get on a bus to go to her factory job, and then left her job, and instead of going home after a long day, to be like everybody else, she went to cast a ballot?" The Justice Department's Ballot Access and Voting Integrity Initiative is suppressing the votes of people who in trying to be good citizens may have done nothing more than violated a rule they didn't know existed. And it could be suppressing the votes of others who hear about their cases and decide that voting just isn't worth it.

Moreover, there are real questions about whether the Justice Department's pilot programs to test what would work with juries in individual cases of fraud have the appearance of being biased against poor and working class people and minorities living in swing states important to the outcome of recent elections. I have not been able to determine the race and party affiliation of all 40 of the voters indicted by the federal government for voter fraud over the 2002 to 2005 period covered by my research. However, when I asked Nancy Joseph about the race and party affiliation of the 14 people indicted in Milwaukee, she told me: "Let me put it this way, by my unscientific accounting - of the 14 people charged, all were African Americans, and all lived in Milwaukee where 90 percent of the vote went for [John] Kerry." It is difficult to overstate the appalling symbolism of bringing the weight of the federal government down on unsuspecting working class African American voters for violations of the Voting Rights Act (as amended). As a problem, the alleged epidemic of voter fraud sweeping the country is a fabricated myth. It can not compare to the massive challenges the states face in administering elections in ways that open up the process and make voting easier for all Americans, but especially for our most vulnerable citizens for whom the barriers to access to the vote are still too high.

TABLE 1  
 FEDERAL ELECTION CRIME PROSECUTIONS  
 BALLOT ACCESS AND VOTING INTEGRITY INITIATIVE

FINAL DISPOSITION OF INDICTMENTS OBTAINED BETWEEN OCTOBER 2002 AND SEPTEMBER 2005

Type of Election Crime	Convictions			Acquittals	Case Dismissed	Total
	Voters	Government Officials, Party, Campaign or Election Workers				
		Government Officials	Party/Campaign Workers	Election Workers		
Registration fraud	1	1	1			3
Voting by ineligible	20			2	8	30
Multiple voting	5			1	3	9
Vote buying		8	27	2	5	47
Ballot forgery				1		1
Civil rights violations			2		1	3
Voter Intimidation		2				2
<b>Total</b>	<b>26</b>	<b>11</b>	<b>30</b>	<b>3</b>	<b>16</b>	<b>95</b>

Source: U.S. Department of Justice