

VOTER SUPPRESSION

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS, AND CIVIL LIBERTIES

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

FEBRUARY 26, 2008

Serial No. 110-100

Printed for the use of the Committee on the Judiciary



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VOTER SUPPRESSION

TUESDAY, FEBRUARY 26, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS, AND CIVIL LIBERTIES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:30 a.m., in Room 2141, Rayburn House Office Building, the Honorable Jerrold Nadler (Chairman of the Subcommittee) presiding.

Present: Representatives Conyers, Nadler, Davis, Wasserman Schultz, Ellison, Scott, Watt, Cohen, Franks, and Pence.

Staff present: David Lachmann, Subcommittee Chief of Staff, LaShawn Warren, Majority Counsel; Kanya Bennett, Majority Counsel; Caroline Mays, Majority Professional Staff Member; and Paul Taylor, Minority Council.

Mr. NADLER. This hearing of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties will now come to order.

Today's hearing will examine the problem of voter suppression and the work of the Department of Justice in protecting the right of all voters to exercise their franchise. The Chair recognizes himself for 5 minutes for an opening statement.

Today's hearing is part of the Subcommittee's continuing oversight over the work of the Department of Justice's Civil Rights Division and its responsibility to protect the right to vote. I can think of no more important right than the right to exercise the franchise freely, fairly, without fear or intimidation.

Our Nation's history is one of expanding inclusion. We have expanded the franchise to include all persons, regardless of race, color or previous condition of servitude, gender, and age. We have enacted the Voting Rights Act, the Help America Vote Act and the Motor Vehicle Voter Law. We have just renewed the Voting Rights Act in the last Congress with almost no dissent.

The rights on paper are not the same as rights in fact. For that we need vigorous enforcement.

Efforts by both official and private parties to suppress the vote, especially of certain groups targeted by race or belief, are unacceptable. Today we examine that problem and the extent to which the Department of Justice is faithfully discharging its duty to protect the rights of all voters.

We have an outstanding lineup of witnesses. And I want to welcome them, and I look forward to their testimony.

With that, I yield back. I would now recognize our distinguished Ranking minority, the gentleman from Arizona, Mr. Franks, for his opening statement.

Mr. FRANKS. Well, thank you, Mr. Chairman. Mr. Chairman, voting is the life blood of a democracy. And there are no legitimate leaders in a democracy without legitimate elections.

I would like to draw to everyone's attention two letters that were sent about a month ago to the Nevada state Democratic party. These letters illustrate the danger posed when we cannot verify legal voters or when existing voting laws go unenforced. Both letters request an investigation into voter suppression regarding actions taken by the Clinton and Obama presidential campaigns. I will first read from the letter from the Obama campaign.

"I request that the Nevada state Democratic party conduct an inquiry into an apparent and disturbing pattern of incidents reported at precinct locations throughout the State during the January 19th caucus. These reports suggest the possibility of activity conducted in violation of party rules and the rights of voters, activity that, as the volume and distribution of these complaints indicate, may have been planned and coordinated with the willful intention to distort the process in favor of one candidate, Senator Clinton.

"A sheet of instructions provided by the Clinton campaign to its precinct workers captures its program for the caucus. 'It is not illegal unless they, the temporary precinct chairs, tell you so.'"

This certainly suggests that for the Clinton campaign the operative standard of conduct was simply and only what it could get away with.

The Obama campaign claimed to receive well over 1,000 accounts of misconduct. "Those Hillary people closed the doors on our people, and we had to call the cops in some precincts to have locks cut from the doors. They slipped people in the back doors. They sent people home at 11:30 when it was illegal to prevent people from voting before noon."

Another wrote, "In precinct 21 a Democratic worker who was clearly for Hillary refused to register Obama supporters and said she was registering Hillary supporters only."

Now let us read the letter from the Clinton campaign.

"The Clinton campaign wishes to bring to your attention," speaking again to the party, Mr. Chairman. "We have received evidence, a premeditated and pre-designed plan by the Obama campaign to engage in systemic corruption of caucus procedures. Compounding this blatant distortion of the caucus rules was an egregious effort by the Obama campaign to manipulate the voter registration process in its favor thereby disenfranchising countless voters.

"Caucus chairs obviously supporting Obama deliberately miscounted votes to favor Senator Obama, deliberately counted unregistered persons as Obama votes and deliberately counted young children as Obama votes. Many Clinton supporters were threatened with employment termination or other discipline if they caucused for Senator Clinton."

These incidents may constitute any number of very serious violations of Federal elections laws. The Obama campaign's allegation that Clinton campaign workers were "turning our supporters away by asking to see their I.D.s and telling them they weren't valid,"

is particularly unsettling, since such abuse could be remedied if there were a single secure universally recognized and accepted voter I.D.

My own state of Arizona has enacted just such a law. Public support for secure voter I.D. remains very strong, Mr. Chairman. According to the independent pollster, Scott Rasmussen, "Support for the concept is overwhelming. More than three-fourths of Republican supporters showed identification as did 63 percent of Democrats and independents, 58 percent of Blacks, 69 percent of Whites, and 66 percent of other ethnic or racial minorities backed the concept."

Indiana's voter I.D. law proves that such laws do not diminish voter turnout. Rather—and this is the important point, Mr. Chairman, rather, they can increase voter turnout by giving legal voters the security of knowing that their vote will count and that it will not be negated by the vote of someone voting illegally. Curiously, it has turned out that the lead plaintiff challenging the Indiana law was actually illegally registered to vote in two States.

Dual registration invites voter fraud, and the plaintiff actually reinforced Indiana's defense arguments. With these concerns in mind, I look forward to hearing from all of our witnesses today and to exploring what Congress and the Justice Department can do to help maintain the integrity of the election process.

And thank you, Mr. Chairman.

Mr. NADLER. I thank the gentleman.

I now recognize for an opening statement the distinguished Chairman of the full Committee, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Nadler.

And thank you, too, Ranking Member Trent Franks, because this is not an insignificant matter that we are bringing forward. The right to vote is the basis that all our Democratic form of government is built on. I only want to add a comment from the excellent statement issued by Chairman Nadler.

Because you see, too many Americans continue to face barriers preventing them from exercising their right to vote. If you don't believe that, take a look at all the work the NAACP has done, the Mexican-American Legal Defense Fund, the American Civil Liberties Union, the Asian-American Legal Defense Fund, to name a few. And it has become and will become obvious because of these important hearings of increasing targets of minority communities' voters of voter suppression tactics, of which there seem to be an ever-expanding number.

So the critical question to be asked here this morning is what is the Justice Department doing to protect the right to vote for all Americans, particularly in light of the upcoming presidential election now only months away. The right to vote and fair access to the ballot box are obvious—the components of a truly Democratic society.

Now, the department's enforcement record in recent years bears scrutiny. That is why we are here. First, I am troubled by the department's over-emphasis on pursuing voter fraud cases, which were the basis of a number of the firings of U.S. attorneys and what is now widely regarded as the politicization of the Department of Justice itself.

And we are pursuing these so-called voter fraud cases to the exclusion of voter suppression cases. Given the fact that voter fraud is so rare and that State law enforcement agencies are already actively pursuing individual voter fraud cases, the department's policy represents, from my point of view, a misallocation of scarce resources and misplaced priorities.

Department records show 24 people were convicted or pleaded guilty to illegal voting, not last year, but between the years 2002 and 2005. That is an average of eight people a year. While voter fraud is not to be ignored, it is unacceptable for the department to pursue voter fraud cases and disregard flagrant examples of voter suppression.

Now, the next item that we want our invited guests to think about with us is the department's decision to intervene in support of the controversial Indiana photo identification law, thought to be one of the most Draconian pieces of legislation of its type in the country. It is particularly problematic because without doubt, this law will disenfranchise minorities, the elderly, the disabled.

And to make matters worse, the Department of Justice has sent letters to 10 States, Iowa, Massachusetts, Mississippi, Nebraska, North Carolina, Rhode Island, South Dakota, Texas, Utah, and Vermont to pressure them to purge their voter rolls before the 2008 election, which could adversely effect many thousands of voters.

And finally, despite complaints about vote caging incidents that occurred in Ohio, in Pennsylvania, Florida, Nevada, and Wisconsin during the course of the 2004 presidential election, the department didn't file a single lawsuit to stop this illegal practice. Instead, the department officials incredibly wrote a letter defending the GOP, the Republican efforts to engage in vote caging.

And so, Mr. Chairman, it seems to me in recent years instead of promoting access to the poll, the voting section of the Department of Justice seems to have used its enforcement authority to deny access and promote barriers to block legitimate voters from participating in the political process. The Civil Rights Division has failed to fully enforce Section 2 of the Voting Rights Act largely aimed at combating racial discrimination in the voting process.

And in the first 6 years of the present Administration, fewer Section 2 cases were brought by the voting section than in any other Administration since 1982. The number of Section 2 cases brought on behalf of African-Americans has come to a virtual standstill.

While different Administrations have different enforcement priorities, it is a dereliction of duty for the Civil Rights Division not to bring voter suppression cases on behalf of African-Americans to protect their constitutional right to vote. The department's role as a protector of voting rights is critical, especially as this upcoming election approaches.

And already voting problems and questionable tactics in the ongoing presidential primaries are surfacing. So, please, Mr. Representative of the Department of Justice, consider these points that have been brought to your attention, and let us plan to really get to work on them.

And, Mr. Chairman, I thank you for the additional time that you gave me.

Mr. NADLER. I thank the gentleman.

The gentleman from Indiana is recognized.

Mr. PENCE. Thank you, Chairman. Thank you for the courtesy. And no one on this Committee holds the Chairman of this Committee, of this full Committee in higher esteem than I do. But I felt duty-bound as a loyal Hoosier and someone who also cherishes the blood-bought right to vote to speak a few moments in opening remarks on behalf of the voter I.D. law in the state of Indiana.

Respectfully quoting the Chairman, I think if I took my notes correctly, he referred to Indiana's law as one of the "most Draconian pieces of legislation of its type in the Nation," and also asserted that it would "disenfranchise the elderly and the disabled." I would like to just say by way of opening remarks that I take exception to those characterizations of our law.

I am anxious to hear the testimony of our witness today about the department's decision to file an amicus brief in the Supreme Court in the Indiana voter I.D. law. The reality is recent experience under Indiana's voter I.D. law shows that such laws do not diminish voter turnout at all. In fact, there is some evidence that they increase voter turnout.

As was recently reported, voter turnout among Democrats improved slightly last year in Indiana despite a new law requiring voters to show photo identification at the polls. Jeffrey D. Milo, a professor at the University of Missouri compared the 2006 mid-term elections, the first since Indiana's law was enacted, to the 2002 elections and said voter turnout increased about 2 percentage points. He said the increase was consistent across counties with the highest percentage of Democrats.

I am anxious to get our witnesses' sense of where this increased turnout derives. Many of us in Indiana believe that securing voter I.D. laws and requiring legal voters to demonstrate their identity at the polling place actually encourages participation because it gives people confidence that their vote will count and that there is fundamental integrity in the system.

And let me also say that despite the characterization of this law as Draconian, there is enormous public support for securing voter I.D. laws. According to the *Washington Times* recently, "Two-thirds of Americans, including a majority of racial and ethnic minorities, say the government should make voters show photo identification before voting."

Sixty-three percent of Democrats and Independents, 58 percent of Blacks, 69 percent of Whites, 66 percent of other ethnic and racial minorities backed the concept. And I would love to hear our witnesses' reflections on what accounts for the popularity of these laws.

I am grateful, Mr. Chairman, for the courtesy of this opening statement. But we in Indiana anxiously await the Supreme Court's judgment in this matter.

But I must say that in my humble opinion that requiring voters to demonstrate their identity with a photo identification is the way we do at airports, the way many of us do when we are engaging in financial transactions, I believe, actually encourages participation. It encourages voter confidence, and it builds on a foundation of confidence in the system that I believe is greatly in the interest of our democracy.

And so, with that defense of our Indiana law, I yield back.

Mr. NADLER. Thank you. I would simply point out that the turnout in 2006 was way up all over the country, regardless of voter I.D. cards over the 2002 election.

In the interest of proceeding to our witness and mindful of our busy schedules, I would ask that other Members submit their statements for the record. Without objection, all Members will have 5 legislative days to submit opening statements for inclusion in the record. Without objection, the Chair will be authorized to declare a recess of the hearing.

As we ask questions of our witness, the Chair will recognize Members in the order of their seniority in the Subcommittee alternating between majority and minority, provided that the Member is present when his or her turn arrives. Members who are not present when their turn begins will be recognized after the other Members have had the opportunity to ask their questions. The Chair reserves the right to accommodate a Member who is unavoidably late or only able to be with us for a short time.

Our first witness today is Asheesh Agarwal, Deputy Assistant Attorney General of the Department of Justice Civil Rights Division. He heads the division's voting section. Mr. Agarwal is a graduate of the University of Chicago's School of Law. And we welcome you here today.

Before we begin, it is customary for the Committee to swear in its witnesses. If you would please stand and raise your right hand to take the oath. Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief? Let the record reflect that the witness answered in the affirmative.

You may be seated. Your written statement will be made part of the record in its entirety. I would ask that you now summarize your testimony in 5 minutes or less. To help you stay within that time there is a timing light at your table. When 1 minute remains, the light will switch from green to yellow and then to red when the 5 minutes are up.

Mr. Agarwal?

TESTIMONY OF ASHEESH AGARWAL, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

Mr. AGARWAL. Thank you. Mr. Chairman, Ranking Member Franks, Members of the Subcommittee, it is a pleasure to appear before you to represent the Department of Justice and the dedicated professionals of the voting section of the Civil Rights Division. I am honored to serve the people of the United States as a deputy assistant attorney general.

I am pleased to report that the Civil Rights Division remains diligent in protecting voting rights of all Americans. I would like to share with you some of the highlights of our work.

As the Subcommittee knows, the President and the Department strongly supported the recent reauthorization of the Voting Rights Act. The Civil Rights Division is vigorously defending that statute's constitutionality in Federal court here in the District of Columbia. Oral argument on the cross-summary judgment motions was held

on September 2007. I was proud to argue part of that case myself on behalf of the Department and in support of the law.

In addition, we have had tremendous success recently under all of the statutes that we enforce. In the last 2 years we have won four trials and successfully resolved three other cases under Section 2 of the Voting Rights Act. These cases include a lawsuit against Long County, Georgia for improper challenges to Hispanic-American voters based entirely on their perceived race and ethnicity. At least three of the challenged citizens were on active duty with the United States Army. We successfully resolved this matter with a consent decree.

The cases also include a vote dilution suit against the city of Euclid, Ohio on behalf of African-American voters. Although African-Americans comprise nearly 30 percent of the city's electorate, not a single African-American candidate has ever been elected to the nine-member city council or to any other office.

In August 2007, the court ruled that the city's method of electing its city council violated the Voting Rights Act. We are proud of this result.

We are also actively pursuing other violations of Section 2. For example, we recently notified two jurisdictions that enforcement actions have been authorized under Section 2 based on minority vote dilution, one in South Carolina on behalf of African-American voters and one in Florida on behalf of Hispanic voters.

We have also broken records with regard to enforcement of Section 208 of the Voting Rights Act. As the Subcommittee knows, Section 208 assures all voters who need assistance in marking their ballots the right to choose a person they trust to provide that assistance. Voters may choose any person other than an agent of their employer or union to assist them in the voting booth.

During the past 7 years, we have brought nine of the 11 suits ever brought by the Department under Section 208, including the first case ever to protect the rights of Haitian-American voters. These suits help combat voter suppression.

For example, in Philadelphia a poll worker forbid a Spanish-speaking citizen with limited English skills from using her daughter to translate for her in the voting booth. This same poll worker then entered the voting booth with the voter and ultimately succeeded in mismarking the voter's ballot for a candidate the voter did not wish to vote for. We were able to resolve this matter with a consent decree.

We also remain committed to enforcing the language minority requirements of the Voting Rights Act. We filed nine lawsuits under these provisions in fiscal year 2007. During the past 7 years, the Civil Rights Division has brought more cases under the minority language provisions of the Voting Rights Act than in all other years combined since 1965. These include the first cases ever on behalf of voters of Korean, Vietnamese, and Filipino heritage.

Finally, the Department is busy preparing for the 2008 elections. As we have in the past, we will implement a comprehensive election day program to help ensure ballot access. As in previous years, we will coordinate the deployment of hundreds of Federal Government employees in counties, cities, and towns across the country to

ensure access to the polls as required by our Nation's civil rights laws.

In identifying locations, the Civil Rights Division will again seek out the views of many organizations, including advocacy groups for minority voters, for voters with disabilities, as well as State and local officials. The division looks forward to continuing to work closely and cooperatively with this Subcommittee in its effort to protect the voting rights of all Americans. I look forward to your questions.

[The prepared statement of Mr. Agarwal follows:]

PREPARED STATEMENT OF ASHEESH AGARWAL

**Statement of
Asheesh Agarwal
Deputy Assistant Attorney General
Civil Rights Division
Department of Justice**

**Before the
Subcommittee on the Constitution, Civil Rights, and Civil Liberties,
Committee on the Judiciary
United States House of Representatives**

**Concerning
“Voter Suppression”**

February 8, 2008

Thank you. Mr. Chairman, Ranking Member Franks, Members of the Subcommittee, it is a pleasure to appear before you to represent the dedicated professionals of the Voting Section of the Civil Rights Division.

I am honored to serve the people of the United States as a Deputy Assistant Attorney General for the Civil Rights Division. I am pleased to report that the Civil Rights Division remains diligent in protecting voting rights.

The right to vote is the foundation of our democratic system of government. The President and the Department strongly supported the Voting Rights Act Reauthorization and Amendments Act of 2006, named for three heroines of the Civil Rights movement, Fannie Lou Hamer, Rosa Parks, and Coretta Scott King. During the signing ceremony at the White House, President Bush said, “My administration will vigorously enforce the provisions of this law, and we will defend it in court.” The Civil Rights Division is committed to carrying out the President’s promise. In fact, the Department currently is vigorously defending the statute’s constitutionality in federal court here in the District of Columbia. Oral argument on the cross-summary judgment motions was held on September 17, 2007.

The Civil Rights Division is responsible for enforcing several laws that protect voting rights, and I will discuss the Division’s work under each of those laws. First, however, it is worth noting that under our nation’s federal system of government, the primary responsibility for the method and manner of elections lies with the States. Article I, Section 4, of the Constitution states, “The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof.” Thus, each State holds responsibility for conducting its own elections. However, Article I, Section 4, goes on to provide: “[B]ut the Congress may at any time by Law make or alter such Regulations” with respect to federal elections. The Fourteenth and Fifteenth Amendments likewise authorize congressional action in the

elections sphere. Therefore, except where Congress has expressly decided to legislate otherwise, States maintain responsibility for the conduct of elections.

Congress has passed legislation in certain distinct areas related to voting and elections. These laws include, among others, the Voting Rights Act of 1965 and subsequent amendments thereto, the Uniformed and Overseas Citizen Absentee Voting Act of 1986 (UOCAVA), the National Voter Registration Act of 1993 (Motor Voter or NVRA), and the Help America Vote Act of 2002 (HAVA). The Civil Rights Division enforces the civil provisions of these laws. Pursuant to 28 C.F.R. §§ 50 and 55, the vast majority of criminal matters involving possible federal election offenses are assigned to and supervised by the Criminal Division and are prosecuted by United States Attorneys' Offices. However, a small percentage of voting-related offenses are principally assigned to the Civil Rights Division to handle or supervise.

The Voting Section is committed to enforcing vigorously each of the statutes within its jurisdiction. The 18 new lawsuits we filed in calendar year 2006 is double the average number of lawsuits filed annually in the preceding 30 years.

In 2006, the President signed the Voting Rights Act Reauthorization and Amendments Act of 2006, which renewed for another 25 years certain provisions of the Act that had been set to expire. The Voting Rights Act has proven to be one of the most successful pieces of civil rights legislation ever enacted. However, as long as all citizens do not have equal access to the polls, our work is not finished. As President Bush said, "In four decades since the Voting Rights Act was first passed, we've made progress toward equality, yet the work for a more perfect union is never ending."

Section 2 of the Voting Rights Act prohibits intentional, purposeful racial discrimination in voting as well as conduct with a racially discriminatory effect. Although most commonly used to address issues of minority vote dilution, Section 2 also has been the basis for other types of legal relief involving voter registration and election-day practices, including: the use of dual (state and municipal) voter registration systems, the refusal to recruit or hire minority poll workers, the intentional targeting of voters for challenges based on their race or ethnicity, misconduct by poll officials favoring candidates of a particular race, changes in candidate residency requirements intended to disqualify minority candidates, and actions and failures to act resulting in the denial of equal access to the political process for language minority voters, in the form of hostile poll workers and refusal to permit bilingual assistance.

In 2006, the Division's Voting Section filed and resolved a lawsuit under Section 2 against Long County, Georgia, for improper challenges to Hispanic-American voters – including at least three United States citizens on active duty with the United States Army – based entirely on their perceived race and ethnicity. The Section also filed a Section 2 lawsuit in Ohio in 2006 that challenged the City of Euclid, Ohio's mixed at-large/ward method of electing its city council on the basis that it unlawfully diluted the voting strength of African-American voters. Although African Americans comprise nearly 30 percent of the city's electorate, and there have been eight recent African-American

candidates for the Euclid City Council, not a single African-American candidate has ever been elected to the nine-member city council or to any other city office. In August 2007, the court ruled that the city's method of electing its city council violated the Voting Rights Act and stayed Euclid's council elections until a new method of election is approved by the court.

Also among our successes under Section 2 is the Division's lawsuit against Osceola County, Florida, where we brought a challenge to the county's at-large election system. In October 2006, we prevailed at trial. The court held that the at-large election system violated the rights of Hispanic voters under Section 2 and ordered the county to abandon it. In December 2006, the court adopted the remedial election system proposed by the United States and ordered a special election under that election plan that took place in April 2007.

The United States filed a complaint on December 15, 2006, alleging that Port Chester, New York's at-large system of electing its governing Board of Trustees diluted the voting strength of Port Chester's Hispanic citizens, in violation of Section 2 of the Voting Rights Act of 1965. On March 2, 2007, after an evidentiary hearing, the court enjoined the March 20 elections, holding that the United States was likely to succeed on its claim. On January 17, 2008, the court ruled that the at-large system of election used by Port Chester to elect its trustees violates the Voting Rights Act because it denies Hispanics an equal opportunity to participate in the political process. The court ordered the parties to file proposed remedial plans by February 7, 2008. According to the evidence adduced at trial, and as cited in the court's opinion, the 2000 census shows that almost half of Port Chester's residents, and 22 percent of Port Chester's citizens of voting age, were Hispanic. By July 2006, the number of Hispanic citizens of voting age had increased to about 28 percent. Despite these figures, no Hispanic has ever been elected to Port Chester's municipal legislature, the six-member Board of Trustees. Indeed, no Hispanic has ever been elected to any public office in Port Chester, despite the fact that Hispanic candidates have run for office six times – twice for the Board of Trustees and four times for the Port Chester Board of Education, which manages a school system that is overwhelmingly Hispanic.

Also in 2007, in Fremont County, Wyoming, the Division successfully defended the constitutionality of Section 2 of the Voting Rights Act, for the fourth time in this Administration. In addition, the Division filed and resolved a claim under Section 2 involving discrimination against Hispanic voters at the polls in Philadelphia and obtained additional relief in an earlier Section 2 suit on behalf of Native American voters in Cibola County, New Mexico. The actions against Philadelphia and Cibola County are noteworthy because both involve claims not only under the Voting Rights Act but also under HAVA and the NVRA. In Cibola County, which initially involved claims under Sections 2 and 203, the Division brought additional claims after the County failed to process voter registration applications of Laguna Pueblo and other Native American voters, removed Native American voters from the rolls without the notice required by the NVRA, and failed to provide provisional ballots to Native American voters in violation of HAVA. In Philadelphia, the Division added to our original Section 203 and 208

claims additional counts under Sections 2 and 4(e) of the Act to protect Hispanic voters, a count under the NVRA pursuant to which the City has agreed to remove from the rolls the names of numerous ineligible voters, including those who are deceased or have moved, and two counts under HAVA – to assure that accessible machines are available to voters with disabilities and that required signs at the polls also are posted in Spanish.

In 2007, the Section litigated a case in Mississippi under Sections 2 and 11(b) of the Voting Rights Act. On June 29, 2007, U.S. Senior District Judge Tom S. Lee found the defendants in *United States v. Ike Brown et al.* (S.D. Miss.) liable for violating the Voting Rights Act by discriminating against white voters and white candidates. The Division will continue to closely investigate claims of voter discrimination and vigorously pursue actions on behalf of all Americans wherever violations of federal law are found.

In recent years, the Division has broken records with regard to enforcement of Section 208 of the Voting Rights Act. Section 208 assures all voters who need assistance in marking their ballots the right to choose a person they trust to provide that assistance. Voters may choose any person other than an agent of their employer or union to assist them in the voting booth. During the past six years, we have brought nine of the eleven such claims brought by the Department since Section 208 was enacted twenty-five years ago, including the first case ever under the Voting Rights Act to protect the rights of Haitian Americans.

Our commitment to enforcing the language minority requirements of the Voting Rights Act, reauthorized by Congress in 2006, remains strong, with nine lawsuits filed in fiscal year 2007. In September 2007, we settled the first lawsuit filed under Section 203 on behalf of Korean Americans in the City of Walnut, California. During the past 7 years, the Civil Rights Division has brought more cases under the minority language provisions than in all other years combined since 1965. Specifically, we have successfully litigated over 60 percent of all the Department's language minority cases in the history of the Voting Rights Act. These cases include the first Voting Rights Act cases in history on behalf of Filipino, Korean, and Vietnamese Americans.

Our cases on behalf of language minority voters have made a remarkable difference in the accessibility of the election process to those voters. As a result of our lawsuit, Boston now employs five times more bilingual poll workers than before. As a result of our lawsuit, San Diego added over 1,000 bilingual poll workers, and Hispanic voter registration increased by over 20 percent between our settlement in July 2004 and the November 2004 general election. There was a similar increase among Filipino voters, and Vietnamese voter registration rose 37 percent. Our lawsuits also spur voluntary compliance: after the San Diego lawsuit, Los Angeles County added over 2,200 bilingual poll workers, an increase of over 62 percent. In many cases, violations of Section 203 are accompanied by such overt discrimination by poll workers that Section 2 claims could have been brought as well. However, we have been able to obtain complete and comprehensive relief through our litigation and remedies under Section 203 without the added expense and delay of a Section 2 claim.

In 2006, the Voting Section processed the largest number of Section 5 submissions in its history. The Division has interposed five objections to submissions pursuant to Section 5 since January 2006, in Georgia, Texas, Alabama, North Carolina, and Michigan, and in 2006 filed a Section 5 enforcement action. Additionally, the Division is vigorously defending the constitutionality of Section 5 of the Voting Rights Act in an action brought by a Texas jurisdiction in 2006 and filed an amicus brief in a Mississippi Section 5 case in 2007. The Division also consented to four actions since 2006 brought by jurisdictions that satisfied the statutory requirements for obtaining a release, or "bailout," from Section 5 coverage.

The Division also has made a major technological advance in Section 5 with our new e-Submission program. Now, state and local officials can make Section 5 submissions on-line. This will make it easier for jurisdictions to comply, encourage complete submissions, ease our processing of submissions, and allow the Voting Section staff more time to study the changes and identify those that may be discriminatory.

The Division has continued to work diligently to protect the voting rights of our nation's military and overseas citizens. The Division has enforcement responsibility for UOCAVA, which ensures that overseas citizens and members of the military, and their household dependents, are able to request, receive, and cast a ballot for federal offices in a timely manner for federal elections. Just since January 2008, we have taken legal action in two States to resolve UOCAVA violations for the February 5 federal primary elections. In Illinois, we participated as amicus curiae in a case to ensure the State adequately ensured the voting opportunities for UOCAVA voters under their truncated 2008 election calendar, and on January 30, the court approved a consent decree with Tennessee to resolve our complaint filed over the late mailing of overseas ballots in that state. In calendar year 2006, we filed successful UOCAVA suits in Alabama, Connecticut, and North Carolina and reached a voluntary legislative solution without the need for litigation in South Carolina. In Alabama and North Carolina, we obtained relief for military and overseas voters in the form of State legislation. We also obtained permanent relief in the form of legislation in a suit originally filed against Pennsylvania in 2004. The Civil Rights Division will continue to make every effort to ensure that our citizens abroad and the brave men and women of our military are afforded a full opportunity to participate in federal elections.

Since 2001, the Voting Section has filed 10 suits alleging violations of the National Voter Registration Act. Since 2006, we filed lawsuits containing NVRA claims in Indiana, Maine, New Jersey, Philadelphia, and Cibola County, New Mexico. Every one of these suits was resolved by agreed orders.

Aside from lawsuits, we actively investigate the practices of jurisdictions to see whether they are complying with federal law. In the past year, we sent letters to a dozen states inquiring about their list maintenance practices when we learned that there appeared to be significant imbalances between their numbers of registered voters and their citizen populations. In the past few months, we sent letters to 18 states inquiring

about their practices and procedures regarding the provision of voter registration opportunities at state offices that provide public assistance, disability, and other services.

With January 1, 2006, came the first year of full, nationwide implementation of the database and accessible voting machine requirements of HAVA. HAVA requires that each State and territory have a statewide computerized voter registration database in place for federal elections, and that the voting systems used in federal elections, among other requirements, provide accessible voting for persons with disabilities in each polling place in the nation.

The Division worked hard to help States prepare HAVA's requirements, through speeches and mailings to election officials, responses to requests for our views on various issues, and maintaining a detailed website on HAVA issues as well as cooperative discussions with States aimed at achieving voluntary compliance. A significant example of the success of the Division's cooperative approach in working with States on HAVA compliance came in California. Prior to the 2006 deadline, the Voting Section reached an important memorandum of agreement with California regarding its badly stalled database implementation. California's newly appointed Secretary of State sought the Division's help to work cooperatively on a solution, and the Division put significant time and resources into working with the State to craft a workable agreement providing for both interim and permanent solutions. The agreement has served as a model for other States in their database compliance efforts.

Where cooperative efforts prove unsuccessful, the Division enforces HAVA through litigation. Since January 2006, the Division filed lawsuits against the States of New York, Alabama, Maine, and New Jersey. In New York and Maine, the States had failed to make significant progress on both the accessible voting equipment and the statewide databases. In Alabama and New Jersey, the States had not yet implemented HAVA-compliant statewide databases for voter registration. The Division ultimately obtained a favorable judgment and remedial order in Alabama, a preliminary injunction and the entry of a remedial order in New York, and favorable consent decrees in Maine and New Jersey. The Division recently won a motion for further relief against New York for failure to achieve full compliance with HAVA's voting system requirements, and the court there has entered a supplemental remedial order to cure the continuing violations. In addition, we filed HAVA claims against Galveston County, Texas, for failing to provide provisional ballots to individuals eligible to vote, post required voting information at polling places, and provide adequate instructions for mail-in registrants and first time voters. We also filed HAVA claims against an Arizona locality for its failure to follow the voter information posting requirements of the Act, and our recent lawsuits in Cibola County, New Mexico, and Philadelphia, Pennsylvania, discussed above, also included HAVA claims to protect Native American and voters with disabilities, respectively. The Division also has defended three challenges to HAVA in a private suit involving the HAVA accessible machine requirement. A separate Pennsylvania State court judgment barring the use of accessible machines was overturned after the Division gave formal notice of its intent to file a federal lawsuit.

A major component of the Division's work to protect voting rights is its election monitoring program, which is among the most effective means of ensuring that federal voting rights are respected on election day. The Justice Department deploys hundreds of personnel to monitor elections across the country. In 2006, the Division deployed a record number of Department monitors and federal observers from the Office of Personnel Management to jurisdictions across the country for a mid-term election. In total, more than 800 federal personnel monitored the polls in 69 political subdivisions in 22 States during the November 7, 2006, election. In calendar year 2006, we sent over 1,500 federal personnel to monitor elections, doubling the number sent in 2000, a presidential election year.

During calendar year 2004, a record 1,463 federal observers and 533 Department personnel were sent to monitor 163 elections in 106 jurisdictions in 29 states. This compares to the 640 federal observers and 110 Department personnel deployed during the entire 2000 presidential calendar year.

For the 2008 elections, the Civil Rights Division will implement a comprehensive Election Day program to help ensure ballot access. As in previous years, the Civil Rights Division will coordinate the deployment of hundreds of federal government employees in counties, cities, and towns across the country to ensure access to the polls as required by our nation's civil rights laws.

As in prior years, the Division will monitor States' compliance with the requirements of the Voting Rights Act, the Help America Vote Act, the Uniformed and Overseas Citizens Absentee Voting Act, and the National Voter Registration Act, instituting enforcement actions as necessary. In that regard, we will closely monitor compliance with our numerous court orders, consent decrees, and other agreements, many of which will be in effect through the 2008 election cycle. The Civil Rights Division's efforts to ensure voter access in accordance with federal law will include training a responsible official, the District Election Official (DEO), in every U.S. Attorney's Office across the country on ballot access laws.

Such extensive efforts require substantial planning. Our decisions to deploy observers and monitors are made carefully and purposefully so that our resources are used where they are most needed. To that end, Department officials will meet with representatives of a number of civil rights organizations prior to the 2008 general election, including organizations that advocate on behalf of racial and language minorities, as well as groups that focus on disability rights. Department officials also will meet with representatives of State and local election officials before the 2008 general election. These meetings will provide a forum for discussion of State and local officials' concerns.

On election day, Department personnel here in Washington will stand ready. We will have numerous phone lines ready to handle calls from citizens with election complaints, as well as an internet-based mechanism for reporting problems. We will have personnel at the call center who are fluent in Spanish and the Division's language interpretation service to provide translators in other languages.

The Civil Rights Division will continue vigorously to protect the voting rights of all Americans.

Mr. NADLER. Thank you. I will begin by recognizing myself for 5 minutes to question Mr. Agarwal.

Mr. Agarwal, historically, vote caging schemes have been used to suppress minority votes. When allegations of vote caging occurred back in 1990, the Department of Justice took swift action sending the FBI out immediately to investigate. The Department filed a Federal lawsuit against the Republican party in, I think it was, South Carolina and the Helms campaign and obtained declaratory and injunctive relief in the form of a consent judgment and decree.

Has the Department's position against vote caging changed since 1990?

Mr. AGARWAL. Thank you, Mr. Chairman. The Department stands ready to investigate any allegation that voters are being discriminated against on the basis of their race.

Mr. NADLER. That wasn't my question. Has the Department's position against vote caging changed since 1990?

Mr. AGARWAL. Congressman, whether any particular set of circumstances constitutes a violation of Federal law will depend on the facts and circumstances. If—

Mr. NADLER. Excuse me. Does the Department—you are evading my question. Does the Department still regard what is commonly known as vote caging as depriving people of the right to vote as illegal?

Mr. AGARWAL. Congressman, with respect, that term vote caging is subject to many meanings. Whether a particular—

Mr. NADLER. Does the Department regard what it regarded as vote caging in 1990 and got a consent decree against—are you still opposed to that?

Mr. AGARWAL. I am aware of no change in departmental policy between 1990 and today on that point.

Mr. NADLER. Thank you.

There were complaints of vote caging in Florida, Nevada, Wisconsin, and Ohio in 2004. How many vote caging investigations were initiated by the Department in response to these complaints?

Mr. AGARWAL. Again, Congressman, we are vigorously investigating complaints that arose as a result of the 2006 mid-term elections.

Mr. NADLER. Wait a minute. I asked about 2004.

Mr. AGARWAL. Fair enough. Congressman, I joined the Civil Rights Division in the summer of 2006. To the extent that there were concerns raised about the 2004 elections I am confident that my predecessors in the Civil Rights Division—

Mr. NADLER. Were there any prosecutions as the result of vote caging allegations in the 2004 elections?

Mr. AGARWAL. I am aware of no criminal prosecutions certainly.

Mr. NADLER. Were there any other kind of prosecutions?

Mr. AGARWAL. Not that I am aware of.

Mr. NADLER. Okay. Why not?

Mr. AGARWAL. Well, Congressman, I can tell you that the Department has remained vigilant in protecting the voting rights of all Americans.

Mr. NADLER. Well, so you say, but we are trying to investigate whether that is true. There were complaints of vote caging in Florida in 2004, Nevada, Wisconsin, and Ohio. You are aware of no

prosecutions? Were they investigated? Were these complaints investigated?

Mr. AGARWAL. Let us take Florida, if we can. I can tell you that a member of the—a career member of the Civil Rights Division was on the ground in Florida in advance of the 2000 elections, was aware of the caging allegations as you describe them and worked cooperatively with State and local officials and with members of both political parties to ensure that those lists that were created ultimately were not used to challenge voters.

Mr. NADLER. Well, what happened? I mean, there were complaints after the election that they were used obviously in Florida, Nevada, Wisconsin, and Ohio. The Department initiated no prosecutions. Were there reports issued by the Department answering these allegations saying they weren't true or they weren't illegal? Or did those investigations just disappear into the ocean?

Mr. AGARWAL. Congressman, again, I joined the division in 2006, so I am not aware specifically of what happened to those investigations.

Mr. NADLER. Can you get detailed written answers to these questions to this Committee within the next 2 weeks?

Mr. AGARWAL. I will be happy to take that back to the Department, Congressman.

Mr. NADLER. Will you commit to getting written responses to this Committee in the next 2 weeks, not to take it back to the Department, to get responses?

Mr. AGARWAL. I will absolutely commit to looking into it during the next 2 weeks.

Mr. NADLER. Will you commit to having your response to this Committee within the next 2 weeks?

Mr. AGARWAL. Congressman—

Mr. NADLER. And the reason I am being so hard-nosed about this is that our experience is that when we get commitments from the Department to respond to us, nothing happens for years. We never get responses.

Mr. AGARWAL. Congressman, I will commit to providing some type of written response within the next 2 weeks.

Mr. NADLER. Thank you. How do you plan to address complaints of vote caging in the upcoming election cycle?

Mr. AGARWAL. We will implement a comprehensive election day program which will include the deployment of hundreds of Federal monitors and observers around the country. In determining where to deploy those people, we will—

Mr. NADLER. Excuse me. That is election day. Do you plan to do anything in advance of election day about people or parties or entities or groups or whoever, who send out mail to voters in minority communities with instructions to return the mail?

Mr. AGARWAL. Absolutely. Congressman, during the next 9 months we will meet regularly. And we have been meeting with State and local election officials, representatives of, for example, the National Association of Secretary of States with minority groups. And we will listen to their concerns. And—

Mr. NADLER. Okay. Thank you. I have one further question as my time is running out. So let me just ask this quickly.

I am increasingly concerned by reports of significant staff turnover within the voting section. As you are aware, we are quickly approaching the 2008 presidential election and the 2010 census, which means there likely will be an upsurge in Section 5 submissions.

It is my understanding that of the 25 experienced Section 5 analysts, only nine now remain. What steps are you taking to ensure that there will be sufficient experienced Section 5 analysts and attorneys to accommodate the increase of Section 5 submissions which can reasonably be anticipated because of the 2008 election and the 2010 census?

Mr. AGARWAL. Congressman, we fully intend to have sufficient numbers of trained analysts ready to go after the 2010 census.

Mr. NADLER. What about the 2008 election?

Mr. AGARWAL. We have sufficient analysts onboard today—

Mr. NADLER. Nine analysts is sufficient?

Mr. AGARWAL. Congressman, in 2006 the Department was able to analyze over 7,100 submissions, which was substantially greater than the number typically received in an election year.

Mr. NADLER. And how many analysts did you have in 2006?

Mr. AGARWAL. I don't know the number offhand, but I can get that information for you.

Mr. NADLER. Because it is my understanding that the Department has generally had at least 25 and that, as I said, of the 25 experienced analysts, only nine remain. So can you get that information to us, please?

Mr. AGARWAL. I can get that.

Mr. NADLER. About how many the Department has had, how many it has now, how many have any kind of experience longer than, say, 2 or 3 years.

Mr. AGARWAL. I can get you whatever information we have, Congressman.

Mr. NADLER. Thank you.

I now yield for 5 minutes of questioning to the distinguished gentleman from Arizona.

Mr. FRANKS. Well, thank you, Mr. Chairman.

Thank you, Mr. Agarwal. We have had a little turnover in Congress here, too. And it hasn't been a pretty picture. I hope you do address the Chairman's concerns there.

Mr. Agarwal, you and your Department filed an amicus brief in the Supreme Court case involving Indiana voter law. Can you elaborate on that and tell us why you did it and what the effect of the law was in your mind?

Mr. AGARWAL. Of course, Congressman. The Department filed that amicus brief because the Department determined that the issues raised in the Crawford case in the Supreme Court could effect the enforcement of Federal law, including Federal criminal law and on the civil side, the Civil Rights Division's enforcement of the Help America Vote Act, which, as you know, contains its own voter identification requirement.

Mr. FRANKS. Well, you know, the recent experience under Indiana's voter law shows that the I.D. laws don't diminish voter turnout at all, but they actually increase the voter turnout. That has been our experience in Arizona as well. And voter turnout among

Democrats improved slightly last year in Indiana despite a new law requiring voters to show photo identification at the polls.

Jeffrey Milyo, professor at the University of Missouri, compared the 2006 mid-term elections—the first since Indiana’s law was enacted—to the 2002 elections and said voter turnout increased by about 2 percentage points. He said the increase was consistent across the counties with the highest percentage of Democrats.

Do you think this increased turnout could be explained—I have made this case many times. But do you think it is explained by the fact that securing voter I.D. laws gives legal voters the security of knowing that their vote will count and that it will not be negated by the vote of someone voting illegally and thereby making them more likely to vote because they know their vote will be counted?

Mr. AGARWAL. Congressman, interestingly enough, the Federal district court in the Georgia I.D. litigation found there was a rational relationship between the goal of deterring voter fraud and the enactment of voter I.D. laws. The Supreme Court had noted in the Priscilla case from 2 years ago that increased confidence in the elections is something that is very important and the States have legitimate interest in.

Mr. FRANKS. Well, Mr. Agarwal, to your knowledge, has any court anywhere in America found that any voter has been prohibited from voting in a State that has a voter I.D. law because the voter did not possess a form of I.D. necessary to vote under that State’s law?

Mr. AGARWAL. I am not aware of a single court that has made such a finding, Congressman.

Mr. FRANKS. And how did the Federal district court rule on the challenge to the Georgia voter I.D. law? And explain that to us a little bit.

Mr. AGARWAL. Well, the Georgia court ultimately upheld that State’s voter I.D. law. Interestingly enough, the court found that the plaintiff’s expert report was unreliable. The expert had relied on data showing that the district court judge himself lacked a driver’s license. And based in part on that flawed data, the court found that the report was unreliable.

Mr. FRANKS. Well, Mr. Agarwal, you know, there are sometimes claims made that illegal immigrants safe from Mexico are voting in our elections. And I am not going to really address that because I don’t know what the circumstances there are. But it is interesting to me that in Mexico one of the main elements they have in their elections is a voter I.D. law. They want to make sure that they can distinguish legal voters from illegal voters.

And I just would say to the Chairman and to the Committee here that I think that it is a reasonable thing to believe that when we have confidence in the election process that that serves the cause of democracy for all voters concerned. And I believe that it will ultimately make this country more secure in its own elections and even emphasize to the world in a greater way why democracy, why a representative form of government that relies upon every day citizens choosing their leaders to be the best in the world.

And with that, I yield back, Mr. Chairman.

Mr. CONYERS. [Presiding.] Thank you, Mr. Franks. I am assuming the chair for Chairman Nadler while he is absent. And I want-

ed to begin our discussion, Mr. Agarwal, by asking you do you believe that voter I.D. laws increase voting among minorities?

Mr. AGARWAL. Congressman, the Department has not taken a position on the policy angles regarding voter identification laws. That is a determination to be made by Congress and by the States.

Mr. CONYERS. This is not a policy question. I am asking you. I am merely asking you if you have any information, knowledge or belief that voter I.D. laws increase voter turnout. That is not a policy question.

Mr. AGARWAL. In our amicus brief filed in the Supreme Court we did cite to the Milyo study that was referenced by Congressman Pence, which did find that there was an increase in turnout after the enactment of voter I.D. laws in Indiana.

Mr. CONYERS. Well, yes, but that doesn't lead you to answer my question in the affirmative?

Mr. AGARWAL. Congressman, I am really not able to answer that question at this time. I think that would need more data. But I can tell you that there have been—at least this one study which did find an increased turnout.

Mr. CONYERS. Sure, okay. Well, thanks a lot.

Now, we have a number of issues in my opening statement which I am going to give you a copy of before you leave because these weren't just rhetorical remarks. They were issues that we need to have answered specifically. Would you be willing to go through my opening statement and respond to them?

Mr. AGARWAL. With pleasure, Congressman.

Mr. CONYERS. Thank you.

Now, with regard to the Tim Griffin case in Florida in which Members of the other body, Senators Whitehouse and Kennedy, called for a Department of Justice investigation into allegations that Tim Griffin in Florida, a former Republican National Committee opposition researcher, and others at the RNC may have engaged in caging during the 2004 elections. Are you familiar with that matter? Or have you heard about it?

Mr. AGARWAL. I have heard about it, yes.

Mr. CONYERS. All right. Is there any indication or do you have any information that there is a Department of Justice investigation ongoing in that matter?

Mr. AGARWAL. I am aware of no such ongoing investigation within the civil rights or criminal divisions, Congressman. And I should also mention that the Department recently sent a letter to the Senate indicating that at least as of 2007 they had not, the Department, had not been aware of those allegations.

Mr. CONYERS. All right. And the letter was sent to Senator Kennedy and Senator Whitehouse?

Mr. AGARWAL. I believe so, perhaps Senator Leahy, yes.

Mr. CONYERS. So there has been nothing done about them, or it looks like there won't be even an investigation.

Mr. AGARWAL. Congressman, as I said during my opening statement, the Department takes very seriously any allegations that voters are being discriminated against on the basis of their race. And I think we have an outstanding record of bringing lawsuits where necessary to protect the rights of minority voters.

Mr. CONYERS. Well, yes, but that doesn't answer my question. That is a wonderful statement on behalf of the Department of Justice. But you are doing nothing in this case. Well, I guess I have to interpret for you what you are saying to me, is that because you are so concerned about this issue and nothing was done, this must not have had any merit to justify an investigation. Is that what you are telling me and the way you talk in the Department of Justice?

Mr. AGARWAL. Congressman, whether any particular factual allegations raise an issue of a violation of Federal law depends on all the facts and circumstances. If—

Mr. CONYERS. Well, of course. I mean, how else could we operate since the Department of Justice has been depoliticized? But what has that got to do with what happened in this matter? I am trying to find it out. Can we save a little time and you get back to me on this matter, since I didn't get a letter, and you are the first to tell me about it?

Mr. AGARWAL. Congressman, we will be happy to take a look at any allegations the congressman thinks raise a possible violation of Federal law.

Mr. CONYERS. Well, I want you to get back to me even if it doesn't raise a violation of law. I am trying to find out what happened to it, not what you think about it.

Mr. AGARWAL. I will take that back to the Department, Congressman.

Mr. CONYERS. Okay, thank you very much. You know, I don't get the sense of cooperation. And it may be my attitude and not your attitude. But, you know, you can fine tune these responses and shade them all you want, but we have got to get to the bottom of this problem.

I understand that you are representing the Department, and you have got to come here prepared to defend the Department. I don't expect anything else. But you could save us a little time because this isn't going to work anymore. I don't know where you testify, probably a lot of places. But we have got to get right down to the facts, sir. I would appreciate a little more definitive response rather than us having to qualify, qualify, qualify, if you can.

Mr. AGARWAL. Absolutely, Congressman. With apologies, I did join the division in 2006. But I will be happy to get the information that I can for you.

Mr. CONYERS. Okay. Well, I joined the Congress in 1965. But nobody holds me responsible for everything that has happened either before or since then. And I am not holding you responsible to know about everything that happened before 2006, not at all.

I would like now to turn to my good friend, Mike Pence, from Indiana.

Mr. PENCE. Thank you, Chairman.

And again, I would like to welcome our witness. And thank you for your service to the country from 2006, before and since.

A couple quick questions about the Department's view of the Help America Vote Act, specifically here. My understanding—Article 1, Section 4 of the Constitution delegates to the States broad authority to regulate the conduct of Federal elections. The Help America Vote Act passes Congress in 2002. Is it the Department's judgment that that, in effect, supplanted the preeminence of States

in the administration of elections? Or is it intended to supplement? What is the Department's view?

Mr. AGARWAL. Thank you, Congressman. The Help America Vote Act sets a certain floor that States need to satisfy. For example, they need to meet certain database requirements. They have to comply with certain posting requirements for language minorities. But States are free to enact other legislation.

Mr. PENCE. Forgive me for interrupting. So it is very much a floor that States are not invited necessarily, but certainly under the Constitution are free to have additional requirements on top of that basic floor?

Mr. AGARWAL. That is absolutely correct, Congressman.

Mr. PENCE. I want to get into what Indiana has done, but also some of the Carter-Baker recommendations. But let me say to begin with—and I think this is reflecting the tone on both sides of this Committee. This is a very serious issue. I don't take this at all lightly. I don't take the concerns of the Chairman of the Subcommittee or the Chairman of this Committee lightly at all.

I believe that the integrity of the vote is the integrity of the democracy. And that happens one vote at a time.

So don't misunderstand what may be my parochial pride in what Hoosiers are attempting to do as in any way diminishing the dreadful seriousness we think about which you are charged and this Department is charged. That being said, are you familiar with the Carter-Baker commission and its recommendations?

Mr. AGARWAL. I am, Congressman.

Mr. PENCE. Is it accurate that the Carter-Baker commission convened after the 2004 presidential elections, which, of course, were fraught with controversy on these topics, that among those recommendations in post-Help America Voting Act reforms was—and I am quoting now, that this bipartisan commission suggested, "To ensure that persons presenting themselves at the polling place are the ones on the registration list, the commission recommends that States require voters to use the real I.D. card, which was mandated in a law signed by the President in 2005"? Is it accurate to say that bipartisan commission recommended photo identification requirements at polling places?

Mr. AGARWAL. That is certainly my understanding, Congressman. And I would add that those recommendations were also supported by former U.N. Ambassador Andrew Young.

Mr. PENCE. Former U.N. Ambassador Andrew Young?

Mr. AGARWAL. Correct, who had been U.N. ambassador under President Carter.

Mr. PENCE. Let me see if I can get an answer specifically. Are you aware of any instance where the Justice Department has been called upon to investigate allegations of a voter being disenfranchised at the polling place as a function of a photo identification law like Indiana's?

Mr. AGARWAL. Congressman, that is an excellent question and no court has found that a voter has been prevented from voting because of a voter I.D. law.

Mr. PENCE. Now, in the state of Indiana we have worked hard to accommodate and to alleviate any hardship that a photo identification—I am sure you are aware of our law, the brief the Justice

Department has filed. Indiana has made provision for people who can't afford to pay for a photo I.D. We have also given people who don't have a photo I.D. a chance to file a provisional vote.

I think it is a week to 10 days that they can then come back and present. And with regard to other States, do other States do as Indiana has done and provide those kind of accommodations to ensure that individuals are not disenfranchised?

Mr. AGARWAL. That is correct, Congressman, they do. I believe that most States do have alternate procedures to vote for voters who may lack photo identification.

Mr. PENCE. And so, again, to go back, now, you said to me no court has found that an American citizen entitled to vote has been deprived of their franchise to vote by virtue of photo identification laws like Indiana's. But let me ask you specifically as my time runs out. Are you aware of any—is there any complaint before or allegation before the Justice Department to your knowledge today of an individual who says that they were deprived of their right to vote because of a photo identification law?

Mr. AGARWAL. I am not aware of any such allegation that would raise a—obviously the Department has limited jurisdiction. I am not aware of any information that is presented to the Department that would constitute a violation of Federal law.

Mr. PENCE. Okay.

Mr. AGARWAL. So the answer is no.

Mr. PENCE. Okay. Out of courtesy to my colleagues I will yield back. I thank the Chairman.

Mr. CONYERS. Thank you.

The Chair recognizes the distinguished gentlelady from Florida, Debbie Wasserman Schultz.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman.

Welcome to the Committee. I have a couple of questions related to the National Voter Registration Act and Section 7. Because as you know, and we have been discussing that this morning, that requires States to provide assistance to voters in public agencies when they are there for other benefits to register to vote.

And a study produced by ACORN and Project Vote called *Unequal Access: Neglecting the National Voter Registration Act 1995 to 2007* showed that voter registrations generated from public assistance agencies nationwide have declined 79 percent between 1995 and 2007 when the National Voter Registration Act was first implemented in 2005 and 2006. Here are my concerns.

In your written statement you assert that since 2006 the voting section filed lawsuits containing NVRA claims in Indiana, Maine, New Jersey, Philadelphia, and Cibola County, New Mexico. And it is my understanding that four of the five lawsuits were filed, not to enhance voter registration opportunities, but instead to force States to conduct massive purges of their registration lists under Section 8 of the NVRA. Is this correct?

Mr. AGARWAL. Congresswoman, we have filed 10 lawsuits under the NVRA during this Administration. Five of them included allegations that States were improperly removing voters from the polls. And two of them were under Section 7.

I should also add, if I could briefly, that in 2007 we sent 18 letters to different States regarding their compliance or lack of com-

pliance with Section 7 of the NVRA. And it is my understanding that at least two of those States have already begun the process of drafting legislation to bring them into compliance.

Ms. WASSERMAN SCHULTZ. Okay, but excuse me. The purpose of Section 7 is not to ensure that States are purging voters, but to ensure that they are registering voters. So why would half the lawsuits that you filed deal with the purging of voters?

Mr. AGARWAL. Well, Congresswoman, we filed two lawsuits under Section 7 during this Administration. We are prosecuting one of them. And in 2007 we sent out 18 letters—

Ms. WASSERMAN SCHULTZ. But are you also pursuing States to ensure that they purge voters that you don't believe belong on the rolls?

Mr. AGARWAL. We enforce all the provisions of the NVRA.

Ms. WASSERMAN SCHULTZ. I realize that. But are you more aggressively pursuing States to encourage them to purge voters rather than pursuing Section 7, which ensures the registration of voters? I would think that it would be more important for the Department to be ensuring that we have more qualified registered voters on the rolls as opposed to making sure that we aggressively purge voters when much of that purging in recent years has shown to be overly aggressive and purged voters who were valid and belonged on the rolls.

Mr. AGARWAL. Congresswoman, we are enforcing both Section 7 and Section 8.

Ms. WASSERMAN SCHULTZ. I realize that. But are you more aggressive—I mean, I think just looking at the percentage of lawsuits that you are pursuing the numbers bear out. If you are only pursuing two Section 7 lawsuits and the others relate to purging of voters from the rolls, then I think one could logically conclude that you are more aggressively going after States to ensure that they purge. Is that the case?

Mr. AGARWAL. With respect, Congresswoman, I would disagree with that characterization because five of the eight Section 8 lawsuits that we have brought do include allegations that the jurisdictions were improperly removing voters.

Ms. WASSERMAN SCHULTZ. How do you explain the 79 percent decrease in the number of registered voters that were added to the rolls if you have been aggressively ensuring that Section 7 is enforced?

Mr. AGARWAL. Congresswoman, I am aware of that study, and that is part of the reason why we sent out 18 letters in 2007 to gather information regarding States—

Ms. WASSERMAN SCHULTZ. Well, good, I am glad you raised those 18 letters. When we are talking about the 18 States that you did send letters to, that was just a few months ago on August 30, 2007. You began that inquiry.

And you sent letters to Vermont, Alaska, Alabama, Arizona, Connecticut, Hawaii, Iowa, Illinois, Massachusetts, Maine, Michigan, Mississippi, Montana, Nebraska, New York, Pennsylvania, Utah, and South Carolina. Now, Florida, Texas, and Virginia also ranked in the bottom 10, and they did not receive letters. So can you answer why you chose not to send letters to Florida, Texas, and Virginia? And if not, then why have you failed to take measures to en-

sure that all of, including the worst offenders of Section 7 violations, were included in your pursuit?

Mr. AGARWAL. Congresswoman, with respect to the letter that we sent out, we did not send out letters to every State because we—

Ms. WASSERMAN SCHULTZ. You sent out 18. Why not 21?

Mr. AGARWAL. With respect to some States, Congresswoman, we already had and continue to have substantial information, and so, there is simply no need to send out letters.

Ms. WASSERMAN SCHULTZ. Well, wait. Why not Florida, for example? I am a little partial to Florida, as you might imagine, where we specifically have had egregious violations of purging voters from the rolls, the use of lists that were inappropriately used, of felons who turned out not to be felons. Why have you excluded Florida and not pursued Florida and sent them a letter? We are in the bottom 10.

Mr. AGARWAL. Congresswoman, I don't know the answer to that. And with respect, it would be inappropriate for me to comment on—

Ms. WASSERMAN SCHULTZ. Mr. Chairman, if you could ask the witness to answer that question specifically and include it in the information that you asked and that the Chairman of the Subcommittee asked for in the next 2 weeks. I would appreciate it.

Mr. CONYERS. You heard her request.

Mr. AGARWAL. I will take that back to the Department. But I should add that the Department cannot get into, you know, disclosing our deliberative process in determining where we are—

Ms. WASSERMAN SCHULTZ. They can certainly tell us why they chose to exclude one State that was in the bottom 10 and had among the most egregious violations of Section 7. I don't think that is something that you are not permitted to disclose.

Mr. AGARWAL. I will be happy to take that back to the Department, Congresswoman.

Ms. WASSERMAN SCHULTZ. Thank you very much.

I yield back.

Mr. CONYERS. Thank you very much.

The Chair recognizes the distinguished gentleman from Minnesota, Keith Ellison.

Mr. ELLISON. It wasn't too long ago that John Tanner was here before us. And he had been reported as saying that while it is a shame that elderly voters may be disenfranchised by new voter I.D. restriction at the polls because many of them don't have driver's licenses, minorities don't have to worry about that because they die first. Do you remember that?

Mr. AGARWAL. Yes, Congressman.

Mr. ELLISON. Was he right?

Mr. AGARWAL. Congressman, Mr. Tanner has apologized for those comments.

Mr. ELLISON. I didn't ask you whether he apologized. I asked you whether he was right.

Mr. AGARWAL. Congressman, Mr. Tanner has apologized for those comments.

Mr. ELLISON. Is he right? Is he right or not?

Mr. AGARWAL. Congressman, Mr. Tanner has apologized for those comments.

Mr. ELLISON. I heard that answer. I am asking you whether he is right. Are you declining to answer?

Mr. AGARWAL. He has stepped down—

Mr. ELLISON. I want to ask you if you are refusing to answer my question.

Mr. AGARWAL. Congressman, Mr. Tanner—

Mr. ELLISON. Are you refusing to answer my question?

Mr. AGARWAL. Congressman—

Mr. ELLISON. Well, then answer it.

Mr. AGARWAL. Congressman, Mr. Tanner has apologized for those comments.

Mr. ELLISON. I heard you say that.

Mr. AGARWAL. He has stepped down from his leadership role at the Department.

Mr. ELLISON. I heard you say that. Was he right?

Mr. AGARWAL. Congressman, I am not here to throw dirt on John Tanner. He was a dedicated—

Mr. ELLISON. Well, let me ask you this. Let me ask you this question because I am not asking you about whether he is dedicated or not. I am asking you whether he was right. But you don't want to answer. So let me ask you this. When he said that seniors, older voters, senior citizens will be disenfranchised by new photo I.D. restrictions at the polls, was he right about that?

Mr. AGARWAL. Congressman, I can tell you what courts have found on that point.

Mr. ELLISON. I want to ask you if he was right or not. Are you familiar with the Wisconsin study that was done in June of 2005, the University of Wisconsin?

Mr. AGARWAL. I am not sure that I am, Congressman.

Mr. ELLISON. Okay. Well, there was a study out there. And you are the deputy of the voting rights section, right?

Mr. AGARWAL. I am a deputy assistant attorney general.

Mr. ELLISON. Right, right. And I would assume that since you know all about other studies, that you had read the literature out there. Are you telling me that you are not familiar with the June 2005 University of Wisconsin study on the impact of photographic identifications on voters?

Mr. AGARWAL. Congressman, there are a lot of studies out there.

Mr. ELLISON. You don't know about that one?

Mr. AGARWAL. There are a lot of studies out there, Congressman.

Mr. ELLISON. Just tell me whether you know about it or not. State yes or no.

Mr. AGARWAL. Not offhand, I do not know about the study you are talking about.

Mr. ELLISON. Okay. Well, I did. I read that study. And I read the one you talked about as well. And in the University of Wisconsin study it estimated that 23 percent of the people aged 65 and over did not have a photo I.D. Do you dispute that? No, because you didn't read the study. Good point.

Less than half of the Milwaukee county's African-American and Hispanic adults did not have a valid driver's license or photo identification compared to 85 percent of their White counterparts who did. Are you familiar with that finding?

Mr. AGARWAL. But Congressman, it is interesting—

Mr. ELLISON. Are you familiar with that study or not? Are you familiar with that finding?

Mr. AGARWAL. There have been a lot of findings made by a lot of studies.

Mr. ELLISON. I am asking you about this finding. Just say yes or no. Why can't—

Mr. AGARWAL. I am not familiar with that particular study.

Mr. ELLISON [continuing]. You—thank you. So that would be no. All right. Are you familiar with the other finding that stated that for young minority adults ages 18 to 24 about 26 percent of the African-American youth and 34 percent of the Hispanic youth had a valid driver's license compared to 71 percent of their White counterparts who did? I guess you don't know about that one, either?

Mr. AGARWAL. Congressman, I am familiar with a lot of studies. I can tell you what courts have found with respect—

Mr. ELLISON. There is no question in front of you right now, sir. I am going to ask you to wait until I get my question ready. You know, let us just talk about Indiana for a moment. Now, I wrote an amicus brief opposing the Indiana statute because it is unconstitutional. Are you familiar with the 24th Amendment?

Mr. AGARWAL. I believe so.

Mr. ELLISON. There are a lot of those, too. Do you know that one?

Mr. AGARWAL. I am familiar with the Constitution, Congressman.

Mr. ELLISON. What does it say? What does it say? What does the 24th Amendment say?

Mr. AGARWAL. It is the poll tax amendment.

Mr. ELLISON. Good. Right answer. And doesn't it say that to impose a financial barrier to voting is unconstitutional?

Mr. AGARWAL. I don't have the language in front of me, but that is the gist of it, correct.

Mr. ELLISON. Right. And to acquire a photographic I.D. would require some money, right?

Mr. AGARWAL. Well, in Indiana the State provides for—

Mr. ELLISON. How much does it cost? How much does I.D. cost in Indiana?

Mr. AGARWAL. Well, the State does have provisions for free photo I.D.

Mr. ELLISON. I am not asking you about that. I am asking how much an I.D. costs in Indiana.

Mr. AGARWAL. Well, I don't know the answer to that. But I do know that Indiana provides for a free photo I.D.

Mr. ELLISON. Okay. What do you have to do to get a free I.D.? Do you have to state your economic status to get a free I.D.? Do you have to state your economic status to get a free I.D. in Indiana?

Mr. AGARWAL. There is an—

Mr. ELLISON. You are the deputy attorney general. You should know this. Do you have to state your—under oath state your economic status to get a free I.D.?

Mr. AGARWAL. There is an indigency exception under Indiana law. I am not familiar—

Mr. ELLISON. And do you have to state your income to apply under that exception?

Mr. AGARWAL. I am not familiar with all of their requirements of the indigency exception.

Mr. ELLISON. Well, I am, and you do. As a matter of fact, the 24th Amendment says that economic status cannot be a barrier to the ballot box. And to have to swear that you are poor to get a free I.D. is requiring that you—is making income a barrier to the ballot box.

The Indiana law is a flagrant violation of the law. And I look forward to it being struck down as unconstitutional.

Mr. CONYERS. The Chairman of the Crime Subcommittee on Judiciary, Mr. Bobby Scott.

Mr. SCOTT. Thank you very much.

I just had a couple of questions and just wanted to ask the witness' position on what the Department's position is when you find that there has been a campaign to intentionally mislead voters as to their eligibility, their right to vote, the location of the polling place or otherwise misleading people into possibly missing their opportunity to vote. What is the Department's position on that?

Mr. AGARWAL. If there were credible allegations of that, we will absolutely look into them. It could very well be a violation of either Section 2 of the Voting Rights Act or, depending on the specific facts and circumstances, possibly Federal criminal law as well.

Mr. SCOTT. And so, if people are passing literature suggesting the wrong date for the election or the polling place has been moved when it, in fact, hasn't or something like that, that could be a criminal violation?

Mr. AGARWAL. That is correct, Congressman.

Mr. SCOTT. And do you prosecute such activities?

Mr. AGARWAL. We certainly have the ability to do so, and we certainly would look into those types of allegations.

Mr. SCOTT. And any allegation has been brought to the attention of the Civil Rights Division, to your knowledge, since you have been there?

Mr. AGARWAL. We have been looking into allegations regarding events that occurred during the 2006 mid-term elections. For example, in Orange County some information was sent primarily to minority voters. We immediately contacted the State and local officials, have been working with them. And currently our criminal section within the Civil Rights Division is looking at that matter.

Mr. SCOTT. And so, if there are other examples of that that are brought to your attention we can count on the division, the Civil Rights Division to follow through both civilly and criminally?

Mr. AGARWAL. Absolutely, we will take a look at it.

Mr. SCOTT. If appropriate?

Mr. AGARWAL. Absolutely.

Mr. SCOTT. Voter caging—what is the Civil Rights Division's position on voter caging?

Mr. AGARWAL. Well, again, as I tried to explain earlier, whether a specific set of facts raises a violation of Federal law will depend on all the facts and circumstances. It is not illegal simply to challenge voters, out from any other facts. If there is evidence that the voters are being targeted because of their race, that could potentially raise issues about violation of Section 2.

Mr. SCOTT. Is additional legislation appropriate to clarify that so that there is no question that a campaign targeting people because of their race for challenges would be illegal?

Mr. AGARWAL. And if any legislation is submitted, the Department will certainly be happy to take a look at it.

Mr. SCOTT. Does the Civil Rights Division have a position on these computer voting machines where you cannot get a recount?

Mr. AGARWAL. Congressman, with respect to the issue of election equipment, it is one that is primarily handled by the election assistance commission. We have a very narrow piece of that pie in ensuring under HAVA that election equipment is accessible to voters with disabilities.

Mr. SCOTT. If it were ascertained that the equipment had discriminatory impact, that is that there are a lot more mistakes or under-voting in certain communities than others, would not that have a civil rights implication?

Mr. AGARWAL. Potentially. And if there are such allegations, again, we would be happy to take a look at them.

Mr. SCOTT. Are you familiar with the report produced by the Asian-American Legal Defense and Education Fund entitled, "Asian-American Access to Democracy and the 2006 Elections"?

Mr. AGARWAL. I believe that I have seen that, yes.

Mr. SCOTT. They allege excessive inquiries for voter identification for Asian-Americans that others were not subjected to. If those could be sustained, what would the Civil Rights Division's response be?

Mr. AGARWAL. We would absolutely take a look at bringing a lawsuit under Section 2 and/or Section 203 of the Voting Rights Act. But we have done so in many instances already. We filed 27 lawsuits under the language minority provisions of the Voting Rights Act. That is more than 60 percent of language minority lawsuits ever brought under the Voting Rights Act.

I can give you a concrete example, if you like. In Hamtramck, Michigan, Bangladeshi and Arab-American voters were singled out and had their right to vote challenged. A consent decree was entered into. We extended that consent decree during this Administration. And as a result of our consent decree, the poll workers in the state of Michigan now have to train poll workers to prevent that sort of thing from happening.

Mr. SCOTT. My time has expired. Are you following through on the allegations in the report?

Mr. AGARWAL. Absolutely, we are.

Mr. SCOTT. Okay.

Mr. Chairman, I would ask unanimous consent that the report that I have just referred to be made part of the record.

Mr. NADLER. [Presiding.] Without objection.

[The information referred to follows:]



Asian American Legal Defense and Education Fund
(AALDEF)

ASIAN AMERICAN ACCESS TO DEMOCRACY IN THE 2006 ELECTIONS

**Local compliance with the Voting Rights Act
and Help America Vote Act (HAVA)
in NY, NJ, MA, MI, IL, PA, WA, VA, MD, and DC**

National Co-Sponsors

Asian Pacific Islander American Vote
Lawyers' Committee for Civil Rights Under Law
National Asian Pacific American Bar Association
National Korean American Service & Education Consortium
Organization of Chinese Americans
People For the American Way Foundation
South Asian American Leaders of Tomorrow
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Asian Pacific American Lawyers Association of New Jersey
Asian Pacific American Legal Resource Center – DC
Cambodian Association of Greater Philadelphia
Chinatown Voter Education Alliance – NY
Coalition of Asian Pacific Americans of Virginia
Conference on Asian Pacific American Leadership – DC
Greater Boston Legal Services, Asian Outreach Unit
Korean American League for Civic Action – NY
Korean American Resource & Cultural Center – IL
Korean American Voters' Council of NY & NJ
ONE Lowell – MA
Pennsylvania Immigration and Citizenship Coalition
Philadelphia Chinatown Development Corporation
YKASEC—Empowering the Korean American Community – NY
The Sikh Coalition – NY
South Asian Youth Action! – NY
Vietnamese American Initiative for Development – MA
and Asian Pacific American Law Students Association chapters across the country.

The Asian American Legal Defense and Education Fund (AALDEF), founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all.

This report was written by AALDEF staff attorney Glenn D. Magpantay, with the assistance of Nancy W. Yu and edited by AALDEF executive director Margaret Fung. AALDEF thanks the many volunteer attorneys, law students, interns, and members of the co-sponsoring organizations for their assistance in monitoring the elections.

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I. INTRODUCTION

Like many minority voters in Florida in 2000, Asian Americans across the nation have encountered a range of discriminatory barriers when they exercised their right to vote. In 2000 in New York, mistranslated ballots inverted the party headings so that Democrats were listed as Republicans and vice versa; in San Francisco, a lack of interpreters resulted in limited English proficient Asian American voters being turned away; and in Los Angeles, translated materials were hidden from voters. In many states, Asian American voters faced hostile poll workers and outright discrimination.

For several years, the Asian American Legal Defense and Education Fund (AALDEF) has monitored elections for anti-Asian voter disenfranchisement. AALDEF has monitored for compliance with the language assistance provisions (Section 203) and non-discrimination protections (Section 2) of the federal Voting Rights Act, and, most recently, implementation of the Help America Vote Act (HAVA). Section 203 requires Asian language ballots and interpreters in covered jurisdictions. HAVA requires identification of certain first-time voters and provisional ballots for voters who may otherwise be prevented from voting. Since 2004, AALDEF successfully persuaded election officials in several jurisdictions to voluntarily provide language assistance to voters.

This report reviews our observations from monitoring the 2006 Midterm Elections on November 7, 2006 in 25 cities in nine states and the District of Columbia. Almost 600 volunteer attorneys, law students, and community volunteers inspected 123 poll sites for mandatory language assistance and surveyed over 4,700 Asian American voters, in 23 Asian languages and dialects, at 82 poll sites about their voting encounters. We observed first-hand a number of problems and also received complaints from Asian American voters, interpreters, and other poll workers.

Although local election officials sought to comply with federal laws and provide assistance to voters, in 2006, we found the following obstacles:

- Limited English proficient Asian Americans had much difficulty in voting. Interpreters and translated voting materials, if any, were inadequate. Some poll workers were completely unaware of their responsibilities under the Voting Rights Act and others consciously refused to make language assistance available to voters.
- Poll workers were hostile and made racist remarks toward Asian American and limited English proficient voters. Poorly trained poll workers made voting difficult and frustrated voters.
- Asian American voters' names were missing or incorrectly listed in voter lists located at poll sites. Although HAVA requires that these voters be offered provisional ballots, poll workers denied voters this right.
- Poll workers made improper or excessive demands for identification – often only from Asian American voters – and misapplied HAVA's ID requirements.
- Inadequate notice of poll sites and misdirection to voting booths created much confusion and discouraged voters.

Vigorous enforcement of voting rights laws as well as concerted effort by local election officials can remedy many of these problems. AALDEF's recommendations to ensure and expand access to the vote are listed at the end of this report.

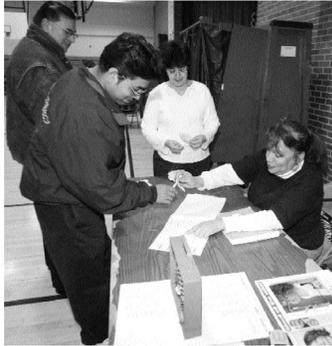
II. BACKGROUND

A. Legal Background

1. The Voting Rights Act

Voting is a fundamental constitutional right.¹ Democracy works best when all eligible voters can participate in the electoral process. Equal access and opportunity to vote are the first steps towards safeguarding the fundamental right to vote.

In the early 1970s, Congress found that limited English proficiency was a serious barrier to the political participation of Asian Americans, Latinos, Alaskan Natives, and Native Americans. Asian American citizens were registered to vote at much lower rates than non-Hispanic whites.² As a result, Congress adopted the language assistance provisions of the Voting Rights Act in 1975, and reauthorized them in 2007.³ In enacting these provisions, Congress found that:



Credit: News India, Times

"[T]hrough the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them resulting in high illiteracy and low voting participation."⁴

The provisions, codified at Section 203, mandate bilingual ballots and interpreters at voting booths and poll sites in certain jurisdictions with large populations of limited English proficient voting age citizens. Section 203 has helped 700,000 Asian Americans, particularly first-time voters, fully exercise their right to vote.⁵

Section 203 covers counties where the census finds 5% or more than 10,000 voting-age (over 18 years old) citizens who speak the same Asian, Hispanic, or Native American language, have limited English proficiency, and, as a group, have a higher illiteracy rate than the national illiteracy rate.⁶ After the 2000 Census, sixteen counties in seven states – Alaska, California, Hawai'i, Illinois, New York, Texas, and Washington – were required to provide Asian language assistance.⁷

Another provision of the Voting Rights Act, Section 208, guarantees that limited English proficient voters may obtain assistance by persons of their choice.⁸ These individuals may be friends, relatives, or official election interpreters, but not the voters' employers or union representatives. These individuals may also accompany the voters inside the voting booth to translate the ballot.

Finally, Section 2 of the Voting Rights Act guards against minority voter discrimination.⁹ Asian Americans who face discrimination in voting may seek remedies that may include language assistance. The U.S. Department of Justice has brought lawsuits under Section 2 involving Asian Americans in which it sought translated voting materials and interpreters to ameliorate the harms that were perpetuated.¹⁰

2. The Help America Vote Act

Following the 2000 Presidential Election debacle in Florida, former Presidents Gerald Ford and Jimmy Carter co-chaired the National Commission on Federal Election Reform. The Commission's Report, *To Assure Pride and Confidence in the Electoral Process* (August 2001), laid the basis and findings for the Help America Vote Act (HAVA), which Congress enacted in December 2002.

HAVA provides voters with new rights, mandates a series of changes in how states conduct elections, and provides federal funds to update voting systems and expand access to the vote. HAVA provides all voters with the opportunity to cast provisional ballots and makes voting information more accessible by providing sample ballots, instructions on how to vote, and information about voters' rights.¹¹

HAVA mandates that certain new voters provide identification in order to vote.¹² Identification is required of first-time voters who registered by mail after January 1, 2003.

HAVA also provides federal funds to help states improve election administration. These funds may be used to improve accessibility to the vote and poll sites for "individuals with limited proficiency in the English language."¹³ States have broad discretion to use the money for language assistance or for other purposes, such as purchasing new voting machines or developing the statewide voter databases required under HAVA.

B. AALDEF's Voting Rights Program

AALDEF's voting rights program includes litigation, advocacy, and community education to eliminate voting barriers and expand access to the vote. AALDEF has won many victories for Asian American voters since 1985, when it negotiated the first agreement with the New York City Board of Elections to provide Chinese language assistance at poll sites.



AALDEF has testified before Congress on the Voting Rights Act. In 1992, AALDEF testified in support of expanding the language assistance provisions. This resulted in ten counties in New York, California, and Hawai'i being covered for Asian language assistance.¹⁴ In 2006 and 2007, AALDEF again testified in support of reauthorization of the language assistance provision for another 25 years.¹⁵ A comprehensive report on discrimination against Asian American voters was submitted into the congressional record.

AALDEF has conducted multilingual exit polls of Asian American voters in every major election since 1988. Nearly 11,000 Asian American voters in eight states and 3,000 in four states were surveyed in the 2004 and 2002 exit polls, respectively.¹⁶

AALDEF has monitored voting rights consent decrees by the U.S. Department of Justice against Hamtramck, MI (2000), Boston, MA (2005), and Philadelphia, PA (2007). Using findings from past poll monitoring efforts that demonstrated violations of the Voting Rights Act, AALDEF sued the New York City Board of Elections in 2006 and joined a lawsuit filed by the U.S. Department of Justice against the City of Boston in 2005.

2. Asian American Election Protection 2006

On November 7, 2006, AALDEF monitored 172 poll sites¹⁷ in 25 cities in 9 states – New York, New Jersey, Massachusetts, Michigan, Illinois, Pennsylvania, Washington, Virginia, Maryland – and the District of Columbia.¹⁸

AALDEF also surveyed 4,726 Asian American voters, in 23 Asian languages and dialects,¹⁹ about their experiences in voting at 82 poll sites. Almost 600 volunteer attorneys, law students, and members of the co-sponsoring organizations observed first-hand a number of problems and received 200 complaints from Asian American voters, interpreters, and poll workers. The exit poll and poll site monitoring documented incidents of anti-Asian voter disenfranchisement and the need for voluntary language assistance.

AALDEF operated a multilingual telephone hotline to record complaints of voting problems. Operators spoke eight languages and dialects: English, Cantonese, Mandarin, Toisan, Korean, Tagalog, Hindi, and Punjabi.

Whenever serious problems arose on Election Day, AALDEF attorneys immediately contacted local election officials to remedy the situations and also reported these incidents to other civil rights groups documenting voting problems.

Before the elections, AALDEF conducted 45 voter protection workshops and trainings, reaching over 2,500 community advocates, lawyers, and students. AALDEF also provided free legal advice on voting matters to community groups and individual voters.

3. Activities Since 2004

AALDEF was involved in the following voting rights cases:

Chinatown Voter Education Alliance v. Ravitz – AALDEF filed a lawsuit under Section 203 of the Voting Rights Act against the NYC Board of Elections, challenging the inadequacy of its Chinese and Korean language assistance programs.²⁰

US v. Boston – The U.S. Department of Justice filed a lawsuit against the City of Boston under Section 2 for discrimination against Chinese and Vietnamese voters. AALDEF intervened representing Asian American and Latino voters and organizations. The settlement requires language assistance.²¹

US v. New York State Board of Elections – The U.S. Department of Justice filed an action pressing for compliance under the Help America Vote Act for new voting machines in New York State. AALDEF intervened on behalf of Asian American voters and organizations to ensure that new machines will accommodate multilingual ballots.²²

US v. Philadelphia – The U.S. Department of Justice filed an action under Section 203 for Spanish language assistance. AALDEF persuaded the City to voluntarily provide interpreters in Chinese, Korean, Vietnamese, Khmer at poll sites as part of the settlement.²³

AALDEF continued to advocate for election reforms. AALDEF worked with many groups to monitor implementation of HAVA's new requirements and submitted new proposals on

provisional ballots. AALDEF was a leading member of local coalitions in New York, New Jersey, Pennsylvania, and Massachusetts.

AALDEF also initiated state legislative proposals for mandatory language assistance. One bill in Massachusetts extends Asian-language ballots and voter assistance in the settlement in *US v. Boston*, which is due to sunset in 2008, and also clarifies that fully translated ballots should include transliterations of candidates' names. A bill in New Jersey amends the current state law that already provides for language assistance in Spanish to include Asian languages as well.

4. After Election Day 2006

AALDEF received more than 200 complaints of voting problems in 2006. In the weeks after the elections, AALDEF followed up with voters to confirm the incidents and obtain more details. AALDEF sent sixteen complaint letters to election officials in each of the ten jurisdictions. These letters reviewed the most significant problems in detail and offered concrete recommendations for improvements. These letters were sent to election officials in the following municipalities:

NY: New York City
 MA: Boston, Lowell, Quincy
 NJ: Bergen, Middlesex, Hudson
 PA: Philadelphia, Upper Darby
 MI: Dearborn, Hamtramck, Ann Arbor
 IL: Cook County, Chicago
 VA: Fairfax, Arlington
 MD: Montgomery
 WA: Seattle
 Washington, DC

This report highlights the most widespread and egregious barriers Asian American voters encountered during the 2006 Elections.

AALDEF EXIT POLL RESULTS – Nov. 7, 2006

Voters Surveyed	First-Time Voter	Foreign Born	No Formal US Education	English as Native Language	Limited English Proficient	Largest Asian Groups Surveyed
BY ETHNIC GROUP						
Chinese	11%	80%	30%	12%	54%	N/A
Korean	9%	89%	56%	12%	69%	N/A
Filipino	10%	85%	22%	16%	10%	N/A
South Asian	17%	88%	22%	12%	23%	Asian Indian 57% Bangladeshi 19% Pakistani 18% Indo-Caribbean 4%
Southeast Asian	46%	85%	21%	6%	47%	Vietnamese 53% Cambodian 22% Thai 7% Laotian 7%

AALDEF EXIT POLL RESULTS – Nov. 7, 2006

All Voters Surveyed	First-Time Voter	Foreign Born	No Formal US Education	English as Native Language	Limited English Proficient	Largest Asian Groups Surveyed
4,726	13%	83%	29%	13%	43%	Chinese 38% South Asian ¹ 27% Korean 14% Southeast Asian ² 8% Filipino 7%

BY STATE						
New York	12%	89%	36%	10%	49%	Chinese 46% Asian Indian 14% Korean 13% Bangladeshi 8% Pakistani 7%
New Jersey	9%	90%	28%	8%	32%	Asian Indian 47% Korean 27% Filipino 10%
Massachusetts	14%	83%	29%	9%	61%	Chinese 56% Vietnamese 27% Cambodian 10%
Pennsylvania	16%	68%	15%	18%	30%	Chinese 43% Vietnamese 17% Asian Indian 11% Korean 7% Cambodian 6%
Michigan	24%	55%	8%	24%	23%	Arab 24% Chinese 13% Asian Indian 11% Bangladeshi 8%
Illinois	14%	94%	55%	5%	66%	Korean 62% Asian Indian 14% Filipino 13%
Washington	17%	80%	30%	12%	40%	Chinese 60% Filipino 23% Vietnamese 8%
Virginia	10%	70%	8%	32%	20%	Vietnamese 18% Korean 17% Asian Indian 17% Chinese 15% Filipino 15%
Maryland	6%	80%	13%	23%	24%	Chinese 40% South Asian 22% Filipino 13% Vietnamese 12%
District of Columbia	23%	84%	44%	11%	69%	Chinese 75% Asian Indian 9%

¹ Includes Asian Indian, Bangladeshi, Pakistani, Indo-Caribbean, Sri Lankan, and Nepalese.

² Includes Vietnamese, Cambodian, Laotian, Hmong, Thai, Indonesian, Burmese, and Malaysian

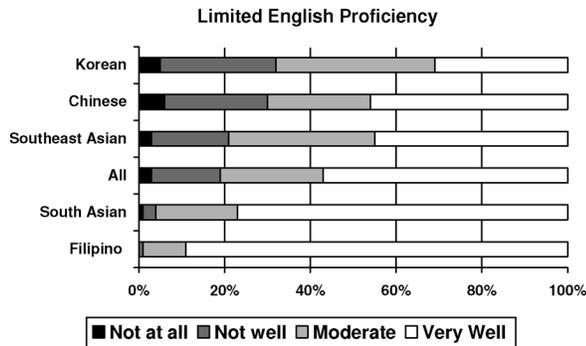
III. FINDINGS AND OBSERVATIONS

In AALDEF’s survey, about one in eight respondents stated that the November 2006 elections were the first U.S. elections in which they had voted. Unfortunately, Asian Americans had to overcome many barriers to exercise their right to vote, including (A) the lack of language assistance; (B) racist or poorly trained poll workers; (C) incomplete voter lists and denials of provisional ballots; (D) improper identification checks; and (E) poll site confusion.

Complaint/ Problem	Voters
Name not on list of registered voters	133
Voted by provisional ballot	148
No interpreters / translated materials	100
Poll workers were rude/hostile	30
Poll workers poorly trained	59
Directed to wrong poll site/precinct voting booth	51

A. Language Assistance

Limited English proficient Asian Americans had much difficulty in voting. In AALDEF’s survey, 83% of all respondents were foreign-born naturalized citizens. 29% had no formal education in the United States,²⁴ and only 13% identified English as their native language. 43% were limited English proficient,²⁵ of which almost half (47%) were first-time voters.



Language assistance, such as interpreters or translated voting materials, if any, was far from adequate. Notwithstanding federal mandates, poll workers were cavalier in providing language assistance to voters. In our survey, 100 Asian American voters complained that there were no interpreters or translated materials available to help them vote.

1. Compliance with the Voting Rights Act (Mandatory Language Assistance)

The Voting Rights Act mandates language assistance. Section 203 requires translated ballots, voting materials, and interpreters at poll sites in counties with large concentrations of language minority voters. In New York, Chinese assistance is required in Queens, Brooklyn (Kings County), and Manhattan (New York County), and Korean assistance in Queens. In Washington, Chinese assistance is required in Seattle (King County). Litigation under the non-discrimination protections (Section 2) of the Act also mandates assistance for Chinese and Vietnamese voters in Boston, MA. Notwithstanding positive efforts by election officials, there have been many shortcomings in compliance.

In New York City, among Chinese American voters, 61% were limited English proficient. 56% needed interpreters, and 48% needed translated materials to vote. Among Korean voters, 76% were limited English proficient. About 79% needed interpreters and 60% needed translated materials.

In Boston, among Chinese American voters in Chinatown, 63% were limited English proficient. 45% needed interpreters, and 69% needed translated materials to vote. Among Vietnamese voters in Dorchester, 80% were limited English proficient. About 85% needed interpreters and 73% needed translated materials.

In Seattle, among Chinese American voters, 52% were limited English proficient. 47% needed interpreters and 69% needed translated materials to vote.

a. Translated Voting Materials and Signs Missing

Section 203 requires the translation and posting of all voting signs and materials. However, many poll sites did not have the required translated signs and materials.

For example, in New York, the multilingual "New York State Voter Bill of Rights" sign, which was also required under HAVA, was missing from 26 poll sites (34% of all sites inspected).

One poll site in Jackson Heights, NY had only one translated provisional ballot which was to be used by hundreds of Chinese voters. In Seattle, WA and Boston, MA, special packages of translated voting materials were never delivered to targeted poll sites.

Some poll workers were both uninformed and unwilling to display the translated voting materials properly. In Boston, the poll site warden insisted that the materials did not need to be displayed until voters requested them.

Limited English proficient voters had to ask specifically for translated materials, and such requests often had to be made in English. In Dorchester, a Vietnamese voter complained that ballots were available only in English and Spanish. But Vietnamese ballots were indeed available; they were simply placed on a back table out of sight.

Poll workers provided Asian American voters with assistance in the wrong language. One Asian American voter in Woodside, NY was given an English/Spanish provisional ballot envelope to complete.

In Seattle, WA, election officials refused to translate required voting information. Translations of four state ballot measures were not included in Chinese Voter Pamphlets. Officials argued that translated voter pamphlets on state ballot measures were not required, because only King county is covered under Section 203 for Asian language assistance. If any voting materials are available to English-speaking voters in the

covered county, then they must also be made available, in the same form, to Chinese speaking voters in the county as well.

b. Interpreter Shortages

Oral language assistance in polling places is needed to help language minority voters exercise their right to vote.

In past New York City elections, many poll sites did not have adequate numbers of interpreters. There was much improvement in 2006. Of the 242 Chinese interpreters assigned to poll sites observed, 84% showed up on the day of the election. However, some sites still had no interpreters or the interpreters spoke a different dialect of Chinese than what was needed by voters at the poll site.

For Korean, interpreter shortages persisted. Of the 91 Korean interpreters assigned, almost one third (31%) were missing. This shortage caused problems in Woodside, where the lone Korean interpreter was extremely overworked.

Similarly in Boston, one in five (21%) of Chinese and 17% of Vietnamese interpreters were absent. In our survey, 38% of voters who wished to receive oral language assistance could not find interpreters who spoke their language or dialect.



Credit: Benjamin Yuh

Voters also have the right to be assisted by persons of their choice under Section 208 of the Voting Rights Act. Unlike Section 203, this provision applies across the nation. These assistants may accompany voters inside the voting booth to translate the ballot for them. Poll workers, however, obstructed this right. In Washington, DC, poll workers harassed voters who brought friends or relatives to assist them in voting.

c. Adequacy of Translated Ballots

Section 203 requires the translation of ballots so that limited English proficient voters can fully and independently exercise their right to vote. However, the full translation and readability of translations continued to be an issue in the 2006 elections.

In New York, Chinese voters complained that translations on ballots were too small to read. Although the Board of Elections provided magnifying sheets to remedy this problem, the sheets were almost always missing at election district tables and inside voting machines. Chinese characters on ballots must be made larger.

In Boston, ballots did not have transliterations of candidates' names into Chinese. Limited English proficient voters typically know their candidates by their transliterated names, which appear in Asian-language media, advertising, and campaign literature. Without properly transliterated names, voters had difficulty identifying their candidates of choice.

Both issues are critical to ensure Asian Americans can vote independently and privately, regardless of English language proficiency.

AALDEF EXIT POLL – Language Minority Groups

State - Locality	Language Minority Group	Limited English Proficient	Prefers Voting Assistance	Needed Interpreter	Needed Translated Materials
New York					
- New York City	Chinese	61%	38%	56%	48%
- New York City	Korean	76%	37%	79%	60%
- New York City	Asian Indian	17%	8%	17%	11%
- New York City	Bangladeshi	38%	13%	18%	10%
- New York City	Pakistani	40%	17%	43%	13%
New Jersey					
- Bergen Co.	Korean	79%	29%	39%	35%
- Middlesex Co.	Indian (Gujarati)	21%	9%	12%	9%
Massachusetts					
- Boston	Chinese	63%	50%	45%	69%
- Dorchester	Vietnamese	80%	58%	85%	73%
- Lowell	Cambodian	50%	32%	64%	42%
Pennsylvania					
- Philadelphia	Chinese	30%	17%	30%	9%
- Philadelphia	Cambodian	53%	35%	29%	0%
- Philadelphia	Vietnamese	58%	28%	46%	4%
Illinois					
- Cook Co.	Korean	88%	63%	61%	49%
Michigan					
- Wayne Co.	Arab	34%	16%	47%	35%
- Wayne Co.	Bangladeshi	52%	4%	40%	17%
Washington					
- King Co.	Chinese	52%	46%	47%	69%
Virginia					
- Fairfax Co.	Vietnamese	56%	26%	36%	14%
- Fairfax Co.	Korean	26%	10%	14%	27%
Maryland					
- Montgomery Co.	Chinese	33%	18%	29%	10%
District of Columbia					
	Chinese	88%	63%	64%	43%

2. Voluntary Language Assistance

Many states and localities with large and fast-growing Asian American populations are not required to provide language assistance under federal law. AALDEF successfully persuaded election officials in New Jersey, Massachusetts, Illinois, Michigan, and Pennsylvania to voluntarily provide language assistance to Asian American voters. However, such efforts were insufficient. In every state where AALDEF conducted poll monitoring, limited English proficient voters complained about the lack of language assistance.



Credit: News India Times

a. New York: Bengali and Urdu

New York City has the largest South Asian population in the nation. According to the 2000 census, the Bangladeshi population increased 471%, to over 28,000. The Pakistani population increased 154%, to over 34,000. The Indian population increased 118%, to over 206,000. More and more South Asian voters are becoming citizens, but they face a number of difficulties in participating in the political process.

In AALDEF's survey, 40% of Pakistani, 38% of Bangladeshi, and 17% of Indian voters were limited English proficient. One-third of Urdu and one-third of Bengali-speakers stated that they needed the assistance of interpreters or translated voting materials in order to vote. Although only 17% of Asian Indian voters needed language assistance, most of these were Punjabi-speaking Indians.

The lack of assistance caused problems. In Brooklyn, NY, a South Asian voter's name was missing from the list of registered voters, even though he had voted at the same poll site for years. He attempted to complete a provisional ballot but may not have filled it out correctly because no Bengali-speaking interpreters were present to assist him.

The New York City Board of Elections should translate voter registration forms and provide Bengali interpreters at poll sites in Queens and Brooklyn, and Urdu interpreters in Brooklyn.

b. New Jersey: Korean, Chinese, and Gujarati

The Asian American population in New Jersey has doubled since 1990, numbering over half a million. There are 37,000 Koreans in Bergen County and 57,000 Indians in Middlesex County. Groups like the Korean American Voters' Council and South Asian American Leaders for Tomorrow advocate on behalf of Asian Americans and encourage their participation in the political process.

Among Korean American voters surveyed in Bergen County, more than half were limited English proficient. 17% needed interpreters or translated materials in order to vote. Among Asian Indian voters in Middlesex County, 15% were limited English proficient. About 12% needed interpreters and 9% needed translated materials to vote.

Korean American voters in Palisades Park and Fort Lee specifically complained of the absence of Korean interpreters and signs. Likewise, South Asian voters in Edison reported similar shortages of interpreters and signs.

The New Jersey State Legislature adopted a package of election reform bills in 2005. One bill required that Voter Bill of Rights signs be translated into any language spoken as the primary language by 10% or more of registered voters in a particular district. Unfortunately, the translated signs were often missing. In Fort Lee, where Korean signs were needed, three election districts were missing the second half of the translated signs.

In addition, the State Attorney General provided translated voter registration forms in Korean, Gujarati, and Chinese, but the forms were only available on the website, and were not postage post-paid or addressed to the proper election officials. Local groups urged that the forms be printed.

c. Massachusetts: Khmer and Chinese

The Asian American population in Massachusetts has grown by 68% since 1990, numbering over a quarter million. Boston has the largest number of Asian Americans; about 19,000 Chinese and 10,000 Vietnamese Americans. Pursuant to a lawsuit, the City now provides translated voter notices, bilingual ballots, and interpreters at poll sites. But these are only available in Boston. Lowell and Quincy have growing Asian American populations, and groups like the Chinese Progressive Association and ONE Lowell have long worked to increase Asian American voting participation.

Lowell has almost 10,000 Cambodian Americans, which comprise almost one-third of the City's entire population. Among Cambodian voters in Lowell, 50% were limited English proficient. 64% of voters needed interpreters and 42% needed translated materials to help them cast their votes.

While the Lowell Elections Commission translated voting signs in Khmer, Spanish, and Portuguese, these signs were not always visible. One voter in The Highlands neighborhood of Lowell complained that he had no access to interpreters or translated materials at his poll site.



Credit: Jeannin Yuh

In Quincy, the Asian American population has increased 146% since 1990, with about 9,500 Chinese Americans. One in ten residents of the City of Quincy is Chinese. Among Chinese voters in Quincy, 46% were limited English proficient, while 21% of voters needed interpreters to help them cast their votes.

The Quincy City Clerk provided interpreters and translated voting materials to assist limited English proficient voters. However, voters in North Quincy complained that they had no access to interpreters at their voting sites. Interpreters were available earlier in the day and then left before the polls closed.

d. Pennsylvania: Chinese, Vietnamese, and Khmer

The Asian American population in Pennsylvania has nearly doubled since 1990, numbering almost a quarter million. In Philadelphia, the Chinese population is about 18,000 and the Vietnamese population is 11,600. Among Chinese American voters, 30% were limited English proficient. 30% needed interpreters and 9% needed translated materials.

The U.S. Department of Justice sued the City of Philadelphia for violations of the Voting Rights Act for Spanish language assistance just a few days before the 2006 general election. Pursuant to the settlement in *US v. Philadelphia*,²⁶ the City agreed to provide Asian language interpreters at poll sites.

In Chinatown and University City, voters complained about the absence of Chinese interpreters and translated materials. One limited English proficient voter was frustrated to tears because she was continuously redirected to different poll sites. Poll workers were unable to explain to her why she could not vote at either site, because no interpreters were available.

In Olney, the Cambodian Association of Greater Philadelphia received complaints that many newly registered Cambodian American voters had difficulty finding their poll sites and dealing with poll workers due to the lack of language assistance.

The Pennsylvania Secretary of State translated voter registration forms into five languages, including three Asian languages (Chinese, Korean, and Vietnamese). However, there were many discrepancies, omissions of phrases, and awkward translations. The translated forms listed no addresses, making it more difficult for voters to submit them. The Chinese form had poorly translated instructions that led applicants to believe that a Pennsylvania driver's license and a Social Security number were required to vote. The Vietnamese form had an instruction in another language altogether, not English and not Vietnamese. Translations must be done carefully and accurately.²⁷

e. Illinois: Korean

The Greater Chicago Area has the nation's third largest Korean American population, after Southern California and New York. With the help of the Korean American Resource and Cultural Center (KRCC), Cook County voluntarily provided interpreters at poll sites. KRCC also conducted voter education workshops in Korean prior to the elections. Yet such efforts did not adequately address the great need for language assistance.

Among Korean American voters, 88% were limited English proficient. 61% of voters needed interpreters and 49% needed translated materials to vote. At one poll site in Mt. Prospect, Korean American voters said that they felt intimidated by the new voting system and needed guidance in Korean on how to use the machines.

f. Michigan: Bengali and Arabic

Pursuant to a consent decree by the U.S. Department of Justice for past voting discrimination and racial profiling at the polls in violation of the Voting Rights Act, the City of Hamtramck was required to provide Bengali and Arabic language assistance.²⁸ The settlement has since expired, but the City continued to voluntarily provide interpreters at poll sites. However, on Election Day, the Arabic interpreter was only present for part of the day.

Among Bangladeshi voters, 52% were limited English proficient. 40% needed interpreters and 17% needed translated materials. Among Arab voters, 34% were limited English proficient. 47% needed interpreters and 35% needed translated materials.

Two voters in Dearborn requested language assistance but poll workers responded that they were not allowed to help them.

g. Virginia: Vietnamese and Korean

The Asian American population in Virginia has grown by 62% since 1990, numbering more than a quarter million. In Fairfax County, the Vietnamese population has doubled, numbering about 20,000; likewise the Korean population has grown tremendously, numbering about 45,000 in 2000.

The Asian Pacific American Legal Resource Center's Language Rights Project expands language assistance to government services in the District of Columbia, Virginia, and Maryland. In 2006, APALRC coordinated local voter registration efforts in the Greater Washington, DC area.

Among Vietnamese voters surveyed, 56% were limited English proficient. 36% of voters needed interpreters and 14% needed translated materials. Among Korean voters, 26% were limited English proficient. 14% of voters needed interpreters and 27% needed translated materials.

In Annandale, Korean American voters did not know how to use the voting machines. They said that the complicated election system discouraged them from voting.

The lack of official language assistance made limited English proficient voters more vulnerable to partisan electioneering. One partisan campaign worker allegedly encouraged several Korean American senior citizen voters to apply for absentee ballots without securing the voters' full consent and understanding. The bilingual campaign worker said it was a new way to vote and that she would assist them in casting their votes since the ballots were in English. Some voters suspected that their votes were cast for other candidates, instead of their candidates of choice.



Credit: Benjamin Yuh

When these limited English proficient voters then came to vote on Election Day, they were turned away, many without any explanation. These occurrences underscore the need for both translated voting materials and non-partisan appointed interpreters at poll sites.

h. Maryland: Chinese

The Asian American population in Montgomery County has grown by 60% since 1990. More than one in ten residents is Asian American, the second largest Asian population in the region and the largest in the state. Almost one-third (31%) of the 100,000 Asian Americans are Chinese.

In our survey, 33% of Chinese voters were limited English proficient. 24% of voters needed interpreters. Voters, however, complained about the lack of interpreters at poll sites. Although local election officials agreed to appoint bilingual election judges, there is still a need to recruit more diverse poll workers.

Local election officials should be commended for voluntarily providing language assistance to Asian American voters. HAVA provides federal funds to make the vote more accessible to language minorities. Jurisdictions should seek funding under HAVA to translate the voter registration forms, voter guides, ballots and other voting materials, as well as hire bilingual poll workers.

B. Racist and Poorly Trained Poll Workers

Poll workers were hostile towards Asian American and limited English proficient voters. In our survey, 30 Asian American voters complained that poll workers were "rude or hostile." Other poll workers were unhelpful or unknowledgeable about proper election procedures, prompting 59 Asian American voters to complain.

In Arlington, VA, a Filipino American voter complained about a white female poll worker who said to him, "Do you know how to read?" while the voter was casting an absentee ballot before Election Day. In Brooklyn, NY, an Arab American voter in Kensington complained that poll workers continuously stared at his traditional clothing and beard, making him feel uncomfortable.

Some poll workers made disparaging remarks about minority language assistance. One poll worker in Woodside, NY said that she thought it was a waste of the taxpayers' money to pay for so many interpreters and for the multiple copies of materials in different languages. Another poll worker commented that she did not think they should be required to provide multilingual materials because voters "should learn English."

Poorly trained and inefficient poll workers resulted in chaotic poll sites that deterred voters from exercising their right to vote.

In Michigan, one Hamtramck voter was turned away and refused a provisional ballot. He complained of hostile, rude poll workers who misdirected him to the wrong poll site. A Dearborn voter reported that poll workers failed to direct people standing in one long line to the appropriate precinct lines. This caused needlessly longer lines to develop.

In New Jersey, voters in Palisades Park complained that poll workers lacked knowledge of the voting process, were unable to direct voters to their assigned election districts, and did not actively help voters. One voter even corrected a poll worker who instructed him to sign the voter roll book next to another voter's name.

Sometimes poll workers were unresponsive to Asian American voters' questions.

In Dorchester, MA, poll workers informed a Vietnamese voter that her vote did not go through and did not offer any explanation as to why or if there was any remedy.

In Jersey City, NJ, voters complained that poll workers did not know proper election procedures, acted discourteously, and were generally disorganized. One voter was frustrated that poll workers were unresponsive to her repeated requests for instructions. She had to call out to one poll worker several times before she was helped.

Before Election Day, election officials could not answer questions about absentee ballots. Sometimes, voters never received these ballots. In New York, two elderly voters applied for absentee ballots in October. The husband is over 80 years old and too weak to go to his polling place and his wife is bed-ridden with cancer. The husband called the Board of Elections and the operator told him that the Board had received their absentee ballot applications but could not tell him when the absentee ballots would be sent. Neither he nor his wife ever received absentee ballots. When the husband called the clerk's office after the elections, he was merely told to write a complaint letter to the State Board of Elections.

C. Incomplete Voter Lists and Denials of Provisional Ballots

In 2006, many Asian Americans complained that their names were missing from lists of registered voters located at poll sites. This was often due to the faulty processing or mishandling of voter registration forms by election administrators.

In the past, poll workers used to turn away voters, but with HAVA, these voters now have the right to vote by provisional ballots. However, poll workers did not always offer such ballots, and simply turned them away.

Voters reported to their assigned poll sites, or to poll sites where they had previously voted, only to find their names missing from voter lists. In our survey, 133 voters complained that their names were not listed or listed incorrectly.

In Dearborn, MI, two limited English proficient voters were told that this was "probably because their hyphenated names had been misspelled."

In Quincy, MA, one of the voters had registered to vote at the Registry of Motor Vehicles four weeks prior to the elections.

In Jersey City, NJ, one voter registered two years ago and was required to go home to retrieve her registration notification.

In Brooklyn, NY, one voter's first name was listed as his middle name, and his last name was improperly hyphenated.

Although HAVA requires that voters whose names are missing be offered provisional ballots, poll workers denied voters this right. Indeed, voters had to explicitly demand provisional ballots. In our survey, 148 voters complained that they had to vote by provisional ballots.

In Palisades Park, NJ, one Korean American voter complained that his name was missing from the voter list at his poll site, although he had registered in April. He was not offered a provisional ballot and instead was told to go to the Borough Clerk's office.



Credit: Benjamin Yuh

In Philadelphia's Chinatown, one limited English proficient voter went to two different poll sites and struggled for nearly three hours before she was finally able to vote by provisional ballot.

In Michigan, one Hamtramck voter was turned away from the poll site and refused a provisional ballot. He complained of hostile, rude poll workers who misdirected him to the wrong poll site. Poll workers in other cities of Michigan may have been too quick to administer provisional ballots to voters who simply waited on the wrong line to vote. They needed to adequately and more completely

search voter lists to make sure voters were not registered at a neighboring precinct.

In Jersey City, NJ, a voter reported his name missing from the voter roll although he registered in 1984. The poll workers offered him a provisional ballot, but he declined. He thought the poll workers were so disorganized and was skeptical his vote would be counted.

Voters' names may not have appeared on lists of registered voters at poll sites for a variety of reasons. Often they tried to register to vote, but their information was entered incorrectly or their registration forms were lost or mishandled and so they were never registered through no fault of their own. Other times the voters were misinformed about their proper poll sites so they came to the wrong sites. Voters may also have been at the correct sites, but their names were improperly removed from lists. The accuracy of voter lists needs to be improved and poll workers need better training on the proper administration of provisional ballots.

The states of Washington and New Jersey use the information provided on provisional ballot envelopes to update the voter registration file. New York and New Jersey also count provisional ballots cast at the wrong election districts, provided that the votes are cast at the correct New York poll site or same New Jersey county in which the voter resides. These practices should be applied nationwide.

D. Improper Identification Checks

HAVA requires identification from a very narrow category of first-time voters. Notwithstanding positive efforts by election officials and community groups to educate the public, as well as poll worker trainings that stressed the specific ID rules, identification was still required of a very large number of minority voters on Election Day.

Many long-time Asian American voters complained that they were improperly required to provide identification. These voters were not required to show ID under HAVA because they were not voting for the first time and had registered before January 1, 2003, the effective date of HAVA's ID provisions.

Voter Complaints About Identification Checks									
In states where ID is not generally required to vote									
	NY	NJ	MA	PA	IL	MI	WA	MD	DC
Required to provide ID to vote	348	68	47	101	79	100	16	33	12
% of total voters surveyed	15%	15%	11%	35%	48%	27%	32%	13%	21%
% ID not required under HAVA	83%	88%	55%	76%	84%	57%	81%	61%	58%

In our survey, 954 voters were required to present identification. The vast majority of them, 78%, were not required to do so under HAVA. AALDEF received complaints and personally observed these improper and sometimes excessive demands for identification in almost every state.

In New York, 83% of voters who were required to show identification were not legally required to do so. At one poll site in Sunnyside, Queens, at least twenty voters complained that they were required to show ID and were offered no explanation as to why ID was required. In Manhattan's Chinatown, one poll worker demanded identification from all Asian American voters waiting in line. In

Brooklyn, three South Asian voters were required to show ID, even though they had registered several years ago and had voted in multiple elections.

In New Jersey, poll workers sought identification from almost seventy Asian American voters even though 88% of them were not required to do so. In one incident in Jersey City, a voter was not only asked for ID but was further challenged about his identity even after complying with the illegal demand for identification.

In Boston, MA, over forty voters said that they were required to present ID. A Chinese interpreter in the South End asked each Chinese-speaking voter for his or her ID. But the other poll workers did not ask non-Chinese voters for their IDs. As a result, only Chinese voters were made to show ID.

In Michigan, one hundred voters surveyed were required to show identification although they were not required to do so under HAVA.

In Maryland, more than thirty voters surveyed in Montgomery County were required to show identification although they were not required to do so under HAVA. One Bangladeshi voter in Rockville complained that poll workers were rude in demanding identification.

In Washington, DC, a dozen voters complained that they were required to show identification although they were not required to do so under HAVA. One of these voters complained that this was because the poll worker simply could not pronounce her last name.

These identification checks were often only required of Asian American or language minority voters. Such demands for identification could discourage voters. Poll workers must be better trained on the legal requirements of voting, and when such demands for identification are intentionally discriminatory, these poll workers must be removed from their posts.

E. Poll Site Confusion

Inadequate notice of poll sites and misdirection to voting booths inside poll sites created much confusion. Voters were often redirected, sometimes wrongly, to other poll sites and were sent back to their original sites.

In our survey, 51 Asian American voters complained of poll site confusion in trying to vote. (This number does not capture voters who did not vote and appeared at poll sites but were told to go elsewhere to vote.) Voters were treated rudely when they asked for directions.

In Philadelphia, one limited English proficient voter in Chinatown never received a voter registration card in the mail and was also told to go to North Philadelphia to vote. The poll worker did not provide her with an address for her correct poll site, and simply told the voter to call "411." The poll worker also denied her the right to cast a provisional ballot and led her out of the poll site. The voter cried in frustration and anger.

In Boston, at one poll site in Dorchester, poll workers were unable to find a voter's name in the voter roll book and told her to visit another poll site. The

voter left without voting, and it seemed that she was so discouraged that she would not go to the other poll site.

In New York, poll workers in Jackson Heights directed a husband and wife to different election districts within the same poll site, even though they live at the same address. In Woodside, poll workers directed a voter to another site, where the voter was then directed back to the original poll site from where she came. The voter concluded that poll workers were "not interested in whether we voted or not."

Voters need better notice of their assigned poll sites. If voters are at the wrong poll sites, they should be allowed to cast provisional ballots and have their votes counted for the races in which they are eligible to vote.

IV. RECOMMENDATIONS

Several steps must be taken to address the barriers faced by Asian American voters. AALDEF's recommendations appear below.

A. National Recommendations

- Congress should expand the language assistance provisions of the Voting Rights Act. It should change the coverage formula under Section 203 to include more jurisdictions in which Asian American populations are growing but not yet large enough to meet the 5% trigger or numerical benchmark of more than 10,000 citizens.
- As recommended by the Carter/Ford National Commission on Federal Election Reform, Congress should amend HAVA to expressly clarify that the process of voting by provisional ballots should also be used as opportunities to correct errors and omissions in voters' registrations.
- The U.S. Department of Justice should continue its vigorous enforcement of Section 203 of the Voting Rights Act for Asian language assistance and increase enforcement of Section 208 to ensure that voters can be assisted by persons of their choice.
- The U.S. Department of Justice should investigate and enforce full compliance with HAVA, including the proper and nondiscriminatory application of identification requirements, the availability of provisional ballots, and the posting of Voter Bill of Rights signs at poll sites.

B. Local Recommendations

- Language assistance should be provided to limited English proficient voters. HAVA provides federal money to provide this assistance, and states should seek such funding to translate voter registration forms, voting instructions, and ballots at poll sites, and provide interpreters and bilingual poll workers at poll sites.
- Poll workers who are rude, hostile, or racially discriminatory toward Asian American and limited English proficient voters, or who deny language assistance, should be reprimanded or removed from their posts.

- Voters whose names cannot be found in lists of registered voters located at poll sites must be given provisional ballots. Local election officials should count the ballots of all these registered voters for all the races in which the voters are eligible to vote even if their ballots were at the wrong poll sites.
- Errors in the registrations of new voters must be corrected so that ballots are not disqualified. If there are some deficiencies in these voters' registrations, provisional ballot envelopes should be used to correct these errors in voter registration databases, as well as the complete omission of voters' registrations in case their applications to register were inadvertently lost or mishandled.
- Poll workers need better training in election procedures and voters' rights, especially on:
 - the requirements for language assistance and the proper use and posting of translated voting materials and signs under Section 203, where applicable;
 - voters' rights to be assisted by persons of their choice, who may also accompany voters inside voting booths under Section 208;
 - proper demands for voter identification checks under HAVA; and
 - proper administration of provisional ballots under HAVA.
- Voters need better notice about their poll sites and confirmation of registration prior to Election Day. For jurisdictions with translated voter registration forms, multilingual notices to voters about their poll sites, as well as any changes, and confirmation of registrations should be sent in appropriate minority languages. The languages can be determined by corresponding the languages in which voters completed their voter registration forms with future election notices.

AALDEF will continue to work with elected officials, policy makers, and election administrators to ensure full compliance with the Voting Rights Act and Help America Vote Act and to guarantee that all Americans can exercise their right to vote.

**Poll Sites Monitored by the Asian American Legal Defense and Education Fund
November 7, 2006**

STATE (total sites) - City/County (total sites)	Neighborhood/City	Number of Sites	Asian Population Targeted
NEW YORK (19) - Manhattan (3) - Queens (14) - Brooklyn (2) - New York City *	Chinatown Flushing Woodside Elmhurst Jackson Heights Richmond Hill Floral Park Jamaica Midwood Kensington Various neighborhoods	3 5 2 1 2 1 2 1 1 1 76	Chinese Pan-Asian Pan-Asian Pan-Asian Pan-Asian Indo-Caribbean Indian Bangladeshi, Filipino Pakistani Bangladeshi Chinese, Korean
NEW JERSEY (7) - Bergen County - Middlesex County - Hudson County	City of Palisades Park City of Fort Lee City of Edison City of Jersey City	2 1 2 2	Korean Korean Indian Indian, Filipino
MASSACHUSETTS (11) - City of Boston - City of Lowell - City of Quincy	Chinatown Mission Hill Dorchester Various neighborhoods * Highlands North Quincy	2 1 2 47 4 2	Chinese Chinese Vietnamese Chinese, Vietnamese Cambodian Chinese
PENNSYLVANIA (2) - City of Philadelphia - Delaware County	Chinatown South Philadelphia Olney University City Upper Darby Township	1 2 1 2 2	Chinese Vietnamese Cambodian Pan-Asian Korean
ILLINOIS (4) - Chicago - Cook County	Albany Park Arlington Heights Mt. Prospect	2 1 1	Korean Korean Korean
MICHIGAN (7) - Wayne County - Washtenaw County	City of Hamtramck City of Dearborn City of Ann Arbor	2 2 3	Bangladeshi, Arab Arab Pan-Asian
VIRGINIA (5) - Arlington County - Fairfax County	Arlington Falls Church Annandale	3 1 1	Pan-Asian Pan-Asian Pan-Asian
WASHINGTON (6) - King County	City of Seattle Bellevue	5 1	Pan-Asian Pan-Asian
MARYLAND (5) - Montgomery County	Rockville Silver Spring	2 3	Pan-Asian Pan-Asian
DISTRICT OF COLUMBIA (1) - Washington, DC	Chinatown	1	Chinese

* AALDEF, along with volunteer attorneys, inspected 123 poll sites specifically for compliance with mandatory language assistance under Voting Rights Act (Section 203 or litigation).

ENDNOTES

- ¹ Reynolds v. Sims, 377 U.S. 533, 561-62 (1964).
- ² Senate Comm. on the Judiciary Report, July 2, 1992, Voting Rights Act Lang. Assist. Amends. of 1992, Report 102-315, Calendar No. 537, 102nd Congress, 2d Session, at 4.
- ³ Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577 (2006).
- ⁴ Voting Rights Act of 1965, Section 203, 42 U.S.C. Sec. 1973aa-1a (amended 2006).
- ⁵ Hearing of the House Subcomm. on the Constitution, House Judiciary Committee, on the Voting Rights Act: Section 203-Bilingual Election Requirements (Part I), 109th Cong. 35-38 (Nov. 8, 2005) (statement of Margaret Fung, Exec. Dir., AALDEF).
- ⁶ 42 U.S.C. Sec. 1973aa-1a (b) (2) (A), as amended by Section 8 of Pub. L. No. 109-246, 120 Stat. 577 (2006).
- ⁷ They are AK- Kodiak Island Borough (Filipino); CA- Alameda Co. (Chinese), Los Angeles Co. (Chinese, Filipino, Japanese, Korean, Vietnamese), Orange Co. (Chinese, Korean, Vietnamese), San Diego Co. (Filipino), San Francisco Co. (Chinese), San Mateo (Chinese), Santa Clara (Chinese, Filipino, Vietnamese), HI- Honolulu Co. (Chinese, Filipino, Japanese), Maui Co. (Filipino); IL- Cook Co. (Chinese); NY- Kings Co. (Chinese), New York Co. (Chinese), Queens Co. (Chinese, Korean); TX- Harris Co. (Texas); and WA- King Co. (Chinese). 67 Fed. Reg. No. 144, 48871-77 (July 26, 2002) (Notices).
- ⁸ Voting Rights Act of 1965, Section 208, 42 U.S.C. Sec. 1973aa-6.
- ⁹ Voting Rights Act of 1965, Section 2, 42 U.S.C. Sec. 1973.
- ¹⁰ United States v. City of Hamtramck, Civ. Action No. 00-73541 (E.D. Mich. 2000); United States v. City of Boston, Civ. Action No. 05-11598 (D. Mass. 2005).
- ¹¹ HAVA Section 302 (a), (b); (a), (b) (2); (b) (2) (2).
- ¹² HAVA Section 301 (a) (5).
- ¹³ HAVA Section 101 (b) (1) (G).
- ¹⁴ Hearing of the House Subcomm. on Civil and Constitutional Rights, House Judiciary Committee, on the Lang. Assist. Provis. of the Voting Rights Act, S. 2236, 102 Cong. Rec. at 12 (Apr. 1, 1992) (statement of Margaret Fung, Exec. Dir., AALDEF); Senate Report 102-315, Calendar No. 537 July 2, 1992, at 12.
- ¹⁵ Hearing of the House Subcomm. on the Constitution, House Judiciary Committee, on the Voting Rights Act: Section 203-Bilingual Election Requirements (Part I), 109th Cong. 35-38 (Nov. 8, 2005) (statement of Margaret Fung, Exec. Dir., AALDEF). Hearing Before the S. Comm. on the Judiciary, on the Voting Rights Act: Continuing Need for Section 203's Provisions for Limited English Proficient Voters, 109th Cong. at 9-11 (June 13, 2006) (statement of Margaret Fung, Exec. Dir., AALDEF); Senate Report 109-669, June 13, 2006, at 9-11.
- ¹⁶ For more detailed information about exit poll findings, see AALDEF, The Asian American Vote 2004: A Report on the Multilingual Exit Poll in the 2004 Presidential Election.
- ¹⁷ Cities and poll sites with large concentrations of Asian American voters were selected based on census data and interviews with local election officials and community leaders. Sites with a history of voting problems were also selected. Among these 172 sites, volunteer attorneys inspected 123 poll sites in New York City and Boston that were specifically targeted for language assistance under the Voting Rights Act.
- ¹⁸ The determination of states was based on the size of the Asian American populations, the interest of local groups to co-sponsor the project, and capacity to mobilize the requisite number of volunteers.
- ¹⁹ The survey questionnaire was written in 7 Asian languages: Chinese, Korean, Bengali, Arabic, Vietnamese, Khmer, and Lao, in addition to English. Volunteers were conversant in 23 Asian languages and dialects.
- ²⁰ Civ. No. 06-CV-913 (S.D.N.Y. 2006).
- ²¹ Civ. Action No. 05-11598 (D. Mass. 2005).
- ²² Civ. No. 06-CV-0263 (N.D.N.Y. 2006).
- ²³ Civ. Action No. 06-4592 (E.D. Pa. 2007).
- ²⁴ Other surveys, including the Census, phrase questions on educational attainment without making distinctions between the education completed abroad and the education acquired in the U.S. The percentages presented in this report reflect educational attainment only in the U.S.
- ²⁵ Limited English proficiency is determined by one's ability to read English less than "very well." U.S. Census Bureau, Census 2000 Summary File 3, Table PCT62D: "Age by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over" (2001); H.R. Rep. No. 102-655, at 7 (1992), as reprinted in 1992 U.S.C.C.A.N. 766, 771.
- ²⁶ Civ. Action No. 06-4592 (E.D. Pa. 2007).
- ²⁷ These problems may have been already been corrected as new versions were recently posted on the Secretary's website. The new forms are currently being proofread for errors.
- ²⁸ U.S. v. City of Hamtramck, (E.D. Mich.) Aug. 2000.

Mr. SCOTT. Thank you.

Mr. NADLER. The gentleman's time is expired. I now recognize the gentleman from North Carolina for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

It is quite apparent that we are not getting many straight answers here. So I am going to try to just close this out with some softball questions since you are not going to answer any hard questions today. It is quite obvious.

I have been sitting here the whole time, and it is always that happened before I got to the Department, or I will take that back to the Department, or I will take that under advisement. But getting a straight answer out of you is about as difficult as it is getting one out of the Secretary of Housing and Urban Development when he comes before the Financial Services Committee.

Can you just give me a 1-minute summary of the arguments on the constitutionality of the Voting Rights Act extension, what position the Department is taking and what position the other side is taking?

Mr. AGARWAL. Sure. The arguments that were raised by the plaintiffs are that the Voting Rights Act as reauthorized in 2006 is no longer congruent and proportional to the harm that it was designed to address, namely, racial discrimination. And the arguments are that there are fewer Section 5 objections interposed today than the recent past than there were in the immediate aftermath of 1965 and the 1982 objections. Our brief and argument focused very—spent a lot of time focusing on the evidence of continued racial discrimination.

Mr. WATT. Okay. That was a pretty direct answer. I appreciate that. Softball question.

Can you tell me how many folks in the last 8 years that you all have been pursuing more aggressively are voter fraud cases? How many people have been found guilty of voter fraud?

Mr. AGARWAL. My understanding from the criminal division is that number is 86.

Mr. WATT. Eighty-six. And so, all of this emphasis that we have placed on keeping people from voting who should not be voting nationwide has yielded 86 cases of voter fraud?

Mr. AGARWAL. That is correct, Congressman. I would add that—

Mr. WATT. That is not a trick question. I am just summarizing what you said. Would it be fair to say that this Department in this Administration has put more emphasis on catching people who might be trying to vote, although they are not qualified to vote, than they put on trying to enhance the ability of people who would really like to vote, who for one reason or another have been prevented from voting?

Mr. AGARWAL. I would disagree with that characterization, Congressman. I think under Attorney General Ashcroft he sought to increase Federal enforcement of all the election laws, both on the civil rights side and on the criminal side.

Mr. WATT. Okay. All right. I guess I would expect you to say that, but I don't think the numbers really support what you are saying. And certainly, the sense in communities around the country is that the Department has been much, much more obsessed with

trying to stop people from voting who are not eligible to vote than they are trying to enhance the ability of people to vote who are eligible to vote, which was the original and historic purpose of the Voting Rights Act.

But I suppose if that is your emphasis, that is your emphasis. And so, we can go on. I am the last person to ask questions here. So we can go on to a more balanced picture of that. But I appreciate you coming and testifying.

Mr. AGARWAL. Thank you, Congressman.

Mr. NADLER. Thank you.

And I thank the witness. That is the conclusion of our questions in panel one. I thank the witness, Mr. Agarwal.

And I would ask that our second panel now join us. To save time, while we are switching panels, I will read the introductions, which I would normally do when everybody has gotten their seats. But I will do it now.

The first witness for our second panel is Gerald Hebert, executive director and director of litigation at the Campaign Legal Center, a nonpartisan organization that focuses on campaign finance and voting rights. For nearly 20 years Mr. Hebert served in many capacities at the Justice Department's voting section, including as acting chief, deputy chief and special litigation counsel.

Mr. Hebert also has his own private practice where he specializes in voting rights and redistricting. Mr. Hebert is an adjunct professor at Georgetown Law School.

Our second witness is Hilary Shelton, director of the Washington Bureau of the NAACP. In that capacity Mr. Shelton advocates for the organization's Federal public policy agenda, including voting rights protection. Prior to his position at the NAACP, Mr. Shelton served in the Government Affairs Department of the United Negro College Fund and the Social Justice Agency of the United Methodist Church.

Our third witness, we hope—I don't see him here. But our third witness is supposed to—is coming, we hope—is Minnesota State Representative Tom Emmer. Mr. Emmer was first elected to that office in 2004 and currently serves as the deputy minority leader in the Minnesota State House.

Our final witness this morning is Lorriane Minnite, assistant professor of political science at Barnard College where she has taught American and urban politics since 2000. Prior to teaching at Barnard, Dr. Minnite served as the associate director for the Center for Urban Research at Columbia University School of International and Public Affairs.

She has also conducted extensive research into issues of equality, social and racial justice, political participation and voting behavior, to name only a few. She is currently working on a book on the politics of electoral rules called, "The Myth of Voter Fraud," which is a subject of some relevance to our hearing today.

Before we begin—and I see all of our witnesses are here—it is customary for the Committee to swear in its witnesses. If you would all please stand and raise your right hands to take the oath.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief?

ALL: I do.

Mr. NADLER. Thank you. Let the record reflect that the witnesses answered in the affirmative. You may be seated.

As a reminder, your written statements will be made part of the record in its entirety. I would ask that each of you now summarize your testimony in 5 minutes or less. To help you stay within that time, there is a timing light at your table. When 1 minute remains, the light will switch from green to yellow and then to red when the 5 minutes are up.

Our first witness is Mr. Hebert.

**TESTIMONY OF J. GERALD HEBERT, EXECUTIVE DIRECTOR
AND DIRECTOR OF LITIGATION, CAMPAIGN LEGAL CENTER**

Mr. HEBERT. Thank you, Mr. Chairman, for the opportunity to testify this morning.

Mr. Franks, Ranking Member, good morning to you as well.

I am going to talk about two issues in particular today. The first is vote caging and how it has been used to suppress minority votes. And second I am going to talk about the Justice Department—

Mr. NADLER. Yes, would you turn your microphone on or speak into it, one or the other?

Mr. HEBERT. And second I am going to talk about the Justice Department's failure to enforce many of the provisions, not only of the Voting Rights Act, but other Federal statutes that should be designed to protect the right to vote.

Mr. NADLER. That is better.

Mr. HEBERT. Vote caging in this context involves sending out non-forwardable or registered mail to targeted groups of voters and compiling caging lists of voters for those whose mail is unable to be delivered. And although the NVRA prohibits election officials from cancelling voter registration merely because a piece of mail has been returned, political operatives, primarily in the GOP, have used these types of tactics and lists called caging lists for many years.

They have been enjoined time and time again by Federal courts in caging operations that have challenged thousands of minority and urban voters nationwide on the basis of returned mail. To bring these types of schemes to an end will require vigorous prosecution by the Justice Department. But this Justice Department's priorities have shifted over the years. And I ought to know because I spent 21 years there, and I was the acting chief of the voting rights section for a number of them.

The current Administration has not only ignored voting caging schemes, but has actively worked—as I think the Chairman pointed out—in Ohio to actually give vote caging schemes a boost in the Federal courts by actually defending them in Ohio. Now, I know that I have limited time today, so I am going to talk in particular about a couple of things I think Mr. Watt and perhaps Mr. Scott and Mr. Ellison asked questions about, what the Justice Department has done in trying to get a straight answer about are there any voting caging schemes under investigation right now.

And, you know, Mr. Agarwal's testimony this morning is that he wasn't aware, as I recall, what he said of a single instance or an investigation even being conducted. So how could they even pos-

sibly know at the Justice Department if there has been any illegality in these voting schemes if they haven't done any investigations of them? I mean, that is just basic law enforcement 101.

With regard to vote caging schemes, I personally have written letters to the Justice Department bringing to their attention instances in which minority voters have been targeted by political operatives. And we don't know who. They could be Democrats. They could be Republicans.

But Black voters in Dallas, TX, in 2006 after Mr. Agarwal joined the Justice Department received a letter that said, "If you were registered by ACORN, they are a fraudulent organization. And if you try to vote, you will be prosecuted and arrested at the poll." The Justice Department hasn't even investigated that matter, even though it was brought to their attention.

And there are other examples that I could get to along those same lines. And to suggest that the Justice Department didn't know about the Tim Griffin vote caging scheme—they must have had their head in the sand because everybody knew about that. It was reported on the BBC years ago. And there is a book out about it. So it is just incredulous for somebody to assert that.

With regard to the Department's enforcement of basic laws that are supposed to expand the right to vote, look at the NVRA. The NVRA motor voter bill was enacted primarily to get more people, to make it easier for people to register to vote. Its primary purpose wasn't to purge voting lists.

But what the Department of Justice has done—and Mr. Agarwal again says, "Since 2006 we have filed five cases to enforce the NRVA." Well, four of them have been to purge people, and one of them have been to increase voter registration for people who are receiving public benefits. And that actually takes the law and turns it on its head.

The final thing I would like to say is that the issue of voter I.D. Now, I filed an amicus brief in the Indiana case attacking the voter I.D. on behalf of 29 scholars and historians across the country who said that basically a lot of good government reforms, which is what I think a voter I.D. bill is—and by the way, let us just call it like it is. The Justice Department was not asked to file a brief in the Indiana voter I.D. case. The most divisive issue of our time in the area of voting rights right now is voter I.D. And the Bush administration politically jumped into that case.

Sure, they have an interest in Federal voting rights. But they didn't have to do it. And they certainly could have presented a more balanced argument for it.

But the fact is—and I will close with this—you have a better chance of being struck by lightning than you do finding a person impersonating another at the poll. And a photo I.D. isn't going to correct that one bit. You talk to any law enforcement officer, and they will tell you the technology is out there to make fake I.D.s as easy as the real ones.

Thank you, Mr. Chairman. And I will look forward to any questions that come later.

[The prepared statement of Mr. Hebert follows:]

PREPARED STATEMENT OF J. GERALD HEBERT

TESTIMONY OF

J. GERALD HEBERT

EXECUTIVE DIRECTOR AND DIRECTOR OF LITIGATION

CAMPAIGN LEGAL CENTER

BEFORE THE

HOUSE JUDICIARY COMMITTEE'S

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS
AND CIVIL LIBERTIES

February 8, 2008

Thank you, Mr. Chairman, for the opportunity to testify this morning before this Subcommittee on the important issue of vote suppression.

My name is J. Gerald Hebert. I am the Executive Director and Director of Litigation at the Campaign Legal Center in Washington, DC. From 1973 to 1994, I served as an attorney in the Civil Rights Division of the Justice Department, with 15 of those years in Voting Section, where I served in a number of supervisory capacities, including Acting Chief and Deputy Chief for Litigation. I am here today to talk about two issues in particular. First, vote caging and how it has been used to suppress minority votes; and second, steps that can be taken now to ensure that the U.S. Department of Justice avoids using its law enforcement machinery to advance partisan goals, as it did in 2004 and 2006.

Vote Caging: The Vote Suppression Weapon Of Choice In 2004

Conspiracies to stop African-American and Latino voters from exercising their constitutional right to vote aren't new – and neither is vote caging. The Republican National Committee has been under a federal consent decree not to engage in the practice since getting caught caging votes on a massive scale in the 1981 gubernatorial election in New Jersey. Despite the injunction, which remains in effect, vote caging schemes continue to be used as an integral part of an ongoing campaign to suppress minority voting rights.¹

Vote Caging, in this context, involves sending out non-forwardable or registered mail to targeted groups of voters and compiling “caging lists” of voters whose mail is

¹ In Attachment A to this written statement, I have set forth a list of vote caging activities over the past three decades.

returned for any reason. Although the National Voter Registration Act (NVRA) prohibits election officials from canceling the registration of voters merely because a single piece of mail has been returned, Republican operatives have used the lists for many years in caging operations to challenge the voting rights of thousands of minority and urban voters nationwide on the basis of the returned mail alone.

With these lists in hand, operatives use the media for aggressive campaigns to create the illusion that the returned mail is evidence of mass voter fraud. In fact, mail can be returned for many reasons having nothing to do with fraud. They then use these caging lists to challenge the voting eligibility of thousands of African Americans and Democrats.

To bring these schemes to an end will require vigorous prosecution by the United States Department of Justice. But the Justice Department's priorities have shifted over the years, with the Department under the current Administration not only ignoring vote caging schemes, but actively working to give them a boost in the courts.

Contrast, for example, the Department of Justice's efforts in 1990 in North Carolina under President George H.W. Bush to the current Bush Justice Department's actions in the 2004 election cycle in Ohio. In 1990, the North Carolina Republican Party and the Jesse Helms for Senate campaign engaged in vote caging by sending 44,000 postcards to black voters, giving them incorrect information about voting and threatening them with criminal prosecution. The plan was designed to intimidate and threaten black voters, and the postcards that came back as undeliverable could easily have been used to compile a caging list. Fortunately, the scheme was uncovered just prior to the election as DOJ took swift action, sending the FBI out immediately to investigate. Even though the

perpetrators of this vote suppression scheme were exposed before the election, DOJ went ahead with a post election prosecution. The Bush I Justice Department, where I served at the time as a federal prosecutor of voting discrimination cases, filed a federal lawsuit against the GOP and Helms' campaign and obtained declaratory and injunctive relief in the form of a consent judgment and decree.

Contrast the aggressive nonpartisan law enforcement action in North Carolina with what the current Bush Justice Department did about such voter suppression efforts in Ohio in 2004. That year, when the Ohio Republican Party was sued by voters prior to the election to stop what appeared to be a similar vote caging scheme in progress, the Bush II Justice Department took immediate action. But they did not file a lawsuit to protect voting rights and stop the vote caging. Instead, led by now highly controversial attorneys Hans von Spakovsky and Brad Schlozman, DOJ intervened in a highly unusual manner, coming to the defense of the Ohio GOP's efforts and by writing a letter to the federal judge overseeing the case and coming to the defense of the Ohio's GOP efforts. The federal judge appears to have ignored the letter, which was totally unsolicited and contrary to the Department's tradition of avoiding intervention in pre-election litigation.

It's one more example of how, under this Administration, with the likes of Hans von Spakovsky and Brad Schlozman calling the shots, the Justice Department's law enforcement program became overtly political. Even worse, this politicization perverted its mission of defending the right to vote.²

² Most disturbing has been the brazen insertion of partisan politics into the decision-making under Section 5 of the Voting Rights Act. Section 5 decisions in the Mississippi and Texas redistricting matters in 2002 and 2003 and the Georgia voter id matter in 2005 were made for clear partisan political reasons over the strong recommendations of career staff. The Georgia matter is especially illustrative of the serious problems in the Division. The decision was made only one day after the near unanimous recommendation by staff to object. After the Georgia decision, a decades old procedure by which career Section 5 staff made written recommendations about whether to object or not to a Section 5 submission was ordered to be ended.

It is disturbing to note that most of the Department of Justice's litigation efforts in 2004 were undertaken for political purposes. For example, shortly before the Presidential election in November 2004, the DOJ's Civil Rights Division filed a series of briefs as *amicus curiae* in three cases addressing a contentious political issue raising legal questions about the provisional ballot provisions of the Help America Vote Act (HAVA). In each case, the brief supported the position of the Republican Party on this issue. Career attorneys in the voting section of DOJ's Civil Rights Division were not informed of these briefs until shortly before filing and had no input into them. The government's participation in these cases was not necessary or required. These filings were of significant concern to career attorneys because inserting the Justice Department unnecessarily into such a sensitive partisan political issue on the eve of a national election was unprecedented and sent a clear political message. Historically, the Department has resisted efforts to draw it into partisan battles on the eve of an election; but under this Administration, that policy changed.

The new Attorney General has quite a task on his hands, because what we have seen in recent years has been unprecedented: the resources of the federal government being used to thwart and attack the voting rights of Americans, and doing so to advance partisan goals.

Vote Caging In Other Battleground States

Ohio was not the only place where the GOP attempted to use vote caging in 2004. There is evidence that caging lists were assembled in Florida, Ohio, and Pennsylvania during the 2004 elections, possibly intended as the basis for massive voter eligibility

All four career staff who recommended an objection to Georgia voter id law have been removed or left the Department. In the end, the priority, indeed obsession, of this Administration was not to protect the rights of American voters but with the politically charged pursuit of chasing the ghosts of voter fraud.

challenges. The Florida incident made headlines again last year during Congress's investigation into the firing of several U.S. Attorneys, when allegations resurfaced that Tim Griffin, the former RNC opposition researcher then serving as an interim U.S. Attorney in Arkansas, had been involved in an effort to cage voters in Jacksonville.

In Ohio, Florida, Wisconsin, Pennsylvania, and Nevada – all battleground states with significant minority populations living in urban communities – vote caging was the voter suppression method of choice for Republicans in 2004. Despite the sworn declaration of Deputy RNC Chair Maria Cino that the RNC has not "been involved in any efforts to suppress voter turnout," e-mails circulated among top RNC and Bush-Cheney campaign officials suggest otherwise. A document for use by state GOP officials in developing campaign plans worked on by Bush-Cheney campaign lawyer Christopher Guith provides a template of plans for vote caging. An e-mail from Guith declares "we can do this in NV, FL, PA, and NM because we have a list to run," referring to a plan to challenge absentee ballots using a caging list. Terry Nelson, Political Director of the 2004 Bush/Cheney campaign, was included on the e-mail.³

In June 2007, Senators Whitehouse and Kennedy called for a Justice Department investigation into allegations that Griffin and others at the RNC may have engaged in caging during the 2004 elections. To my knowledge, DOJ has failed to respond to these inquiries. Even more troubling, DOJ does not appear to have undertaken a single prosecution, or even an investigation, of any of the 2004 vote caging schemes. One would think that the best antidote for stopping future vote caging schemes would be

³ These emails and documents are available at:
<http://i172.photobucket.com/albums/w31/drational/Cino2.jpg>,
and <http://www.epluribusmedia.org/features/2007/images/Allstates.jpg>, and
<http://www.epluribusmedia.org/features/2007/documents/State%20Implementation%20Template%20III.doc>.

vigorous prosecution of those who perpetrated them in 2004. Unfortunately, DOJ has shown a real penchant for prosecuting the few individual cases of vote fraud rather than dealing with more widespread abuses and intimidation that have occurred during the last few election cycles. One has to ask this Administration's Justice Department: why aren't the votes of African Americans, Latinos, the poor and the elderly worth the same amount of protection from DOJ that the vote of white Republicans has been?

Pending Vote Caging Legislation

Legislation was recently introduced by Chairman Conyers of this Committee that would make vote suppression through vote caging illegal. The bill, entitled "The Caging Prohibition Act of 2007" provides that the right to register to vote or vote shall not be denied by election officials if the denial is based on voter caging and other questionable challenges not corroborated by independent evidence. The bill would also prohibit persons other than election officials from challenging a voter's eligibility based on voter caging and other questionable challenges.

I have seen first hand that voters, particularly the poor and the elderly, can be easily intimidated when someone challenges their right to vote. It can have the effect of discouraging that voter from casting a ballot or returning to vote again in the next election. And of course, that's precisely the aim of those who engage in vote caging. So I am pleased to see that Chairman Conyers' legislation would require that if a voter is being challenged by someone other than an election official, the challenger must have personal, first-hand knowledge in order to make a challenge.

Perhaps most importantly, Chairman Conyers' bill takes vote caging and deals with that pernicious practice in a way that will severely punish those who target certain

groups for disfranchisement. Thus, the Conyers' bill designates vote caging and other questionable challenges intended to disqualify eligible voters as felonies, crimes eligible for fines up to \$250,000, five years imprisonment, or both.

Similarly, under a Senate bill introduced last fall by U.S. Senator Sheldon Whitehouse (D-R.I.) and 12 other senators, legislation was introduced aimed at preventing the long-recognized voter suppression tactic known as "voter caging." Challenging a person's right to vote because a letter sent to him or her was returned as undeliverable would be illegal under the bill.

Senator Whitehouse's "Caging Prohibition Act" would prohibit challenges to a person's eligibility to register to vote, or cast a vote, based solely on returned mail or a caging list. The bill would also mandate that anyone who challenges the right of another citizen to vote must set forth the specific grounds for their alleged ineligibility, under penalty of perjury.

Vote Caging Schemes Involve The Intentional Suppression of Voting Rights

Because vote caging is targeted to racial and ethnic minorities, those who perpetrate these caging schemes know full well the racially discriminatory nature of their efforts. That's why they make every effort to cover their tracks and distance themselves from the vote suppression schemes they unleash. Thus, in another e-mail chain involving the vote caging in Ohio in 2004 later enjoined by a federal judge, Bush-Cheney lawyer Guith, Tim Griffin, and others discussed "the risk of having GOP fingerprints" on the vote caging lists. Clearly, they did not want the public to know the party was targeting black voters with the goal of trying to knock them off the voter rolls and intimidate them into not voting.

As we enter another hotly-contested, high stakes election cycle, there is reason to believe vote caging will once again be used illegally to suppress the black vote or the vote of other minority voters, especially Latinos, for partisan gain. The recommendations of the Conyers report from last year on how to stop vote caging have yet to be heeded. The RNC has shown that federal consent decrees are inadequate to stop vote caging from again and again rearing its ugly head.

A legislative fix is clearly needed, but what is also needed is aggressive enforcement by DOJ. Not only has this Administration been remiss at enforcement, DOJ officials took positions in 2004 that actually supported the vote cagers and the vote suppressors.

**DOJ Officials Who Supported Vote Suppression Schemes
Have Not Been Held Accountable**

Unfortunately, those at the DOJ who failed to stop – and in some cases actually supported – the voter suppression efforts in 2004 through vote caging and other schemes have not been held accountable. None has even been reprimanded for their abuses.

Instead, they've been rewarded with promotions for their partisan misdeeds. Alex Acosta, the Assistant Attorney General who, along with Hans von Spakovsky and Brad Schlozman, was responsible for sending the letter to the Ohio federal judge in defense of the vote caging scheme there, was appointed in May 2005 to the post of U.S. Attorney for the Southern District of Florida – a past and possibly future site for voting rights controversies. And the DOJ political appointee who likely drafted the letter to the Ohio federal court in support of the 2004 vote caging scheme, Hans von Spakovsky, has been

nominated for the Federal Election Commission, the agency charged with overseeing the fair administration of our election laws.⁴

With the stakes in the upcoming 2008 elections being so high, both major political parties have once again directed their efforts at combating alleged voter fraud (the GOP) and fighting alleged vote suppression schemes (the Democrats). Given the politicization of the DOJ, it is highly unlikely that we will see efforts to stop vote caging among the enforcement priorities of the Civil Rights Division. That's unfortunate, because it means that once again the burden to put an end to these tactics will fall on private litigants.

Congress can and should do something: for one, hearings should be held promptly on Conyers' bill that would criminalize racially discriminatory vote caging schemes. Party officials should be brought in and asked about past vote caging schemes. And they should be queried also about ongoing or planned vote caging operations this year. Such hearings might have a chilling effect on those who were otherwise planning a new round of vote caging activities aimed at minority voters. That would be a good outcome.

Caging voters will continue to be an issue unless Congress enacts legislation making it clear what constitutes illegal vote caging, and prescribes severe penalties for those who unfairly target voters using that technique. Failure to do so will only encourage continued vote suppression and voter intimidation efforts in 2008 through vote caging and other methods, and this will likely suppress the voting rights of minorities, active military serving overseas, and students registered at a parent's address.

⁴ Fortunately, the von Spakovsky nomination stalled once Senators learned the details of his DOJ partisan shenanigans and other misdeeds.

Is DOJ Still Steeped in Politics?

Some of the details of actions by some in the Bush Administration to politicize the Justice Department's law enforcement efforts are now well known, due in large measure to Senate and House Judiciary hearings held last year. Those hearings should continue in the year ahead for a couple of reasons.

First, we have yet to learn fully about misconduct and possible crimes committed by DOJ officials and White House personnel during this period. Second, the current election cycle presents yet another opportunity for DOJ partisans to use law enforcement machinery to affect the outcome of this year's elections. So there is some urgency to get to the bottom of all this and ensure that the problem is corrected going forward.

Now some will claim that the purging of a number of appointees and appointee hires last year has eliminated all the concerns about partisanship at DOJ and there is no longer a need to worry. After all, Alberto Gonzales, Karl Rove, Harriet Miers, Monica Goodling, Kyle Sampson, Brad Schlozman, and Hans von Spakovsky have all left Government. Presumably, they no longer pose a threat. But the politicization of DOJ runs both broad and deep. As a former DOJ prosecutor, I know it will take more than a new Attorney General and the resignations of a few bad apples to restore DOJ's integrity, credibility, and reputation for evenhanded, nonpartisan law enforcement. What can or should happen?

Hearings such as this are a good occasion to call DOJ officials before the Committee and determine the steps that they are taking this year to ensure that the Justice Department will not use its vast law enforcement resources to play politics again this year. If the answer is that nothing has changed from 2004, then that's a source for great

concern. That seems particularly important not only because it is an election year, but because DOJ has been investigating itself over this matter for many months now and has yet to tell Congress what it found and or even when the investigation will finish. There is also reason to wonder if the Inspector General at DOJ or the Office of Professional Responsibility will be blocked from obtaining all of the facts. Recall that in 2006 the Justice Department's Office of Professional Responsibility was foiled in its efforts to investigate the Bush Administration's domestic eavesdropping program when investigators were denied security clearances to do their work. This points up the need for continued oversight hearings.

For those who wonder why many of us remain concerned about politicization at DOJ, let me give you some recent examples of DOJ actions that suggest partisan politics continues to drive litigation decisions at DOJ. Consider the Indiana voter ID case heard last month by the Supreme Court. The case is steeped in politics, with Democrats claiming the law was enacted by Republicans to deprive certain voters of the right to vote. And who are those certain voters? In the words of the only Democratically-appointed federal judge to rule on the Indiana voter ID law, those voters "skew Democratic." The Indiana voter ID law challenged in the case was voted into law by a Republican-controlled Legislature and signed into law by a Republican Governor. Not a single Democratic legislator supported it.

The issue of voter ID is seen today as one of the most politically polarizing issues in the election law arena. Indeed, in the handful of states that have enacted voter ID laws since the infamous *Bush v. Gore* decision, all have been states where Republicans control the Legislature and have been enacted largely along party lines. In Texas last year, where

Republicans control the Legislature, a voter ID law only lost because one Democratic state senator, Senator Mario Gallegos, literally risked his life (he had undergone a liver transplant) and defied his doctor's orders to return home, instead staying on the senate floor in a hospital bed to help block a vote on the measure.

Given the politically polarizing issue of voter ID laws, I find it troubling that DOJ made a decision to participate in the Indiana case before the Supreme Court. But DOJ not only filed a brief in the case, they asked to participate in oral argument and even had their 'top gun', Solicitor General Paul Clement, present the argument. It also struck me as unusual that among the signatories to the Government's brief in the case, there were no career attorneys from the Division's Appellate Section listed. That is a procedural departure from the norm (particularly when an attorney from the Voting Section is listed on the brief as was the case here), and it suggests to me that an attorney in the Appellate Section likely asked to have her/his name left off the brief. It is clear to me and several other former DOJ attorneys that the current Solicitor General's office will essentially serve as the de facto legal counsel to the GOP in any election law case that reaches the Supreme Court and has partisan implications.

If Attorney General Mukasey is going to do more than give mere lip service to his confirmation hearing promise to eliminate partisanship from DOJ decisionmaking, then fully disclosing the results of the ongoing investigations to the public, particularly about partisan misdeeds in 2004, would be a good place to start. And announcing that the Justice Department would stay out of pre-election partisan litigation skirmishes would be another positive step, unless the Department's participation is necessary to protect minority voting rights.

Attorney General Mukasey also needs to establish a timetable for the completion of the current investigations, so they don't disappear into the black hole at Justice where so many other public corruption investigations have fallen. Remember Tom DeLay and his involvement with convicted felon Jack Abramoff? Even with Abramoff singing to federal prosecutors for months, it doesn't appear DOJ is any closer to prosecuting DeLay or any other Members of Congress than they were a year ago.

What is happening at DOJ? Public corruption cases are seen by the public, correctly in my view, as indicators of whether DOJ is going to enforce the law wherever the evidence leads. It's the one area where the Attorney General, by pursuing cases vigorously, can be most influential in restoring integrity to Justice. And in that same vein, Mr. Mukasey needs to give priority to matters where the actions of Departmental attorneys suggest partisan bias, as we have seen in 2004 when officials were guided by partisan concerns rather than evenhanded law enforcement goals.

Attorney General Mukasey should also take action in light of what was learned about the firings of the U.S. Attorneys last year. You may recall, for example, that in one case, former U.S. attorney in New Mexico, received a pre-election call from U.S. Senator Pete Domenici about a pending investigation and if indictments were imminent. Iglesias testified that indictments were not imminent to which Domenici replied, I'm very sorry to hear that" Iglesias told the Senate he felt "pressured" and "leaned on by the unprecedented" call. He also reported that Congresswoman Heather Wilson called him two weeks earlier to ask about sealed indictments in an ongoing public corruption probe. Both Domenici and Wilson admitted to making the calls. Wilson was involved in a tight re-election race at the time against former state Attorney General Patricia Madrid.

Iglesias perceived the calls from these two Members as an attempt to influence him to “speed up” the indictments and the publicity over them that would surely ensue, in an attempt to sway the election in Wilson’s favor. (Wilson ended up winning by around 900 votes.)

What is most interesting to me about this whole episode is that these Members saw no wrongdoing in contacting a federal prosecutor about a pending public corruption investigation and putting pressure on him to speed up or unseal indictments. The reason for this is that, by 2006, the politicization of DOJ had taken root and the Department was widely known as a haven for partisan law enforcement. Thus, members like Wilson and Domenici (neither of whom have been prosecuted or reprimanded, as far as I know) felt no compunction about contacting a federal prosecutor in such circumstances.

Here again, this is an area where Attorney General Mukasey can take reform measures. He could inform all federal prosecutors that in the pre-election period, say sixty days before an election, all contacts with the Department of Justice from members of Congress must go through the Department’s Office of Legislative Affairs. It should be Departmental policy that DOJ attorneys may not discuss any ongoing federal investigation or possible investigation with any Member of Congress during this time. (To me, it is highly doubtful that direct contact between a member of Congress and a U.S. Attorney about a pending case is ever appropriate).

Also, if existing House rules do not make clear that contact with a federal investigator or prosecutor is forbidden in any pending investigation or case, then the Rules should be amended in clear and unambiguous language. After all, House rules already make clear that Members may not engage in ex parte – or “off the record” –

conversations with agency officials on matters under formal consideration. The need to guard against political interference is even greater in ongoing criminal matters, especially those involving public corruption.

If we don't see action by the Attorney General or the Justice Department soon in these areas, then there will be little reason to believe that much has changed at Justice since 2004. More importantly for those of us in the election law field, it does not bode well for the election year decisions that will soon be made at DOJ.

Conclusion

Since its creation in 1957, the Civil Rights Division has been the primary guardian for protecting our citizens against illegal racial, ethnic, religious and gender discrimination. Through both Republican and Democratic Administrations, the Division developed a well-earned reputation for expertise and professionalism in its civil rights enforcement efforts. Partisan politics was rarely, if ever, injected into decision-making, in large measure because decisions usually arose from career staff and were normally respected by political appointees. The career staff played a central role in recommending new career hires and those recommendations were almost always respected. Unfortunately, since this administration took office, that professionalism and non-partisan commitment to the historic mission of the Division has been replaced by unprecedented, political decision making. The result is that the essential work of the Division to protect the civil rights of all Americans is not getting done.

This Committee is right to try and shine a light on the vote suppression schemes that have infected our elections. And it is right to attempt to legislate in this area, to ensure that voters are not intimidated and prevented from voting.

If we are going to try and spread democracy throughout the world, we should first make sure that we correct our own election inadequacies here at home. Vote suppression and racially targeted vote caging schemes threaten the integrity of our elections and undermine our democracy. They have no place in a just society. I look forward to working with Members of the Committee to put an end to this abhorrent practice.

Thank you again for the opportunity to testify before the Committee.

Attachment A

Vote Caging Activities in the 1980's:

New Jersey 1981

The notorious 1981 New Jersey gubernatorial election between Republican Tom Kean and Democrat Jim Florio provided a window into voter intimidation and suppression techniques, vote caging in particular. The Republican National Committee used vote caging to compile a list of more than 45,000 voters, mostly Black and Latino, to challenge at the polls. Republican "ballot security" teams hired armed guards with armbands to police polling places.

Kean won by less than 2,000 voters, but only after an almost month-long recount. Both state and county prosecutors launched investigations into voter intimidation. A federal court eventually entered a consent decree that prohibited the RNC from engaging in vote caging.

Louisiana 1986

In the 1986 election, the RNC used vote caging to compile a list of 31,000 voters, mostly black, that it attempted to have thrown off the voter rolls. At the time, Kris Wolfe, the Republican National Committee Midwest political director, wrote Lanny Griffith, the committee's Southern political director, "I know this is really important to you. I would guess this program would eliminate at least 60,000 to 80,000 folks from the rolls. If this is a close race, which I assume it is, this could keep the black vote down considerably." Following this caging scandal, both parties agreed to amend the original 1982 consent decree to require that the RNC would submit to the court any ballot security plan for approval.

The 1990's: Vote Suppression Through Caging Continues

North Carolina 1990

In October of 1990, when the black Democratic candidate for U.S. Senate, Harvey Gantt, was leading incumbent Jesse Helms in the polls, the Helms for Senate Committee and the North Carolina Republican Party developed a vote caging scheme. As described above, according to a lawsuit brought by the Bush I Justice Department, on October 29, 2004, at least 44,000 postcards were sent, without a disclaimer that they were paid for by a political party, exclusively to black voters in North Carolina. The postcards served two purposes; first, they were intended to directly intimidate and threaten black voters and to give them false information about voting; second, and more insidiously, the undelivered postcards would be used to create a caging list of black voters with the intent of challenging them at the polls. According to the suit, "This effort was terminated shortly before the election and subsequent to the initiation of an investigation ... by the United States Department of Justice." Later a consent decree was entered against defendants that allowed the court oversight until 1996.

The 2004 Elections: Vote Caging Suppression At Full Bore

Florida 2004

The 2000 election in Florida raised the stakes and also showed the effectiveness of disenfranchising black voters in a close election. Both parties trained their sights on the state again in 2004 and vote caging became an integral part of the Republican Party plan in the Sunshine State.

In the late summer and fall of 2004, the Republican National Committee developed a caging list of voters in predominantly black areas of Jacksonville, Florida. The scheme came to light when Tim Griffin, then the Research Director and Deputy Communications Director for the RNC, mistakenly sent an e-mail with the subject line “caging” to an e-mail address at georgewbush.org, a political parody website whose operators sent it to the press. Griffin had meant to send the list to a Republican operative with an e-mail address at georgewbush.com, the official Bush campaign e-mail suffix. Griffin’s e-mail contained an Excel spreadsheet “Caging-1.xls” containing the names of 1,886 Florida voters, mostly black, including the names of black soldiers deployed abroad.

As the BBC reported, “An elections supervisor in Tallahassee, when shown the list, told Newsnight: ‘The only possible reason why they would keep such a thing is to challenge voters on Election Day.’” A recent analysis of the names on the caging list showed that the Jacksonville caging preferentially selected blacks and excluded whites. Griffin was later appointed an interim U.S. Attorney in Arkansas. The White House refused to submit him to the Senate for confirmation out of concerns over his involvement in vote caging, as Monica Goodling verified in her testimony before the Senate Judiciary Committee.

Nevada 2004

In Clark County Nevada, the former state Republican Party executive director, Dan Burdish, attempted to cage 17,000 voters weeks prior to the 2004 election. The voters had been put on an “inactive” list when mail sent to their addresses was returned. The *Las Vegas Review Journal* reported, “Burdish said he only targeted Democratic voters because ‘I’m a partisan Republican, I admit it.’”

Local election administrators objected to the challenge, including Registrar of Voters Larry Lomax. As reported by the *Review Journal*, “Lomax said he can see no legitimate reason why Burdish would challenge _ the voters. ‘The law already tells us what to do with inactive voters,’ Lomax said. ‘The law provides a remedy for these people, and I’d guess that the only point in a challenge _ would be an attempt to intimidate voters.’”

Ohio 2004

More so than Florida, Ohio was ground zero for the hotly contested 2004 election – and also a hotbed of voter intimidation. The Ohio Republican Party developed a caging scheme and identified 35,000 newly registered voters in urban areas, mostly black, who either refused to sign for letters from the Republican party or whose letters came back undeliverable. An attorney for the Ohio Republican Party even admitted that the plan was to use the returned letters from minority neighborhoods to challenge voters.

Prior to Election Day, when the caging list would be used to challenge voters at the polls, the caging scheme was challenged in court on two fronts. In New Jersey, voters

filed suit against the RNC for violating the 1982 consent decree. The RNC argued that the consent decree only applied to it, not the Ohio Republican Party, which planned to supply the challengers, and therefore was inapplicable to the Ohio election. The federal court rejected that argument, and, on Nov. 1, 2004, ordered Republicans in Ohio not to proceed with the caging scheme on Election Day.

Meanwhile, in Ohio, voters filed suit to challenge the Ohio law permitting political parties to post challengers in polling places on Election Day – challengers armed with caging lists.

While the court battles were playing out in New Jersey and Ohio in the days and hours leading up to the 2004 election, with the rights of minority voters hanging in the balance, did the Department of Justice step in to enforce the Voting Rights Act? Unsurprisingly for anyone who's followed the ongoing scandal over the politicization of the Civil Rights Division, the answer is "of course not." Perversely, the Justice Department sent a letter to the Ohio federal judge overseeing the lawsuit to tell her that the challenge statute that was to be used as part of the vote caging scheme was perfectly fine.

Assistant Attorney General Alex Acosta's Oct. 29, 2004 letter to District Judge Susan Dlott was unusual not just in that it attempted to offer legal cover for the same practices that 12 years earlier DOJ had sued to stop, but also because it was nearly unprecedented for DOJ to intervene in an election eve case in which it had not previously participated, its involvement was unsolicited, and it was not a party. (Acosta's letter was sent just a few days after then-U.S. Attorney Bradley Scholzman filed the now-infamous indictments against the four ACORN workers in Missouri.)

Judge Dlott refused to heed the advice of the Assistant Attorney General, found that permitting the challenges would have a racially discriminatory impact, and issued an order enjoining the Republican Party from placing challengers at the polls. In the end, the caging scheme was stymied. (For a thorough discussion of other voter intimidation techniques that succeeded, see *Preserving Democracy: What Went Wrong in Ohio*, Status Report of the House Judiciary Committee Democratic Staff, January 5, 2005 [a.k.a. "the Conyers Report"].)

Pennsylvania 2004

The Pennsylvania GOP targeted for caging only voters in Philadelphia, which is approximately 45% black, according to Census data. Voters in other parts of the state, which is 85% white, were not caged.

The party compiled a caging list of 10,000 returns from a Republican mailing purporting to welcome new registrants in Philadelphia to the political process, and then announced plans to challenge those 10,000 voters on Election Day. The Republican speaker of the state House admitted the campaign tactics were intended to "keep down" the vote in Philadelphia.

As *The Inquirer* reported, "State Republicans released additional details yesterday from their list of 10,000 letters to Philadelphia voters that they said were returned as undeliverable. They said they would use this list to challenge voters at the polls today - a type of challenge similar to one that federal judges have barred Republicans from using today in Ohio." [25]

According to the *Bucks County Courier Times*: "Election officials and other observers, however, say the 7.6 percent rate of returned letters isn't surprising in a large city with many transient, low-income neighborhoods. 'This is a mobile population,' said Randall Miller, who teaches a course on elections at St. Joseph's University. 'Some people are living in places where they don't really have addresses, [such as] shelters. They have every right to vote.'" When the media asked the GOP for the list, the party initially refused but later provided just six names and addresses.

Wisconsin 2004

The Wisconsin Republican Party announced the Saturday before the 2004 election plans to challenge 37,180 voters on a caging list developed by the party. The Wisconsin GOP targeted for caging only voters in Milwaukee, which is approximately 40% black and 55% minority (black and Hispanic), according to Census data. Voters in all other parts of the state, which is 91% white, were not caged.

In this caging scheme, the party used a commercial software program to compare addresses on voter registration cards to a postal service database of known addresses, and then announced plans to challenge 37,180 voters at the polls whose addresses, the party claimed, didn't match.

The non-partisan City Attorney called the plan "outrageous." It was. Of the caged list, 13,300 of the addresses simply listed incorrect apartment numbers. Some 18,200 more cases stemmed from the lack of an apartment number for a resident of an existing building.

Of the remaining 5,000 or so addresses, the City Attorney's office found hundreds actually did exist, and many of the other non-matches were likely due to clerical errors. Had the plan been allowed to go forward, thousands of legally-registered, apartment-dwelling black voters would have been challenged because of a clerical error involving apartment numbers. The attempt was stopped by the City Attorney and Election Commission.

Mr. NADLER. Thank you.
Mr. Shelton is recognized for 5 minutes.

**TESTIMONY OF HILARY SHELTON, DIRECTOR,
WASHINGTON BUREAU OF THE NAACP**

Mr. SHELTON. Thank you very much, Mr. Chairman. And good morning. As you mentioned, my name is Hilary Shelton. And I am director of the NAACP's Washington bureau. The NAACP currently has more than 2,200 membership units with members in every State across the union.

I would like to begin by thanking the Chairman, Chairman Conyers, many other Members of the Committee for holding this hearing today. The right to vote is clearly the cornerstone of our Nation's democracy.

Throughout our Nation the NAACP and countless Americans have fought and died to protect the right of people across the globe to cast a free and unfettered ballot and to have that vote counted. We owe it to these men and women and their families to ensure that the right to vote is protected here at home.

Sadly, our struggle is not yet complete as there are still voter suppression throughout the United States. What is even more disturbing than the continued existence of the Americans being denied the constitutional right to vote, however, is the fact that for the last 8 years the U.S. Department of Justice has not been our partner in trying to stem voter suppression. In fact, given the fact that the U.S. Department of Justice filed an amicus brief in the case of *CRAWFORD V. MARION*, Indiana County Election Board, which the Supreme Court heard just last month, many would argue that the current Administration is actually working against the goals of all Americans enjoying their constitutional right to vote.

And as any major national civil rights organization can tell you, the number of voter suppression cases brought by the current Department of Justice does not even begin to reflect the number of complaints that we receive from the folks across the Nation who believe their rights have been violated. In fact, although the number of voting rights violations is very difficult to measure, the NAACP as well as representatives from almost every civil rights voting rights organization all report an increase in the number of Americans, primarily racial and ethnic minority Americans, who say they have been denied their constitutional right to register and cast their votes.

Furthermore, attempts to pass laws at the State and local levels as well as at the Federal level that restrict or effectively shut out entire segments of the population are on the increase throughout the Nation. And they are not being challenged by the current Administration.

Specifically, the NAACP has seen a dramatic increase in the number of cases in which people have registered to vote believing having been told that they have then done everything correctly only to be turned away from the voting booth on election day and being told that they are not on the rolls. We know that the 2000 election in Florida debacle did over-zealously purge from the rolls especially in neighborhoods with heavy concentrations of racial and ethnic minorities can be a standard trick by unscrupulous or cor-

rupt election officials trying to suppress a certain segment of the voting public.

Now it appears that not even putting these people on the rolls is the new popular tactic. Another tactic that is being used to keep racial and ethnic minority voters and low-income voters out of the ballot box is the enactment by legislatures and governors sworn to protect the rights of all their residents of laws to require government-issued photo identification documents before voting.

While supporters of these initiatives purport to be combating voter fraud, a problem which as numerous studies have shown is not really a problem, what these laws are, in fact, doing is creating a barrier to keep out up to 20 million Americans who do not have government-issued photo I.D.s out of the ballot booth. And I would hasten to add that a disproportionate number of these people who do not have government-issued I.D.s are racial, are ethnic minorities, are low-income Americans.

Finally, I would like to talk for just a brief moment about an issue that the NAACP was intimately involved in crafting. That is the 2002 Help America Vote Act. This legislation, which was enacted in response to the election debacle of 2000, has been underfunded and under-supported since its enactment at almost every turn. While the NAACP and other civil rights organizations strongly supported HAVA in part because it was seen as a sign that the Federal Government took voting rights protection seriously, the fact that it has been largely ignored is discouraging, to say the least.

To close, I would like to share with the Subcommittee some thoughts shared by the NAACP and the Mexican-American Legal Defense and Education Fund, that is MALDEF, one of the premier civil rights organizations investigating and protecting the rights—invested in protecting the rights of Latino voters.

Racial and ethnic minority voters require that the civil rights Department of the U.S. Department of Justice be fully staffed with well-qualified attorneys and experts who are committed to addressing voter suppression and protecting minority voter rights. While the NAACP and MALDEF and other civil rights organizations frequently bring legal actions on behalf of racial and ethnic minorities whose voting rights have been infringed, private individuals and organizations lack sufficient resources to guarantee free and fair elections for all voters nationwide.

Mr. Chairman, Members of the Subcommittee, the disenfranchisement of voters, voters who are disproportionately racial and ethnic minority Americans, due to the mismanagement of registration bases and the restrictive laws and regulations that are akin to discriminatory poll taxes present a much larger threat to our national fabric than the many so-called threats that we have been spending untold billions of dollars defeating.

Unless Americans, all Americans, feel that they are vested in our Nation and that they have a voice in their government, the promise and security of democracy is hollow and left unfulfilled.

Furthermore, I would argue that the inaction of the U.S. Department of Justice's department of civil rights to address voter suppression is not only unethical, immoral, and counterproductive, it is flat out wrong. Thus, I again thank the Subcommittee for hold-

ing this hearing and inviting the NAACP to testify. And I look forward to your questions.

[The prepared statement of Mr. Shelton follows:]

PREPARED STATEMENT OF HILARY O. SHELTON

Good morning. My name is Hilary Shelton and I am the Director of the Washington Bureau of the NAACP, our Nation's oldest, largest and most widely-recognized grassroots civil rights organization in the United States. The NAACP's Washington Bureau is the legislative and public policy arm of the NAACP. We currently have more than 2,200 membership units with members in every state across the country.

I would like to begin by thanking and commending the Subcommittee for holding this hearing. The right to vote is the cornerstone of our Nation's democracy. Throughout our history, countless Americans have fought and died to protect the right of people across the globe to cast a free and unfettered ballot and to have that vote counted. We owe it to these men and women and their families to ensure that the right to vote is protected here at home.

The NAACP has been in existence for almost 100 years, and since our inception we have fought for equal voting rights for all Americans. Sadly, our struggle is not yet complete as there is still voter suppression throughout the United States.

What is even more disturbing than the continued existence of Americans being denied their Constitutional right to vote however, is the fact that for the last eight years the U.S. Department of Justice has not been our partner in trying to stem voter suppression.

In fact, given the fact that the US Department of Justice filed an amicus brief in the case of *Crawford v. Marion County Election Board*, which the Supreme Court heard just last month, many would argue that the current Administration is actually working against the goal of all Americans enjoying their Constitutional right to vote.

And as any major, national civil rights organization can tell you, the number of voter suppression cases brought by the current Department of Justice does not even begin to reflect the number of complaints that we receive from folks across the Nation who feel their rights have been violated.

In fact, although the number of voting rights violations is very difficult to measure, the NAACP, as well as representatives from almost every other civil and voting rights organization, all report an increase in the number of Americans—primarily racial and ethnic minority Americans—who say that they have been denied their Constitutional right to register and vote.

Furthermore, attempts to pass laws at the state and local levels, as well as at the federal level that restrict or effectively shut out entire segments of the population are on the increase throughout the Nation—and they are not being challenged by the current Administration.

Specifically, the NAACP has seen a dramatic increase in the number of cases in which people have registered to vote, believing or having been told that they have done everything correctly, only to be turned away from the voting booth on Election Day and being told that they are not on the rolls.

We know from the 2000 Florida election debacle that over-zealous purging of the rolls, especially in neighborhoods with heavy concentrations of racial and ethnic minorities, can be a standard trick by unscrupulous or corrupt election officials trying to suppress a certain segment of the voting public. Now it appears that not even putting these people on the rolls is the new popular tactic.

Another tactic being used to keep racial and ethnic minority voters and low-income voters out of the ballot box is the enactment, by legislatures and governors sworn to protect the rights of all of their residents, of laws to require government-issued photo identification documents before voting.

While supporters of these initiatives purport to be combating "voter fraud," (a "problem" which, as numerous studies have shown, is not really a problem), what these laws are in fact doing is creating a barrier to keep the up to 20 million Americans who do not have government-issued photo IDs out of the ballot booth. And I would hasten to add that a disproportionate number of these people who do not have government-issued IDs are racial or ethnic minorities or low-income Americans.

Finally, I would like to talk for a brief moment about an issue that the NAACP was intimately involved in crafting, the 2002 *Help America Vote Act* (HAVA). This legislation, which was enacted in response to the election debacle of 2000, has been under-funded and under-supported since its enactment at almost every turn.

While the NAACP and other civil rights organizations strongly supported HAVA in part because it was seen as a sign that the federal government took voting rights protections seriously, the fact that it has been largely ignored is discouraging, to say the least.

To close, I would like to share with the subcommittee some thoughts shared by the NAACP and the Mexican American Legal Defense and Education Fund, MALDEF, one of the premier organizations invested in protecting the rights of Latino voters. Racial and ethnic minority voters require that the Civil Rights Department of the U.S. Department of Justice be fully staffed with well-qualified attorneys and experts who are committed to addressing voter suppression and protecting minority voters' rights.

While the NAACP, MALDEF and other civil rights organizations frequently bring legal actions on behalf of racial or ethnic minorities whose voting rights have been infringed, private individuals and organizations lack sufficient resources to guarantee free and fair elections for all voters nationwide.

Mr. Chairman, members of the subcommittee, the disenfranchisement of voters, voters who are disproportionately racial or ethnic minority Americans due to the mismanagement of registration bases, and restrictive laws and regulations that are akin to discriminatory poll taxes presents a much larger threat to our national fabric than many of the so-called "threats" that we have been spending untold billions of dollars defeating.

Unless Americans, all Americans, feel that they are vested in our Nation and that they have a voice in their government, the promise and security of democracy is hollow and left unfilled.

Furthermore, I would argue that the inaction of the US Department of Justice's Department of Civil Rights to address voter suppression is not only unethical, immoral and counter-productive, it is just flat-out wrong. Thus I again thank the subcommittee for holding this hearing and for inviting the NAACP to testify.

Mr. NADLER. I now recognize Mr. Emmer for 5 minutes.

**TESTIMONY OF TOM EMMER, DEPUTY MINORITY LEADER,
MINNESOTA STATE HOUSE OF REPRESENTATIVES**

Mr. EMMER. Thank you, Mr. Chairman, Ranking Member Franks. Thank you for the invitation here today. My name is Tom Emmer, and I am a State representative from the state of Minnesota.

The United States Congress has enacted numerous requirements, including registration and identification requirements designed to increase the number of citizens who register to vote while simultaneously protecting the integrity of the electoral process. Some of these initiatives include the Help America Vote Act of 2002, which requires voters to provide proof of identification before registering or casting their first ballot, providing the attorney general with the authority to prosecute voter fraud in Federal elections, requiring acceptable forms of identification under the Help America Vote Act, including a current and valid photo identification or a current utility bill, bank statement, government check, paycheck, or a government document that shows the name of the voter.

The Help America Vote Act also provides that States may provide more strict rules and regulations regarding voter identification. Since the enactment of this act, several States, including some well-publicized cases and challenges in Georgia and Indiana, have proposed voter identification bills. The bills were specifically designed to require photo identification.

In a world in which we have much turmoil and such contested elections, it is imperative to maintain the integrity of the electoral process and thus, the public confidence in that process. Voters want to know that their vote counts and will not be canceled out by a fraudulent vote. We simply must have something in law that

allows us to confirm that we are who we say we are on the day of the election.

The American public agrees with this concept. In fact, national polling shows that almost 80 percent of American citizens agree that photo identification should be required to verify identify prior to voting.

Voter identification laws are designed to prevent voter fraud in our elections. There is no question that we have a problem with fraud.

The Carter-Baker commission made such a determination in its 2004 report. In addition, there are numerous examples from other States that demonstrate how fraud has played a role in elections. We as elected officials are slowly realizing the destructive force this has on public confidence in the strength of their vote and the outcome of the election.

In 2004, for example, the Indiana Supreme Court in the case of *PABEY V. PASTRICK* found that widespread fraud had rendered election results "inherently deceptive and unreliable." The Indiana Supreme Court invalidated a 2003 East Chicago mayoral primary based on evidence of rampant absentee voter fraud, which included the use of a vacant lot or former address in casting of ballots by nonresidents.

At the same time, the state of Indiana was experiencing highly inflated voter registration rolls as a result of 35,000 deceased individuals remaining on statewide voter rolls. Incredibly, the list of registered voters in 2004 was actually inflated by some 41 percent, including well over 200,000 duplicate voter registrations.

In fact, on April 7, 2005, the United States Department of Justice informed the Indiana secretary of state that numerous counties had registration totals that exceeded their voting age population. This is an important national issue. It is not a political issue and should not be.

Despite efforts to the contrary, some people are selecting to turn photo identification into a political issue that destroys the very nature of election integrity. Protecting the integrity of our elections and ensuring the validity of the votes cast and the electoral process is important to all of our children and communities, is important to the future of our freedom and our democracy.

Those that are challenging these laws that voter photo identification somehow violates the 1st and 14th Amendment to the United States Constitution because it imposes an unwarranted burden on the right to vote. In fact, they take this position despite their inability to identify any concrete harm stemming from a potential photo identification voter law. In fact, despite the predictions of widespread disenfranchisement resulting from the photo I.D. regulation in Georgia, no plaintiff in any Georgia litigation, either as an individual or as an organization demonstrated any injury.

The fact is that despite apocalyptic assertions of wholesale voter disenfranchisement, there is not a single piece of evidence of any identifiable registered voter who would be prevented from voting. It is commonplace in virtually every polling place in America that voters are asked to identify themselves before they vote.

A State's interest in deterring voter fraud before it happens is important. As the 7th Circuit Court of Appeals has recognized, in-

person voter fraud is extremely difficult to detect. Without a photo I.D. requirement for in-person voting, it is nearly impossible to catch an imposter.

As the pre and post-voter I.D. study and analysis has established in Indiana after the implementation of the Indiana voter I.D. law, there was an overall county level turnout increase of almost 2 percentage points. There was an increase in relative turnout for counties with a greater percentage of minority and poor populations. There was no significant impact on turnout in counties with a greater percentage of less educated or elderly voters. And as has been previously been noted today, there was a significant increase in turnout of Democrats.

Thank you for inviting me, again, here today. And I hope that this Committee will give serious consideration to what should not be a political issue. And that is proving who we are when we step up to the polling place.

[The prepared statement of Mr. Emmer follows:]

PREPARED STATEMENT OF TOM EMMER

Tom Emmer
State Representative
Deputy Minority Leader

District 19B
Wright and Hennepin Counties



**Minnesota
House of
Representatives**

COMMITTEES: PUBLIC SAFETY AND CIVIL JUSTICE
GOVERNMENTAL OPERATIONS, REFORM, TECHNOLOGY AND ELECTIONS
HEALTH AND HUMAN SERVICES

Deputy Minority Leader Tom Emmer
Minnesota House of Representatives
State Representative - District 19B

Written Testimony

to

Subcommittee on the Constitution, Civil Rights, and Civil Liberties

Oversight Hearing on Voter Suppression

U.S. House of Representatives

February 26, 2008



The United States Congress has enacted numerous requirements, including registration and identification requirements, designed to increase the number of citizens who register to vote while simultaneously protecting the integrity of the electoral process. Some of these initiatives include: the Help America Vote Act of 2002, which requires voters to provide proof of identification before registering or casting their first ballot; providing the Attorney General with the authority to prosecute voter fraud in federal elections; requiring acceptable forms of identification under the Help America Vote Act including a current and valid photo identification or a current utility bill, bank statement, government check, paycheck, or government document that shows the name of the voter.

The Help American Vote Act also provides that states may provide more strict rules and regulations regarding voter identification. Since the enactment of this act several states, including some well publicized cases and challenges in Georgia and Indiana, have proposed voter identification bills. The bills were specifically designed to require photo identification.

In a world in which we have much turmoil and such contested elections, it is imperative to maintain the integrity of the electoral process and thus the public confidence in that process. Voters want to know that their vote counts and will not be cancelled out by a fraudulent vote. We simply must have something in law that allows us to confirm that we are who we say we are on the day of the election.

The American public agrees with this concept. In fact, national polling shows that almost 80 percent of American citizens agree that photo identification should be required to verify identity prior to voting.

The voter identification laws are designed to prevent fraud in our elections. There is no question that we have a problem with fraud in our elections. The Carter Baker Commission made such a determination in its 2004 report. In addition, there are numerous examples from other states that demonstrate how fraud has played a role in elections. We as elected officials are slowly realizing the destructive force this has on public confidence, in the strength of their vote and the outcome of the election.

In 2004, for example, the Indiana Supreme Court in the case of Kabey vs. Pasterick found that widespread fraud had rendered election results "inherently deceptive and unreliable." The Indiana Supreme Court invalidated a 2003 East Chicago mayoral primary based on evidence of rampant absentee voter fraud, which included the use of a vacant lot or former addresses in casting of ballots by non-residents.

At the same time, the state of Indiana was experiencing highly inflated voter registration rolls as a result of 35,000 deceased individuals remaining on the statewide voter rolls. Incredibly, the list of registered voters in 2004 was actually inflated by some 41 percent including well over 200,000 duplicate voter registrations.

In fact on April 7, 2005, the United States Department of Justice informed the Indiana Secretary of State that numerous counties had registration totals that exceeded their voting age populations.

This is an important national issue. It is not a political issue. Despite efforts to the contrary, some people are selecting to turn photo identification into a political issue that destroys the very nature of election integrity. Protecting the integrity of our elections and ensuring the validity of the votes cast in the electoral process is important to all of our children and communities. It is important to the future of our freedom and our democracy.

Those that are challenging these laws argue that voter photo identification somehow violates the First and Fourteenth Amendment of the United States Constitution because it imposes an unwarranted burden on the right to vote. In fact, those that take this position and their inability to identify any concrete harm stemming from a potential photo identification voter law render their arguments largely theoretical and entirely speculative.

The argument is typically that the voter identification photo law, and in fact any election law, should be invalid if one can hypothesize any single individual who would be prevented from voting by the burden it creates. If this is the standard upon which we review election reform laws such as photo identification, it would put the constitutionality of the Help America Vote Act upon tenuous ground as well.

The United States Constitution expressly provides that state legislatures are to proscribe "times, places and manner of holding election for senators and representatives." The United States Supreme Court has long recognized that the states have broad powers to determine the conditions under which the right to vote may be exercised. In fact, voter fraud drives honest citizens away from the democratic process and breeds distrust in our government. The right to vote can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the right to vote.

The fact is that despite apocalyptic assertions of wholesale voter disenfranchisement, there is not a single piece of evidence of any identifiable registered voter who would be prevented from voting.

Today, we are providing you with a 2007 report from the Institute of Public Policy that was conducted on voting in Indiana before and after the photo identification laws were passed. The report found that "no consistent evidence that counties that have higher percentages of minority, poor, elderly or less-educated populations suffer any reduction in voter turnout relative to other counties."

It is commonplace in virtually every polling place in America that voters are asked to identify themselves before they vote.

Election laws will invariably impose some burden on individual voters. Indeed it is hard to imagine any election regulation that does not limit the opportunity of, or cause some inconvenience to, at least some citizens who choose to vote. A state's choice of poll locations and hours of operation will inconvenience some voters, and could require them to find child care, incur transportation or even miss work in order to vote in person. Some citizens may also stand in long lines to vote in person, depending on when and where they go to the polls. Any identification requirements - photo or otherwise - will inconvenience some voters. However such routine costs and inconveniences do not render a state electoral process constitutionally defective.

Because the Carter Baker Commission concluded this was such an important issue they proposed creating Real ID. Some of us would prefer to see this remain a state issue as opposed to turning it over to the Federal government. The issue of photo identification being required, however, should be the same whether it is administered by the federal government or the states. I firmly believe that anyone who does not have a photo identification should have one made available free of charge. The absence of photo identification should not preclude any indigent voter from being excluded from voting because he or she is unable to pay for the documentation necessary to obtain one. Those voters should be able to vote using an in-person absentee ballot at the court house before the election day and sign an affidavit of indigence or go to the polls and sign a similar affidavit before voting a provisional ballot.

Opponents of photo identification will argue that individual states do not have sufficient reported incidences of fraud to warrant requiring photo identification. I refer again to the bipartisan Carter Baker Commission which found that there is "no doubt" that in-person voter fraud occurs.

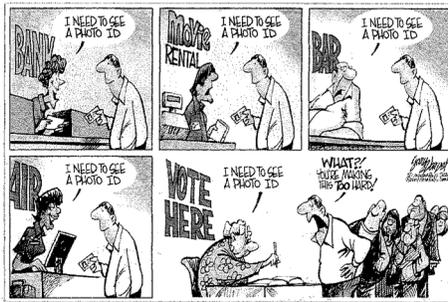
A state need not wait to suffer harm. It can and should adopt prophylactic measures to prevent it from occurring in the first place. This is particularly true in a situation like voter fraud, where the temptation is obvious and the consequences of undeterred and undetected violations are enormous.

A state's interest in deterring voter fraud before it happens is evident from the monumental harm that can come from such fraud. The East Chicago mayoral primary in Indiana proves the point. Although the plaintiff was only able to show 155 invalid absentee votes, the court found that "widespread corruption" had left the putative winner's 278 vote victory "inherently deceptive and unreliable," and the court invalidated the entire election. Thus, the fraudulent votes of even a small number can, in a close election, invalidate the votes of every other citizen who participated in the election. Even when the election is not so close, "a very false registration" and every fraudulent ballot cast harms the system by canceling votes cast by legitimate voters.

Senator Kit Bond said it best when he stated that "if your vote is cancelled by the vote of a dog or a dead person, it is as if you did not have a right to vote."

By its very terms, the 2002 Help America Vote Act establishes mandatory minimum voter identification requirements. This act explicitly provides that "nothing in {it} shall be construed to prevent a state from establishing requirements that are more strict." In fact, the Help American Vote Act in no way limits the right of the states from taking steps beyond those required.

In conclusion, we have a right to know that every election, no matter the margin of victory, is determined fairly with respect to the idea of one person, one vote. We also have the duty to protect the rights of legally registered voters who may not have proper identification. Requiring photo identification at the poll accomplishes both. This is a matter of preserving the integrity of the election process and the validity of the outcome.



The Effects of Photographic
Identification on Voter
Turnout in Indiana:
A County-Level Analysis

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Abstract:

I examine the change in voter turnout across Indiana counties before and after the implementation of photo ID requirements. Overall, statewide turnout increased by about two percentage points after photo ID; further, there is no consistent evidence that counties that have higher percentages of minority, poor, elderly or less-educated population suffer any reduction in voter turnout relative to other counties. In fact, the estimated effect of photo ID on turnout is positive for counties with a greater percentage of minorities or families in poverty. The only consistent and frequently statistically significant impact of photo ID in Indiana is to increase voter turnout in counties with a greater percentage of Democrats relative to other counties. These findings run counter to some recent and prominent concerns that have been raised about voter identification reforms; however, these results are consistent with both existing theory on voter behavior and the most recent and reliable empirical evidence on the effects of voter identification requirements on turnout.



The Effects of Photographic Identification on Voter Turnout in Indiana: A County-Level Analysis

Jeffrey Milyo

1. Introduction

This study evaluates the effects of photographic voter identification requirements implemented in Indiana prior to the 2006 general election. Previous studies have examined the effects of voter identification laws more generally, but none of these separately analyzes the effects of so-called "mandatory photo ID" (hereafter simply, "photo ID") on turnout in Indiana.¹ Nevertheless, the existing scholarly literature on voter identification does strongly suggest that photo ID requirements are likely to have only a negligible impact on overall voter turnout; further, previous studies indicate that photo ID is unlikely to reduce the relative participation of minorities (e.g., Alvarez et al. 2007 and Mycoff et al. 2007). Given that these lessons from social science research run counter to the conventional wisdom, at least that espoused in some quarters,² I first review the most recent and relevant literature on the effects of voter identification on turnout, then present the findings from my empirical analysis of turnout in Indiana.

The change in voter turnout from the 2002 to 2006 general elections provides a nearly ideal natural experiment for estimating the effects of photo ID on voter turnout across the 92 counties in Indiana. Both years were midterm election years and in neither year was there a major contested statewide race (i.e., for governor or U.S. Senate); however, 2006 was the first general election year in which Indiana's photo ID law was actually implemented. I exploit this natural experiment to identify the effects of photo ID on turnout in counties with a greater percentage of minority, poor, elderly, or less educated populations.

I examine a variety of models of voter turnout and control for the influence of several other factors that may influence turnout. Overall, voter turnout

in Indiana increased about two percentage points from 2002 to 2006; however, in counties with greater percentages of minority or poor voters, turnout increased by even more, although this increase is not statistically significant. For counties with greater percentages of elderly or less educated voters, results are more mixed, but not consistently significant or negative. The only consistent and frequently significant effect of voter ID that I find is a positive effect on turnout in counties with a greater percentage of Democrat-leaning voters.

2. Voter ID and Turnout: Lessons from the Social Science Literature

The public debate over photo identification requirements for voters has been marked by oft-repeated concerns about the possible dramatic and detrimental effects of state voter identification requirements on voter turnout. The political rhetoric has become so superheated that recent attempts to reform voter identification laws have been met with explicit accusations of racism on the part of reformers, dire warnings of a coming "disenfranchisement," and assertions that such reforms, though popular across party lines, are a "thinly veiled" attempt to prevent Democrats from voting.

In contrast, political theory suggests that the effects of voter identification laws on voter turnout are ambiguous. Such reforms increase the effort required to vote for some persons without proper identification (at least one time, anyway). Of course, some of these persons may be eligible voters and others will be ineligible voters. However, voter identification reforms may also instill greater confidence in the electoral process among eligible voters, making them more willing to participate in elections. Consequently, the actual impact of voter identification on turnout is an



empirical question; and even if turnout decreases with voter identification laws, it is by no means apparent that it is eligible voters that are being affected.

Until very recently, there were no systematic statistical studies of the effects of photo ID requirements for voting, although it has long been understood that many other countries both require such identification and experience higher rates of turnout than in the U.S. Studies of voter turnout across countries have instead focused on voter registration, the frequency of elections, non-compulsory voting, and single-member districts (as opposed to proportional representation) as reasons that turnout in the U.S. is low relative to other developed democracies (Powell 1986 and Blaise 2006). The fact that such cross country studies do not even entertain the possibility that photo ID requirements reduce turnout is itself informative about the long-standing opinion of the political science profession regarding the relative unimportance of such laws for turnout.

In contrast, numerous studies analyze the effects of voting institutions other than voter identification on turnout. In general, these studies find at best very modest effects of post-registration laws such as time off work for voting, opening polls early or keeping polls open late, mailing sample ballots, etc. (Primo, et al. 2007). This is because voter registration is a relatively high hurdle compared to these post-registration requirements; adding or removing some marginal costs of voting beyond registration has virtually no observable effect on turnout. Applying these lessons to voter identification, it is highly unlikely that anyone sufficiently motivated to register to vote, inform themselves about the current election issues, and transport themselves to a polling place will then be deterred by the incremental requirement of presenting proper identification at the polls.

In fact, there is an even more fundamental reason to expect that the impact voter identification requirements on turnout are likely to be negligible. This is because very few eligible voters lack official identification and presumably even fewer (if any) lack the capacity to produce sufficient identification should they have a need and inclination to do so.³ Finally, the ability to cast a provisional ballot reduces further the potential for a legitimate voter to be disenfranchised, even when that person lacks proper identification.

On this point, Ansolabehere (2007) notes that in a recent national survey with 36,500 respondents, only 23 persons self-reported that they were not permitted to cast a regular ballot at the polls in 2006 because of identification problems. Further, it is not clear how many of these 23 persons cast a provisional ballot, although it appears that most did;⁴ nor is it ascertainable from the survey whether any of these persons were actually eligible to vote, or whether they were honestly reporting problems at the polls.⁵ It is nonetheless apparent that recent claims of a coming “disenfranchisement” are nothing more than irresponsible and ignorant exaggerations (e.g., Schulz 2007).

On the other hand, the widespread popularity of voter identification requirements suggests that the general public is indeed concerned about vote dilution from ineligible votes.⁶ Lott (2006) has argued that confidence in the fairness of elections translates directly into higher voter turnout; such an effect, if it existed, might also reasonably be expected to be most pronounced for groups that tend to have less trust in the efficacy American democracy (e.g., racial and ethnic minorities, the poor and the less educated).

In fact, scholars of American politics generally agree that voter turnout is determined largely by idiosyncratic factors, such as an individual’s intrinsic value of voting (i.e., does the individual feel a duty to vote) as opposed to political institutions (Matsusaka and Palda 1999; Mycoff et al., 2007).⁷ For this reason, factors that influence trust and confidence in the integrity of the electoral process are generally thought to be important determinants of an individual’s decision to vote (Putnam 2000).⁸ For all these reasons, it is theoretically plausible that photo identification requirements actually increase voter turnout. Consequently, there exists a long-standing political science literature that does not support recent assertions that photo ID requirements have dramatic and detrimental effects on turnout.

Recent empirical studies of state voter identification laws

In the wake of recent legislation implementing voter identification reforms in the states, a flurry of new empirical studies have appeared that more directly address the question of how state voter identification laws impact voter turnout. Unfortunately, the two



studies that have received the most coverage in the press (Eagleton 2006 and Vercellotti and Anderson 2006; hereafter, the "Rutgers studies") are fatally flawed on several counts.⁹ For example, several authors note that these studies examine only a single cross-section of turnout data from 2004, so cannot properly estimate the treatment effect of state voter identification laws; nor can these studies properly estimate the effects of mandatory photo ID requirements (Alvarez, et al 2007, Mycoff, et al 2007 and Muhlhausen and Sikich 2007). Further, the Rutgers studies miscode several state identification laws (Mycoff, et al. 2007 and Muhlhausen and Sikich 2007). Finally, the findings reported in the Rutgers studies are not robust to reasonable changes in their statistical model (Alvarez, et al. 2007 and Muhlhausen and Sikich 2007).

The flawed Rutgers studies are also the only systematic studies of voter identification for which the authors conclude that ID laws have strong or consistently negative consequences for voter turnout overall, and especially for minorities. However, even ignoring the methodological problems with the Rutgers studies, the authors do an additional disservice to the public debate by mischaracterizing their own findings. For example, taken at face value, the results presented in the Rutgers studies imply that the most strict forms of voter identification laws examined in their data (voluntary photo ID) are associated with higher voter turnout among Black, Hispanic and Asian minorities than are the next most strict category of identification laws that they examine (non-photo ID). Further, the Rutgers studies also find that voluntary photo ID requirements yield no difference in overall turnout compared to non-photo ID requirements. The authors of the Rutgers studies fail to note any of these findings; this is a serious error that leads them to make conclusions that are not supported by their own evidence.

In contrast to the Rutgers studies, more recent studies stand out for both their methodological rigor and the fact that they examine voter turnout through the 2006 general elections (Alvarez, et al. 2007 and Mycoff, et al 2007). However, both of these studies are work in progress, so results must be interpreted with care.

Mycoff et al. (2007) examine the effects of voter identification laws on state level voter turnout, as well as individual-level self-reported voter

turnout from the National Election Studies (a large national survey that is conducted each election year). The authors examine turnout from 2000 to 2006 using a random-effects model; they find that voter ID laws are not significantly related to turnout in either the aggregate state data or the individual level data. The individual-level analysis in Mycoff et al. is a particularly valuable innovation, since it allows the researchers to more confidently discuss the impacts of voter identification on minorities, the poor, the elderly, etc. However, the original analysis in Mycoff et al. does not examine these differential effects, nor do the authors separately investigate the effects of photo ID apart from other voter identification requirements.

More recently, however, Mycoff et al. have analyzed the effects of mandatory photo ID on individual level turnout after controlling for state fixed effects. In this most recent analysis, Mycoff et al. cannot reject the null hypothesis that the within state effects of photo ID on overall turnout are zero; likewise, the null of zero effect cannot be rejected for turnout across race, ethnicity, income or age categories.¹⁰ Overall, Mycoff et al. (2007) find that idiosyncratic factors, such as an individual's interest in politics, are far more important determinants of turnout than are institutional factors like voter identification.

The most recently available study of the effects of voter identification on voter turnout is by Alvarez, et al. (2007); these authors also examine the effects of voter identification on both state-level turnout and individual level turnout (from the Current Population Survey). Alvarez et al. control for state fixed effects in their analysis, but they fail to control for the presence and competitiveness of statewide races in the different states and years in their study. This unfortunate oversight should be corrected in future iterations of the study, but for now this shortcoming undermines the usefulness of the authors' findings. Ignoring this methodological problem, Alvarez et al. (2007) report that voter ID laws are associated with higher (albeit not significant) voter turnout in the analysis of state-level turnout from 2000-2006. The individual-level analysis suggests that voter identification requirements have a modest negative impact on overall turnout, no differential impacts by race or ethnicity and a slightly more negative impact on elderly or poor voters.



The results reported in Alvarez et al. (2007) also suggest that there is no significant change in voter turnout for any population subgroup when comparing the effects of mandatory photo ID laws to voluntary photo ID, although the authors do not conduct a formal test of this hypothesis. However, it is unclear at this point how sensitive the estimates reported by Alvarez et al. will be to the inclusion of controls for the presence and competitiveness of statewide races. Consequently, the recent and on-going study by Mycoff et al. (2007) remains the most reliable and thorough systematic evaluation of the effects of photo ID laws on voter turnout to date.

In this review, I have demonstrated that both theory and the best evidence to date strongly suggest that the effects of photo ID on overall turnout are likely to be very modest (and may even be positive). Further, the best analyses of the differential impact of photo ID indicate no deleterious effects on minorities, the poor, or the elderly. In the next section, I demonstrate that these conclusions are borne out in the county-level election returns for Indiana.

3. Data and Methods

The subsequent empirical analysis examines the effects of photographic identification requirements on county-level turnout in Indiana. I analyze the change in voter turnout in the general midterm elections of 2002 and 2006; these elections offer a nearly ideal natural experiment for identifying the effects of photo ID on turnout. This is because there were no other major changes in Indiana election laws during this time period, so the impact of photo ID will not be confounded with other changes in state election administration. Further, because some demographic groups tend to have higher turnout in presidential election years, it is appropriate to compare turnout in the two most recent midterm elections. Finally, these two midterm elections are also relatively comparable since there were no major contested statewide races in either year.¹¹ Even so, I also check the whether the resulting estimates are sensitive to the inclusion of additional midterm and/or presidential election years; to preview: they are not.

I measure voter turnout as the percent of voting age population (VAP) in each election year; VAP is estimated by the U.S. Census as of July 1st of the

election year.¹² This measure is commonly employed in studies of voter turnout in aggregate data, since voter registration data is not of a consistent quality across time or jurisdiction. However, voting age population estimates including non-citizens and other persons that are not eligible to vote. While this is more problematic for studies of turnout in states with larger populations of ineligible voters, it is less likely to be a concern in a state like Indiana. Further, to the extent that the number of non-citizens is growing over time, and is disproportionately of Hispanic ethnicity, this has the effect of understating overall turnout in 2006, especially in areas with higher Hispanic populations.

For this reason, I also measure voter turnout as the percentage of the estimated number of citizens of voting age (CVAP) in each year. However, reliable estimates of CVAP at the county-level are not readily available, so I generated my own estimate based upon U.S. Census counts of non-citizens in 2000. In order to estimate CVAP by county in each year, I first calculate the ratio of citizens of voting age population to all the total voting age population for each county in 2000 from Census data. I then multiply the estimated VAP for each county and year by this ratio. However, the question of whether voter turnout should be measured as a percentage of VAP or CVAP is not surprisingly a non-issue in the present context; the correlation between the two measures is better than 98% for the time periods examined in this study.

In order to measure the overall effect of photo ID on voter turnout across the 92 Indiana counties, I estimate an ordinary least squares regression controlling for county-fixed effects and year effects. The county fixed-effects account for factors such as demographic differences across counties, while the year effects account for the different composition of state races in each election year. However, there has only been one general election in Indiana post-photo ID, so it is not possible to separately identify the overall effects of photo-ID on voter turnout absent additional assumptions. For this reason, the present analysis focuses on the effects of photo ID on different groups of eligible voters.

I evaluate claims about the relative effects of voter ID on racial and ethnic minorities, the poor, the elderly, persons without a high school diploma and Democrats by estimating the effects of photo ID on



turnout in counties with greater percentages of those groups as a percent county population. However, these demographic variables do not vary over time, since they are taken from the 2000 U.S. Census. This means that it is not possible to control for county-fixed effects when estimating the effects of photo ID on these particular demographic groups. For this reason, I account for differences in the demographic composition of counties by including control variables for per capita income and the percent of county population by several categories, including: age, education, ethnicity, female labor force participation, military status, non-citizens, party, poverty, race, and rural status (see Appendix). I also check the sensitivity of results when this list of control variables is pared down to just age, education, ethnicity, income and race.

Despite the plethora of county-level control variables described above, it is possible that there remain some unobserved county-level phenomena that may bias the estimated effects of photo ID on turnout in some unknown way. For this reason, I also examine the effects of photo ID on the within-county change in voter turnout since the most recent general election (i.e., the change in voter turnout from 2004 to 2006 compared to the change from 2000 to 2002). This alternative model effectively purges voter turnout of the county-specific factors mentioned above and so provides an important check on the estimates obtained from the basic model. Finally, because repeated observations at the county-level over time are not necessarily independent observations, I also control for clustering of standard errors by county in every regression model.

While most authors examine the effects of voter identification on voter turnout, some (e.g., Alvarez et al. 2007) look at the effects on the natural logarithm of voter turnout (i.e. "log turnout"); for this reason, I use both of these measures in my analysis. Therefore, in the next section I present estimates for four basic statistical models, where the dependent variable is i) turnout, ii) log turnout, iii) change in turnout, and iv) change in log turnout. I also discuss the sensitivity of these results to different measures of turnout, time periods or sets of control variables; for the most part, the key findings are quite robust to these alternative specifications.

4. Results

Voter turnout as a percentage of VAP in Indiana was about 2 percentage points higher in 2006 compared to 2002. This increase in turnout was fairly uniform across all counties; the mean within-in county change in turnout was +1.76% ($p < .001$). However, it is not possible to discern how much of this increase in turnout is attributable solely to the effects of photo ID; this is because there was also an uncompetitive Senate race in 2006. For example, the presence of a U.S. Senate election in 2006 might have led to an increase in turnout above what it would have been otherwise. On the other hand, the fact that there was no Democrat candidate in the 2006 Senate race might have led to lower turnout than otherwise. In fact, my examination of historical Senate election data does indeed suggest that state voter turnout tends to be lower when there is an uncompetitive Senate election at the top of the state ticket, all else constant. Assuming that this phenomenon occurred in 2006 in Indiana, then the photo ID likely led to an even greater increase in voter turnout than the 2% observed in the raw data.

Even so, I prefer to err on the side of caution in this report, so I focus only on the differential impact of photo ID across Indiana counties. In contrast to the situation for overall turnout in 2006, there is no a priori reason to believe that the uncompetitive 2006 Senate election influenced voter turnout in some counties more than others. Consequently, the effects of photo ID on turnout across counties with differing populations of minority, poor, low education, elderly voters, or Democrat voters can be identified and estimated in the available election data.

In Table 1A, I report the estimated effects of photo ID on both turnout and the change in turnout for counties with higher proportions of minority population. The table is divided into two panels; one for each model. For example, the results in the top panel of the table under column one indicate that photo ID increased voter turnout in counties with higher percentage of black population, albeit this estimate is not statistically significant ($t = -1.23$). However, the estimated magnitude of this effect is quite large; for each percentage point increase in black population in a county, voter turnout increases by 0.1 percentage points. Looking to the bottom panel of Table 1A under the same column, the estimated effect



of photo ID on the change in turnout for counties with a higher percentage of Black population is also positive, nearly identical in magnitude, although again not statistically distinguishable from zero ($t=0.59$).

Moving to column two of Table 1A, the estimated effect of photo ID on voter turnout (top panel) for counties with larger Hispanic populations is negative, but much smaller in magnitude than that for Black population and also statistically insignificant. However, the impact of voter ID on the change in voter turnout for counties with greater Hispanic population is positive (even more so than for Black population), but once again not significantly different from zero (bottom panel).

In column three, I report the estimated effects of photo ID for both the Black and Hispanic variables; this model exhibits a similar pattern as when the variables are estimated separately. In all but one case the estimated effect of photo ID on turnout is positive for counties with more Black or Hispanic population. However, in no case are these variables individually or jointly significant.

The final column of Table 1A reports the effects of photo ID on turnout in counties with higher total minority population (non-white and/or Hispanic). The estimates are identical for both turnout and the change in turnout models. For each one percentage point increase in minority population, county turnout increases by 0.7 percentage points after the implementation of photo ID. Again, these effects are imprecisely estimated, so the null hypothesis of a zero differential effect of voter ID on turnout in counties with higher minority populations cannot be rejected.

My analysis of the effects of photo ID on turnout by race and ethnicity continues with an examination of the impact on both the log of turnout and the change in the log of turnout. The results of this estimation are reported in Table 1B; however, because this is a non-linear model, the coefficients do not have a similarly straightforward interpretation as before. For example, the point estimate of .003 for %Black in the top panel under column one of Table 1B has the following interpretation: for each percentage point increase in Black population in a county, voter turnout increases by .003 times voter turnout in 2002. For example, given a county-wide voter turnout rate of 30% in 2002, the implementation of photo ID is associated with a .09 percentage point increase in 2006

turnout for each percentage point of black population (or a nearly identical effect as was observed in Table 1A).

Given the complexity of interpreting the estimates in Table 1B, and the fact that none of these estimates are significantly different from zero (either individually, or in the case of column three, jointly), I will only note that the pattern of qualitative results obtained in the log models of turnout is very similar to that seen in Table 1A. In fact, the only substantive difference is that the effect of photo ID on Hispanic population is uniformly more positive.

To this point, there is no evidence that photo ID requirements in Indiana reduced voter turnout, either overall, or in counties with relatively larger racial or ethnic minority populations. Re-estimating these models for the three most recent midterm elections (1998, 2002 and 2006) yields a similar pattern of results, with one exception: the effect of photo ID on counties with more Hispanic population is consistently positive. Similarly, including presidential election years, along with additional controls for the differing turnout tendencies in midterm versus presidential election years, likewise produces nearly identical results. Finally, substituting citizen voting age population (CVAP) for VAP in any of the models discussed above has the effect of making the estimated effects of photo ID on Hispanic population positive, but otherwise yields no appreciable difference.

The analysis above is repeated for other demographic groups in Tables 2A and 2B. Specifically, I examine the effects of photo ID on turnout in counties with higher percentages of families below the poverty line (%Poverty), persons with less than a high school degree (%No High School) education, and persons over 65 years of age (%Elderly). These demographic variables are never statistically significant in the turnout models shown in panel one of Table 2A, although both the percent of county population in poverty or elderly approach statistical significance ($p < .15$). The effect of photo ID on turnout in counties with more poor families is positive, while the effect on turnout in counties with more elderly population is negative. However, these effects are largely attenuated for the change in turnout, and especially so for the percentage elderly (bottom panel of Table 2B). The effect of photo ID on turnout in counties with relatively fewer high school graduates exhibits a similar



pattern; it is negative and insignificant in panel one, but closer to zero and less precisely estimated in panel two. Further, these three demographic variables are jointly insignificant in both models. Finally, all of the race, ethnicity and demographic variables examined to this point are also not jointly significant when they are all simultaneously included in these turnout models.

As was the case for the race and ethnicity variables, the same general pattern of qualitative effects are observed in the log turnout and change in log turnout models (Table 2B); in addition, the demographic variables (poverty, no high school and elderly) are not jointly significant, nor is the combination of these demographic variables with the race and ethnicity variables examined in Table 1A and 1B. Re-estimating these four models for additional years, and/or substituting CVAP for VAP likewise yields no major changes, although the estimated effects of photo ID on counties with more elderly or low-education population become more positive and less precisely estimated.

The final variable examined is the extent of Democrat voting preferences in a county; this is measured using a common proxy in the political science literature, the county vote percentage for the Democrat presidential candidate in 2004 (John Kerry). The results for this variable are found in column four of Tables 2A and 2B. In all but one case, the effect of voter ID on turnout in highly Democrat-leaning counties is statistically significant or marginally so ($p < .10$ or better). In every case examined in Tables 2A and 2B, photo ID is associated with higher turnout in counties with a greater share of Democrat leaning voters. The magnitude of this estimated effect is about 0.1 percentage points higher voter turnout in 2006 per percentage point increase in John Kerry's 2004 vote percentage in the county. [This result holds up even when the model is estimated using additional election years or citizen voting age population, as above.]

I have also estimated all of the models described above with a more sparse set of control variables, only including controls for age, education, ethnicity, income, and race. However, the choice of these control variables does not yield any notable changes in the pattern of results discussed here.

As a final sensitivity check, all of the models above have been estimated without the adjustment for

clustering of observations at the county level. This does not affect the estimated coefficients in these models but in general will affect the standard errors of the estimates. The effect of the cluster-adjustment to standard errors is to make some of the key estimates described above more precise; without the cluster-adjustment, none of the coefficients on percent elderly or percent poor remain even marginally statistically significant (i.e., $p > .10$ in every case). The only coefficient estimates that remain statistically significant without the cluster-adjustment are those for the percent Democrat in the county.

5. Discussion

Given the context of the existing research on voter turnout, my findings for Indiana are completely unsurprising. Despite the attention-grabbing and often strident claims that voter identification is the modern version of the poll tax and the like, nothing could be further from the truth. Existing theory and evidence from decades of social science research do not support the contention that photo ID requirements are likely to have a large and detrimental impact on turnout; nor does the previous empirical evidence find any significant impact of photo identification on racial or ethnic minorities. Further, the best previous evidence to date also finds no significant impact of photo ID on the poor or the elderly.

In this study, I exploit the existence of a natural experiment on the impact of photo ID: the change in turnout between the 2002 and 2006 midterm elections in Indiana. My analysis is novel not only for its focus on the effects of photo ID in Indiana, but because I subject my findings to a battery of sensitivity checks. This is also the first study to analyze the differential impact of photo ID requirements on turnout among more Democrat-leaning voters.

The findings that emerge from my analysis are that photo ID is associated with: i) an overall county-level turnout increase of almost two percentage points, ii) an insignificant increase in relative turnout for counties with a greater percentage of minority and poor population, iii) no consistent or significant impact on relative turnout in counties with a greater percentage of less educated or elderly voters, and iv) a significant relative increase in turnout for counties with a higher percentage of Democrat voters.



- 1 The term "mandatory" is a misnomer, since voters without proper photo ID are still allowed to cast a provisional ballot at the polls.
- 2 For example, see the recent brief for certiorari submitted to the U.S. Supreme Court by the Indiana Democratic Party and Marion County Democratic Central Committee (Indian Democratic Party, et al. v. Todd Rokita, et. al.).
- 3 Hood and Bullock (2007) argue that about 5% of registered voter names in Georgia do not have a valid driver's license or state identification card; however, the authors make no attempt to investigate how many of the registered voter names are actually attached to eligible voters. This is a rather egregious error, since it is well known that voter registration lists overstate, sometimes quite dramatically, the number of valid eligible voters due to duplicate, erroneous, out-dated and even fraudulent registrations. For example, in Indiana, the number of registered voters exceeds the number of voters that report being registered by more than 40% (Schulz 2007).
- 4 Ansolabehere (2007) does not explicitly report how many of the 23 persons with voter identification issues cast provisional ballots, although it would appear to be nearly all of them, since elsewhere he writes: "an almost immeasurably small number of people who tried to vote were excluded because of identification requirements or questions with their qualifications;" also, Ansolabehere notes that only three persons did not vote because of any problems with their voter registration.
- 5 Given the bitter partisan debate over voter identification, it would not be surprising if a handful of respondents chose to exaggerate their experience at the polls; in light of this, it is quite amazing that so few respondents self-report problems voting.
- 6 Ansolabehere (2007) reports that large majorities support voter identification reforms, including 79% of Blacks, 78% of Hispanics and 67% of all Democrats; in fact, persons who were asked to show identification when voting in 2006 were even more supportive of voter identification requirements than other respondents.
- 7 Also, see Primo and Milyo 2006a,b on the effects of political institutions on citizen trust and voter turnout.
- 8 For example, influential evidence on the importance of the intrinsic value of voting comes from field experiments in which those individuals that receive reminders about their civic duty to vote are more likely to do so (Gerber and Green 2000). Further evidence comes from Ansolabehere, et al (1999); they argue that negative campaign advertising reduces voter turnout primarily because of its detrimental effect on public trust in the political process.
- 9 In fact, the two studies are nearly identical, as Vercellotti and Anderson were part of the research team that produced the Eagleton (2006) report.
- 10 Personal communication with Jason Mycoff (November 9, 2007).
- 11 There was not a gubernatorial or U.S. Senate election in Indiana in 2002. In 2006, there was a U.S. Senate race in which Richard Lugar, a Republican, was not opposed by a Democrat; Lugar defeated his closest opponent, a Libertarian candidate, by 87.3% to 12.6% of the total vote.
- 12 All data employed in this study were provided by Polidata (www.Polidata.org).

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Table 1A: Effects of Photo ID by Race and Ethnicity (County Turnout in 2002 and 2006)				
	(1)	(2)	(3)	(4)
<i>Panel One: % Voting Age Pop. (%VAP)</i>				
%Black*PhotoID	0.10 (1.23)		0.12 (1.44)	
%Hispanic*PhotoID		-0.03 (0.21)	-0.15 (0.97)	
%Minority*PhotoID				0.07 (1.27)
<i>Panel Two: Change in % Voting Age Pop.</i>				
%Black*PhotoID	0.09 (0.59)		0.08 (0.45)	
%Hispanic*PhotoID		0.13 (0.83)	0.06 (0.28)	
%Minority*PhotoID				0.07 (0.72)
<p>NOTES: Absolute values of t-statistics in parentheses (adjusted for clustering by counties). The estimated effects of photo ID interacted with percent Black and Hispanic are also not jointly significant in either panel above. All models include controls for year and characteristics of county population, including: age, education, ethnicity, female labor force participation, income per capita, military status, non-citizens, party, poverty, race, and rural status.</p>				



Table 1B: Effects of Photo ID by Race and Ethnicity
(Natural Logarithm of County Turnout in 2002 and 2006)

	(1)	(2)	(3)	(4)
<i>Panel One: Log of % Voting Age Pop. (%VAP)</i>				
%Black*PhotoID		.003 (1.42)	.004 (1.50)	
%Hispanic*PhotoID		.000 (0.08)	-.003 (0.82)	
%Minority*PhotoID				.002 (1.55)
<i>Panel Two: Change in Log of % Voting Age Pop.</i>				
%Black*PhotoID		.002 (0.67)	.002 (0.58)	
%Hispanic*PhotoID		.002 (0.55)	-.000 (0.00)	
%Minority*PhotoID				.002 (0.82)

NOTES: Absolute values of t-statistics in parentheses (adjusted for clustering by counties). The estimated effects of photo ID interacted with percent Black and Hispanic are also not jointly significant in either panel above. All models include controls for year and characteristics of county population, including: age, education, ethnicity, female labor force participation, income per capita, military status, non-citizens, party, poverty, race, and rural status.



**Table 2A: Effects of Photo ID by Poverty, Education, Age, and Party
(County Turnout in 2002 and 2006)**

	(1)	(2)	(3)	(4)
<i>Panel One: % Voting Age Pop. (%VAP)</i>				
%Poverty*PhotoID	0.29 (1.67)			
%NoHighSchool*PhotoID		-0.08 (1.25)		
%Elderly*PhotoID			-0.36 (1.89)	
%Democrat*PhotoID				0.10 (2.22)
<i>Panel Two: Change in % Voting Age Pop.</i>				
%Poverty*PhotoID	0.17 (0.98)			
%NoHighSchool*PhotoID		-0.01 (0.11)		
%Elderly*PhotoID			-0.08 (0.41)	
%Democrat*PhotoID				0.11 (1.59)

Notes: Absolute values of t-statistics in parentheses (adjusted for clustering by counties). The estimated effects of photo ID interacted with percent poverty, no high school degree and elderly are also not jointly significant in either panel above. All models include controls for year and characteristics of county population, including: age, education, ethnicity, female labor force participation, income per capita, military status, non-citizens, party, poverty, race, and rural status.



Table 2B: Effects of Photo ID by Poverty, Education, Age, and Party
(Natural Logarithm of County Turnout in 2002 and 2006)

	(1)	(2)	(3)	(4)
<i>Panel One: Log of % Voting Age Pop. (%VAP)</i>				
%Poverty*PhotoID	.007 (1.56)			
%NoHighSchool*PhotoID		-.003 (1.60)		
%Elderly*PhotoID			-.011 (2.08)	
%Democrat*PhotoID				.003 (2.28)
<i>Panel Two: Change in Log of % Voting Age Pop.</i>				
%Poverty*PhotoID	.004 (0.88)			
%NoHighSchool*PhotoID		-.001 (1.05)		
%Elderly*PhotoID			-.005 (0.99)	
%Democrat*PhotoID				.003 (1.87)

Notes: Absolute values of t-statistics in parentheses (adjusted for clustering by counties). The estimated effects of photo ID interacted with percent poverty, no high school degree and elderly are also not jointly significant in either panel above. All models include controls for year and characteristics of county population, including: age, education, ethnicity, female labor force participation, income per capita, military status, non-citizens, party, poverty, race, and rural status.



APPENDIX :

The following county-level census variables are included as controls in the statistical analysis:

Percent non-Hispanic Black
Percent Hispanic
Percent non-white and/or Hispanic

Natural logarithm of per-capita income
Percent of families in poverty

Percent without a high school degree (omitted category)
Percent with at most a high school degree
Percent with some college education
Percent with college degree
Percent with post-graduate education

Percent age less than 5 years (omitted category)
Percent age between 5 and 17 years
Percent age between 19 and 24 years
Percent age between 25 and 44 years
Percent age between 45 and 64 years
Percent age 65 or more

Percent voting for John Kerry in 2004 (of those casting votes in 2004)

Percent active military
Percent female labor force participation
Percent non-citizens
Percent retired military
Percent rural

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Mr. NADLER. Thank you.
Professor Minnite is recognized for 5 minutes.

**TESTIMONY OF LORRAINE C. MINNITE, Ph.D.,
ASSISTANT PROFESSOR, BARNARD COLLEGE**

Ms. MINNITE. Thank you, Chairman Nadler.

And thank the Members of the Committee for inviting me to testify today. I have submitted a written testimony that explains in a lot of detail the research that I have been doing over the last several years on this question of voter fraud. And I would like to just take the few minutes that I have here to highlight a couple of points.

One is the purpose of this research. As a political scientist, we study voting behavior. And the prevailing theories of voting suggest that, in fact, it may not even be rational to vote, let alone to vote twice. So when the rhetoric of fraud really got ramped up after the 2000 election, I thought it was an interesting puzzle.

On the one hand, we were hearing lots and lots of stories of all kinds of fraud, of the system being very vulnerable to fraud, of there being an epidemic of voter fraud. And at the same time, the academic side, I had colleagues looking at me and asking why are you studying this. There is very little academic research on it. And, in fact, it doesn't make sense.

The incentives have to be huge for an individual voter to commit fraud. In the absence of a conspiracy, there is no rationale for a voter to take the effort to commit a felony crime to vote twice or to vote in the name of someone else. So it was an interesting puzzle. That is how I approached it.

And I began by trying to look at the empirical record. And I want to address what I think are some mischaracterizations and misunderstandings about what that record shows. I want to focus specifically on the Federal Government's effort here to root out voter fraud.

We heard the number 86 people. The research that I have been able to do—and it has been quite difficult actually to get the data from the Justice Department. But the research that I have done to look at the success of the ballot access and voting integrity initiative which the Justice Department began in 2001, 2002 shows that between October 2002 and September 2005 there were only 40 voters indicted for any kind of a crime related to illegal voting. And I have supplied in the written testimony a table that shows for you a breakdown of the 95 indictments that the Federal Government brought under this program, which was to address voter fraud and voter intimidation.

And when you dig into the data—because you have to dig into it—you find that only 40 of those people actually were voters. Others were government officials, campaign workers, election workers, and so forth.

So looking at those 40 voters, there were 26 convictions or guilty pleas. That is a conviction rate of 65 percent, which is quite low for the Justice Department.

When we look at those voters and those who were convicted, we see that one person was convicted for registration fraud. That person did not even vote. And, in fact, that man was deported back

to Pakistan for registering to vote inadvertently when he went to redo his driver's license.

There were 20 people who voted who were ineligible. And these were people who had felony convictions and had not had their civil rights restored and also noncitizens, 15 of those and then five people for multiple voting. And most of this occurred over the Kansas, Missouri border.

So the record, the empirical record of the Justice Department here where they have made a vigorous effort to root out voter fraud has produced very, very little. And in my testimony I mention other things that I have looked at. I have made an extensive search to try to look at State records here. I have used open records requests in the States to request data from every attorney general, secretary of state. I wrote letters to 2,700 district attorneys asking for data on this.

And I am convinced that there is no problem with individual voters trying to commit voter fraud. So this first point here is that we must look at this data carefully. And we should look at what voters are doing because one of the consequences of feeding what I think really has become a propaganda effort to convince the American public that voter fraud is a problem is that there is a lot of confusion about who is committing fraud and where the system is vulnerable. And it is worth taking the time to analyze that.

The other point that I want to make and to conclude quickly is that contrary to what has been suggested here, there is no evidence that I.D. laws increase confidence in voting or increase voting. You can have an increase in turnout and you can suppress the vote at the same time. The question in Indiana is how much larger the turnout might have been had the photo I.D. law not been in place. So I will conclude with that comment.

[The prepared statement of Ms. Minnite follows:]

PREPARED STATEMENT OF LORRAINE C. MINNITE

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

February 26th, 2008, 9:30 A.M.
2141 Rayburn House Office Building
Washington, D.C. 20515-6216

Testimony Submitted by Lorraine C. Minnite
Assistant Professor
Barnard College
New York, New York

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.

[See table 1 at end]

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."

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

Source: U.S. Department of Justice

Mr. NADLER. I thank the witnesses. I will begin by recognizing myself for 5 minutes.

Ms. Minnite, what do you mean when you say that there is no evidence that I.D. laws increase confidence in voting? What do you mean by confidence in voting?

Ms. MINNITE. Well, this is a term that has been used a lot in the media. It can be taken from public opinion polls which ask people about whether or not they think their vote is going to count and so forth. So most of when people say confidence of voting, I think usually they are trying to rely on public opinion polls that ask people questions that way.

Mr. NADLER. Thank you.

Mr. Emmer, you talked about thousands of—I think you said thousands of people who were not removed from the rolls when they died or when they moved. Is there any evidence that any of these people voted after they died?

Mr. EMMER. I don't have any.

Mr. NADLER. Thank you. So now, I mean, this is not a revelation that most States—when someone dies and moves out of the State their name remains on the rolls for a few years. But there is no evidence. And now an attempt has been made, including by you in your testimony, to point to that as if it is some great problem. But is there any evidence that there has been any substantial voting by people whose names remain on the rolls because they died or voting in two States because they moved from one State to another and two counties because they moved from one State?

In other words, when you move from place a to place b, you register in place b. You don't go normally and deregister in place a. But is there any evidence that there is a problem with that, that people, in fact, have tried to vote where they used to live as well as where they live or that people voted for them after they died?

Mr. EMMER. Yes.

Mr. NADLER. What evidence is that?

Mr. EMMER. Well, I started to read it to you. It was the mayoral primary in Chicago in Indiana. And then there is a couple of other instances.

Mr. NADLER. Excuse me. And how many people allegedly voted who were dead?

Mr. EMMER. Dead, I don't know because it wasn't—

Mr. NADLER. All right. How many people allegedly voted who, in fact, had moved out of Chicago, let us say?

Mr. EMMER. One hundred and fifty-five invalid absentee votes is what the research that I did showed.

Mr. NADLER. Invalid absentee votes, which were counted or which were invalidated?

Mr. EMMER. That invalidated it because the race was determined based on a difference of 228 votes.

Mr. NADLER. No, no, no. When you cast an absentee ballot, they validate the vote or not because it is counted. Were these ballots counted?

Mr. EMMER. Originally they were. It was subsequent after a court challenge, my understanding is. That is when the court determined—

Mr. NADLER. So ultimately, they weren't counted in the election.

Mr. EMMER. Excuse me?

Mr. NADLER. So ultimately, they were not counted in the election.

Mr. EMMER. Ultimately, the election was determined to be flawed, and it was thrown out, the results.

Mr. NADLER. The Chicago mayoral election?

Mr. EMMER. The East Chicago mayoral primary in Indiana, yes, sir.

Mr. NADLER. East Chicago? Okay.

Mr. EMMER. I am sorry if I confused the Chairman.

Mr. NADLER. Mr. Hebert, could you comment on this? Is there much evidence—or Ms. Minnite? I am not sure who to ask—that lots of people vote, that there is a substantial problem of people impersonating dead people voting or impersonating someone else voting.

Mr. HEBERT. Well, first of all, there is not a voter fraud epidemic out there of people impersonating others. As I am sure every Member of this Committee knows, it is hard enough to get people to show up to the polls once, let alone trying to convince people to show up twice and vote for somebody else.

Let me just say that with regard to Mr. Emmer's case, there are cases out there that involve voter fraud occasionally being committed by somebody in connection using absentee ballot. But a photo I.D. requirement doesn't have any impact on an absentee ballot. Those are votes that come in by mail, and there is no photo I.D. involved there. So often—

Mr. NADLER. Let me ask you a different question.

Eighty-six voting fraud cases that the Department prosecuted, Ms. Minnite. How many of them involved impersonations that a photo I.D. card might catch of those 86?

Ms. MINNITE. Well, I am not sure exactly where the 86 number comes from. But if you look at the 95 indictments brought between 2002 and 2005, none of them involved voter impersonation.

Mr. NADLER. Okay. None of them?

Mr. Emmer, you argue that we have this epidemic of fraud. How many cases have been convictions? How many convictions have we had of people impersonating other people?

Mr. EMMER. Mr. Chairman, with all due respect, that wasn't my argument. My problem here is that there is—

Mr. NADLER. Well, wait a minute. Your argument is that a voter I.D. card is essential to prevent fraud.

Mr. EMMER. Yes, it is.

Mr. NADLER. Aside from impersonation, what other kinds of fraud would a voter I.D. card prevent?

Mr. EMMER. The voter I.D. card—and I will give the example that Mr. Hebert said—it would have nothing to do with absentee ballots. In fact, this is why these cases are so rare. Without a voter I.D. card, Mr. Chairman, with all due respect, you can't determine whether or not fraud has occurred.

Mr. NADLER. Wait a minute. In an absentee ballot, someone signs a ballot, mails it in. They compare it to the records they have. How does a voter I.D. card have anything to do with that process? And how could it?

Mr. EMMER. Well, after the fact, you would use—we have in Indiana and Georgia, I believe it is, you get 2 days when you do a provisional ballot, much like an absentee ballot, to confirm that, in fact, you are who you say you are when you filled out the ballot.

Mr. NADLER. Wait a minute. But in a provisional ballot or an absentee ballot—an absentee ballot you mail it in. I am going to be in Russia. You mail it in, and you fill out the information. I am so and so, I live at such and such address. I am a registered voter, and so forth.

They take that. They compare it to the records. They compare your signature. In a provisional ballot where for some reason your information is not at the polls, you sign an affidavit in which you say I am so and so, I live at such and such an address, signed so and so, and I am entitled to vote, signed so and so.

They take that after the election, after election day, I should say. They take that. They take it to the board of elections. They compare that information with the information they have. They compare the signatures. And they either say it is the same person or it is not, and they count the ballot or they don't. In either case, how would a voter I.D. photo I.D. card come into the picture one way or the other?

Mr. EMMER. In the example that you just gave me, Mr. Chairman, it would be, in fact, if there is any necessary investigation after comparing the actual absentee ballot to the signature on the voter rolls. If somebody determined that they needed to further investigate whether or not that signature was valid.

Mr. NADLER. But once you compared the signatures, there is no further investigation.

Mr. EMMER. Excuse me. If somebody determines that that is satisfactory, you are right. You are correct, sir.

Mr. NADLER. And if someone determines it is unsatisfactory, now you are dealing with a criminal allegation that someone forged your signature. A photo I.D. card is irrelevant. You call in the person. You say prove you are so and so. You don't need the card at that point. It wouldn't help at that point.

Mr. EMMER. Well, it may or may not. I will agree with the Chairman.

Mr. NADLER. So the only thing that it would help then, aside from this situation where it wouldn't help in 99.9 percent of the cases, is if someone shows up to vote and says I am Joe Smith when, in fact, he is Joe Jones. How many proven instances of that do we have?

Mr. EMMER. Well, and that is the problem. Therein lies the problem. Without a photo I.D., how would you ever know?

Mr. NADLER. Mr. Hebert, could you comment on that? And then I will yield the floor.

Mr. HEBERT. Yes. This is a common thing we hear. Prosecutors have all kinds of resources. First of all, when you go to the polls to vote, for the most part, the people who run the polls are neighborhood people who live in your neighborhood who know you.

And so, when you come back, if you were to claim that you are so and so there to vote and you attempt to vote and you impersonate somebody else, and then that person comes to vote later in the day, and they say I am sorry you can't vote because you al-

ready voted, that person probably would vote a provisional ballot. And the district attorney would then have an opportunity to go ahead and prosecute the person who showed up first.

Then you think to yourself, who is going to take that risk, given the current felony statutes that are on the books, to go and commit voter fraud with eye witnesses, like voter officials who are going to witness you committing the voter fraud, rather than commit it through some more subtle means like absentee voting.

Mr. NADLER. Thank you. My time is expired.

I now recognize the distinguished Ranking Member of the Subcommittee.

Mr. FRANKS. Well, thank you, Mr. Chairman. Mr. Chairman, you know, I just want to repeat what has been said many times here today, that the process of our voting and the process of our elections are critically important to this country because our confidence, and not only our confidence, but their actual accuracy is a foundation of the Nation.

With that said, I would readily admit to the majority that sometimes when I hear about voter fraud, there are a lot of instances that you hear about, and it does seem that the evidence indicates that that is less than what you hear about in the public. If you take polls, there are a lot of people that are concerned about voter fraud. And maybe it is less than what people think.

But isn't that the point? Part of the issue here really is about the public's understanding that their elections are secure. I think the testimony here has been anywhere from 40 to 86 indications of voter fraud. And yet the testimony here today has been that there has not been one court that has ever ruled that anyone was prohibited from voting because they didn't have the proper I.D. based on those allegations.

And so, you know, I don't discount the majority's concern about some type of I.D. card, trying to make sure that that doesn't prevent someone from voting who has a right to. So consequently, I think it is unfair to discount the concern over voter fraud.

But with that said, I think there is a different issue here involved as well. I think the people of this country have a right to believe that their elections have been made among those who were who they said they were, as Mr. Emmer has said.

And there is another issue sometimes. You know, I mean, in Mexico, the last election they had they had two people pretending they were president for a long time because there wasn't confidence in the system. And there wasn't any way to be able to put that out of people's minds. And I think that a voter I.D. that was universally accepted is one way to create confidence in the system.

But if I could draw everyone's attention to two letters that were sent about a month ago that I think illustrates the confusion that can take place. These were letters that were sent to the Democratic party of the state of Nevada.

And I want to ask the panelists whether they think that there is any potential Federal election law based on the following allegations made by the Clinton campaign for President. The allegations were that caucus chairs, who obviously supported Mr. Obama were, number one, deliberately miscounting votes to favor Senator Obama; number two, were deliberately counting unregistered per-

sons as Obama votes; and number three, were deliberately counting young children as Obama votes. They also went on to say many Clinton supporters were threatened with employment termination or other discipline if they caucused for Senator Clinton.

Now, if those allegations are true—maybe they are just campaign rhetoric. But if they were true, Mr. Emmer, would they be potential Federal election campaign violations?

Mr. EMMER. I would say yes. Well, the answer is yes.

Mr. FRANKS. Yes. Well, let me shift gears, and let us give the Obama, Clinton campaign their fair due here. This is allegations made by the Obama campaign. And these are quotes. This is written to the Nevada state Democratic party in written form.

Those Hillary people closed the doors on our people, and we had to call the cops in some precincts to have the locks cut from the doors. They slipped people in the back doors. They sent people home at 11:30 when it was illegal to prevent people from voting before noon.

In precinct 21 a Democratic worker who was clearly for Hillary refused to register Obama supporters and said she was only registering Hillary supporters. Another one—almost immediately I was told by a couple of other Obama precinct leaders that the Hillary people were turning our supporters away by asking to see their I.D.s and telling them they weren't valid.

And, Mr. Emmer, I ask you a question again. If those allegations were true—and again, I have no idea. I mean, it sounds to me like just campaign bickering. But if they were true, would they be potential Federal elections campaign violations?

Mr. EMMER. I believe they would.

Mr. FRANKS. Yes. Well, I think the point I am making here is do you think then—and I will give others a chance to respond. Do you think that there are potential—if that is true, do you think that a universal I.D. card that was universally accepted would have at least been able to dispel those kinds of allegations to some degree?

Mr. EMMER. It may have. And, Ranking Member Franks, what I would add is the public is asking for this. Eighty percent of Americans are asking for it. So it is not just the example that you are giving which would warrant it, but the public across all different races, religions, creeds, walks of life is asking for this.

Mr. FRANKS. Well, my point exactly.

Mr. Chairman, I am going to yield back as my light is on. I am sorry.

Mr. NADLER. Thank you.

I now recognize the gentleman from Virginia for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. I couldn't help but notice the fair and balanced approach that the gentleman from Arizona used. He criticized all of the Democrats. That is, I guess, his view of bipartisanship.

Anyway, Representative Emmer, we have been warned by the old adage to avoid situations where the cure is worse than the disease. We have heard about the handful of fraudulent cases that would possibly be cured with voter I.D. How many people would be prevented from voting because they couldn't get their paperwork straight in order to register?

Mr. EMMER. Mr. Chairman, Member Scott, none.

Mr. SCOTT. I am sorry?

Mr. EMMER. None, sir.

Mr. SCOTT. Okay. You don't have to find a birth certificate or something?

Mr. EMMER. Mr. Chairman, Member Scott, I am sure you are going to have to put together some paperwork. But as the experience has shown in several States over the last couple of years, absolutely no one—there is no evidence that anyone has been denied the right to vote. In fact, cases in Georgia have been dismissed for that very reason because plaintiffs can't meet their burden of proof.

Mr. SCOTT. Mr. Shelton or Mr. Hebert, are there examples of people that couldn't get their paperwork straight in time to register to vote under the voter I.D. law?

Mr. HEBERT. Absolutely, there is. And in Indiana, for example, Marion County, which is where Indianapolis is, filed a brief in the Supreme Court of the United States in which they talked about the people who actually had been denied the right to vote as a result of the inability to produce the necessary documentation. There are other examples.

Remember, too, when the Indiana voter I.D. case was brought, they had never had an election yet under the voter I.D. when the case went to trial. I think it is a little misleading for people to get up there and say, well, in that case, the court didn't find a single instance of a voter being denied the right to vote. But as it turned out, once the election was held, yes, there are really horrendous stories of veterans denied the right to vote even though they were already registered to vote.

Mr. SHELTON. Let me just add that the NAACP held a series of hearings from the 2000 election and 2004 election in Florida, in Ohio, and other places across the country where numerous people testified they were not able to meet that burden, provide the paperwork you are describing. As we talk about that paperwork, we also have to talk about in the context of what it costs to actually get a certified copy of your birth certificate.

Or in some cases, they want a copy of your passport for those that have it. We are talking about expenses that run \$35 and up in most States across the country.

Mr. SCOTT. Mr. Shelton, in your hearings did you find examples of people intentionally misleading others about their eligibility to vote or how to vote or when to vote?

Mr. SHELTON. Yes, sir, in terms of their eligibility and when to vote and how to vote, there were documents sent out, misleading documents in various communities, even right here in Prince George's County, but other places across the country in which misinformation was distributed about what time the vote was going to take place, where voting sites were. In one case, they were told if you were a Democrat you can vote on Wednesday, but Republicans would vote on Tuesday. And, of course, Tuesday was election day.

We have also had examples of robotic phone calls going to people, in many cases misleading, and telling them that very well we are testing out this new system. You can vote by telephone today. So if you want to vote for so and so, you punch the number one, for such and such, you punch the number two. And then when the call was over after they went through the ballot, they told them be-

cause you have been such a great participant and because of your voting history and done such an excellent job in the past, don't worry about coming out to the polls to vote on Tuesday.

Mr. SCOTT. Thank you.

Ms. Minnite, are you familiar with the report issued by the Asian-American Legal Defense Fund?

Ms. MINNITE. I am familiar with it.

Mr. SCOTT. Can you talk about what response there has been to the allegations of excessive requests for identification for Asian-Americans?

Ms. MINNITE. That I don't know.

Mr. SCOTT. Do you know if there is any response to the allegation that there was lack of interpreters at polling places?

Ms. MINNITE. I don't know the response. I am assuming you mean by the Justice Department or by election officials.

Mr. SCOTT. Election officials, just somebody.

Ms. MINNITE. Yes. No, I don't know that there has been any.

Mr. SCOTT. And clerical mistakes or lack of information available to help people actually cast a vote?

Ms. MINNITE. No, I don't know.

Mr. SCOTT. Mr. Hebert, are you familiar with those allegations?

Mr. HEBERT. I am just generally familiar with them. I represent the city of New York Board of Elections. A lawsuit was filed against the city because there was allegations of ineffective assistance at the polls provided to Asian-American voters. The city ended up settling the case and, in fact, now has pending for pre-clearance, what we think is a pretty effective plan that remedies some of these same problems, at least in New York City.

There are other problems, though, in other cities that still remain unremedied. And the Justice Department's long litany of 27 cases or whatever it was they said they had filed, you know, a lot of those are against little, bitty counties in some rural place. And the allegation was you violated Section 203 of the Voting Rights Act because you didn't put a sign up saying that there was a bilingual election law in effect.

And the officials generally in the Justice Department you don't want to use your resources that way. You want to take on the big ticket items that private litigants can't do. That is what you do at the Justice Department. Again, there are lots of allegations like that, Mr. Scott. And that report contains numerous examples of them.

Mr. SHELTON. Mr. Scott, if I might also add that both MALDEF, the Mexican-American Legal Defense and Education Fund and the Asian-American Law Center testified before the NAACP in 2006 that indeed the types of cases that you are describing were a major problem in a number of areas, both throughout the South as well as throughout the West. We have copies of that testimony. We would be delighted to provide it to the Committee.

Mr. SCOTT. Thank you.

Mr. NADLER. Thank you. The gentleman's time is expired.

And I recognize the gentleman from Minnesota for 5 minutes.

Mr. ELLISON. Thank you, Mr. Chairman.

Let me greet Mr. Emmer. He and I served in the Minnesota State House together. We disagreed on most policy issues, but we

did agree on some, particularly debtor privacy issues. And it is good to see you here again, Representative.

You know, you mentioned some things that happened in Indiana. But let us talk about the State you and I know best.

In Minnesota we have some of the highest voter turnout in the country, don't we?

Mr. EMMER. We do.

Mr. ELLISON. And in general we are either one or two in the country election after election after election. And we also have some voting laws that make it easy for people to vote such as same-day voter registration. Isn't that right?

Mr. EMMER. I am sorry. Mr. Chairman, Representative Ellison, I didn't catch the last part.

Mr. ELLISON. Yes. We also have rules that make it easy for voters to cast a vote such as election day registration. Right?

Mr. EMMER. Yes, some would say that makes it easier.

Mr. ELLISON. And also we have vouching, which means that if you have—if you can—if you live in the precinct and you can verify that you know this person lives in the precinct, even if they don't have an I.D., they can register and vote on that day. That is a rule in Minnesota, right?

Mr. EMMER. That is Minnesota.

Mr. ELLISON. Yes. Well, can you tell me whether we have any verifiable fraud in Minnesota?

Mr. EMMER. We have had some allegations, but as far as I know, there have been no outright prosecutions in the last 2 to 4 years.

Mr. ELLISON. Yes. So we have got highest voter turnout, same-day voter registration, vouching, and no verified, proven fraud at all. Now, we did have a case in Redwing. Do you remember that thing?

Mr. EMMER. No.

Mr. ELLISON. Not Redwing, Red Lake. I am sorry.

Mr. EMMER. That one I remember.

Mr. ELLISON. Yes, the Red Lake one. You know, you are quicker than me on that one, Red Lake. Do you remember the Red Lake incident?

Mr. EMMER. I do vaguely. Perhaps you could refresh my recollection.

Mr. ELLISON. Yes, let me do that. In 2004 in the Native American Indian reservation on the far west part of our State reported that somebody from Washington came there and was challenging every voter, regardless as to having specific information. Because in Minnesota you can challenge a voter.

And the tribal authorities actually had to escort this person off the reservation because they were creating such a nuisance for native American voters. Are you familiar with that case? Do you remember that one?

Mr. EMMER. That is very unfortunate. We have the same problem in Minneapolis and St. Paul with Republicans when they go to vote.

Mr. ELLISON. Yes, that is a good joke. I appreciate that. But let me just ask a few other questions.

Thank you, Professor Minnite, for your work. I would like to ask you is there—I looked on your chart, and I couldn't find any dem-

onstrated or documented cases of imposter voting, specifically imposter voting. I am voting today. I am not who I say I am. Here is my fake I.D., and I voted. Are there any cases of that that you were able to discover?

Ms. MINNITE. Not in this data. Not in the Federal record here, no. I will add the one case of impersonation that I know of in looking, you know, for years now and looking quite hard was a case in a Republican primary in New Hampshire—I think it was 2002—in which a 17-year-old who shared his father’s name and knew that his father was going to be out of town went and voted because the polling site was in his school and the teacher had taken the class down to say, you know, we must exercise our civic duty and stuff. So when you turn 18, vote.

And he knew his father was out of town and that his father wanted to vote for George Bush. I am sorry. No, it must have been 2000. And he voted. But in that case, an I.D. card obviously wouldn’t have worked because he had the same name as his father. So that is the only case that I have come across in which you might say there was a kind of impersonation going on.

Mr. ELLISON. Now, I am familiar with that case. And my recollection is that it was New York. But it could have been New Hampshire.

Ms. MINNITE. It was New Hampshire.

Mr. ELLISON. Was it?

Ms. MINNITE. Yes.

Mr. ELLISON. And in this particular case, I recall that kid getting a criminal record.

Ms. MINNITE. No, he——

Mr. ELLISON. Or some sort of a juvenile——

Ms. MINNITE [continuing]. Had a community service requirement. And he was also required to make a speech to his class about integrity in the voting process. But they didn’t want to give him a criminal record for that.

Mr. ELLISON. Sully his record. Yes. And so, that is the only case I have ever heard of.

Let me ask you this as well. What is really going on here? I mean, we have had a lot of people say that we have got to have these photo I.D.s because we have got to have integrity in the vote. I haven’t heard any proof that people don’t believe—you know, believe that is a widespread problem. And the number of cases are woefully inadequate to support the case. But we have this big P.R. campaign going on.

And now what we are seeing is scholars like yourself saying, you know, there is no there there. So what is really going on? Why the big furor about voter fraud?

Mr. Shelton, would you venture to enlighten us a little bit?

Mr. SHELTON. I believe it is an attempt at voter suppression, that we know that the poorest of Americans have a tendency to be racial and ethnic minorities. They have a tendency to vote in one direction for a particular party. The thrust of this seems to be the other party pushing against those participants being able to cast that vote and have that vote counted.

We have had other experiences in which African-Americans would go to the polls in places that do have a photo I.D. require-

ment. And when the African-American came to the poll to vote because the poll workers have the discretion to actually accept other forms of identification, even signature attestation, which, by the way, is the most effective and sure-fire way to prevent any kind of misrepresentation, that very well they were being sent home to pick up their photo I.D.s to come back.

But the White voters that lived in the same community were allowed to cast votes even if they didn't have the photo I.D. on themselves. And they were saying it is a discriminatory application of the law that cuts across racial lines and cuts across lines of, not only employment, but certainly income.

Mr. ELLISON. Mr. Chairman, can I ask unanimous consent to have this University of Wisconsin 2005 study entered into the record?

Mr. NADLER. Without objection, so ordered.

[The information referred to follows:]

The Driver License Status of the Voting Age Population in Wisconsin

by John Pawasarat, Employment and Training Institute, University of Wisconsin-Milwaukee, June 2005.

Because one of the most important employment issues facing central city Milwaukee residents is access to a valid drivers license, the UWM Employment and Training Institute has conducted considerable research on drivers license suspension and revocation issues for Milwaukee adults and teenagers and explored the impacts of past and current state policies suspending licenses for failure to pay fines and forfeitures on residents of central city neighborhood. **This research report provides a first-time analysis of drivers license issues based on the racial/ethnicity of drivers and unlicensed adults in Wisconsin.** The importance of possessing a valid drivers license cannot be overstated in Milwaukee's labor market. Annual employer surveys conducted by the Employment and Training Institute for the Private Industry Council of Milwaukee County have found that three-fourths of Milwaukee area job openings are located in Milwaukee County suburbs and the exurban counties of Waukesha, Ozaukee, and Washington counties – usually not easily accessed by public transportation. Research on welfare recipients finding employment showed that possession of a drivers license and car was a stronger predictor of leaving public assistance than even a high school diploma.

For this report, new ETI research on interrelationships between race/ethnicity, income and geography for the drivers license issue is applied to proposals in the Wisconsin Legislature to require state drivers licenses or photo IDs as identification for voting in elections in the state. The report details the impact of the proposed voter identification legislation on the population of adults 18 and older in the State of Wisconsin compared to the population of adults with a current driver license and current address. The number of Wisconsin licensed drivers is taken from the Department of Transportation (DOT) computer database for licensed drivers current as of January 31, 2002 and analyzed by age, race/ethnicity, gender, and geography. The Census 2000 full count (Summary File 1) for Wisconsin and Milwaukee County is used as the base for comparison. Individuals who were 16 or older on April 1, 2000, the reference date of the Census, are compared to the population of drivers with a drivers license 2 years later when they reached legal voting age. Data on Wisconsin DOT photo ID utilization was only available at the state level by age and gender, and this data is incorporated in the analysis where possible.

Findings

1. Many adults do not have either a drivers license or a photo ID. An estimated 23 percent of persons aged 65 and over do not have a Wisconsin drivers license or a photo ID. **The population of elderly persons 65 and older without a drivers license or a state photo ID totals 177,399**, and of these 70 percent are women. While racial data was not available on the state population with photo IDs, 91 percent of the state's elderly without a Wisconsin drivers license are white. **An estimated 98,247 Wisconsin residents ages 35 through 64 also do not have either a drivers license or a photo ID.**
2. Minorities and poor populations are the most likely to have drivers license problems. Less than half (47 percent) of Milwaukee County African American adults and 43 percent of Hispanic adults have a valid drivers license compared to 85 percent of white adults in the Balance of State

(BOS, i.e., outside Milwaukee County). The situation for young adults ages 18-24 is even worse -- with only 26 percent of African Americans and 34 percent of Hispanics in Milwaukee County with a valid license compared to 71 percent of young white adults in the Balance of State.

3. A large number of licensed drivers have had their licenses suspended or revoked, many for failure to pay fines and forfeitures rather than traffic points violations. The drivers license file shows 39,685 individuals in Milwaukee County who have drivers licenses but also recent suspensions or revocations on their licenses. Another 49,804 Milwaukee County adults had a recent suspension/revocation but no license with the DOT. Only 65 percent of adults in Milwaukee County have a current and valid Wisconsin drivers license, compared to 83 percent of adults in the Balance of State.
4. A portion of the population with a drivers license and a recent suspension or revocation may retain their license as an ID for voting and others may secure a state photo ID. These licenses cannot be renewed, however, without clearing up the outstanding fines and fees.
5. Students without a Wisconsin drivers license or a Wisconsin photo ID would need to obtain either one to vote. Those students and young adults living away from home but retaining their permanent home address on their drivers license need to provide proof of residence to vote prior to registration under current laws. Because the drivers license is a valid ID, regardless of address, few if any in this population would have a photo ID with a current address. These individuals may have a Wisconsin or out-of-state drivers license but not one with a current address. At UWM, Marquette University, and the University of Wisconsin-Madison, a total of 12,624 students live in residence halls, but only 280 (2 percent) have drivers licenses with these dorms' addresses. All others require special handling to vote under proposed and current legislation.
6. The population that changes residence frequently is most likely to have a drivers license address that differs from their current residence. This would include lower-income residents who rent and students and young adults living away from home (who are likely to have a drivers license listing an incorrect address or their permanent home address). To illustrate this point, 16 Wisconsin ZIP codes were identified which have the highest concentration of undergraduate students (both in dorms and in apartments). These ZIP codes had 118,075 young voting age adults (ages 18-24) but 83,981 (or 71 percent) 18-24 year olds did not have a drivers license with this current ZIP code address. Over half of the adults of the 18-24 year old age group did not have a drivers license with an address in their current ZIP code for college neighborhoods in Eau Claire, LaCrosse, Madison, Milwaukee, Oshkosh, Platteville, River Falls, Stevens Point, Stout, and Whitewater. All of those without a current address on their drivers license or ID need to provide proof of residence.

I. Drivers License Status for Minorities

The number and percent of minorities who are Wisconsin residents has been increasing, particularly in Southeast Wisconsin. This population is also very young. Minorities are much less likely to have a drivers license and if they do, they are much more likely to have a recent license suspension or revocation. Having a suspension or revocation could result in a large number of licenses not having a current address and licenses not being renewed.

Statewide, the percent of Wisconsin residents with a valid drivers license is 80 percent for males and 81 percent for females. For African-Americans, only 45 percent of males and 51 percent of females have a valid drivers license. Hispanics show 54 percent of males and only 41 percent of females with a valid drivers license.

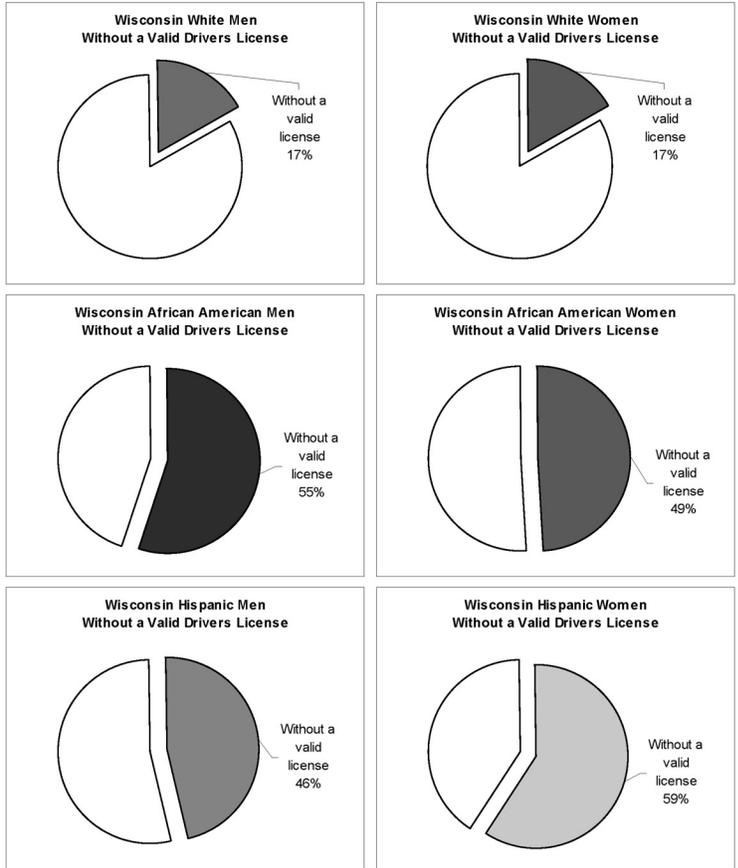
For young adults (ages 18 through 24) even fewer minorities have valid drivers licenses to use for voter identification under the proposed legislation. Statewide, only 22 percent of young African American males and 34 percent of young African American females have a valid license. For young Hispanics, 43 percent of males and only 37 percent of females have a valid license. For whites, 64 percent of males and 75 percent of females have valid licenses.

Many Wisconsin residents have a drivers license with a recent suspension or revocations, and minorities are twice as likely to be in this situation. If these individuals have retained their license, they will be able to use it as an ID for voting purposes. Statewide, an estimated 11 percent of African American adults and 8 percent of Hispanic adults have a license with a current revocation or suspension, compared to 4 percent of whites.

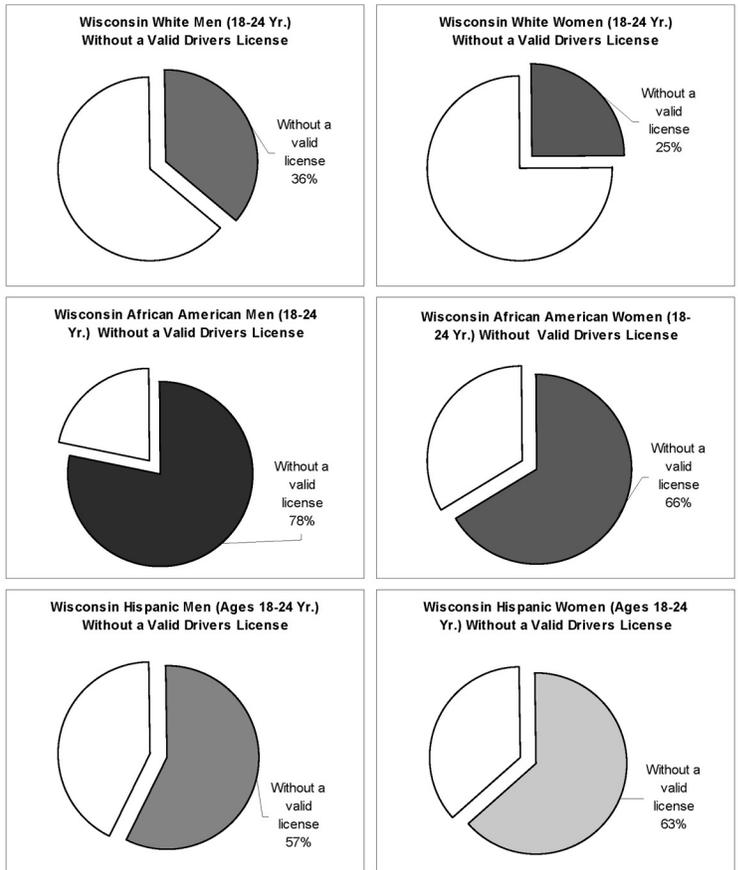
An even larger number have no license but a recent suspension or revocation. An estimated 17 percent of African American adults and 8 percent of Hispanic adults, compared to 1 percent of white adults, fall into this category.

A portion of the population without a drivers license – whether valid or not – will have a photo ID, but without an analysis by race and location, it is not possible to estimate that population.

The graphs below show the percentages of adults of voting age (ages 18 and above) in Wisconsin with valid drivers licenses, without recent suspensions or revocations.



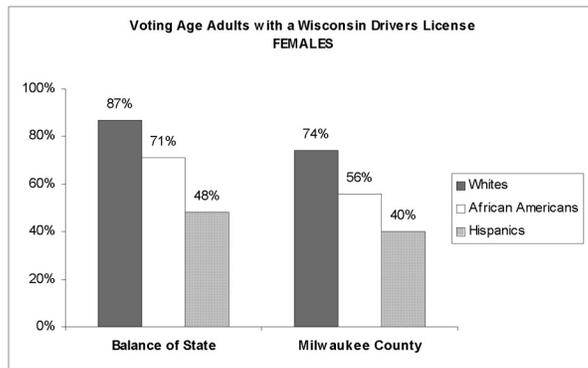
The graphs below show the percentages of **young adults (ages 18 through 24)** in Wisconsin with valid drivers licenses, without recent suspensions or revocations.

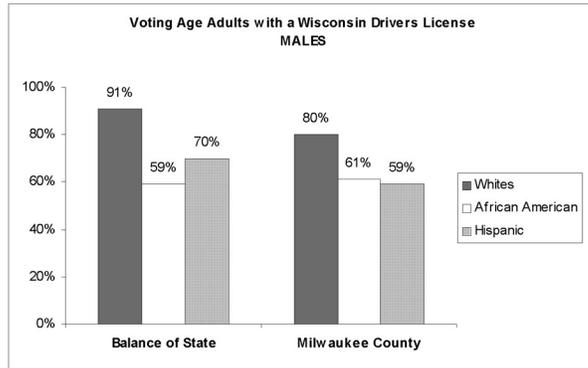


II. Drivers License Status of Milwaukee County Residents

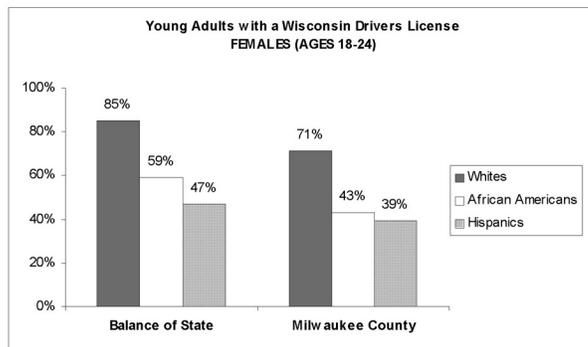
Milwaukee County residents are more than twice as likely to be without a drivers license as adults in the balance of the state. Almost a third (30 percent) of Milwaukee County voting age adults do not have a drivers license compared, to 12 percent of residents in the Balance of State. The county is home to much of the state's African American and Hispanic populations who have lower percentages with a current drivers license. Milwaukee is also home to Marquette University, UWM, and a number of other post-secondary institutions that house significant numbers of non-resident students. Dense urban neighborhoods and extensive mass transit systems may also account for more individuals without a drivers license in Milwaukee County.

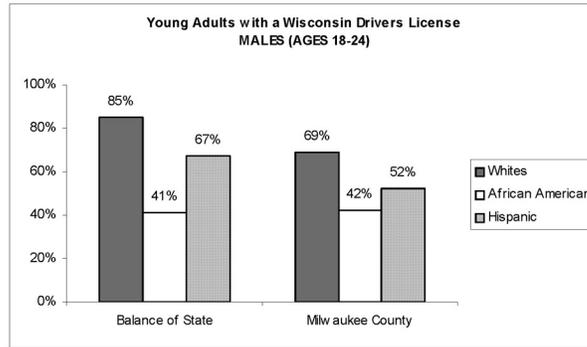
The graphs below (and the tables on pages 21-22) show the differing impacts by race/ethnicity and area of the state (i.e., Milwaukee County and the "balance of the state") that would result from using the drivers license as a voter ID. The combination of race and geography results in some populations having less than half of the percentage of eligible voters based on drivers license ID requirements. This analysis does not include photo ID utilization, as the published state photo ID data is only available by age and gender and at the state level. **In the graphs below all licensed drivers are included, including persons with suspensions and revocations.**





The percentages of young adults with drivers licenses for use as voter IDs is strikingly lower than for the voting age population as a whole. For some minority subpopulations, less than half of young voting age adults show a current drivers license. **In the graphs below all licensed drivers are included, including persons with suspensions and revocations.**





A ZIP code analysis of the percentages of adults of voter age holding drivers licenses shows wide differences within Milwaukee County as well. The tables below show the percentage of Milwaukee County adults with drivers licenses.

The first table shows adults with a valid license. In the 53217 “North Shore” communities of Bayside, Fox Point, Glendale and parts of River Hills, and Whitefish Bay, 92 percent of adult males and females had valid drivers licenses, compared to rates of 40 percent or below on the near northside of Milwaukee (ZIP codes 53205 and 53206) and around Marquette University (53233).

The second table shows adults with any Wisconsin drivers license, whether valid, suspended or revoked. Here, the percentages of males with licenses is 95 percent or above in the “North Shore” (ZIP code 53217), Hales Corners (ZIP code 53130), and Oak Creek (ZIP code 53154). Fewer than half of females in Milwaukee ZIP codes 53233, 53204, 53205, and 53206 had a license.

Voting Age Adults in Milwaukee County with Valid Drivers Licenses

ZIP Code (ZCTA)	Voting Age Males	% of males with a valid drivers license in the ZIP Code	Voting Age Females	% of females with a valid drivers license in the ZIP Code
Milwaukee 53233	7,485	21%	6,471	16%
Milwaukee 53205	2,858	38%	3,854	36%
Milwaukee 53206	8,860	40%	12,555	37%
Milwaukee 53204	15,707	47%	13,113	33%
Milwaukee 53212	9,796	47%	11,827	44%
Milwaukee 53210	8,632	49%	11,713	50%
Milwaukee 53208	10,668	53%	12,992	46%
Milwaukee 53202	11,129	55%	9,217	57%
Milwaukee 53216	9,976	57%	13,577	60%
Milwaukee 53218	11,895	61%	15,734	58%
Milw., Wauwatosa 53225	8,582	62%	10,497	63%
Milwaukee, Brown Deer, Glendale, River Hills 53209	15,447	62%	20,067	63%
Milw., West Milw. 53215	19,384	63%	20,407	52%
Milwaukee 53224	6,247	63%	7,565	63%
Milw., Shorewood, W. Bay 53211	14,669	65%	16,068	64%
W. Allis, Milw., W. Milw. 53214	14,124	65%	14,474	68%
Milw., Brown Deer 53223	10,443	66%	13,060	65%
St. Francis 53235	3,562	67%	3,878	63%
W. Allis, Milw., Greenfield 53227	9,273	74%	10,534	71%
Milwaukee, Greenfield, West Allis, West Milwaukee 53219	12,956	74%	14,995	70%
Milwaukee 53207	14,327	75%	15,028	74%
Milwaukee, Wauwatosa 53222	8,818	76%	11,357	71%
Franklin 53132	12,208	77%	11,121	90%
Wauwatosa, Milwaukee 53226	7,085	77%	8,433	77%
Milwaukee, Greenfield 53221	13,444	78%	15,615	72%
Cudahy 53110	7,007	79%	7,639	75%
Wauwatosa, Milwaukee 53213	9,298	80%	10,974	80%
Greenfield, Milwaukee 53220	9,532	81%	11,319	78%
South Milwaukee 53172	8,001	81%	8,342	83%
Greenfield, Milwaukee 53228	5,295	85%	6,292	80%
Oak Creek 53154	10,832	88%	11,564	87%
Greendale 53129	5,329	88%	6,145	89%
Hales Corners 53130	2,826	89%	3,302	84%
Bayside, Fox Pt., Glendale, River Hills, W. Bay 53217	10,707	92%	12,087	92%
Milwaukee County	336,402	66%	381,816	65%

**Voting Age Adults in Milwaukee County with Drivers Licenses
(including Valid, Suspended and Revoked Licenses)**

ZIP Code (ZCTA)	Voting Age Males	% of males with a drivers license in the ZIP Code	Voting Age Females	% of females with a drivers license in the ZIP Code
Milwaukee 53233	7,485	25%	6,471	19%
Milwaukee 53205	2,858	49%	3,854	42%
Milwaukee 53206	8,860	55%	12,555	43%
Milwaukee 53204	15,707	58%	13,113	36%
Milwaukee 53212	9,796	61%	11,827	50%
Milwaukee 53210	8,632	64%	11,713	56%
Milwaukee 53208	10,668	65%	12,992	50%
Milwaukee 53202	11,129	61%	9,217	59%
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Bayside, Fox Pt., Glendale, River Hills, W. Bay 53217	10,707	96%	12,087	93%
Milwaukee County	336,402	75%	381,816	68%

III. License Suspensions and Revocations

Wisconsin law permits units of government to suspend a drivers license for failure to pay outstanding fines. In the case of juveniles who fail to pay fines for truancy, curfew violations, underage drinking, jaywalking, etc., a suspension order is placed which prevents the youth from obtaining a license until these fines are paid. The suspensions solely for failure to pay bills make up almost half of the total suspensions in the state. Previous studies of the impact of these suspensions have shown the adverse impact on residents of central city neighborhoods in Milwaukee. Milwaukee County residents are twice as likely to have a suspension in a year than are residents in the balance of the state. Most of this disparity occurs because Milwaukee has the largest concentration of poor young minorities, who show the highest levels of suspensions for failure to pay fines.¹ Review of drivers license files showed 89,489 Milwaukee County residents and 237,434 adults in the Balance of State with recent license suspensions or revocations. Other residents lost their licenses in the past and have not paid the fines and fees required to restore them.

IV. Drivers License Status of Elderly Residents

The population of 177,399 older persons without a Wisconsin drivers license or photo ID would be adversely effected by the voter ID legislation proposed, except for those living in nursing homes and assisted living quarters. Nearly all of those affected appear to be white (91 percent) and most are female (70 percent). The population of those 65 and over totaled 780,947 as of 2002 (based on Census data), while those with a Wisconsin drivers license totaled 560,686 and those with a photo ID and no license totaled 42,862, leaving 177,399 without an ID. Only a small portion (5 percent) of the older population is in a nursing home (38,199 persons statewide as of 2000) and some of these nursing home residents may still have an unexpired Wisconsin drivers license.

V. License Status of College Students in Residence Halls

Students enrolled at post secondary institutions and not currently living at home may face problems when attempting to vote while at school. Most college students do not change their drivers license address when attending school. Student ID's typically do not include addresses, and students in dorms are most often under 21 years of age with no reason to obtain a photo ID from the DOT to prove they are of legal drinking age. Statewide, students living in dormitories in the 2000 Census totaled 51,249.

As shown below, very few University of Wisconsin-Milwaukee, University of Wisconsin-Madison, and Marquette University students 18-24 years of age have a drivers license that lists their dorm as their current address. Fewer than 3 percent of students have a drivers license with their current

¹ See John Pawasarat, **Removing Transportation Barriers to Employment: The Impact of Driver's License Suspension Policies on Milwaukee County Teens** (University of Wisconsin-Milwaukee Employment and Training Institute, 2000) online at www.uwm.edu/Dept/ETI/barriers/tccnsdot.htm; John Pawasarat and Frank Stetzler, **Removing Transportation Barriers to Employment: Assessing Driver's License and Vehicle Ownership Patterns of Low-Income Populations** (UWM Employment and Training Institute, 1998) online at www.uwm.edu/Dept/ETI/dot.htm; and **Neighborhood Indicators Central City Milwaukee: 1992-Present** online at www.uwm.edu/Dept/ETI/reports/indy.page.htm.

residence hall address, while 97 percent could require special handling at the polls under proposed legislation and at the time they register to vote under current legislation.

**University Students in Residence Halls Compared to Licensed Drivers at the Address:
UWM, Marquette University, and UW-Madison**

Residence Hall	Address	With Drivers License at address	Residents Capacity
University of Wisconsin-Milwaukee:			
Sandburg Residence Halls	3400 N. Maryland Ave.	51	2,700
Marquette University (Milwaukee)			
Coben Hall	729 N. 11 th Street	8	350
Carpenter Hall	716 N. 11 th Street	3	300
Mashuda Hall	1530 W. Wisconsin Ave.	10	400
McCormick Hall	1530 W. Wisconsin Ave.	9	725
O'Donnell Hall	725 N. 18 th Street	6	300
Schroeder Hall	715 N. 13 th Street	7	650
South Hall	525 N. 17 th Street	1	87
Straz Hall	915 W. Wisconsin Ave.	12	376
(Sub-total, Marquette University)		(56)	(3,188)
University of Wisconsin-Madison			
Adams Hall	1520 Tripp Circle	12	276
Barnard Hall	970 University Ave.	8	138
Bradley Hall	1900 Willow Drive	10	246
Chadbourne Hall	420 N. Park Street	23	687
Cole Hall	625 Elm Drive	8	244
Elizabeth Waters Hall	1200 Observatory Drive	5	473
Friedrick Center	1950 Willow Drive	0	50
Kronshage Hall	1650 Kronshage Drive	11	616
Merit House	919 W. Dayton Street	0	23
Ogg Hall	716 W. Dayton Street	38	950
Sellery Hall	821 W. Johnson Street	21	1,148
Slichter Hall	625 Babcock Drive	7	198
Sullivan Hall	635 Elm Drive	5	257
Tripp Hall	1510 Tripp Circle	8	280
Witte Hall	615 W. Johnson Street	17	1,150
(Sub-total, UW-Madison)		(173)	(6,736)

There are 15 residence halls at the University of Wisconsin-Madison, having a capacity of 6,736 beds. However, the number of licensed drivers with the residence hall addresses totaled 173, or less than 3 percent of the residents. At the Sandburg Residence Halls at UWM, out of 2,700 dorm residents, less than 2 percent of dorm residents had a drivers license with the Sandburg address. Similarly, less than 2 percent of the students living in the Marquette University dorms (or 56 out of 3,188 residents) had a drivers license with their dorm's address. It is not possible, based on published data tables for state photo IDs, to determine how many students have obtained Wisconsin photo IDs or how many have state drivers licenses with a different home address listed.

College students not in dorms may be in a similar situation. Students and young people who move away from home to attend school usually have a drivers license but do not change their license address during college. In many cases younger adults may not change their license address until they find a permanent job except for occasional situations when a current drivers license may be required for another purpose. (For example, the City of Milwaukee overnight parking permits require a current drivers license with the address where the vehicle is parked.)

The Wisconsin DOT drivers license file and Census 2000 (SF3 file) are used to assess the degree to which students do not change their license address in “student intense ZIP codes” throughout the state. The U.S. Census data was used to compare the number of 18 through 21 year olds to the number enrolled in undergraduate programs in each Wisconsin ZIP code. The top 16 ZIP codes (ZCTAs, Zip Code Tabulation Areas) where the highest number of undergraduates resided accounted for a total of 96,589 undergraduates and 78,075 young people ages 18 through 21. The 18-21 year old population with a drivers license in these same 16 ZIP codes totaled 15,321, or 20 percent of those 18 through 21 years old. The population in these 16 ZIP codes without a drivers license with their current residence totaled 62,754. When the population of 22 to 24 year olds are included, the number without a drivers license address at the current address totals 83,981. In some ZIP codes 98 to 99 percent of the students do not have a license with their current school address.

18, 19 and 20 Year Olds in the 2000 Census and With a Drivers License for the ZIP Code for the Top 16 Student-Intensive ZIP Codes in Wisconsin

ZIP Code (ZCTA)	Census 2000 population 18-20 yr.	With drivers license at this ZIP Code	Without a drivers license at this ZIP Code	% without a drivers license at this ZIP Code
Madison 53703	5,527	308	5,219	94%
Madison 53706	4,872	56	4,816	99%
LaCrosse 54601	5,880	1,124	4,756	81%
MU-Milwaukee 53233	4,379	109	4,270	98%
Whitewater 53190	4,042	456	3,586	89%
Eau Claire 54701	4,711	1,152	3,559	76%
Oshkosh 54901	4,222	913	3,309	78%
Stevens Point 54481	4,010	1,089	2,921	73%
Stout 54751	3,287	632	2,655	81%
UW-Milwaukee 53211	3,435	1,138	2,297	67%
Platteville 53818	2,286	363	1,923	84%
River Falls 54022	2,493	578	1,915	77%
Madison 53705	2,660	750	1,910	72%
Madison 53715	1,781	135	1,646	92%
Milwaukee 53202	1,307	122	1,185	91%
Eau Claire 54703	2,371	1,345	1,026	43%
Total 16 ZIP Codes	57,263	10,270	46,993	82%

The problem of young adults without drivers licenses at their current address is not limited to the

younger college student population. An analysis of the population of 21-24 year olds in the "student intense ZIP codes" also showed a large number of adults aged 21-24 without a drivers license for the ZIP code. Almost 37,000 young adults, 61 percent of those living in these college area ZIP codes, did not have a drivers license for that ZIP code.

**21-24 Year Olds in the 2000 Census and With a Drivers License for the ZIP Code
for the Top 16 Student-Intensive ZIP Codes in Wisconsin**

ZIP Code (ZCTA)	Census 2000 population 21-24 yr.	With drivers license at this ZIP Code	Without a drivers license at this ZIP Code	% without a drivers license at this ZIP Code
Madison 53703	9,247	2,464	6,783	73%
LaCrosse 54601	5,725	2,938	2,787	49%
Oshkosh 54901	4,669	1,886	2,783	60%
MU-Milwaukee 53233	3,315	563	2,752	83%
UW-Milwaukee 53211	5,037	2,331	2,706	54%
Stevens Point 54481	4,456	1,988	2,468	55%
Whitewater 53190	3,369	928	2,441	72%
Madison 53715	3,197	795	2,402	75%
Eau Claire 54703	4,431	2,220	2,211	50%
Stout 54751	3,365	1,201	2,164	64%
Milwaukee 53202	2,941	1,158	1,783	61%
Platteville 53818	2,105	645	1,460	69%
River Falls 54022	2,442	990	1,452	59%
Madison 53705	3,010	1,681	1,329	44%
Eau Claire 54701	3,198	1,946	1,252	39%
Madison 53706	305	90	215	70%
Total 16 ZIP Codes	60,812	23,824	36,988	61%

VI. The Number of Unlicensed Adults Is Expected to Grow

According to population estimates prepared by the Wisconsin Department of Administration, the population of adults aged 18 or older as counted in the 2000 Census is continuing to grow in the state, in part because as older residents die or move away from Wisconsin, they are being replaced by a much larger population of young adults. For example, the population of 65-year olds in the 2000 Census totaled 36,876, while the population of 17-year olds in Wisconsin totaled 81,360.

The Wisconsin Department of Administration estimates the population of Wisconsin residents 18 or over as of January 1, 2004 to be 4,119,320, or a 124,401 increase over the 2000 Census count. Assuming the same annual growth of the 18 and over population, the January 1, 2005 estimate will be close to 4,152,521, or 157,602 higher than 2000 population count.

VII. Households Without a Vehicle Unlikely to Have Current Licensed Drivers

Census 2000 special tabulation files for the PUMS (Public Use Microdata Sample) offer detailed data on households in Wisconsin. Of particular interest are those households that do not have any vehicles. Statewide, a total of 371,501 persons, aged 18 and over, were reported in households with 0 vehicles (cars or trucks). These persons were heavily concentrated in the City of Milwaukee, where 87,300 adults were in households without vehicles. While many adults in other households may be unlicensed, it is likely that households where there is no car or truck owned by any household member would have much higher numbers of persons without current drivers licenses. As shown in the table below, while the City of Milwaukee has 11 percent of the state's adult population, it has 23 percent of the adults living in households without a vehicle.

**Wisconsin Voting Age Adults Without a Vehicle in Their Household
Census 2000 PUMS Files**

<u>Location</u>	<u>Total Voting Age Adult Population:</u>		<u>Adults With NO Vehicle in the Household:</u>	
	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>
State of Wisconsin	3,990,736	100%	371,501	100%
City of Milwaukee	425,372	11%	87,300	23%
Milwaukee County Suburbs	268,667	7%	23,831	6%

As seen in the tables below, the number of adults without a vehicle in their household varies greatly by subpopulation. Older adults, for example, without vehicles in their household reflect statewide distributions of this age cohort and show less intense concentration in the City of Milwaukee compared to outstate. The numbers of older adults without vehicles in the household are similar for the City of Milwaukee as for the Milwaukee County suburbs.

**Wisconsin Older Adults (Ages 55 and Above) Without a Vehicle in Their Household
Census 2000 PUMS Files**

<u>Location</u>	<u>Total Adult Population (Ages 55+):</u>		<u>Older Population With NO Vehicle in the Household:</u>	
	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>
State of Wisconsin	1,111,676	100%	149,158	100%
City of Milwaukee	98,902	9%	24,351	16%
Milwaukee County Suburbs	84,872	8%	14,441	10%

Non-white residents show very different patterns of potential impact of drivers license policies on voting. Fully, 60 percent of African American adults in Wisconsin without a car or truck in their household live in the City of Milwaukee.

**Wisconsin African American Voting Age Adults Without a Vehicle in Their Household:
Census 2000 PUMS Files**

<u>Location</u>	<u>Adult African American Population (Ages 18+):</u>		<u>Adult Afr. Americans With NO Vehicle in the Household:</u>	
	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>
State of Wisconsin	327,073	100%	80,034	100%
City of Milwaukee	170,209	52%	47,858	60%
Milwaukee County Suburbs	15,264	5%	3,104	4%

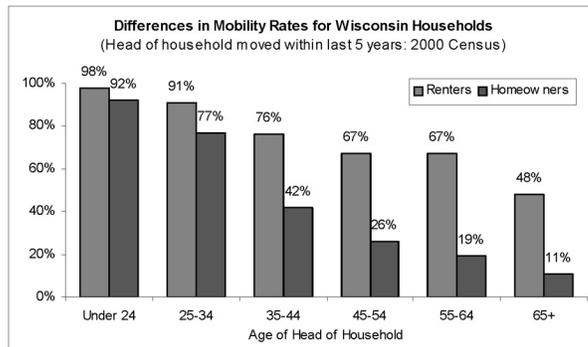
**Wisconsin White Voting Age Adults Without a Vehicle in Their Household:
Census 2000 PUMS Files**

<u>Location</u>	<u>Adult White Population (ages 18+):</u>		<u>Adult White Pop. With NO Vehicle in the Household:</u>	
	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>
State of Wisconsin	3,863,863	100%	291,467	100%
City of Milwaukee	255,163	10%	39,442	14%
Milwaukee County Suburbs	253,403	7%	20,727	7%

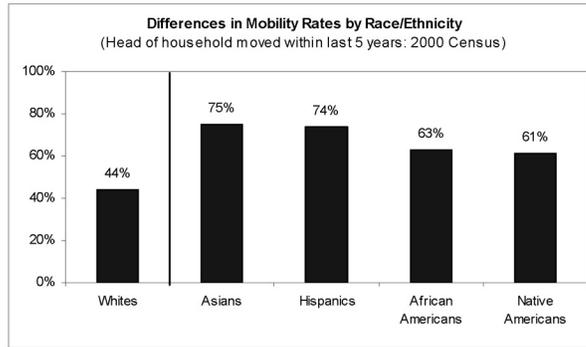
VIII. Subpopulations Without a Current License or Photo ID Address

Many people move to another residence at various times and for various reasons. As a result, some subpopulations will be less likely to have a Wisconsin drivers license or photo ID with a current address. The Wisconsin drivers license is usually valid for eight years, but many citizens move frequently and may not update their license address each time they move. According to the 2000 U.S. Census, 46 percent of Wisconsin households had moved into their current residence since 1995 or after. This moving population involved 962,425 households. Any of these residents who had not updated their drivers license to their current address would require special processing by the local election board or at the polls. Those most effected by proposals to use the drivers license to verify voters' current addresses would include the following:

1. **Renters.** Seventy-six percent of Wisconsin households who are renters changed their residence between January 1995 and March 2000, and many may have moved multiple times. (By comparison, 22 percent of households owning their own home had moved between January 1995 and March 2000.) Almost forty percent of the renting households moved one or more times in the 2-1/4 year period from January 1999-March 2000.



2. **College students.** As detailed above, college students do not usually contact the Department of Transportation each time they move during their college years and instead maintain their permanent home address on their drivers license.
3. **Minorities.** Mobility rates differ substantially by racial/ethnic groups in Wisconsin. According to the 2000 Census, whites are least likely to move with 44 percent of white households having moved in 1995 or after. By comparison, the mobility rates for Native Americans, African Americans, Hispanics, and Asians ranged from 61 to 75 percent.



Wisconsin Household Heads Who Moved from Jan. 1995 to Mar. 2000 by Race/Ethnicity: 2000 Census

<u>Race/Ethnicity of Householder</u>	<u>% of Household Heads Who Moved from 1/1995 to 3/2000</u>
Whites	44%
Native Americans	61%
African Americans	63%
Hispanics	74%
Asians	75%

4. **Younger adults.** Mobility rates for Wisconsin adults differ by the age of the householder. Statewide, 97 percent of head of households ages 18-24 had moved in 1995 or after. Older adults showed much lower mobility rates.

Wisconsin Households Heads Who Moved from Jan. 1995 to March 2000: 2000 Census

<u>Age of Householder</u>	<u>% of Household Heads Who Moved from 1/1995 to 3/2000</u>
Under 25 yr.	97%
25-34 years	84%
35-44 years	52%
45-54 years	34%
55-64 years	32%
65 and older	21%

IX. Subpopulations Considered in the Drivers License Analysis

Drawing on its prior research work using institutional databases and its work studying the use of the Wisconsin drivers license for collection of fines and civil forfeitures, the Employment and Training Institute assessed the extent to which the population of licensed drivers compares to the state's estimated eligible voting population. The research identifies subpopulations that are underrepresented in the drivers license file and who may need separate attention at the polling place. Examination of DOT records and U.S. Census counts of the state population show significant **subpopulations without a current license**.

1. **Persons who use mass transit.** In cities, persons who use mass transit and do not own a vehicle may not have or need a drivers license. The City of Milwaukee will have the largest population of unlicensed residents using mass transit.
2. **Lower income residents.** Some lower income households may find the costs of purchasing, maintaining and insuring a vehicle to be prohibitive. Without a car, they have little reason to obtain a drivers license.
3. **Teenagers who don't own their own car and who have not obtained a license.** While many teenagers obtain a drivers license soon after they turn 16, some do not. In some households the teenager may not have access to a car or may have access to alternative transportation from relatives and friends. In Wisconsin drivers license applicants under age 18 are required to show evidence of completion of a driver education course before receiving their probationary license – a requirement that presents an economic impediment in lower-income households, as free drivers education may not be available.
4. **Senior citizens.** Many older adults give up driving for health or economic reasons. While only 5 percent of Wisconsin seniors aged 65 and older are in nursing homes, many others do not drive.
5. **Women.** Females are disproportionately underrepresented in the drivers license file. Rates of licensing are lower for Hispanic women and for older white women.
6. **Bad drivers.** Persons who have lost their drivers license due to suspensions and revocations include those who lost their licenses for repeat speeding offenses, drunk driving ("DWI," or "driving while intoxicated"), or drug convictions.
7. **Drivers with unpaid fines.** The vast majority of suspended licenses in Wisconsin are for failure to pay municipal and circuit court fines and civil forfeitures (sometimes called "driving while poor"). The suspension of drivers licenses for failure to pay fines falls disproportionately upon citizens of color in the state, who are both disproportionately poor and also are more likely to be subject to racial profiling. In some cases, college students also will be overrepresented in this population. For example, a student fails to pay parking tickets. The agency (municipality, university, etc.) issuing the ticket pays DOT to put a trap on the student's vehicle license. The fine costs escalate and if the student continues driving with an expired plate may result in a traffic citation.

8. **Non-drivers with suspended licenses.** In Wisconsin it is possible to receive a suspended drivers license even if an individual has never had a vehicle-related ticket or problem. Teenagers cited for being out of their homes after curfew, jaywalking, or underage drinking may have a suspension placed on their “drivers license” even though they’ve never actually had a drivers license.
9. **Persons with medical or vision problems.** Individuals may stop driving or never obtain a drivers license for medical reasons if they or their physician believe that they are unable to drive safely. Others may be deemed ineligible to obtain or renew a license based on their failure to pass the vision test.

This report offers a first-time analysis of the drivers license population by age, gender, race and geography. Future research analyzing driver’s license suspension issues by type of offense or collection problem and the race/ethnicity and residence of the driver should provide additional useful information for voting and other policy issues.

Acknowledgments

Research on drivers license suspension and revocation issues is supported by grants from the Greater Milwaukee Foundation and the Helen Bader Foundation. Review comments were provided by the state Department of Transportation staff. Send comments to: John Pawasarat, Director, Employment and Training Institute, University of Wisconsin-Milwaukee, 161 W. Wisconsin Avenue, Suite 6000, Milwaukee, WI 53203. For other drivers license reports, see the Employment and Training Institute website at www.eti.uwm.edu.

CENSUS COUNT AND DRIVERS LICENSE STATUS OF VOTING AGE ADULTS (AGES 18 AND ABOVE) IN WISCONSIN

MILWAUKEE COUNTY

BALANCE OF STATE

U.S. CENSUS, ages 18 and older as of 2002		U.S. CENSUS, ages 18 and older as of 2002						
	TOTAL	WHITE	BLACK	HISPANIC	TOTAL	WHITE	BLACK	HISPANIC
MALES	337,802	230,688	64,091	28,678	MALES	1,692,811	1,579,255	29,091
FEMALES	381,237	257,722	84,298	24,632	FEMALES	1,744,759	1,647,897	21,064
TOTAL	719,039	488,410	148,389	53,310	TOTAL	3,437,570	3,227,152	50,155

18 YEARS AND OLDER

18 YEARS AND OLDER

VALID WISCONSIN DRIVER LICENSE

VALID WISCONSIN DRIVER LICENSE

U.S. CENSUS, ages 18 and older as of 2002		U.S. CENSUS, ages 18 and older as of 2002						
	TOTAL	WHITE	BLACK	HISPANIC	TOTAL	WHITE	BLACK	HISPANIC
MALES	222,740	171,809	28,568	13,731	MALES	1,399,635	1,336,496	13,365
FEMALES	244,245	186,636	40,612	8,950	FEMALES	1,469,271	1,403,222	13,182
TOTAL	466,985	358,445	69,180	22,681	TOTAL	2,868,906	2,739,718	26,547

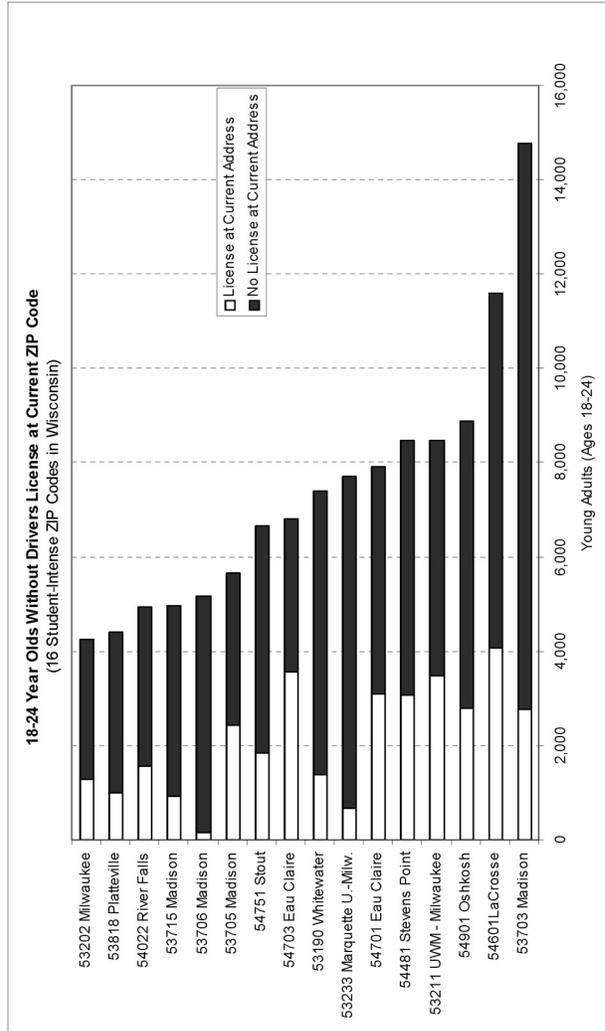
18 YEARS AND OLDER

18 YEAR AND OLDER

PERCENT WITH A VALID WISCONSIN DRIVER LICENSE

PERCENT WITH A VALID WISCONSIN DRIVER LICENSE

U.S. CENSUS, ages 18 and older as of 2002		U.S. CENSUS, ages 18 and older as of 2002						
	TOTAL	WHITE	BLACK	HISPANIC	TOTAL	WHITE	BLACK	HISPANIC
MALES	66%	74%	45%	48%	MALES	83%	85%	46%
FEMALES	64%	72%	48%	36%	FEMALES	84%	85%	63%
TOTAL	65%	73%	47%	43%	TOTAL	83%	85%	53%



Mr. ELLISON. Am I out of time?

Mr. NADLER. Yes, you are.

I thank the witnesses. That is our last questioner. I thank the witnesses.

Without objection, all Members have 5 legislative days to submit to the Chair additional written questions for the witnesses, which we will forward and ask the witnesses to respond as promptly as you can so that their answers may be made part of the record. Without objection, all Members will have 5 legislative days to submit any additional materials for inclusion in the record.

Again, I thank the witnesses. And with that, this hearing is adjourned.

[Whereupon, at 12 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD



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January 23, 2008

Jill Derby, Chair
Nevada State Democratic Party
1210 S. Valley View Road
Suite 114
Las Vegas, NV 89102

Dear Chair Derby:

On behalf of the Obama for America campaign, I am writing to request that the Nevada State Democratic Party conduct an inquiry into an apparent and disturbing pattern of incidents reported at precinct locations throughout the state during the January 19 Caucus.

These reports suggest the possibility of activity conducted in violation of Party rules and the rights of voters—activity that, as the volume and distribution of those complaints indicate, may have been planned and coordinated with the willful intention to distort the process in the favor of one candidate, Senator Clinton. A sheet of instructions provided by the Clinton campaign to its precinct works captures its program for the Caucus: "*It's not illegal unless they [the temporary precinct chairs] tell you so.*" (See attachment). This certainly suggests that, for the Clinton campaign, the operative standard of conduct was, simply and only, what it could get away with.

On the day of the Caucus, we received by phone reports of misconduct, violations of the rules and irregularities, in the hundreds. Since that time, well *over a thousand* more accounts have been sent to us. Others have begun to emerge in other sources.
http://andrewsullivan.theatlantic.com/the_daily_dish/2008/01/sleaze-in-nevad.html#more

At the outset, we wish to make clear what the inquiry we are requesting is **not** intended to accomplish. We are not seeking to challenge the outcome of the Caucuses at the precinct level.

Jill Derby, Chair
 Nevada State Democratic Party
 January 23, 2008
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Nor is it our intention to question the extraordinary efforts devoted by the NSDP to the organization and conduct of the Caucus, including the contribution its leadership made to resolve the high volume of questions and problems that exploded during the caucusing. Indeed, the Party responded promptly and effectively to the frontal attack on the Caucus in the form of an eleventh hour legal action by Senator Clinton's allies, intended to shut down voting locations or put into question the legitimacy of the process.

The question raised here about activities on Caucus Day concerns solely the tactics employed by one campaign and their effects—their intended and actual effects—on the participation of voters supporting other candidates. Participation is a principle second to none in importance to the Democratic Party, emphasized throughout the national party's rules, as well those of the Nevada party.

Nature of Suppressive and Other Improper Activity

We have attempted to sort through the range of reports received, and while our own review has not been completed in the short time since the conclusion of the Caucus, we suggest that the evidence supports an inquiry focused on the following:

Door closings

As you know, and as their own training materials confirm, the Clinton campaign informed its precinct captains that the doors should close—and registration should end—at 11:30 am. This is, of course, false: the rules could not be clearer that any voter wishing to participate would until 12:00 pm take his or her place in line. What the rules clearly specify is repeated, with equal clarity, in the party's own Guide to the Caucuses.

It seems inconceivable that a well-financed and nationally organized campaign, stressing a platform of competence and experience, could have inadvertently misunderstood a rule of first importance to the Caucus. It is a rule governing participation and intended to encourage it. Any preparation for the Caucus would have included careful attention to any such rules of eligibility.

Yet the Manual put out by the Clinton campaign stated a false statement of the "closed door" rules.

Voters have given these reports, which are representative of others received like them:

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 Nevada State Democratic Party
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- *"It happened at my caucus site and it happened, apparently, at every caucus site in Southern Nevada, as I spoke to dozens of Barack volunteers from other caucus sites who all said the same thing. At 11:30, the Hillary supporters were clamoring to have the doors closed, saying that the caucus was supposed to start at 11:30 and the doors should be closed immediately. The theory was that if a number of different people asked the caucus chair to close the doors at 11:30, some caucus chairs might believe that 11:30 was indeed the official door-closing time and would close the doors. This appeared to be the case and a number of caucus locations across the Vegas area, from my own first-hand (random but small) sample.*

Apparently, Hillary's strategy was to tell her supporters to get there early, and have the doors close 30 minutes prior to their prescribed time, thereby shutting out some Barack supporters who might be a little late."

- *"Those Hillary people...closed the doors on our people and we had to call the cops in some precincts to have locks cut from doors, [they] slipped people in the back doors, they sent people home at 11:30 when it was illegal to prevent people from voting before noon."*
- *"Issue one was when the temporary chairman locked the doors at 1:30 preventing at least two caucus participants at 11:34 and 11:40 from entering. He stated that the rules were to close the doors at 11:30. Immediately stated that I was informed that the doors were to close at 12:00 but was rebuffed."*
- *"The Precinct 16 Caucus Chair...ordered the doors locked at 11:30 am. not 12 noon. I objected and called the hotline, and [the Chair] relented, but not before many voters were prevented from entering."*

Obstructing Voter Access

Voters have given these reports, which are representative of others received like them:

- *"While my precinct ran well due to the fact that we had only 24 caucus members present, there was mass confusion in the five other larger precincts at the same site. Obama people were being told my Clinton supporters that they could not register because the sign-in sheet was only for Clinton voters."*
- *"In Precinct 21, a Democratic worker ...(who was clearly for Hillary) refused to*

Jill Derby, Chair
 Nevada State Democratic Party
 January 23, 2008
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register Obama supporters and said she was only registering Hillary supporters."

- *"Someone told Obama supporters they had to wait until 11:30 to enter because Republicans were voting. (A Clinton supporter in front of the School.) There were many Clinton supporters telling Obama supporters to leave. A Clinton supporter took our bottles of water, and then tried to take our box containing precinct packet and voter registration forms. I had to run her down in the crowd. By the time I located her (with help) she had thrown things out, but kept the water bottles in her large bag."*
- *"Almost immediately, I was told by a couple of other Obama precinct leaders, whose names I don't know, that the Hillary people were turning our supporters away, by asking to see their ID's and telling them they weren't valid."*

Improper Handling of Voter Preference Cards

Voters have given these reports, which are representative of others received like them:

- *"The next controversial issue involved the voter cards disappearing into the Clinton camp, so that the Edwards and Obama people were left with no cards. When we asked them to give us back some cards, we then noticed that they had all been pre-marked for Clinton."*
- *"We circled Obama and were given a small slip of paper with our names and no voting ballot. We were told they were out of ballots. How convenient. It wasn't until later than I realized the Hillary group had ballots."*
- *"I personally observed one of Hillary's precinct captains taking up the ballot of the voter before the caucusing started. When the delegates were moved to the other side of the room she could not find all of the people that she took their ballots she then put them in her purse, further another one of Hillary supporter collected ballots as well and she had a ballot where some one was voting for Obama she fold it up in her hand. I call her on this matter she stated that she could not find the person that it belong to."*

Jill Derby, Chair
Nevada State Democratic Party
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Process for Conducting Review

This is a smattering of the reports we have received. Emerging from them is a disturbing picture of rules violations, discriminatory treatment of voters, bullying and disrespectful behavior toward those from other campaigns, the mishandling of preference cards, and failure to follow the process specified under the rules for the conduct of the vote count.

To support the inquiry that we are asking that you conduct, we will provide them these reports, unedited or redacted, to the Party, subject to an agreement protecting the privacy of voters who have given these accounts. We are confident, however, that with the benefit of these protections, these voters, if asked, will give their first-hand recollections directly to party counsel and representatives.

We would ask that this process be expedited. It is crucial that the Party enforce its rules. And, in the interests of all voters, any and all questions about misconduct at the Caucuses should be conclusively and clearly addressed so that what seems to have occurred in Nevada on January 19 will not be repeated.

We stand ready to support and cooperate in this inquiry, and hope and expect that the same support and cooperation will be forthcoming from the Clinton campaign and any and all others with relevant information.

Very truly yours,



Robert F. Bauer
General Counsel, Obama for America

What Happened in Iowa?

Speak up, don't be afraid to ask questions.

Temporary chairs are doing this for the first time. Don't try to offend them, but remember that this is their first time too.

It's not illegal unless they tell you so.

Energy is very important. Cheer, yell, speak up for Hillary.

Engage every supporter. Talk to them, find a role for them. Every supporter is a volunteer on caucus day.

Be aware of what's going on with other groups of supporters.

Encourage people to check over caucus math. Recruit help with all aspects of caucusing.

Don't be afraid to go negative on other candidates.

Make sure you have enough supplies for outside viability. GET CREATIVE!!

Talk to staffers in room, ask them questions.

Try to exploit the fact that the culinary union supported Obama over Edwards... target Edwards people.

If people are in our corner, collect preference cards. Get people to fill them out RIGHT AWAY.

Go after people when they come in, persuade, greet, encourage.

★ DON'T FORGET TO COUNT YOURSELVES

CALL AFTER 1ST ALIGNMENT

RYAN, PHILLIPS, UTRECHT & MACKINNON*

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January 23, 2008

Jill Derby, Chair
Nevada State Democratic Party
1210 South Valley View Road
Suite 114
Las Vegas, NV 89102

Dear Chair Derby:

I write on behalf of Hillary Clinton for President ("the Committee") in regard to the January 19, 2008 Nevada Democratic Caucus. The Committee is aware of a letter addressed to you today from the Obama for America campaign requesting an inquiry into the conduct of the caucuses. The Committee shares the Obama campaign's concern that full participation in the democratic process may have been compromised by the substantial number of irregularities occurring at the caucuses, and we fully support a complete inquiry by the Nevada State Democratic Party (the "Party") into all caucus improprieties.

This letter is not intended as a response to the Obama campaign's letter. However, in the interest of a complete record, and in contrast to the alleged minor procedural problems noted by the Obama campaign, the Committee wishes to bring to your attention information we have received evidencing a premeditated and predesigned plan by the Obama campaign to engage in systematic corruption of the Party's caucus procedures. Compounding this blatant distortion of the caucus rules was an egregious effort by the Obama campaign to manipulate the voter registration process in its own favor, thereby disenfranchising countless voters. Finally, the Committee has received a vast number of reliable reports of voter suppression and intimidation by the Obama campaign or its allies.

The Committee had 30 phone lines on Saturday to receive calls in its Las Vegas offices. These lines rang continuously from early morning until well after the caucuses concluded with reports from people who were victimized and who observed irregularities. The phone lines were so overwhelmed that many callers resorted to calling individual Committee staff cell phones to report that they could not get through. The Committee also received many similar calls at its national headquarters.

The Committee is confident that any investigation into the conduct of the caucuses will be thorough, fair and in the interest of insuring that future Party caucuses will be as open and democratic as possible.

Systematic Corruption of the Party's Caucus Procedures

The Committee received substantially similar reports of improprieties of such a number as to leave no conclusion but that the Obama campaign and its allies and supporters engaged in a planned effort to subvert the Party's caucus procedures to its advantage. For example:

- Preference cards were premarked for Obama.
- Clinton supporters were denied preference cards on the basis that none were left, while Obama supporters at the same caucus sites were given preference cards.
- Caucus chairs obviously supporting Obama:
 - Deliberately miscounted votes to favor Senator Obama.
 - Deliberately counted unregistered persons as Obama votes.
 - Deliberately counted young children as Obama votes.
 - Refused to accept preference cards from Clinton supporters who were at the caucus site by noon on the ground that the cards were not filled out fast enough.
 - Told Clinton supporters to leave prior to electing delegates.
- Clinton supporters who arrived late were turned away from the caucus, while late Obama supporters were admitted to the caucus.

Manipulation of the Voter Registration Process

Numerous reports received by the Committee demonstrate a concerted effort on the part of the Obama campaign and its supporters to prevent eligible voters supporting a candidate other than Senator Obama from caucusing. The Obama supporters complained of were acting in positions of authority at the caucus sites. Some of these reports are as follows:

- Obama supporters wrongly informed Clinton supporters that they were not allowed to participate in the caucus if their names were not on the voter rolls. However, Obama supporters whose names did not appear on the voter rolls were permitted to register at the caucus site.

- Obama supporters falsely informed Clinton supporters that no registration forms were available for them to register to vote at the caucus site.
- Obama supporters wrongly told Clinton supporters who were attempting to caucus at the wrong precinct that they could not caucus at that site, while simultaneously permitting Obama supporters at the wrong precinct to participate.
- Obama supporters were allowed to move to the front of the registration and sign-in line.

Voter Suppression and Intimidation

The Committee received a substantial number of disturbing reports from voters that they had been subject to harassment, intimidation or efforts to prevent them from voting. Some of the most egregious of these complaints are described below:

- Voters at at-large caucus sites were informed that those sites were for Obama supporters only.
- Clinton supporters at at-large caucus sites were told that their managers would be watching them while they caucused.
- Workers were informed that their supervisors kept lists of Clinton and Obama supporters, and were told that they could not caucus unless their name was on the list of Obama supporters.
- Many Clinton supporters were threatened with employment termination or other discipline if they caucused for Senator Clinton.
- Workers were required to sign a pledge card to support Obama if they wanted time off to participate in the caucus.
- Workers at one casino were offered a lavish lunch and permitted to attend and register to vote only if they agree to support Obama.

The complaints summarized above represent only a small sample of the complaints received by the Committee. With respect to each of these complaints and many more, the Committee has the names and phone numbers of those reporting these incidents and the specific precinct numbers where the incidents occurred. Upon request the Committee will share these with the Party with appropriate safeguards to protect these individuals from reprisal. On the whole, these reports show a troubling effort by the Obama campaign and its allies and supporters to advance their own campaign at the expense of the right of all Nevada Democrats to participate in the democratic process in a free, fair and open manner.

Jill Derby

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Senator Clinton and the Committee are wholly committed to ensuring that every eligible voter has his or her vote cast and counted. There is no place in the American electoral process for the types of voter suppression, intimidation and harassment systematically engaged in by the Obama campaign, its allies and supporters.

Sincerely,

A handwritten signature in cursive script that reads "Lyn Utrecht".

Lyn Utrecht
Counsel
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**Testimony of Kristen Clarke
Co-Director, Political Participation Group
NAACP Legal Defense and Educational Fund, Inc.**

**Before the U.S. House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Civil Liberties**

**Oversight Hearing on Voter Suppression
February 26, 2008**

Founded under the direction of Thurgood Marshall, the NAACP Legal Defense and Educational Fund (LDF) is the nation's oldest civil rights law firm and has served as legal counsel for African Americans in a significant number of important federal voting rights cases over the course of the last several decades. Through extensive litigation, advocacy and public education efforts, particularly in the Deep South, LDF has developed significant expertise regarding barriers to political participation including the recent rise of voter suppression tactics that are the subject of today's hearing.

I currently serve as the Co-Director of LDF's Political Participation Group. Prior to joining LDF, I served for several years in the Civil Rights Division of the U.S. Department of Justice. Three of those years were spent handling matters arising under the Voting Rights Act of 1965, the National Voter Registration Act and other statutes as a Trial Attorney in the Voting Section of the Civil Rights Division. On behalf of LDF, I submit the following written testimony sharing our observations regarding the impact of voter suppression tactics and the threats that these tactics pose to the integrity of our nation's political process. Although the right to vote is widely recognized as a constitutionally-protected right, it can be rendered meaningless by actions that make it more difficult for citizens to access the ballot box.

LDF is pleased that the Subcommittee on the Constitution, Civil Rights and Civil Liberties is holding a hearing to study and examine problems of voter suppression. Quelling voter suppression tactics and improving voter access are important issues for LDF. Despite improvements in voter access in recent years, threats to full and equal minority voter access to the polls continue to stand, including: increased tensions in some communities where there have been growing numbers of Black, Latino and Asian voters; voter intimidation; and aggressive challenges mounted inside polling places. Many of these problems can be addressed through stronger enforcement by the U.S. Department Justice (DOJ) of existing federal civil rights statutes, including Section 11(b) of the Voting Rights Act and Section 1971 (b) of the Civil Rights Act of 1957. In addition, Section 5 of the Voting Rights Act continues to serve an

important role in those jurisdictions covered under the Act in ferreting out retrogressive and discriminatory voting changes that might otherwise expose minority voters to suppressive or intimidating conduct. Aggressive enforcement of these laws can help avoid future problems and guarantee access for larger numbers of our nation's citizens during the upcoming 2008 presidential election cycle and in future elections generally. Moreover, better leveraging of federal resources, including DOJ's federal observer program, can also help address problems that threaten the integrity of our political process.

II. Voter Suppression Tactics

A. Voter Intimidation

During recent elections, there have been significant incidents of voter intimidation directed against African-American and Latino, and Asian-American voters. These incidents, occurring in contests at the local, state and federal levels, make clear that voting discrimination continues to impede minority voters' access to the polls. Accordingly, it is important that the Department of Justice consider how existing laws can be used to reach those who use violence, the threat of violence, or intimidation to suppress the rights of minority voters.

Intimidating acts preceding an election can create an atmosphere that discourages voters, particularly minority voters, from freely participating in the political process. Too many of these acts are targeted at minority voters. Often, the acts of intimidation take place in the context of close elections between minority and non-minority candidates or in areas of the country where minority voters are on the verge of exercising political power.

To that end, LDF has urged that the Department of Justice investigate acts of racial intimidation that threaten minority voter access to the ballot box. One such example concerns a November 3, 2006, cross-burning incident in Grand Coteau, Louisiana. On the eve of a racially heated and hotly contested mayoral election, a five-foot cross was erected outside of the town hall's parking lot, placed in a wooden frame, doused with oil and lit on fire. Cross-burnings are a clear and unmistakable expression of racial animus and hatred. Because this particularly vile act of intimidation was staged on public property on the eve of a racially heated election, many African-American voters may have been discouraged from freely participating in the political process. African-American residents in the region believe that the cross-burning was a tool to intimidate minority voters from freely exercising their right to vote during the November 7, 2006 contested local election (in which the African-American candidate very narrowly lost). LDF has not yet received information regarding our request for an investigation into this matter.

B. Aggressive Challenges to Voter Eligibility

Aggressive challenges inside polling places can create an intimidating atmosphere that discourages voters from freely participating in the political process. Moreover, in the context of hotly contested elections where voters are closely divided, the aggressive challenging of voters may very likely be a carefully targeted campaign aimed at locking certain voters out.

One recent example illustrating the impact of aggressive challengers inside polling places concerns Greenwood, Mississippi -- a small town located in the Mississippi Delta with a Black population of 65.4 percent, according to 2000 Census data. Greenwood became the subject of an

intensely debated and racially-heated mayoral contest following a May 2006 mayoral contest. Election-night results indicated that a Black challenger had successfully ousted the long-term, white incumbent. However, the following morning, those results changed and the white incumbent had been declared the winner after a series of alleged problems yielded a margin of victory for the white candidate. Perkins brought a successful challenge to the election that eventually led the State Supreme Court to order that a new election be conducted. The court found substantial irregularities in the delivery and counting of absentee ballots, among other problems. The second election garnered significant attention and observation by LDF, DOJ and others.

During the newly scheduled election, partisan challengers were deployed at predominately Black precincts throughout the small town of Greenwood. In many instances, these challengers were overzealous and their conduct was deemed intimidating by both voters and poll workers. In fact, one white challenger was ultimately removed from one polling place. However, instead of stripping this particular challenger of his authority to remain stationed inside the polls, he was merely shuttled to another majority Black precinct where he continued to challenge and intimidate voters. At the new site, the challenger aggressively cited to various provisions in the state's election code, and ordered that the poll manager rearrange the positioning of tables so that he could easily view the registration list and mount challenges against voters. His conduct was found so disruptive by the poll manager that both DOJ federal observers and members of the State Board of Elections were ultimately called to the site to remove the challenger.

Indeed, state laws vary widely with respect to the limits placed on the conduct of the challenger and the burden of proof placed on those challenging an individual's eligibility to vote. Moreover, election officials inside polling places often wield tremendous discretion in determining whether the challenger has presented sufficient evidence to deny a voter the right to cast his or her ballot. We urge deployment of federal observers, where permitted, to ensure that these challenge laws are not being used to intimidate or deny eligible voters the right to cast their ballots, particularly during federal elections. In addition, these laws should also be examined to ensure that they do not extend unwarranted levels of discretion to poll officials. In our experience, placing unfettered levels of discretion in the hands of officials invites the kind of abuse that could inhibit minority voter access to the polls.

C. Voter Purging

Although it is both appropriate and legal to institute voter registration roll maintenance programs, in recent years there has been an emergence of various purge and matching programs aimed at removing presumptively ineligible voters from registration rolls. These programs, often inconsistent in their approach and flawed in their methodology, threaten the fragile gains that have been made with respect to registration rates among minority voters. Indeed, new or re-emergent barriers to voter registration move the nation in the wrong direction and the recent problems suggest the need to strengthen compliance with and enforcement of the various voter registration requirements and purge program restrictions that are codified within the National Voter Registration Act (NVRA). Most recently, we have learned of a pending Mississippi law that would essentially subject voters to the burden of reregistering to vote – a law that bears striking resemblance to other laws that have drawn Section 5 objections by DOJ in the past.

The NVRA was passed, in part, to create uniform procedures for registering to vote in federal elections and to eliminate the discriminatory and burdensome registration practices that existed in many states. Congress determined that the Act's uniform, nationwide procedures were necessary to remedy these practices after finding that problems surrounding the registration status of minority voters were often the direct result of abuse of discretion by election officials; lack of access to forms; inconsistent purging; discrimination in the appointment of registrars and other election officials; inadequately trained poll workers; and antiquated election machinery.

Despite the important achievements of the NVRA, there is significant evidence that suggests that new and more sophisticated obstacles have emerged that stand as contemporary barriers to electoral participation today. For example, recent steps to remove voters from the registration rolls in Louisiana through a voter registration cancellation program provide a stark illustration of efforts that serve to undermine the goals of the NVRA.

Although voter removal programs are generally aimed at preserving the integrity of the election rolls by identifying presumably unqualified voters, such programs also run the risk of disqualifying large numbers of qualified registrants. Moreover, these programs place the burden of re-registration squarely on impacted citizens, potentially discouraging voters from participating in the electoral process. Thus, voter removal programs should be carefully assessed and scrutinized to ensure that they are not over-inclusive with respect to the scope of persons targeted for removal. Without more DOJ monitoring and enforcement in this area, voters would be subject to the burdensome task of having to reregister to voter in order to access the ballot box on Election Day. Reregistration requirements have been deemed discriminatory and/or retrogressive in effect and have drawn objections by DOJ in the past. *See e.g.* DOJ Objection Letter re Jasper County, Texas "reregistration" measure (June 8, 1971); DOJ Objection Letter re Texas "reregistration" law (December 10, 1975). These problems are particularly compounded by the standing hurdles that civil rights organizations have faced as of late in attempting to mount challenges to these laws. As the one bearing primary enforcement responsibility for federal voting rights laws, we hope that the Attorney General will be more aggressive with respect to litigation in this area, particularly given the fact that he does not face the same standing hurdles.

III. Need for More Aggressive Enforcement of Relevant Federal Statutes

There are two underutilized federal statutes that can reach conduct deemed intimidating or obstructive to voters. For example, Section 11(b) of the Voting Rights Act bars conduct deemed intimidating, threatening or coercive to voters. Specifically, Section 11(b) of the Voting Rights Act states that "no person [...] shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote." However, since the Act's initial passage in 1965, the Justice Department has filed suit under Section 11(b) in only three instances. Section 11(b) is one statutory tool available to the Justice Department that can be and should be used to address ongoing acts of voter intimidation, particularly those acts that have a racial dimension. Even one or two high-profile prosecutions under this statute would send an important deterrence signal nationwide.

In addition, Section 1971 (b) of the Civil Rights Act of 1957, applicable during federal elections, states that no person "shall intimidate, threaten or coerce ... any other person for the purpose of interfering with the right of such other person to vote." Cases that have been brought under this provision of the Voting Rights Act have also been exceedingly rare. The Justice Department should consider using this statute as a mechanism to reach the various voter suppression tactics of the type that we have witnessed during recent elections.

The Justice Department should also continue to identify problems in those jurisdictions covered under Section 5 of the Voting Rights Act, and interpose objections to discriminatory voting changes that are likely to worsen the position of minority voters. Indeed, it is critical that the Justice Department carefully examine and assess proposed voting changes by soliciting the input of affected individuals and organizations with knowledge of the impact of voting changes in covered jurisdictions. The perspectives presented by community contacts must also be sought to ensure that jurisdictions satisfy their burden under the revitalized standards adopted by Congress during the recent 2006 reauthorization of Section 5.

Moreover, so long as voter suppression tactics persist, there remains the potential for intimidation to emerge on Election Day. The Justice Department's federal observer program serves an important oversight function that can help protect minority voters' access to the ballot box. The resources of DOJ's federal observer program should be carefully leveraged and appropriately distributed in covered jurisdictions to help discourage and deter the kind of suppression tactics that would likely emerge in the absence of federal oversight.

Finally, voter suppression tactics and acts of voter intimidation continue to be significant factors in our electoral process. These tactics stand in the way of full and equal participation on the part of African-American, Latino and other minority voters. More aggressive enforcement of relevant federal civil rights statutes and continued deployment of federal observers can help quell the threat posed by these voter suppression tactics. It is critical that the Justice Department focus its enforcement efforts on schemes used to discourage minority voter participation during elections including, but not limited to: voter intimidation; aggressive challenges mounted by groups and/or individuals inside polling places on Election Day; and purge programs that threaten to remove eligible citizens from our registration rolls.



A D V A N C I N G E Q U A L I T Y

**Statement of
Terry M. Ao
Director of Census & Voting Programs, Asian American Justice Center**

**Before the
U.S. House of Representatives
Committee of the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties**

**Oversight Hearing on Voter Suppression
Friday, February 8, 2008**

Voter intimidation and voter suppression are serious problems for the Asian American community. The Asian American Justice Center (AAJC), formerly known as the National Asian Pacific American Legal Consortium, requests that this statement about the impact of voter intimidation and voter suppression on the Asian American community be formally entered into the hearing record.

AAJC is a national non-profit, non-partisan organization that works to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation. AAJC has three affiliates: the Asian American Institute in Chicago, the Asian Law Caucus in San Francisco and the Asian Pacific American Legal Center in Los Angeles, all of who have been engaged in working with their communities to ensure their right to vote. AAJC also has over 100 community partners serving their communities in 24 states and the District of Columbia.

AAJC, and its affiliates, work to eliminate barriers to the participation of Asian Americans in our nation's political process. This includes working to defend and enforce the Voting Rights Act (VRA), encouraging voter registration through enforcement of the National Voter Registration Act, improving election systems and providing analysis of Asian American electoral participation. AAJC also provides training and technical assistance to local groups on a wide range of issues that remove barriers to voting, such as implementation of the Help America Vote Act (HAVA) and enforcing the language assistance provisions of the VRA.

While the Asian American community has become more established in recent years, its continuing explosive growth and the current political climate have created numerous opportunities and challenges, particularly in the realm of voting. The Asian American community is one of the fastest growing minority communities in America today, growing as much as 72% from 1990 to 2000. There are now nearly 14 million Asian Americans, comprising 5% of the nation's population. This growth is occurring in states with large, established Asian American populations, such as California, New York and Hawaii, as well as in states with emerging Asian American communities, such as Nevada, home to the nation's fastest growing Asian American population.

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AFFILIATES: Asian Pacific American Legal Center in Los Angeles • Asian Law Caucus in San Francisco • Asian American Institute in Chicago

The rising diversity of America's populace has resulted in more voices participating in the political debate, with many racial and ethnic groups seeing an overall increase in participation as well as civic engagement. In Minnesota, two Hmong Americans have successfully run for the state senate and the state house.¹ An Asian American is in New York's state legislature,² and a Vietnamese American was recently elected to the Texas state legislature, beating an incumbent.³ However, with this comes the real challenge of voter suppression and intimidation.

As the Asian American population continues to grow in this country, and new pockets of Asian Americans emerge in new communities across the country, voter suppression and voter intimidation tactics will follow and increase. Asian Americans are often perceived as "foreigners," somehow "un-American," or as "other." We can expect to see an increase of voter intimidation, singling out Asian American voters based on the color of their skin or the accent of their voice. For example, in the state of Washington, we saw an attempt by a person named Martin Ringhofer to challenge the right to vote of more than one thousand people with "foreign-sounding" names. Mr. Ringhofer targeted voters with names that he believed "have no basis in the English language" and "appear to be from outside the United States" while eliminating from his challenge voters with names "that clearly sounded American-born, like John Smith, or Powell."⁴ Mr. Ringhofer primarily targeted Asian and Hispanic voters.⁵ In one of the counties in which Mr. Ringhofer initiated his challenge, the county auditor declined to process the challenge and contacted the DOJ about the challenge due to its apparent violation of state and federal law.⁶

Another aspect that will lead to voter suppression is the fact that the Asian American population, which continues to grow and spread across the nation, represents new blocs of voters who can upset the status quo. Those who wish to protect the status quo will employ tactics to suppress the Asian American votes in order to maintain the status quo. We saw this play out in Bayou La Batre, Alabama, a fishing village of about 2,750 residents, about one-third of who are Asian Americans. During the 2004 primary election, an Asian American candidate ran for City Council. In a concerted effort to intimidate supporters of this candidate, supporters of a white incumbent challenged Asian American voters at the polls. The challenges, which are permitted under state law, included complaints that the voters were not U.S. citizens or city residents, or that they had felony convictions. The challenged voters had to complete a paper ballot and have that ballot vouched for by a registered voter. The Department of Justice investigated the allegations and found them to be racially motivated. As a result, the challengers were prohibited from interfering in the general election, and ultimately the town, for the first time, elected an Asian American to the City Council.⁷

We will continue to see such voter intimidation and voter suppression schemes against Asian American voters as we go into the future, and we expect these tactics to increase against our community. Enforcement against these types of tactics is critical to protect Asian American voters from voter suppression and voter intimidation. Without aggressive monitoring and enforcement, Asian American voters will be denied their voice through the loss of their vote.

¹ Cy Thao and Mee Mona are currently serving third terms as members of the Minnesota House of Representatives and the Minnesota Senate, respectively.

² Ellen Young made New York State history when she was elected in 2006 as the first Asian-American woman to serve in the legislature.

³ Hubert Vo became the first Vietnamese state legislator in the state of Texas.

⁴ See also Jim Camden, *Man Says Votes from Illegal Immigrants*, March 31, 2005, <http://www.spokesmanreview.com/local/story.asp?ID=61944>.

⁵ *Id.*

⁶ Letter dated April 5, 2005 from Franklin County Auditor to Martin Ringhofer.

⁷ DeWayne Wickham, *Why renew Voting Rights Act? Ala. town provides answer*, USA Today, Feb. 22, 2006, available at http://www.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-act_x.htm.



MALDEF Statement re: Latino Voter Suppression

United States House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

Oversight Hearing on Voter Suppression
February 8, 2008

The Mexican American Legal Defense and Educational Fund (MALDEF) commends the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties for conducting this oversight hearing regarding voter suppression. Founded in 1968, MALDEF is the nation's leading Latino civil rights legal organization.

For American democracy to function effectively, all eligible voters must be allowed to participate in elections. Minority communities are often subject to discrimination as they organize politically and begin to make new political gains, however, and Latino voters have increasingly become targets of voter suppression.

Recent voter suppression efforts directed against Latinos demonstrate the ongoing need for an active Department of Justice that is committed to protecting minority voters' ability to elect their candidates of choice.

In the weeks leading up to the November 7, 2006 elections, a major party congressional candidate's campaign in Orange County, California, mailed a letter specifically designed to suppress the Latino vote to 14,000 registered Latino voters. The letter, written in Spanish, falsely stated that immigrants may not vote (when, in fact, eligible naturalized immigrants may freely participate in U.S. elections). The letter also declared that "there is no benefit to voting" in U.S. elections. MALDEF notified the U.S. Attorney General of this voter suppression effort, and the Civil Rights Division began an investigation. To MALDEF's knowledge, however, no federal prosecutions have resulted from this investigation.

In Tucson, Arizona, on November 7, 2006 MALDEF attorneys witnessed anti-immigrant activists aggressively attempting to suppress the Latino vote. One of these activists wore dark clothing with a badge-like emblem and carried a handgun in a holster, giving the false impression that he was a law enforcement official. The men intercepted Latino voters as they approached the polling place, pushed a video camera in Latino voters' faces, and asked them to provide personal information. MALDEF referred the matter to the Civil Rights Division, but is aware of no prosecutions that have resulted.

In addition, in 2006 the United States Supreme Court found that the 2003 Texas congressional redistricting plan impermissibly used race to prevent Latino voters from electing their candidate of choice to the U.S. Congress.¹ MALDEF successfully argued the case before the Supreme Court on behalf of Latino voters on March 1, 2006. In a majority opinion authored by Justice Anthony Kennedy, the Court held that the state's redistricting plan amounted to vote dilution in violation of Section 2 of the Voting Rights Act.² A state or political subdivision violates Section 2 of the Voting Rights Act "if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election ... are not [as] equally open to ... members of [a racial group as they are to] other members of the electorate." The Supreme Court sided with MALDEF in finding that the State of Texas removed 100,000 Latino voters from a congressional district on the basis of race alone, thereby impermissibly preventing these voters from electing their candidate of choice.³

Latino voters require that the Civil Rights Division of the U.S. Department of Justice be fully staffed with well-qualified attorneys and experts who are committed to addressing voter suppression and protecting minority voters' rights. While MALDEF frequently brings legal actions on behalf of Latino voters, private individuals and organizations lack sufficient resources to guarantee free and fair elections for all voters nationwide. The growing Latino electorate must be able to depend upon the Department of Justice to protect the federal interest in nondiscriminatory elections and ensure that no voter is wrongly disfranchised.

The Voting Section of the Civil Rights Division of the Department of Justice is responsible for enforcing the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Help America Vote Act of 2002, and other key federal statutes designed to safeguard the right to vote of all citizens, including racial and language minorities. The Voting Section's vigorous enforcement of Section 2, Section 5, and Section 203 of the Voting Rights Act is particularly essential in ensuring that Latino voters may fully and equally participate in the political process and elect their candidates of choice.

¹ League of United Latin American Citizens, et al., v. Perry, et al., 538 U.S. 34 (2006).

² 42 U.S.C. §1973(b).

³ *Supra* note 1.

**U.S. Department of Justice**

Office of Legislative Affairs

Assistant Attorney General

Washington, D.C. 20530

April 9, 2008

The Honorable Jerrold Nadler
Chairman
Subcommittee on the Constitution, Civil Rights,
and Civil Liberties
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter responds to oral questions raised during the hearing before the House Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Civil Liberties on February 26, 2008, regarding the topic of "Voter Suppression." We are pleased to provide the information requested by Members of the Subcommittee.

I. Vote Caging

During the hearing, you inquired about actions taken by the Department in light of alleged "vote caging" incidents in the 2004 presidential election.

As explained at the hearing, whether "vote caging" constitutes a violation of the federal election laws depends on the specific set of facts and circumstances. The Civil Rights Division stands ready to investigate any credible allegations that voters are being discriminated against on the basis of their race, and is taking affirmative steps to ensure equal access to the polls for all citizens. To the extent that such "vote caging" may violate federal election law, the Civil Rights Division enforces three statutes that could be used to prevent unlawful disenfranchisement by alleged "vote caging."

First, the Department is charged with enforcing the National Voter Registration Act of 1993 (NVRA). As you know, the NVRA specifies voter registration procedures for federal elections. Specifically, Section 8 of the NVRA provides that the name of a registrant may be removed from the official list of eligible voters in only a few circumstances: (i) at the voter's request; or (ii) as provided by State law, by reason of criminal conviction or mental incapacity; or (iii) under a program conducted by the State, as required by the NVRA, to remove ineligible

The Honorable Jerrold Nadler
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voters who have died or have moved. Moreover, even a voter who is thought to have moved may only be removed from the voter rolls if he or she has failed to respond to a confirmatory mailing from the State and has failed to vote in two consecutive federal general elections. 42 U.S.C. §1973gg-6. Therefore, under federal law, a voter may *not* be removed from a voter registration list merely for failing to vote or because a private mailing sent to the voter was returned as undeliverable. To the extent that States remove voters from the registration rolls without following the protections afforded by the NVRA, the Department is prepared to take action as appropriate, and indeed has already done so in numerous cases. E.g., *United States v. Cibola County* (D.N.M. 2007); *United States v. Pulaski County* (E.D. Ark. 2004).

Second, the Department of Justice also enforces certain provisions of the Help America Vote Act of 2002 (HAVA). The Department is charged with enforcing Section 302(a) of HAVA, which provides that if an individual's name does not appear on the voter registration list, or if an election official asserts that the individual is not eligible to vote, but the individual asserts he or she is a registered voter and eligible to vote in a federal election, the individual is entitled to cast a provisional ballot in that election. If the appropriate State or local election official then determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted in that election in accordance with State law. Additionally, States are required to establish a system by which individuals who cast provisional ballots may determine whether their ballots were counted. 42 U.S.C. §15482(a). To the extent that States fail to afford voters their rights under HAVA, the Department is prepared to take action as appropriate.

For example, on February 27, 2008, a U.S. District Court signed the consent decree resolving a lawsuit under Section 302(a) of HAVA against Bolivar County, Mississippi. The Department's complaint alleged that county officials violated Section 302(a) by failing to establish a free access system for voters to ascertain whether their provisional ballots were counted. The consent decree establishes procedures for Bolivar County officials to follow during federal elections regarding provisional ballots.

Finally, the Department of Justice enforces the Voting Rights Act of 1965. Pursuant to the Act, the Department monitors elections in various parts of the country with Department of Justice personnel and federal observers. 42 U.S.C. 1973a, 1973g. The Department's election monitoring program is a major component of its work to protect against illegal discrimination at the polls. Additionally, if the Department detects discrimination on the basis of race, color or membership in a language minority group in voting practices or procedures, the Department may conduct an investigation and file suit under Section 2 of the Voting Rights Act. 42 U.S.C. 1973. For example, in 2006, the Department filed and resolved a lawsuit under Section 2 against Long County, Georgia, for improper challenges to Hispanic-American voters – including at least three

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United States citizens on active duty with the United States Army – based entirely on their perceived race and ethnicity. The Department is vigorously enforcing Section 2 of the Voting Rights Act to ensure that voters are not discriminated against on the basis of race.¹

As noted above, the Department's election monitoring program is a major component of its work to protect voters against illegal discrimination. In many cases, the presence of Department of Justice personnel alone may be enough to deter or prevent discrimination at the polls. Therefore, each year, the Department coordinates the deployment of hundreds of federal government employees in counties, cities, and towns across the country to monitor elections and ensure equal access to the ballot. During calendar year 2004, a record 1,463 federal observers and 533 Department personnel were sent to monitor 163 elections in 106 jurisdictions in 29 states. This compares to the 640 federal observers and 110 Department personnel deployed during the entire 2000 presidential calendar year. In 2006, the Department deployed a record number of Department monitors and federal observers from the Office of Personnel Management to jurisdictions across the country for the mid-term election. In total, more than 800 federal personnel monitored the polls in 69 political subdivisions in 22 States during the November 7, 2006, election. Overall, in calendar year 2006, we sent over 1,500 federal personnel to monitor elections, doubling the number sent in 2000, a presidential election year.

The Department investigated "vote caging" allegations in several states prior to the 2004 general election and deployed election monitors and observers to those states to protect against race-based challenges. In each instance, the Department moved as quickly as possible to respond to allegations in an appropriate and responsible way. Ultimately, the facts revealed that the Department effectively addressed these allegations in 2004. For example, in response to allegations in Duval County, Florida, the Department's personnel negotiated an agreement that called for the elimination of vote caging lists as a basis for challenging voters at the polls on election day. In Nevada, local officials had already blocked inappropriate race-based challenges before they were brought to the Department's attention, and no subsequent problems were detected by our monitors. In Wisconsin, local officials effectively blocked any attempted interference with the voting rights of minority voters prior to election day. In other instances, the Department reviewed the available facts and determined that state and local officials were acting appropriately to protect the rights of all voters.

¹The Department also continues to aggressively enforce Section 2 of the Voting Rights Act in other contexts. For example, most recently, on March 14, 2008, the Department settled a Section 2 lawsuit on behalf of African-Americans against the Georgetown County, South Carolina School Board. The suit challenged the board's at-large method of election on the grounds that it diluted the voting strength of African-Americans. Additionally, in 2006, the Voting Section filed a Section 2 lawsuit challenging the at-large method of election in the City of Euclid, Ohio, on the grounds that it discriminated against African-American voters. The Department prevailed after trial in 2007 when the Court found a violation of Section 2. The Department filed another suit under Section 2 in 2006 challenging the at-large election system in Port Chester, New York, on the grounds that the system discriminated against Hispanic citizens. In January 2008, the Court ruled that the method of election violated Section 2.

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II. National Voter Registration Act

During the hearing, Congresswoman Wasserman-Schultz posed questions regarding the Department's enforcement of Section 7 of the NVRA. As an initial matter, it is important to note that the Department enforces all federal election laws enacted by Congress, including all provisions of the NVRA. As part of these efforts, in 2007, the Department sent letters to approximately 18 states regarding their compliance with Section 7. These states were selected through an objective methodology that relied on available data, including, but not limited to, reports from the Election Assistance Commission. The Department continues to monitor the compliance of all covered states with the NVRA, and will gather additional information from states and take action as appropriate. Our efforts have, in some instances, resulted in compliance without the need to resort to litigation. For example, the State of Nebraska recently took action to comply with Section 7 as a result of the Department's inquiry. In a letter to the State last year, the Department suggested that Nebraska may have to take steps to comply with Section 7, and on March 10, 2008, Nebraska's Governor signed into law a bill designating additional selected State offices as "voter registration agencies" under Section 7 of the NVRA.

Moreover, given that Congresswoman Wasserman-Schultz focused on Florida, it is worth noting that the Department has been committed to enforcing all of the provisions of federal election law in that State. The Department has protected the voting rights of Florida citizens in recent years through several lawsuits to enforce the Voting Rights Act, as well as targeted election monitoring. The Department has monitored 38 elections in Florida with Department personnel since 2001.

Most recently, the Department sent a letter to the Osceola County, Florida, School Board explaining that it is authorized to file suit against the Board, alleging that the existing district boundaries for electing members of the school board violate Section 2 of the Voting Rights Act. We are in negotiations to resolve the matter without the need for litigation.

The Department has filed two other lawsuits against Osceola County in recent years. In 2005, the Department filed a Section 2 lawsuit against Osceola County in which we challenged the county's at-large election system. In October 2006, we prevailed at trial. The court held that the at-large election system violated the rights of Hispanic voters under Section 2 and ordered the county to abandon that system. In December 2006, the court adopted the remedial election system proposed by the United States and ordered a special election under that election plan that took place in April 2007. The Department settled another Section 2 lawsuit against Osceola County in 2002. Our complaint alleged that the county violated Section 2 of the Voting Rights Act by discriminating against Hispanic voters through hostile treatment at the polls and the failure to provide adequate language assistance. In addition, it alleged the county violated Section 208 of the Voting Rights Act by not permitting Hispanic voters to bring assistants of their choice into the polling places. On July 22, 2002, the parties entered a consent decree remedying the violations.

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In another action, the Department filed the first lawsuit ever on behalf of Haitian-American victims under Section 208 of the Voting Rights Act. The Department alleged that, in the 2000 Presidential election, Miami-Dade County poll officials effectively prevented Creole-speaking Haitian-American voters from securing assistance at the polls from persons of their choice. In 2002, the court approved a consent order which required that the county train election officials on Section 208, assign bilingual English/Creole-speaking pollworkers in precincts with significant numbers of Haitian voters, post a Creole language version of the Voter's Bill of Rights and Responsibilities, and monitor the performance of election officials on election day. In addition, the parties agreed to permit the United States to monitor elections through December 31, 2005.

In 2002, the Department filed suit against Orange County, Florida, alleging violations of Sections 203 and 208 of the Voting Rights Act. The complaint alleged that the county failed to provide an adequate number of bilingual workers to serve its Spanish-speaking voters, and that its poll workers interfered with the ability of voters to receive assistance from the persons of their choice. A consent decree, signed by a three judge court on October 8, 2002, required the City to increase the number of bilingual poll workers and to permit voters their assistants of choice consistent with Section 208.

Finally, in 2006, the Department entered into a Memorandum of Agreement with Broward County, Florida, under Section 203 of the Voting Rights Act. The agreement ensures that Spanish-speaking voters have access to election materials in the Spanish language and have adequate language assistance at the polls.

III. Voting Section Staff

During the hearing, Chairman Conyers inquired about the employees of the Section 5 unit in the Department's Voting Section. All attorneys, including managers, participate in the review of voting changes under Section 5 as the need arises. In terms of civil rights analysts, in January 2001, the Section had 14 civil rights analysts, compared to 12 on April 1, 2008. We have hired an additional civil rights analyst who has not started yet, which will bring the total to 13. There are also two contract personnel engaged in the analysis of Section 5 submissions. Additionally, the Department plans to increase staffing in preparation for the increased number of submissions after the 2010 Census. Finally, the Department has made a major technological advance in Section 5 with our new e-Submission program. Now, state and local officials can make Section 5 submissions online. This will make it easier for jurisdictions to comply, encourage complete submissions, ease our processing of submissions, and allow the Voting Section staff more time to study the changes and identify those that may be discriminatory.

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Thank you for bringing your concerns to the attention of the Department of Justice.
Please feel free to contact the Department if we can be of assistance in other matters.

Sincerely,



Brian A. Benzkwski
Principal Deputy Assistant Attorney General

cc: The Honorable Trent Franks
Ranking Minority Member
Subcommittee on the Constitution, Civil Rights,
and Civil Liberties
Committee on the Judiciary

The Honorable John Conyers
Chairman
Committee on the Judiciary

The Honorable Lamar Smith
Ranking Minority Member
Committee on the Judiciary

JOHN FUND ON THE TRAIL

**'This Will Make
Voter Fraud Easier'***November 2, 2007*

Editor's note: James Taranto is on vacation. Best of the Web will return Monday. In the meantime, we hope you enjoy the following article from today's OpinionJournal.com.

Sen. Hillary Clinton was asked during a debate this week if she supported New York Gov. Eliot Spitzer's plan to give driver's licenses to illegal immigrants. At first she seemed to endorse the idea, then claimed, "I did not say that it should be done, but I certainly recognize why Governor Spitzer is trying to do it."

The next day she took a firmer stand (sort of) by offering general support for Gov. Spitzer's approach, but adding that she hadn't studied his specific plan. She should, and so should the rest of us. It stops just short of being an engraved invitation for people to commit voter fraud.

The background here is the National Voter Registration Act, commonly known as "Motor Voter," that President Bill Clinton signed into law in 1993. It required all states to offer voter registration to anyone getting a driver's license. One simply fills out a form and checks a box stating he is a citizen; he is then registered and in most states does not have to show any ID to vote.

But no one checks if the person registering to vote is indeed a citizen. That greatly concerns New York election officials, who processed 245,000 voter registrations at DMV offices last year. "It would be [tough to catch] if someone wanted to . . . get a number of people registered who aren't citizens and went ahead and got them drivers' licenses," says Lee Daghlian, spokesman for New York's Board of Elections. Assemblywoman Ginny Fields, a Long Island Democrat, warns that the state's "Board of Elections has no voter police" and that the state probably has upwards of 500,000 illegal immigrants old enough to drive.

The potential for fraud is not trivial, as federal privacy laws prevent cross-checking voter registration rolls with immigration records. Nevertheless, a 1997 Congressional investigation found that "4,023 illegal voters possibly cast ballots in [a] disputed House election" in California. After 9/11, the Justice Department found that eight of the 19 hijackers were registered to vote.

Under pressure from liberal groups, some states have even abandoned the requirement that people check a citizenship box to be put on the voter rolls. Iowa has told local registrars they should register people even if they leave the citizenship box blank. Maryland officials wave illegal immigrants through the registration process, prompting a Justice Department letter warning they may be helping people violate federal law.

Gov. Spitzer is treading perilously close to that. Despite a tactical retreat this week--he says he will only give illegal immigrants a license that isn't valid for airplane travel and entering federal buildings--Mr. Spitzer has taken active steps to obliterate any distinctions between licenses given to citizens and non-citizens.

In a memo last Sept. 24, he ordered county clerks to remove the visa expiration date and "temporary visitor" stamp on licenses issued to non-citizens who are legally in the country. A Spitzer spokeswoman explained the change was made because the "temporary" label was "pejorative," given that some visitors might eventually stay in the U.S. Under fire, Mr. Spitzer backed down this week, delaying the cancellation of the "temporary visitor" stamps through the end of next year.

But he has not retreated from another new bizarre policy. It used to be that county clerks who process driver's licenses were banned from giving out voter registration forms to anyone without a Social Security number. No longer. Lou Dobbs of CNN reported that an Oct. 19 memo from the state DMV informed the clerks they don't "have any statutory discretion to withhold a motor voter form." What's more, the computer block preventing a DMV clerk from transmitting a motor voter registration without a Social Security number was removed.

Gov. Spitzer's office told me the courts have upheld their position on Social Security numbers. Sandy DePerno, the Democratic clerk of Oneida County, says that makes no sense. "This makes voter fraud easier," she told me.

While states such as New York are increasing the risk of such fraud, a half-dozen states have recently adopted laws requiring voters to offer proof of identity or citizenship before casting a ballot. A federal commission, co-chaired by former President Jimmy Carter and former Secretary of State James Baker, gave such laws a big boost in 2005 when it called for a nationwide policy requiring a photo ID before voting.

Mr. Carter has personal knowledge of why such laws are needed. He recounts in his book "Turning Point" how his 1962 race for Georgia State Senate involved a local sheriff who had cast votes for the dead. It took a recount and court challenge before Mr. Carter was declared the winner.

Measures that curb voter fraud on the one hand and encourage it on the other will be central to the 2008 election. The Supreme Court will rule on the constitutionality of Indiana's photo ID law next spring, while lawsuits challenging Gov. Spitzer's moves will be in New York state courts.

Despite her muddled comments this week, there's no doubt where Mrs. Clinton stands on ballot integrity. She opposes photo ID laws, even though they enjoy over 80% support in the polls. She has also introduced a bill to force every state to offer no-excuse absentee voting as well as Election Day registration--easy avenues for election chicanery. The bill requires that every state restore voting rights to all criminals who have completed their prison terms, parole or probation.

Pollster Scott Rasmussen notes that Mrs. Clinton is such a polarizing figure that she attracts between 46% and 49% support no matter which Republican candidate she's pitted against--even libertarian Ron Paul. She knows she may have trouble winning next year. Maybe that's why she's thrown herself in with those who will look the other way as a new electoral majority is formed--even if that includes non-citizens, felons and those who suddenly cross a state line on Election Day and decide they want to vote someplace new.

Mr. Fund, a columnist for OpinionJournal.com, is author of a forthcoming revised edition of "Stealing Elections: How Voter Fraud Threatens Our Democracy." (Encounter).



JOHN FUND ON THE TRAIL**Whose Ox Is Gored**

After Bush's victory, liberals shouted "Voter fraud!" Why have they changed their tune?

Monday, July 30, 2007 12:01 a.m.

When Republicans win elections, liberals are quick to cry fraud. But when actual fraud is found, they are just as quick to deny it, if Democrats are the ones who benefit.

Just before the 2004 election, the influential blog DailyKos.com warned of a "nationwide" wave of voter fraud against John Kerry. After the election, liberal blogger Josh Marshall urged Mr. Kerry not to concede because the election had been "too marred with voter suppression, dirty tricks and other unspeakable antics not to press every last possibility" of changing the outcome. When Congress met in January 2005 to certify the election results, Sen. Barbara Boxer (D., Calif.) and Rep. Stephanie Tubbs Jones (D., Ohio) challenged Mr. Bush's victory and forced Congress to debate the issue. Months later, Democratic National Committee chairman Howard Dean maintained that blacks had been the victims of "massive voter suppression" in Ohio.

But now liberals are accusing the Bush Justice Department of cooking up spurious claims of voter fraud in the 2006 elections and creating what the New York Times calls a "fantasy" that voter fraud is a problem. Last week Sen. Patrick Leahy, the Judiciary Committee chairman, claimed that the administration fired eight U.S. attorneys last year in order to pressure prosecutors "to bring cases of voter fraud to try to influence elections." He said one replacement U.S. attorney in Kansas City, Mo., was a "partisan operative" sent "to file charges on the eve of an election in violation of Justice Department guidelines." But the Kansas City prosecution was approved by career Justice lawyers, and the guidelines in question have since been rewritten by career lawyers in the Public Integrity section of Justice.

But last week also brought fresh evidence that voter fraud is a real problem and could even branch out into cyberspace:

- California's Secretary of State Debra Bowen, a Democrat, reported that state-approved hackers had been "able to bypass physical and software security in every [voting] machine they tested," although she admitted that the hackers had access to internal security information and source codes that vote thieves wouldn't normally have.
- The Florida secretary of state's office reported it had found "legally sufficient" evidence that some 60 people in Palm Beach County had committed voter fraud by voting both there and in New York state. The Florida Department of Law Enforcement has launched a formal probe. In 2004, New York's Daily News found that 46,000 people were illegally registered to vote in both New York and Florida.
- Prosecutors in Hoboken, N.J., last week announced they are investigating a vagrant who was part of a group of voters observed to be acting suspiciously outside a polling place in an election last month. After he signed a voting register in the

name of another man, he was confronted by a campaign worker and fled the scene. He later admitted to cops that he had been paid \$10 to vote.

- Last week the U.S. Department of Justice recommended that an outside party be appointed to oversee Democratic primary elections in Noxubee County, Miss. In June, federal district judge Tom Lee found that Ike Brown, the Democratic political boss of Noxubee, had paid notaries public to visit voters and illegally mark their absentee ballots, imported illegal candidates to run for county office and manipulated the registration rolls.

But the most interesting news came out of Seattle, where on Thursday local prosecutors indicted seven workers for Acorn, a union-backed activist group that last year registered more than 540,000 low-income and minority voters nationwide and deployed more than 4,000 get-out-the-vote workers. The Acorn defendants stand accused of submitting phony forms in what Secretary of State Sam Reed says is the "worst case of voter-registration fraud in the history" of the state.

The list of "voters" registered in Washington state included former House Speaker Dennis Hastert, New York Times columnists Frank Rich and Tom Friedman, actress Katie Holmes and nonexistent people with nonsensical names such as Stormi Bays and Fruto Boy. The addresses used for the fake names were local homeless shelters. Given that the state doesn't require the showing of any identification before voting, it is entirely possible people could have illegally voted using those names.

Local officials refused to accept the registrations because they had been delivered after last year's Oct. 7 registration deadline. Initially, Acorn officials demanded the registrations be accepted and threatened to sue King County (Seattle) officials if they were tossed out. But just after four Acorn registration workers were indicted in Kansas City, Mo., on similar charges of fraud, the group reversed its position and said the registrations should be rejected. But by then, local election workers had had a reason to carefully scrutinize the forms and uncovered the fraud. Of the 1,805 names submitted by Acorn, only nine have been confirmed as valid, and another 34 are still being investigated. The rest--over 97%--were fake.

In Kansas City, where two Acorn workers have pleaded guilty to committing registration fraud last year while two others await trial, only 40% of the 35,000 registrations submitted by the group turned out to be bogus. But Melody Powell, chairman of the Kansas City Board of Elections, says Acorn's claim that it brought the fraud in her city to light is "seriously misleading." She says her staff first took the evidence to the FBI, and only then Acorn helped identify the perpetrators. "It's a potential recipe for fraud," she says, noting that "anyone can find a voter card mailed to a false apartment building address lying around a lobby and use it to vote." Ms. Powell also worries that legitimate voters who were registered a second time by someone else under a false address might find it difficult to vote.

In Washington state, King County Prosecutor Dan Satterberg said that in lieu of charging Acorn itself as part of the registration fraud case, he had worked out an agreement by which the group will pay \$25,000 to reimburse the costs of the investigation and formally agree to tighten supervision of its activities, which Mr. Satterberg said were rife with "lax oversight."

Last year several Acorn employees told me that the Acorn scandals that have cropped up around the country are no accident. "There's no quality control on purpose, no checks and balances," says Nate Toler, who was head of an Acorn campaign against Wal-Mart in California until late last year, when Acorn fired him for speaking to me.

Loretta Barton, another former community organizer for Acorn, told me that "all Acorn wanted from registration drives was results." Ironically, given Acorn's strong backing from unions, Ms. Barton alleges that when she and her co-workers asked about forming a union, they were slapped down: "We were told if you get a union, you won't have a job." There is some history here: In 2003, the National Labor Relations Board ordered Acorn to rehire and pay restitution to three employees it had illegally fired for trying to organize a union.

Acorn president John James told reporters last week that his group will cooperate with election officials to make sure "no one is trying to pull a fast one on us." "We are looking to the future," he said in a statement. "Voter participation is a vital part of our work to increase civic participation."

But the Acorn case points up just how difficult it is to convince prosecutors to bring voter fraud cases. Donald Washington, a former U.S. attorney for northern Louisiana, admits that "most of the time, we can't do much of anything [about fraud] until the election is over. And the closer we get to the election, the less willing we are to get involved because of just the appearance of impropriety, just the appearance of the federal government somehow shading how this election ought to occur." Several prosecutors told me they feared charges of racism or of a return to Jim Crow voter suppression tactics if they pursued touchy voter fraud cases--as indeed is now happening as part of the reaction to the U.S. attorney firings.

Take Washington state, where former U.S. attorney John McKay declined to pursue allegations of voter fraud after that state's hotly contested 2004 governor's race was decided in favor of Democrat Christine Gregoire by 133 votes on a third recount. As the Seattle media widely reported, some "voters" were deceased, others were registered in storage lockers, and still others were ineligible felons. Extra ballots were "found" and declared valid 10 times during the vote count and recount. In some precincts, more votes were cast than voters showed up at the polls.

Mr. McKay insists he left "no stone unturned" in investigating allegations of fraud in the governor's race but found no evidence of a crime. But in an interview with Stefan Sharkansky of SoundPolitics.com in May, Mr. McKay admitted that he "didn't like the way the election was handled" and that it had "smelled really, really bad." His decision not to prosecute was apparently based on the threshold of evidence he insisted be met before he would even deploy FBI agents to investigate: a firsthand account of a conspiracy to alter the outcome of the election.

But Mr. McKay is incorrect in saying that he had to find a conspiracy in order to reach the federal threshold for election crimes. In Milwaukee, after the 2004 election U.S. Attorney Steve Biskupic investigated many of the same problems that were found in Seattle: felons voting, double-voting and more votes cast than voters who signed poll books. In 2005 Mr. Biskupic concluded that he had found nothing that "has

shown a plot to try to tip an election," but he nonetheless prosecuted and won six convictions for felon voting and double-voting.

Tom McCabe, executive vice president of the Building Industry Association in Washington state, says he is pleased that the evidence his group compiled was helpful in securing the indictments of the seven Acorn workers last week. But he can't help but wonder if the Acorn workers who forged registrations last year were part of the cadre of election workers who were allowed by a local judge after the 2004 governor's election to seek out voters who had given problematic signatures on their voter-registration cards and helped them "revise" their registrations in order to make their votes valid. "We may never know whether Acorn workers forged signatures in 2004, but we know they did in 2006," he says. "Those who think voter fraud isn't an ongoing problem should come to Washington state."

Instead, Sen. Leahy and other liberals are busy dismissing concerns about voter fraud, no doubt in an effort to make certain the Justice Department drops the issue as a priority before the 2008 election. But the blunders and politicization of parts of the Bush Justice Department notwithstanding, voter fraud deserves to be investigated and prosecuted. The Justice Department may be dysfunctional and poorly led, but the Democratic Congress seems more interested in paralyzing its activities than helping to fix the problem.

John Fund Voting Fraud article:

Voter-Fraud ShowdownHow can anyone object to asking for ID?
Wednesday, January 9, 2008 12:01 a.m. EST

Supporters and critics of Indiana's law requiring voters to show a photo ID at the polls square off in oral arguments before the Supreme Court today. The heated rhetoric surrounding the case lays bare the ideological conflict of visions raging over efforts to improve election integrity.

Supporters say photo ID laws simply extend rules that require everyone to show such ID to travel, enter federal office buildings or pick up a government check. An honor system for voting, in their view, invites potential fraud. That's because many voting rolls are stuffed with the names of dead people and duplicate registrations--as recent scandals in Washington state and Missouri involving the activist group ACORN attest.

Opponents say photo ID laws block poor, minority and elderly voters who lack ID from voting, and all in the name of combating a largely mythical problem of voter fraud.

Some key facts will determine the outcome, as the court weighs the potential the law has to combat fraud versus the barriers it erects to voting. The liberal Brennan Center at NYU Law School reports that a nationwide telephone survey it conducted found that 11% of the voting-age public lacks government-issued photo ID, including an implausible 25% of African-Americans.

But U.S. District Judge Sarah Evans Barker, who first upheld Indiana's photo ID law in 2006, cited a state study that found 99% of the voting-age population had the necessary photo ID. Judge Barker also noted that Indiana provided a photo ID for free to anyone who could prove their identity, and that critics of the law "have produced not a single piece of evidence of any identifiable registered voter who would be prevented from voting."

Since then, liberal groups have pointed to last November's mayoral election in Indianapolis as giving real-life examples of people prevented from voting. The 34 voters out of 165,000 who didn't have the proper ID were allowed to cast a provisional ballot, and could have had their votes counted by going to a clerk's office within 10 days to show ID or sign an affidavit attesting to their identity. Two chose to do so, but 32 did not.

Indeed, a new study by Jeffrey Milyo of the Truman Institute of Public Policy on Indiana's voter turnout in 2006 did not find evidence that counties with more poor, elderly or minority voters had "any reduction in voter turnout relative to other counties." Opponents of photo ID laws make a valid point that, while Indiana has a clear problem with absentee-ballot fraud (a mayoral election in East Chicago, Ind., was invalidated by the state's Supreme Court in 2003), there isn't a documented problem of voter impersonation. "The state has to demonstrate that this risk of fraud is more than fanciful. And it really isn't," says Ken Falk, legal director for the ACLU of Indiana.

But Indiana officials make the obvious point that, without a photo ID requirement, in-person fraud is "nearly impossible to detect or investigate." A grand jury report prepared by then-Brooklyn District Attorney Elizabeth Holtzman in the 1980s revealed how difficult it is to catch perpetrators. It detailed a massive, 14-year conspiracy in which crews of individuals were recruited to go to polling places and vote in the names of fraudulently registered voters, dead voters, and voters who had moved. "The ease and boldness with which these fraudulent schemes were carried out shows the vulnerability of our entire electoral process to unscrupulous and fraudulent misrepresentation," the report concluded. No indictments were issued thanks to the statute of limitations, and because of grants of immunity in return for testimony.

Even modest in-person voter fraud creates trouble in close races. In Washington state's disputed 2004 governor's race, which was won by 129 votes, the election superintendent in Seattle testified in state court that ineligible felons had voted and votes had been cast in the name of the dead. In Milwaukee, Wis., investigators found that, in the state's close 2004 presidential election, more than 200 felons voted illegally and more than 100 people voted twice. In Florida, where the entire 2000 presidential election was decided by 547 votes, almost 65,000 dead people are still listed on the voter rolls--an engraved invitation to fraud. A New York Daily News investigation in 2006 found that between 400 and 1,000 voters registered in Florida and New York City had voted twice in at least one recent election.

Laws tightening up absentee-ballot fraud, which is a more serious problem than in-person voting, would be welcome. But, curiously, almost all of the groups opposing the photo ID law before the Supreme Court today either oppose specific efforts to combat absentee-ballot fraud or are silent on them.

No matter how much voter fraud is caused by voter impersonation, Stuart Taylor of the National Journal reports that "polls show voters increasingly distrust the integrity of the electoral process." He also notes that a 2006 NBC/Wall Street Journal nationwide poll found that, by a 80%-7% margin, those surveyed supported voters showing "a valid photo identification." The idea had overwhelming support among all races and income groups.

That sweeping support helps explain why, in 2005, 18 of 21 members of a bipartisan federal commission headed by former President Jimmy Carter and former Secretary of State James Baker came out in support of photo ID requirements more stringent than Indiana's. "Voters in nearly 100 democracies use a photo identification card without fear of infringement on their rights," the commission stated. Mr. Carter feels strongly about voter fraud. In his book, "Turning Point," he wrote of his race for Georgia State Senate in 1962, which involved a corrupt local sheriff who had cast votes for the dead. It took a recount and court intervention before Mr. Carter was declared the winner.

Right now, half the states have decided that some kind of ID should be required to vote. It makes sense for the Supreme Court to allow federalism to work its will state-by-state. In 2006, the court unanimously overturned a Ninth Circuit ruling that had blocked an Arizona voter ID law. In doing so, the court noted that anyone without

an ID is by federal law always allowed to cast a provisional ballot that can be verified later. The court also noted that fraud "drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised."

So the high court itself has already defined the nub of the case it is hearing today. On one side are those who claim photo IDs will block some voters from casting ballots, but offer scant evidence. On the other side are those who believe photo ID laws can act as a deterrent to irregularities the public increasingly views as undermining election integrity. Given the obvious political nature of the argument, here's hoping a clear Supreme Court majority reprises its 2006 finding and holds that such questions are best resolved by the elected branches of government and not by unaccountable courts.



Do Voter Identification Laws Affect Voter Turnout?

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A previous version of this paper was prepared for presentation at the Annual meeting of the American Political Science Association in Chicago, IL, August, 2007. We thank Herb Weisberg for helpful comments on a previous draft and Timothy Verzellotti and David Anderson for access to their data.

Abstract

Scholars have debated the effects of voter identification laws with some arguing tougher state voter identification laws may disenfranchise low socio-economic status voters and others arguing the new laws have no effect on voter turnout. In this article we empirically explore these potential outcomes examining whether the institutional constraint of stricter voter identification laws decrease, increase or have no effect on voter turnout. Examining voting behavior data across four elections (2000, 2002, 2004, and 2006) at both the aggregate and individual levels, our results suggest that voter identification laws do not affect voting at either level.

On May 2, 2006, Representative Julia Carson (D-IN) arrived at her polling place with her congressional identification card to cast a vote in Indiana's primary election. In an incident that made national headlines, Carson was initially turned away from voting because her congressional identification card did not include an expiration date and therefore did not meet Indiana's new voter identification law (Goldstein 2006). Indiana's law, the most stringent in the nation, was one of dozens of new laws passed around the country designed to prevent voter fraud.

Recent scholarship investigating electoral reforms aiming to send more Americans to the polls concludes that innovations such as voting by mail, Internet voting, and early voting have the unintended consequence of *increasing* socioeconomic biases related to voter turnout (Berinsky 2005) while only sometimes providing a modest increase in the number of voters casting a ballot (Gronke, Galenas-Rosenbaum, and Miller 2007). Less is known about situations such as those that faced Representative Carson. While the congresswoman was ultimately allowed to vote, her experience highlights the importance of understanding whether the wide variance in state voter identification laws affects turnout.

Indeed, this question is on the minds of lawmakers, pundits, and scholars alike. In 2002, President Bush signed the Help America Vote Act (HAVA) into law with the intention of bolstering confidence in the electoral system, ensuring that votes would be counted accurately and preventing voter fraud. Some

Democratic operatives argued that tough state laws, like those in Indiana, that require a government-issued photo identification with an expiration date, would disenfranchise low socio-economic status voters who are less likely to have such an id, or know that they must bring it to the polls. Some Republican operatives, like Mark Hearne, counsel at the American Center for Voting Rights, and former election counsel for Bush-Cheney 2004, predicted that the new laws would not only prevent voter fraud but prompt *higher* turnout (Goldstein 2006). The early scholarly evidence paints an incomplete picture, consisting of some qualified claims that states with stricter voter identification laws negatively, albeit marginally, affect turnout (Alvarez, Bailey, and Katz 2007; Eagleton Moritz 2006; Vercelloti and Anderson 2006) while other work finds that these marginal effects are too small to be of concern (Ansolabehere 2007; Muhlhausen and Sikich 2007).

Since the central tenet of democratic theory is that elections transfer the will and authority of the people to their representatives in government, democratic government rests on the establishment of fair elections that can accurately capture the will of the people. Throughout the history of the republic American election law has discriminated against entire populations, most notably minorities and women, preventing them from voting. These discriminatory practices have been largely addressed with legislation but democratic theorists and activists alike remain concerned about the quality of American democracy because of

continuing reported problems of voter fraud, voter intimidation, and disenfranchisement (Dahl 1989).

In this article we empirically and theoretically explore this issue, examining whether the institutional constraint of stricter voter identification laws decreases, increases or has no effect on voter turnout. We measure the effect of new voter identification laws at the aggregate and individual levels using multiple data sets across four elections (2000, 2002, 2004, and 2006). Ultimately, we find that the voter identification laws do not meaningfully affect voter turnout.

Voter Identification and Turnout

Voter turnout is a topic of interest for scholars because of its theoretical significance and practical importance. As is often the case concerning topics of great concern, there is little agreement among scholars. On the one hand, many studies suggest that turnout varies significantly across different groups (Wolfinger and Rosenstone 1980; Rosenstone and Hanson 1993; Verba, Nie, and Kim 1978). Wolfinger and Rosenstone (1980) suggest that those with lower levels of education turn out less than those who have higher levels of education in states with restrictive registration laws. On the other hand, Nagler (1991) finds that restrictive registration laws have no differential effect on turnout.

This debate also extends to ways in which voter turnout affects electoral outcomes. Citrin, Schickler, and Sides' (2003) work simulating 100% voter

turnout demonstrates that high turnout marginally benefits Democrats. DeNardo (1980) shows that high turnout has two effects: one that helps the Democrats and one that helps the minority party, whichever it is. Beyond who gets elected, differences in voter turnout matter from a policy perspective as Avery and Peffley (2005) find that states with restrictive voter registration laws are likely to have higher upper-class turnout, resulting in less favorable welfare eligibility requirements for the poor.¹ More generally, Piven and Cloward (1989) claim that legislators need not pay as much attention to the interests of the lower economic classes since they vote less than the wealthy. Clearly, then, the additional costs to vote when voter identification laws are more restrictive have the potential to change the results of elections and the policy outputs provided by those who are elected. But should we expect different voter identification laws to affect voter turnout?

Whether considering the decision to turnout from either psychological or economic perspectives, we believe the answer to this question is clearly no. First, as Brady, Verba, and Schlozman (1995) forcefully demonstrate, political interest is the driving force behind the decision to vote. Indeed, their work echoes that of the authors of *The American Voter*, who wrote that “the stronger the individual’s psychological involvement (in political matters) the more likely he is to participate in politics by voting” (Campbell, et al 1960, 102). Additionally,

¹ See Soss, et al (2001) for another view.

education remains a crucial factor with respect to turnout (Wolfinger and Rosenstone 1980; Brady, Verba, and Schlozman 1995).²

As such, voters who are already interested in politics should be interested enough to overcome the potential institutional barrier of strict voter identification requirements while citizens who are uninterested in politics should not be expected to vote anyway, regardless of the nature of a state's voter ID law; a law of which they may not even be aware.

From an economic perspective, since Downs introduced the elusive "duty" term in *An Economic Theory of Democracy* (1960), and subsequent formalization by Tullock (1967) and Riker and Ordeshook (1968), several generations of scholars have sought to explain why voters show up to vote in seeming disregard for their own self-interest. Downs' explanation for why voters would make the decision to vote, even though the chance of their individual vote making a pivotal difference is infinitesimal, is that civic duty provides a large enough direct benefit to the voter to overcome the costs of voting. Indeed, Aldrich (1993) asserts that scholars have overestimated the costs of voting. Meanwhile, Gomez, Hansford, and Krause (2007) find that a non-political factor, bad weather on Election Day, affects turnout in a way that is good for Republicans.

² While Brady, Verba, and Schlozman (1995) do not report statistically significant results for education in their models predicting turnout, they do note that the effect of education on voting is "funneled through political interest" (see page 283).

The personal cost of voting is an important part of the decision calculus. Recent voter identification laws potentially increase this cost in at least two ways. First, voters face an increasingly specific set of requirements at the polls and voters who fail to supply the necessary form of identification will be turned away without voting. Retrieving the appropriate identification may be as simple as a trip to the parking lot, or it may require a second trip, but once turned away a voter must engage in an additional cost of voting in order to try again. Second, there is a preparation cost associated with voter identification laws that voters must pay to assure compliance with the new law. This preparation cost may be low—a sophisticated voter may become aware of the new requirements through routine conversation or news consumption—or high—a less sophisticated voter may require a call to the local board of elections or some other form of information gathering to learn the requirements.

In recent years, the federal and state governments have paid increasing attention to making voter registration and voting easier as well as taking greater steps to prevent voter fraud. Programs such as motor-voter have been introduced in states across the country to make registration easier and new voting procedures such as vote-by-mail and electronic voting have been introduced to give voters more opportunities to cast their votes.

Recent research, however, has demonstrated that these efforts at making registration and voting easier have affected different socio-economic and racial

groups differently. Berinsky (2005) provides evidence that the efforts to increase voter registration and turnout have in fact increased registration and turnout only among those groups most likely to register and vote before the new measures were implemented, i.e. those with high socio-economic status. According to Berinsky, "Individuals who utilize easy voting procedures tend to be more politically engaged and interested than those who do not take advantage of the opportunity" (2005, 482).

Put simply, we ought to expect that awareness of changes in voter identification laws may only exist for those who are likely to vote in the first place. Thus, strict voter identification laws should not decrease voter turnout. Further, strategies to improve voter turnout will not be found in changing voter identification requirements; rather, they will be found in efforts to change non-voters interest in politics.

Finally, Ansolabehere's (2007) examination of cases in which a potential voter's identity was in question, shows that exclusions from voting are exceptionally rare. According to Ansolabehere, "only 23 people in the entire 36,500 person sample said that they were not allowed to vote because of voter identification requirements" (2007, p. 7).

Recent scholarship, however, finds evidence supporting a different view (Alvarez, Bailey, and Katz 2007; Eagleton Moritz 2006; Vercellotti and Anderson 2006). Each report assesses the effect of voter identification laws using turnout

data from the 2004 federal election, and finds that as identification laws become more stringent, or voters must meet more requirements, turnout decreases. Specifically, they found evidence at the aggregate level that requiring a signature match or non-photo identification is negatively related to turnout when compared to requiring that a voter only state his or her name (Vercellotti and Anderson 2006). Likewise, at the individual level, Vercellotti and Anderson found that voter identification requirements including signing one's name, non-photo identification, and photo identification all had statistically significant and negative effects on the likelihood of voting (2006). These results were partially confirmed by Muhlhausen and Sikich who found that white survey respondents were less likely to vote when required to present photo identification rather than stating their name while Black survey respondents were less likely to vote when required to present non-photo identification rather than stating their name (2007). Finally, Alvarez, Bailey, and Katz found that at the individual level, strict voter identification laws, those requiring a non-photo or photo identification, or matching ones signature to a voter card on file, have a negative effect on voter participation (2007).

We question these results, however, because of the way in which some of the authors coded their key independent variable, the measure of voter identification requirements in each state, and the exclusion of political control variables from the analyses. Three reports relied on the same measure of each

state's voter identification requirements—with which we disagree (Eagleton Moritz 2006; Muhlhausen and Sikich 2007; Vercelloti and Anderson 2006). The reports identified five different voter identification requirements that states used in 2004 to identify voters. In each state, voters were required to: state their name, sign their name, match their signature with a signature on file, provide a non-photo identification, or provide a photo identification (Vercelloti and Anderson 2006, 4). Each report argues that states use a maximum standard, or the standard required by law for positively identifying a voter before he or she can cast a regular, non-provisional ballot, and a minimum standard, which can be used instead if the voter cannot provide the required form of identification, but still allows the voter to cast a regular, non-provisional ballot (Eagleton Moritz 2006; Muhlhausen and Sikich 2007; Vercelloti and Anderson 2006). The Eagleton Moritz (2006) and Vercelloti and Anderson (2006) reports identified eleven states that offered exceptions to the voter identification requirements—but our interpretation of state election law in these states suggested that there was but one set of requirements for voters to cast a regular, non-provisional ballot.

For example, Eagleton Moritz (2006), Muhlhausen and Sikich (2007), and Vercelloti and Anderson (2006) code Florida as a state that required photo identification in order to vote with a regular, non-provisional ballot in 2004 under their maximum standard. The reports conclude that if a Florida voter was unable to provide a photo identification the voter could still cast a regular, non-

provisional ballot under the minimum standard of signing an affidavit swearing that the voter is in fact who he or she claimed to be on Election Day. But Florida election law in 2004 stated, as reported by Eagleton Moritz (2006, appendix 1) (emphasis added by authors):

The clerk or inspector shall *require each elector*, upon entering the polling place, to *present a current and valid picture identification* as provided in s. 97.0535(3)(a). *If the picture identification does not contain the signature of the voter, an additional identification that provides the voter's signature shall be required.* The elector shall sign his or her name in the space provided, and the clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector.

(2) Except as provided in subsection (3), *if the elector fails to furnish the required identification*, or if the clerk or inspector is in doubt as to the identity of the elector, such clerk or inspector shall follow the procedure prescribed in s. 101.49.³

Furthermore, the Florida Secretary of State's website advised voters that (emphasis added by authors):⁴

When you go to the polling place to vote, you will be asked to *provide a current and valid picture identification with a signature*. Approved forms of picture identification are: Florida driver's license; Florida identification card issued by the Department of Highway Safety and Motor Vehicles;

³ Florida State law in S. 101.49 and in related sections describes procedures for voting with a provisional ballot. Voters who cannot meet this standard may complete a provisional ballot for federal offices that may or may not be counted after Election Day.

⁴ See the Florida Department of State, Division of Elections
http://election.dos.state.fl.us/online/faq.shtml#Elections_and_Voting.

United States passport; employee badge or identification; buyer's club identification; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; and public assistance identification. *If the picture identification does not contain a signature, you will be asked to provide an additional identification with your signature. If you do not have the proper identification you will be required to vote a provisional ballot.*

Each statement above indicates that Florida voters must present a valid photo identification in order to cast a regular, non-provisional ballot. The only exception in the law is for a photo identification that does not include a signature. In this case, voters are permitted to use a second form of identification to verify the voter's signature—but the exception does not absolve the voter of providing a photo identification. We found similar evidence for other states where Eagleton and Moritz (2006), Muhlhausen and Sikich (2007), and Vercellotti and Anderson (2006) found exceptions in the law.⁵ In addition, our reading of state election law in the other 39 states where Eagleton Moritz (2006) and Vercellotti and Anderson (2006) found only one requirement to cast a regular ballot, also revealed some different conclusions about what the law required voters to provide in order to cast a regular ballot. We feel that these differences in interpretation stand

⁵ We did find obscure exceptions for very specific circumstances in some states. For example, Indiana includes an exception for the indigent and those with a religious objection to being photographed. Indiana requires that voters seeking an exemption from the law to cast a provisional ballot and establish identification at a later time. Again, this type of exemption does not allow voters to cast regular, non-provisional ballot without a photo identification.

testament to the difficulty voters face in interpreting complex election laws that may include ambiguous language.⁶

We also question previous results due to misspecification of their models. Both Alvarez, Bailey, and Katz (2007) and Muhlhausen and Sikich (2007) find marginally substantively significant relationships between voter turnout and voter identification laws but both rely on CPS data that does not include a political variable capable of accurately capturing political interest. Political interest is one of the best predictors of turnout (Berinsky 2005; Brady, Verba, and Schlozman 1995; Campbell, et al 1960) and the marginal results reported by Alvarez, Bailey, and Katz (2007) and Muhlhausen and Sikich (2007) would likely vanish with the proper controls.⁷

We believe that the psychological and economic costs of providing identification at the polls are not great enough to cause would be voters to not vote. Thus we hypothesize that voter identification laws will have no effect on turnout. Instead, we hypothesize that traditional socio-economic variables

⁶ Muhlhausen and Sikich (2007) also report differences in their coding of state laws from the data collected by Eagleton Moritz (2006) and Vercelloti and Anderson (2006).

⁷ Alvarez, Bailey, and Katz (2007) statistically significant findings are also heavily influenced by the extremely large sample size—approximately 120,000 per year (480,000 over four years)—which benefits their goal of examining states and other populations of interest, but also creates a greater chance of statistical significance with effect sizes (substantive significance) close to zero.

(Teixeira, 1987), interest in politics, the presence of high profile campaigns for president, governor, or senator, or the presence of social issue referenda on the ballot will be statistically significant predictors of turnout.

Data and Methods

We test our hypothesis using empirical analyses of both aggregate and individual-level data. We collected aggregate data that includes two presidential and two mid-term elections across four federal elections from 2000 to 2006. At the individual level, we examined four corresponding years—2000, 2002, 2004, and 2006 (pilot study)—of National Election Study (NES) data. In his comprehensive review of the factors affecting turnout, Andre Blais (2006) argues that since many variables that affect turnout vary from year to year, studies exploring the effect of new variables on turnout must include a dynamic time component, something we account for in our analyses below, but was absent from the Eagleton and Moritz (2006), Muhlhausen and Sikich (2007), and Vercellotti and Anderson (2006) analyses.

Our dependent variable at the aggregate level is *turnout*, measured as the ratio of voters in each state who cast a vote on Election Day to the number of registered voters in each state. Our dependent variable at the individual level is

the respondent's self-reported voting behavior during the election.⁸ Our independent variable of interest is a Guttman scale variable capturing the strength of each state's voter identification law.⁹ For example, the lowest score reflects the minimum standard (e.g., verifying one's name) with increasing values for each additional requirement reflecting some more stringent requirements that voters must meet such as a government issued photo identification with an expiration date. In both the aggregate and individual-level models we also control for other factors that might explain turnout following the literature on voter turnout. The aggregate data include state-level socio-economic variables, political context variables, and legal restrictions. The individual-level data contain socio-demographics (e.g., sex, race, age, region, and socio-economic status variables), political affiliation (i.e., party identification), and level of political interest.

⁸ The self-reported vote includes those who turned out at the actual polling station, as well as individuals who cast absence ballots.

⁹ For a Guttman scale variable responses indicating higher levels on the scale will also meet the requirements of lower items on the scale. So meeting the highest requirement should satisfy all of the preceding requirements.

Aggregate Model

The dependent variable turnout measures the number of voters who cast votes in each state in each election as certified by the Secretaries of State.¹⁰ The legal factors include our primary variable of interest, a six-point Guttman scale variable measuring the strictness of each state's *identification requirements* in order to cast a regular non-provisional ballot on Election Day, ranging from the easiest to the most difficult standard to meet.¹¹ State law in each of the fifty states requires voters to identify themselves as described in the law or they will not be permitted to cast a regular, non-provisional ballot. Voters who cannot meet the necessary standard will often be allowed to cast a provisional ballot that is not counted with the regular ballots, but rather, may or may not be counted depending on the outcome of a challenge or review process.

We coded state laws based on the legal standard in each state into six categories ranging from the easiest standard of stating one's name to the most difficult of providing identification with the voter's name, photograph, and an expiration date. A one (1) on the scale represents the easiest level to meet—

¹⁰ We used turnout data collected by the United States Election Project at George Mason University (<http://elections.gmu.edu/>), and by the U.S. Election Assistance Commission (<http://www.eac.gov/>).

¹¹ We collected voter identification law data by consulting state election law, websites run by the Secretaries of State, and through direct communication with the offices of Secretaries of State.

stating one's name. The next level (coded 2) in difficulty is signing one's name. The third level (coded 3) is matching one's signature to a signature on file at the polling location. The fourth level (coded 4) in the scale is providing a form of identification that includes the voter's name and may or may not include the voter's photograph. The fifth level (coded 5) is providing identification that includes the voter's name and photograph. We included in this level states that also added requirements that the identification also include the voter's address and or signature. The highest level (coded 6) of stringency is providing photo identification with special requirements. The only case included at this level is Indiana because it requires that a voter's photo identification must be issued by the United States or the State of Indiana and include an expiration date indicating that the identification has not expired in addition to including the voter's name.¹² We use this variable to test our hypothesis that increasingly difficult voter identification requirements will have no effect on voter turnout.

We begin our analysis by examining the relationship between identification requirements and turnout with a series of difference of means tests. Table 1 reports the distribution of states' identification requirements along with

¹² We felt that the inclusion of an expiration date made the Indiana law more stringent than the other state laws requiring a photo identification and therefore created a sixth level in our Guttman scale. We reestimated our models folding the sixth level into the fifth and the results were not substantively different.

turnout by election by identification requirement. A quick glance at the distribution of identification requirements reveals there is a good bit of variation in identification requirements across the states. In the 2000, 2002, and 2004 elections the majority of states required the less demanding standards of stating or signing one's name in order to cast a regular ballot. But by 2006, the slight majority of states are found at the top end of the Guttman scale requiring more stringent identification requirements such as a photo identification and a signature. A two-way random effects analysis of variance (ANOVA) comparing mean turnout across election year, the presumably categorical factor level for each type of identification requirement, and the interaction between the two reveals only the year variable reaching statistical significance ($F(3,5,545)=140.1$, $p<.01$).¹³ Post-hoc Bonferonni adjusted t-tests show lower turnout in the mid-term

¹³ Random effects modeling is also called "multilevel modeling" (MLM) or "hierarchical linear modeling" (HLM). In this analysis, year is the random effect because states are nested within the election period (Tabachnick and Fidell 2006). The intraclass correlation coefficient (ICC or ρ ("rho")) is based on Maximum Likelihood Estimation for a random effects model. The ICC is equivalent to an Eta square (η^2) statistic, and indicates the amount of variance in turnout that occurs between states relative to the turnout within states. Lower ICC values indicate random effects modeling is likely unnecessary (Bickel 2007; Tabachnick and Fidell 2006). The ICC between election year and turnout is .79, indicating that approximately 62% (ρ^2) of the variance in turnout for states can be explained by the election year. Thus, we employ random effects modeling for the aggregative level data.

election years (2002 and 2006), and higher turnout in presidential election years (2000 and 2004). Both the voter identification requirement variable ($F[5,29]=2.35, n.s.$), and the interaction of year and voter identification requirement ($F[12,161]=.46, n.s.$) were non-significant predictors of state-level turnout. Using the same random effects model, we also found no statistically significant relationship when treating our Guttman scale measure of identification stringency as an ordinal covariate ($\beta=-.81, SE=.46, n.s.$). Thus, controlling for the election year, state voter identification laws produced no statistically significant effects on state level turnout. This very simple analysis suggests state level turnout and voter identification requirements have very little to do with one another, at least between the years of 2000 and 2006.

[Table 1 about here]

Having shown state voting requirement laws have no significant effect on state level turnout, we next wanted to show what factors do matter. To accomplish this, we regressed turnout on three categories of variables: legal, election-specific, and demographic factors. First we controlled for two other legal factors in addition to identification requirements, the number of days between the deadline to register to vote in each state and Election Day (*number of days before election*) and a dichotomous variable indicating whether a state's election laws changed with respect to voter identification since the previous election (*change in*

requirement).¹⁴ We hypothesize that a change in election law with respect to voter identification since the last federal election should cause a decrease in turnout due to increased voter confusion and a greater number of days between the deadline for voter registration and Election Day should also cause a decrease in turnout because voters must register far in advance of the election.

Next, we control for five election-specific characteristics that might affect turnout. *Senate race* and *gubernatorial race* are dichotomous variables indicating whether there was a senate or gubernatorial race in a state during the election year. We expect each of the variables to have a positive relationship with turnout as each type of election is generally more high-profile than elections for lower offices. *Federal campaign spending* measures the total amount of spending in 2004 dollars by federal candidates in each year as reported by candidates to the Federal Election Commission.¹⁵ *Social issues* indicates the number of social issues (abortion, same sex marriage, or stem cell research) that were on the ballot in a state during each election.¹⁶ We expect both of these factors to increase

¹⁴ We collected the number of days between the registration deadline and Election day from state laws. The change in election law variable is a dichotomous indicator based on our identification requirement variable.

¹⁵ We collected financial data from www.fec.gov.

¹⁶ We collected ballot initiative data using information from the National Conference of State Legislatures (<http://www.ncsl.org/index.htm#>).

turnout as more spending and high-profile issues on the ballot should increase awareness of and interest in the election through increased campaign advertising and media coverage, thereby increasing turnout. We also control for each election year with a series of three dummy variables controlling for the 2000, 2002, and 2004 election years, with the 2006 election year as the excluded category. We expect that 2000 and 2004 will cause an increase in turnout as these were presidential election years.

Finally, we control for demographic factors that the literature has found to be important in explaining turnout. *Voting age population* measures the size of each state's voting age population as measured by the 2000 Census. We expect that population size and voter turnout should have a positive relationship.¹⁷ *Percent Black* and *percent Hispanic* measure the percentage of each state's citizens who are Black and Hispanic, respectively. We also control for states in the *south* and interact south and percent Black to control for differences in voting in southern states with variation in the percentage of Black voters. Following the literature we expect each of these variables to have a negative effect on turnout. *Percent college* is a variable indicating the percentage of college graduates in each state and *percent urban* indicates the percentage of citizens living in urban areas. We expect that an increase in the percentage of college educated voters will

¹⁷ We also estimated the model using the number of registered voters instead of population size and the results were equivalent.

cause an increase in turnout while an increase in urbanity will have the opposite effect.

Table 2 reports the results of a random effects general linear model with maximum likelihood estimation explaining turnout in four elections, 2000 through 2006.¹⁸ Again, election year was treated as a random effect, and the other predictors were treated as fixed effects. On the whole, the model does a very good job of explaining turnout (*Adjusted R*² = .75). Socio-demographic and ballot initiative variables that are usually statistically significant in the turnout literature are also significant in our model with coefficients in the expected direction.¹⁹ The primary variable of interest, identification requirement, is again not statistically significant indicating that the type of voter identification law does not affect voter turnout. We also ran this analysis with data from each election year independently but did not find a statistically significant relationship between voter identification laws and turnout.²⁰ On the aggregate level, we are confident that variation in voter

¹⁸ There are only 197 observations in the aggregate model because turnout data was not available for North Dakota in 2000 or for Wisconsin in 2000 and 2002.

¹⁹ We also estimated this model using a series of dummy variables representing the different state voter identification requirements with stating one's name as the excluded reference category and the results were equivalent.

²⁰ These results are available from the authors upon request.

identification laws does not cause meaningful variation in turnout, particularly after controlling for socio-demographic and political factors.

Most of the control variables offer confirmation for the received wisdom on characteristics that affect turnout. Among the statistically significant variables the number of social issues on the ballot, presidential election years (2000 and 2004), and percent college each had positive effects on turnout while the percentage of Blacks, the percentage of Hispanics, and southern states each showed negative effects on turnout. Ancillary analysis of the significant interaction of percent Black and southern state indicates a positive relationship between percent Black and turnout in southern states, but a negative relationship in non-southern states. More generally, there are sizable differences in turnout between southern and non-southern states when the black population is lower, but practically no differences when the black population is higher.²¹

Individual-Level Model

To further investigate the relationship between voter identification laws and turnout we next turn to our individual-level analysis using NES data. NES

²¹ The terms “higher” and “lower” are relative, since there are few states with what would normally be considered high percentages of Black Americans. We used percentiles found in the data to create our categories, which resulted in lower being between 0 and 3.4%, middle between 3.41 and 11.5%, and higher greater than 11.5%.

data are not completely consistent over time in terms of demographic variables and sample sizes (e.g., 2006 is a Pilot study with fewer cases); however, each of the years we examine includes a variable measuring political interest, which allow us to control for a basic civic motivation. We sought to determine the effect of state level voter identification laws on individual voting behavior. Examining these potential effects required us to append the state-level data to individual level respondents in the NES data for 2000, 2002, 2004, and 2006, respectively. Such an analysis typically necessitates the use of random effects modeling since respondents are nested within states, and this nesting may produce correlated responses (and errors) (Bickel 2007; Tabachnick and Fidell 2006).²² Yet, random effects modeling is required only when random effects are present. The intraclass correlation coefficient (ICC), which indicates the correlation between the random factor (e.g., state) and the individual level variable (e.g., turnout) is typically the determining factor for employing random effects modeling. ICC values approximating .100 call for consideration of the random effects; however, ICC values close to zero indicate the nesting variable is not significantly related to the

²² We do not pool the NES data because of the variation in missing demographic across the years; however, a pooled random effects saturated model with time as the random factor, and state identification law and political awareness as predictors produced no statistically significant main effects for identification laws ($F[1,4287]=.015, n.s.$) or election year ($F[3,4287]=.20, n.s.$). The saturated model includes all possible main and interaction effects.

individual level variable, and there is no need to specify (or hypothesize) an effect, when it is not already present, unless there is some theoretical grounds for including mixed level interactions. ICCs were calculated for each year to test the hypotheses that individual level turnout varied across state.²³ In each year the values— $\rho=.011$, $\rho=.021$, $\rho=.005$, and $\rho=.009$ for 2000, 2002, 2004, and 2006 respectively—were small enough for us to conclude that individual-level models are adequate for our analysis of state level effects on individual level turnout. That is, we can statistically treat the voter identification law as an individual level variable.

We first ran bivariate correlations to examine the effects of state laws on individual turnout. Biserial correlations reveal no statistically significant effects of state law requirements on individual level turnout for any of the four years: 2000 ($r = -0.025$), 2002 ($r = -0.041$), 2004 ($r = 0.001$), and 2006 ($r = -0.044$).²⁴ The lack of statistical significance is sufficient for us to conclude individuals' voting

²³ The ICC (ρ) is based on Maximum Likelihood Estimation for a random effects model. The ICC is equivalent to an Eta square (η^2) statistic, and indicates the amount of variance in turnout that occurs between states relative to the turnout within states. Lower ICC values indicate MLM is likely unnecessary (Tabachnick and Fidell, 2006).

²⁴ Biserial correlations are coefficients computed between dichotomous and [assumed to be] continuous variables. The biserial correlation provides an estimate of what the correlation would have been if the collapsed dichotomous variable were continuous.

behavior, or more aptly their self-reported voting behavior, is not influenced by voter identification laws.

[Table 3 about here]

To estimate the significant determinants of individual voting behavior we ran logistic regression analyses predicting whether or not respondents voted in each of the four election years. Our independent variables included *age*, *sex*, race (dummy variables for *Black* and *Other non-White Race-Ethnicity*), *education* (standardized scores), *household income* (standardized scores), living in the *south*, political party identification (dummy variables for *Democrat* and *Republican*), and an individual's level of interest in politics (*political interest*) measured on a 3-point scale (1=not interested, 3=very much interested). The results are shown in Table 3. Looking across all four years of data age, education, party identification, and political interest were consistently significant predictors of voting.²⁵ In addition, household income (not included in 2006) was a significant predictor of voting in 2000, 2002, and 2004. As expected, the state voter identification law variable never reached statistical significance in any of the four years we examined. Thus, our results suggest that basic socio-demographics and other individual level characteristics such as political interest have a much larger effect on voting behavior than political context variables such as the type and degree of identification required for voting.

²⁵ The 2006 NES pilot data did not include all of the demographics variables.

Discussion

Despite not having the proper identification when she arrived at the polls, Congresswoman Julia Carson was ultimately allowed to vote in the 2006 Indiana primary. Of course, a member of Congress is far more likely to aggressively pursue her right to cast a ballot than the average citizen. Our paper sought to determine whether or not states' voter identification laws, which vary greatly, affect voter turnout. Scholars, pundits, and activists make forceful arguments with respect to the ways in which identification laws can intimidate voters or encourage fraud, depending on the strictness of the rule. Our analyses, at both the aggregate and individual levels, consistently demonstrate that, as was the case with Congresswoman Carson, concerns about voter identification laws affecting turnout are much ado about nothing.

Despite the intense speculation about these laws and some preliminary evidence that they do negatively affect turnout, we consistently find that demanding voting requirement laws at the state level have no significant effect on either aggregate or individual-level turnout. Our findings are consistent with the importance theories of voting behavior place on factors such as interest in politics, socioeconomic status, and the context of a particular elections year. Just as electoral reforms aimed at increasing voter turnout generally affect those citizens

who are already likely to vote rather than the nonvoters that the reforms are targeting, voter identification laws of increasing strictness do nothing to dissuade Americans from casting a ballot.

One interesting finding from the individual-level analysis related to the aggregated data was the regional factor of “the South.” The aggregate analysis revealed Southern states averaged lower turnout (see Table 2). In an ancillary analysis of the pooled NES data examining which individual level predictors were most related to the degree of voting requirements, the one variable with a statistically significant correlation greater than $\pm .100$, was the dummy variable for the South (South=1). Individuals who lived in the south tend to live in states where the voting requirements are more stringent ($r = 0.390, p < .01$). This effect was consistent for 2000 ($r = 0.422, p < .01$), 2002 ($r = 0.395, p < .01$), 2004 ($r = 0.468, p < .01$), and even 2006 ($r = 0.252, p < .01$). If the original intent of making voting laws more stringent (e.g., government issued photo identification with signatures) was to reduce potential fraud, based on the NES data one might expect Southern states to be most fearful of the crime. Yet, there is scant evidence of widespread fraud in the South.

Our NES results do not provide strong support for the notion that individuals living in the South are less likely to vote, as south was only statistically significant in 2004, even when controlling for state voting laws, nor do the data indicate the effects of the voter identification laws differ because one

lived in the South ($\beta_{\text{South} \times \text{State ID law}} = -0.08$, n.s.).²⁶ Thus, even among the individual level-factors strongly associated with the stringency of the state law, the laws have no significant effect on individual level turnout.

Voter identification laws are a much smaller piece to the electoral puzzle than are factors such as the kinds of issues on a state ballot, the competitiveness of campaigns, the institutional structures of a particular election, socio-economic factors, and interest in politics. This is not to say that the rules of the game are unimportant; rather it is to suggest that some rules (voter identification laws) are not as consequential as others (i.e. same day registration in Minnesota, a state with historically high turnout). Time and energy spent debating the utility of various voter identification laws may well be better spent exploring to how factors such as interest in politics (Berinsky 2005), particular kinds of elections (Gronke, Galenas Rosenbaum, and Miller 2007), and controversial social issues (Tolbert, Grummel, and Smith, 2001) can motivate voters. As Berinsky (2005) suggests, changing voter identification and registration laws are not as likely to increase turnout as are civic-minded measures aimed at raising political awareness and feelings of efficacy. Our results are certainly consistent with Berinsky's recommendation as we provide strong evidence that voter turnout is unrelated to voter identification laws.

²⁶ Results based on logistic regression model controlling for all factors in Table 3.

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TABLE 1: Mean Turnout by Identification Requirement, 2000-2006

Identification Requirement	2000		2002		2004		2006	
	<i>M</i>	<i>N</i>	<i>M</i>	<i>N</i>	<i>M</i>	<i>N</i>	<i>M</i>	<i>N</i>
State Name	68.9	10	48.6	11	70.5	10	45.5	10
Sign Name	66.1	19	47.2	19	70.3	16	42.8	13
Match Signature	66.1	8	40.6	8	71.7	7	40.0	6
ID with Name	66.0	10	46.8	10	70.9	15	44.2	17
Photo ID	57.7	1	44.2	1	70.1	2	37.7	3
Photo ID +	---	0	---	0	---	0	36.6	1
Total ²⁷	66.5	48	46.3	49	70.7	50	43.1	50

Note. ANOVA F-tests comparing mean turnout across identification requirement categories reveal no significant mean differences within years; however turnout in 2000 and 2004 were significantly higher than turnout in 2002 and 2006 (see ANOVA results in the text).

Source. Aggregate data gathered by the authors.

²⁷ North Dakota and Wisconsin are omitted because in 2000 and Wisconsin is omitted in 2002

because the turnout data was not available for the states. In each of the three cases, however, state law required the standard of stating one's name to cast a regular ballot.

TABLE 2. Random Effects Parameter Estimates of Turnout on Identification Requirements, 2000-2006

Variable	β
<i>Legal Factors</i>	
ID Requirement	-19 (.47)
Change in Requirement	-1.60 (2.30)
# Days Before Election	-.21 (.08)
<i>Election Factors</i>	
# Social Issues	3.28 * (1.35)
Senate Race	.72 (1.13)
Gubernatorial Race	-.71 (1.15)
Federal Campaign Spending	.00 (.00)
<i>Year</i>	
2000 Election Year	24.3 * (1.50)
2002 Election Year	1.88 (1.58)
2004 Election Year	27.71 * (1.43)
<i>Demographic Factors</i>	
Voting Age Population	.00 (.00)
Percent Black	-.60 * (.17)
South	-9.47 * (2.57)
South x Percent Black	.70 * (.20)
Percent Hispanic	-.19 * (.07)
Percent College	.37 * (.14)
Percent Urban	.02 (.06)
Constant	36.16 * (4.16)
Adjusted R ²	.75

Note. Values in parentheses are standard errors; Total cases=182; 2000 N=48, 2002 N=34, 2004 N=50, and 2006 N=50; * p < .05

Source. Aggregate data gathered by the authors.

**TABLE 3. Logistic Regression Coefficients and Odds Ratios
Predicting Individual-Level Turnout**

	2000			2002				
	β	SE	Odds Ratio	β	SE	Odds Ratio		
Age (years)	.02	(.01)	*	1.02	.03	(.01)	*	1.03
Sex (Male=1)	.02	(.15)		1.02	.18	(.15)		1.20
Other Race	-.43	(.32)		.65	-.05	(.32)		.95
Black	-.07	(.26)		.94	.10	(.25)		1.11
Education ^b	.63	(.09)	*	1.89	.53	(.09)	*	1.70
Household Income ^b	.38	(.10)	*	1.46	.24	(.08)	*	1.27
South	-.12	(.18)		.89	-.31	(.17)		.74
Democrat	.96	(.22)	*	2.62	.82	(.29)	*	2.27
Republican	.92	(.23)	*	2.52	.89	(.29)	*	2.42
Political Interest	.94	(.11)	*	2.57	1.40	(.13)	*	4.04
ID Requirement	-.08	(.08)		.92	-.09	(.08)		.92
Constant	-2.28	(.45)	*	.10	-3.75	(.51)	*	.02

	2004			2006 ^a				
	β	SE	Odds Ratio	β	SE	Odds Ratio		
Age (years)	.01	(.01)	*	1.01	.03	(.01)	*	1.04
Sex (Male=1)	-.44	(.20)	*	.65	.07	(.29)		1.07
Other Race	-.82	(.35)	*	.44	--	--		--
Black	-.29	(.28)		.75	--	--		--
Education ^b	.48	(.12)	*	1.62	--	--		--
Household Income ^b	.35	(.10)	*	1.42	--	--		--
South	-.59	(.23)	*	.56	-.07	(.33)		.93
Democrat	1.10	(.29)	*	3.00	2.11	(.64)	*	8.24
Republican	1.40	(.31)	*	4.04	2.05	(.64)	*	7.79
Political Interest	1.18	(.15)	*	3.27	1.03	(.20)	*	2.81
ID Requirement	.09	(.09)		1.09	.11	(.11)		1.11
Constant	-2.36	(.58)	*	.09	-5.12	(.99)	*	.01

Note. Analyses are based on unweighted sample data: 2000 Analytic N=1,290 ($R^2=.31$); 2002

N=1,254 ($R^2=.34$); 2004 N=935 ($R^2=.34$); 2006 N=332 ($R^2=.29$); * $p < .05$

^a 2006 NES Pilot did not contain some demographics. ^b Education and household income are standardized (z) scores based on ordinal measures found in the NES.

Source: National Election Studies (NES) (2000, 2002, 2004, and 2006 (Pilot)).

Analytic Brief

Prepared by David C. Wilson, Jason D. Mycoff, Michael W. Wagner
(Prepared November 9, 2007)

Question

What impact do stringent voter identification laws have on voting behavior in the American public? Some have suggested requiring photo identification for voting adversely impacts different racial, income, and age segments in the population, while others suggest such laws have minimal impact because they do not alter the political behavior (i.e., voting) of individuals. To address this question, we analyzed cross-sectional survey data collected during 2000, 2002, 2004, and 2006 election years. Using state identification codes, we appended state level laws to each respondent.

Methodology

Results are based on the American National Election Studies (ANES) 2000-2006. The 2006 ANES is pilot data collected prior to the midterm election. The data are unweighted, and pooled although respondents were less likely to vote in one (i.e., 2002) of the mid-term years ($F=5.4$, $p<.01$).

Analytic Approach

General Linear Model (GLM) regression estimates are reported for baseline effects (state, voting ID requirement, and X (demographic)), and the same effects controlling for our “political” variable (i.e., political interest). The state a respondent resides in is modeled as a fixed effect control variable. Voting identification law was measured as a dummy variable indicating whether a state has a photo identification requirement or not. Analyses examine three main demographics: race (black, Hispanic, other, and white), income (standardized household income), and age (years). These are all items that are “self-reported” in the ANES. Interaction terms indicate the effect of the state voter ID law (providing a photo ID) on [self-reported] voting behavior is different across the levels of the demographic variables of interest. For ease of presentation the effects of each state are not shown.

Results

The results show the importance of one's interest in politics when it comes to the decision to vote. In all three analyses below, demographics and political interest account for more differences in voting than the state law. The fact that more stringent laws such as photo identification do not adversely impact minorities, seniors, or persons with lower income signifies the low elasticity of such laws on the general population.

Table 1. Race Analysis

Parameter	Model 1			Model 2		
	<i>B</i>	<i>SE</i>	<i>Sig.</i>	<i>B</i>	<i>SE</i>	<i>Sig.</i>
Intercept	.868	.145	.000	.377	.135	.005
Black	-.023	.041	.571	-.009	.038	.816
Hispanic	-.104	.051	.043	-.084	.047	.074
Other	.073	.066	.266	.036	.060	.554
Photo ID	.048	.051	.347	.000	.047	.994
Photo ID x Black	-.025	.049	.614	-.043	.045	.338
Photo ID x Hispanic	-.018	.063	.773	-.022	.058	.704
Photo ID x Other	-.174	.075	.020	-.116	.069	.091
Political Interest				.244	.009	.000

Model 1: N=4,250, Adjusted Rsq=.02

Model 2: N=4,290, Adjusted Rsq=.165

Note. Whites are the reference category for the race variable.

The results in Table 1 show the state ID requirement has no significant effect ($B=.048$, n.s.), and while the ID law effect varies across "other" race and whites, that effect is easily mediated by one's level of interest in politics.

Table 2. Income Analysis

Parameter	Model 1			Model 2		
	<i>B</i>	<i>SE</i>	<i>Sg.</i>	<i>B</i>	<i>SE</i>	<i>Sg.</i>
Intercept	.745	.141	.000	.328	.131	.012
Photo ID	.102	.050	.042	.053	.047	.254
Income	.086	.008	.000	.073	.008	.000
Photo ID x Income	.001	.016	.935	-.012	.015	.437
Political Interest				.238	.010	.000

Model 1: N=4,034, Adjusted Rsq=.055
Model 2: N=3,750, Adjusted Rsq=.192

Table 2 shows voter ID law (Beta=.031) is statistically related to voting, although its effect is not as strong as income's effect (Beta=.176). Also, the sign is positive indicating that in those states requiring photo identification individuals are more likely to vote. Most important are the effects of voting law when controlling for political interest; they are null.

Table 3. Age Analysis

Parameter	Model 1			Model 2		
	<i>B</i>	<i>SE</i>	<i>Sg.</i>	<i>B</i>	<i>SE</i>	<i>Sg.</i>
Intercept	.579	.135	.000	.250	.127	.049
Photo ID	.070	.052	.179	.067	.052	.200
Age	.004	.000	.000	.003	.000	.000
Photo ID x Age	-.001	.001	.439	-.001	.001	.218
Political Interest				.232	.009	.000

Model 1: N=5,174, Adjusted Rsq=.04
Model 2: N=4,528, Adjusted Rsq=.17

Table 3 shows the presence of a photo ID law has no significant effect on voting, while age, similar to income, is significant both in the baseline model, and the model controlling for political interest.

Conclusions

Our brief analyses show that political interest is not only significantly related to voting behavior, but that it mediates any effects that state level voter identification laws might have. To us, this makes sense because the voting ID laws would not change the calculus (i.e., engagement in politics) that induce individuals to vote.

UNEQUAL ACCESS:

NEGLECTING THE NATIONAL VOTER REGISTRATION ACT, 1995-2007

By Douglas R. Hess and Scott Novakowski

Please fill out the sections below if they apply to you.

February 2008

2 Previous Address Apt. or Lot # City/Town State Zip Code

3 Address Where You Did Your Most Recent Voting Apt. or Lot # City/Town State Zip Code

4 Please sign (or mark X) to the best of my knowledge and belief that the information I have provided is true and correct. If I have provided false information, I may be fined, imprisoned, or if not a U.S. citizen, deported from or refused entry to the United States.

7 Please sign (or mark X) to the best of my knowledge and belief that the information I have provided is true and correct. If I have provided false information, I may be fined, imprisoned, or if not a U.S. citizen, deported from or refused entry to the United States.

8 If you are registering to vote for the first time, please refer to the application instructions for information on submitting copies of valid identification documents with this form.

A Last Name First Name Middle Name (Circle one) (A) (B) (C) (D) (E) (F) (G) (H) (I) (J) (K) (L) (M) (N) (O) (P) (Q) (R) (S) (T) (U) (V) (W) (X) (Y) (Z)

B Street (or route and box number) Apt. or Lot # City/Town/County State Zip Code

C If you live in a rural area but do not have a street number, or if you have no address, please show on the map where you live. Write in the names of the crossroads (or streets) nearest to where you live.

D If the applicant is unable to sign, who signed the application for this applicant? Give name, address and phone number (phone number optional).

Mail this application to the address provided for your State.



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Executive Summary

Recognizing that burdensome and discriminatory voter registration laws have a damaging impact on American democracy, Congress passed the National Voter Registration Act (NVRA) in 1993 to make voter registration more accessible, with the hope of reducing disparities in voting among various populations. The NVRA remains one of the nation's most important voting rights laws.

Although millions of citizens have taken advantage of voter registration opportunities created by the NVRA, key provisions of the law meant to reach populations with low voter registration rates have been poorly and inconsistently administered in many states. Specifically, states have failed to adequately implement — and the Department of Justice has in recent years failed in their duty to enforce — NVRA provisions that require states to offer voter registration in government agencies providing public assistance benefits.

“Unequal Access: Neglecting the National Voter Registration Act, 1995-2007” details the following:

- The number of voter registration applications from public assistance agencies in 2005–2006 is a small fraction of what it was in 1995–1996, when the NVRA was first implemented (see Figure 1 and Tables 1a and 1b). Indeed, registrations from public assistance agencies declined by 79 percent during this time.
- The decline in registrations from public assistance agencies occurred despite the fact that millions of citizens from low-income households remain unregistered. In 2006, 13 million, or 40 percent of, voting-aged citizens from households earning under \$25,000 were unregistered (see Table 2).
- Many states frequently fail to report data on their public assistance agency registrations to the Elections Assistance Commission, as required for the EAC's biennial report to Congress (see Table 3).
- Recent surveys of clients at public assistance agency sites in more than half a dozen states have found numerous instances where voter registration was not being offered as required by the NVRA; voter registration applications were completely absent at some agency sites.
- States that have adopted improved NVRA procedures have seen dramatic increases in voter registrations at public assistance agencies, indicating the potential for substantial improvement in other states.
- The Department of Justice has taken little action in recent years to enforce the public assistance agency registration requirements of the NVRA, despite being repeatedly presented with strong evidence of states' noncompliance.
- Based on the outcomes in states where recent compliance efforts have been undertaken, states can improve their compliance with the NVRA and increase the number of low-income citizens registering to vote by implementing recommended procedures, outlined in this report, to improve training, monitoring and reporting by agencies.

The NVRA is the only federal law requiring the government to affirmatively offer voter registration to broad segments of the population. Because of noncompliance with the NVRA, however, the

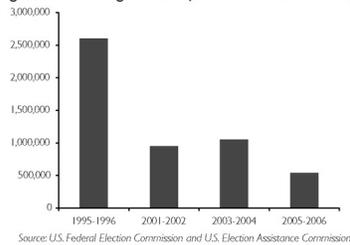
rights of thousands of low-income citizens are violated daily across the nation. Project Vote and Demos call on state election and public assistance officials to take immediate action to properly implement this important civil rights law. We also call on the Department of Justice to fulfill its role by actively enforcing the NVRA's requirement for voter registration at public assistance agencies.

Introduction

Congress passed the National Voter Registration Act (NVRA) in 1993 to “increase the number of eligible citizens who register to vote in elections for Federal office.”¹ Recognizing that unfair and discriminatory registration laws have a “direct and damaging” effect on democratic participation, Congress designed the NVRA to make voter registration more accessible, with the hope of reducing disparities in registration and voting.² Key to this goal is Section 7 of the NVRA, which requires states to provide voter registration services at public assistance agencies (see box on Section 7 of the NVRA on page 4). The Act remains the only federal law requiring the government to affirmatively offer voter registration to broad segments of the population.²

Unfortunately, many states have failed to fully or consistently implement voter registration in public assistance agencies, and the U.S. Department of Justice has largely ignored violations of the law in recent years. For example, examination of federal data shows that, compared to the number of public assistance registrations achieved during the NVRA’s first years of implementation, 1995–1996, the number of agency-based registrations has declined by 79 percent in the most recent reporting period (see Figure 1).

Figure 1: Voter Registrations from Public Assistance Agencies



“As a result of states’ noncompliance, millions of low-income citizens have been denied an opportunity to register to vote.”

As a result of states’ noncompliance, millions of low-income citizens have been denied an opportunity to register to vote, and a significant gap in registration rates between the rich and the poor remains. Indeed, in 2006 only 60 percent of adult citizens in households making less than \$25,000 a year were registered to vote compared to over 80 percent of those in households making \$100,000 or more.³

¹ 42 U.S.C. § 1973gg(b)(1)(3).

² 42 U.S.C. § 1973gg(a)(3).

³ In fact, the United States is one of the only democracies that places the burden on the individual to register to vote. See Frances Fox Piven and Richard Cloward, *Why Americans Don’t Vote* (1988), p. 17. Canada, Germany, Mexico and the United Kingdom all have systems in which the government assumes the responsibility for registering its citizens to vote.

⁴ See Douglas R. Hess, Project Vote, “Representational Bias in the 2006 Electorate,” (2006), Table 6: Household Income and Voting Behavior, available at <http://www.projectvote.org>.

This report — co-authored by Dēmos and Project Vote as part of their joint effort to improve NVRA agency implementation nationwide — examines in detail the decline in voter registration at public assistance agencies and presents data for each state.⁵ The report also details the potential of the NVRA to increase registration among low-income citizens, the failure of states to collect and report data on their public assistance voter registration programs, and the failure of the

Section 7 of the NVRA: Voter Registration in Public Assistance Agencies

Enactment of the National Voter Registration Act marked a significant expansion of voter registration opportunities in the United States. In addition to the well-known requirement that states offer voter registration to persons applying for or renewing a driver's license (the so-called "Motor Voter" provision), the NVRA requires states to offer voter registration at all offices providing public assistance.¹ Recognizing that low-income and disabled citizens may be less likely to visit motor vehicle departments, Congress included the requirement for registration at public assistance agencies to ensure greater equality of access to voter registration.² Indeed, Census data confirm that low-income citizens are less likely to register to vote at a motor vehicle department.³

By "public assistance" agencies, Congress meant to include all offices in the state that administer the Food Stamp Program, Medicaid, Temporary Assistance for Needy Families (TANF), and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).⁴ Under the NVRA, with each application for benefits, recertification or renewal of benefits, or change of address notification, a public assistance agency must (among other things):

- Provide the individual with a voter registration application and provide assistance in completing it;
- Provide the individual with a form ("declination form") containing the specific question, "if you are not registered to vote where you live now, would you like to apply to register to vote here today?" along with a check-off box indicating the individual's choice;
- Accept completed voter registration application forms and transmit them promptly to the appropriate election official.

States that do not comply with the NVRA are subject to litigation by private individuals or the U.S. Department of Justice. Currently, litigation is underway against officials in Ohio and, at the time of this writing, officials in Arizona, Florida, New Mexico and Missouri have received letters from Project Vote, Dēmos, ACORN and others notifying them of their non-compliance with the law. Such notice letters provide the state with 90 days to correct the violation before litigation can be filed.

¹ This requirement is set out in Section 7 of the NVRA, 42 U.S.C. § 1973gg-5. Section 7 of the NVRA also requires states to offer voter registration at offices providing services to disabled persons, at armed services recruiting offices and at other agencies designated by the state, which may include unemployment offices, libraries, universities and other state agencies.

² NVRA Conf. Report 103-66.

³ U.S. Census Bureau, "Voting and Registration in the Election of November 2004, Table 14," <http://www.census.gov/population/www/socdemo/voting/cps2004.html>.

⁴ NVRA Conf. Report 103-66.

⁵ This report updates an earlier report by Dēmos, Project Vote and ACORN on NVRA compliance problems. See Brian Kavanaugh, Steven Carbo, Lucy Mayo and Michael Slater, "Ten Years Later, A Promise Unfulfilled" (September 2005), available at <http://demos.org/generatePub.cfm?pubID=634>.

Department of Justice to take action in the face of ever-mounting evidence that rights granted under the NVRA are being denied every day to thousands of citizens across the country.

This report concludes with an outline of effective "best practices" in NVRA Section 7 implementation. These practices are based on the experience of states that have improved their compliance with the NVRA and, as a result, have shown increases in the number of voter registration applications coming from agencies.

Evaluating Agency Registration: An Overview

Federal data reveal a troubling decline in the number of voter registration applications coming from public assistance agencies since initial implementation of the NVRA in 1995. Table 1a presents the number of public assistance voter registrations reported⁴ to the federal Election Assistance Commission⁷ by each state for four two-year election cycles: the first cycle after the NVRA was implemented (1995–1996) and the three most recent cycles (2001–2002, 2003–2004 and 2005–2006).⁸

The percent change in agency-based voter registration between cycles is shown in Table 1b for the following four comparisons:

- The first and the most recent NVRA reports (1995–1996 compared to 2005–2006)
- The two most recent election cycles (2003–2004 compared to 2005–2006)
- A pair of presidential-election cycles (1995–1996 compared to 2003–2004)
- A pair of mid-term election cycles (2001–2002 compared to 2005–2006)

The number of voter registrations from public assistance agencies declined 79 percent between initial implementation (1995–1996) and the most recent reporting period (2005–2006).⁹ The decline between the two presidential election cycles was also dramatic: 60 percent. Registrations declined by 43 percent from the previous mid-term election cycle (2001–2002) to the most recent (2005–2006).

According to available data and field observations, the large declines reported in agency-based registration can be largely attributed to states failing to adequately implement the public assistance provisions of the NVRA. Evidence that noncompliance with the NVRA has driven the dramatic decline comes from surveys of public assistance clients and site visits to agency offices. For instance, in late 2005, staff and members of the community organization ACORN surveyed 103 clients coming out of Department of Job and Family Services (DJFS) offices in Ohio. Only three clients

⁴ The failure by many states to provide the EAC with complete data has been an ongoing problem. These states are noted on Table 1a. We discuss in greater detail the problem of poor reporting later in this report.

⁷ The NVRA requires the Federal Election Commission (FEC) to provide Congress with a biennial report on the impact of the law on the administration of elections. This responsibility was transferred to the Election Assistance Commission (EAC) by the Help America Vote Act of 2002 (42 U.S.C. § 15482). Data on public assistance voter registrations are among those collected by the agency. See Federal Election Commission/Election Assistance Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office," 1995–1996, 1997–1998, 1999–2000, 2001–2002, 2003–2004 and 2005–2006, most available at <http://www.eac.gov>.

⁸ Several states are not required to implement the NVRA because they offered Election Day Registration at the polling place at the time the Act was passed. Those states, not in our tables, are Idaho, New Hampshire, Minnesota, Wisconsin and Wyoming. North Dakota also is exempt from the NVRA because it has no requirement for voter registration, and therefore is not included in our tables. The District of Columbia is treated as a state for our purposes.

⁹ The decline that has occurred since the initial implementation period in 1995–1996 is all the more troubling because compliance with the NVRA was by no means complete even during that period. Indeed, several states, including California, Illinois, Michigan, Pennsylvania, Virginia and South Carolina, flatly refused to implement the NVRA and had to be sued to enforce compliance.

Alternative Explanations for the Decline in Agency Registrations

This report concludes that many states are failing to comply with an important provision of the NVRA. However, it is fair to ask: Are there alternative explanations for the dramatic decline in public assistance registrations? Specifically, questions might address whether declines in public assistance registrations are due to (1) reductions in agency caseloads, or (2) low-income citizens registering to vote in places other than public assistance offices. The evidence indicates that neither of these hypotheses can explain away the dramatic decline in agency registrations over the past decade.

While welfare reform and the booming economy in the late 1990s contributed to a decrease in participation in some public assistance programs, this trend reversed in the first years of the new century. For instance, the Food Stamp Program — by far one of the largest public assistance programs required to offer voter registration — had several hundred thousand more adult citizen participants nationwide in fiscal year 2006 compared to a decade prior.¹

The second alternative explanation is that, as access to voter registration has increased, citizens that would have registered at public assistance agencies are simply registering elsewhere. While increasing access to registration at other points of contact with the public may affect agency registration numbers at the margin, the available evidence indicates that this is an unlikely explanation for the enormous declines documented in this report.

- First, in states whose data we have examined in-depth, there are counties that are able to maintain levels of registration in both their public assistance agencies and their motor vehicle departments that are significantly higher than other counties within the same state (even when disparities in population and public assistance receipt are taken into account).²
- Second, states such as Iowa and Tennessee that have improved their procedures and have experienced significant increases in public assistance registrations have not seen a corresponding drop in the number of citizens registering elsewhere. In fact, both of these states have experienced large increases in motor vehicle department and mail-in registrations at the same time as they saw significant increases in public assistance registrations.³
- Third, as Table 2 indicates, there remains a very large pool of unregistered low-income citizens (more than 13 million in 2006). Many of these individuals are interacting with public assistance agencies on a regular basis and frequently change addresses (again, see Table 2). Clearly, these individuals have not registered in other places.
- Fourth, first-hand investigations clearly indicate that states are simply disregarding the law. (See page 5 to 7 regarding client surveys and on-site investigations that have been conducted by Project Vote and ACORN).
- Finally, recently released county-level data from the EAC's 2006 Election Administration and Voting Survey provide further evidence that agencies are not following the law: Dozens of counties across numerous states reported less than 50 public assistance registrations during

¹ See "Food Stamp Households Characteristics Reports" for fiscal years 1996 and 2006 at [http://www.fns.usda.gov/oaen/MENU/](http://www.fns.usda.gov/oaen/MENU/Published/FSP/FSPPartHH.htm) Published/FSP/FSPPartHH.htm; tables B-10, B-11 and B-12.

² See Douglas R. Hess, "Investigating Voting Rights in Missouri: An Assessment of Compliance with the National Voter Registration Act in Public Assistance Agencies," (2007); and Jody Herman and Douglas R. Hess, "Investigating Voting Rights in Colorado: An Assessment of Compliance with the National Voter Registration Act in Public Assistance Agencies," (2008), both available at <http://www.projectvote.org>.

³ See FEC/EAC reports for 2001–2002, 2003–2004 and 2005–2006.

2005 and 2006.⁴ In other words, agencies in these counties registered fewer than two citizens a month over those two years. The number of voters registered in states that have improved their procedures suggests that such low numbers are simply not credible in a state that is in compliance with the law.⁵

⁴ We limited our review to those counties that had received more than 5,000 applications from all voter registration sources in 2005 and 2006. If we had included in this review even smaller counties — and if it were possible to examine counties in states that did not provide county-level data — we would presumably have found even more cases of counties with negligible numbers of registrations from public assistance agencies.

⁵ See Danetz and Novakowski, footnote 11 for data on the increase in registrations in North Carolina.

reported having been provided a form offering voter registration as required by the NVRA. Spot checks in DJFS offices in six Ohio counties revealed that only one of them had voter registration applications on site. Surveys in 2006 and 2007 outside offices in Arizona, Colorado, Florida, Maryland, Missouri, New Mexico and North Carolina have revealed similar violations of the NVRA.¹⁰ Moreover, it was found that states may meet some of the law's requirements for voter registration services at agencies while neglecting others. For example, several states have not been offering voter registration at all of the required points of contact, including interactions conducted via mail, telephone or Internet.

Later in the report, to control for the possible impact of poor reporting by the states, we analyze agency registration declines for only those states providing complete data for both periods being compared. Regardless of how we analyze the data, the conclusion is the same: There has been a very clear and marked decline in most states in the number of voter registrations coming from state public assistance agencies.

“Regardless of how we analyze the data, the conclusion is the same: There has been a very clear and marked decline in the number of voter registrations coming from state public assistance agencies.”

The Potential of Public Assistance Registration

Millions of low-income citizens are currently excluded from the electorate, and public assistance agencies are well suited to help register these citizens to vote. These agencies are in regular contact with low-income citizens, often helping them to complete government forms. Clients also frequently contact agencies when they change addresses, one of the most common circumstances in which a previously registered voter must re-register. Additionally, voter registration is compatible with many agencies' core mission of empowering economically disadvantaged citizens to participate fully in society. In crafting the NVRA, Congress recognized the potential of public assistance agency-based registration and, to this day, the NVRA remains the only federal law requiring the government to affirmatively offer voter registration to low-income citizens.

Data in Table 2 provide an approximate indication of both the magnitude of the need for voter registration programs in public assistance agencies and the potential of such agencies to help register significant numbers of Americans.

¹⁰ The pre-litigation “notice letters” sent to Arizona, Florida, Missouri, New Mexico and Ohio provide a summary of the investigators in those states. These letters are available at <http://www.demos.org>.

For each state, Table 2 presents (for 2006):

- The number of adult citizens from low-income households
- The number of unregistered adult citizens from low-income households
- The number of all citizens from low-income households who had resided at their address for two years or less
- The average monthly number of adult citizens participating in the Food Stamp Program

As shown in Table 2, more than 13 million low-income adult Americans are not registered to vote. In addition, more than 12 million have moved within the previous two years, providing an indication of the need for frequent updates to voter registration records.

As a conservative estimate of the flow of traffic through public assistance agencies, the table also lists for each state the average monthly number of adult citizens participating in the Food Stamp Program. Nationwide, nearly 12 million low-income adult citizens participate in the Food Stamp Program in a given month. Average monthly Food Stamp participation reflects just one, albeit the largest, program covered by Section 7's registration requirements and thus likely understates the number of persons interacting with NVRA-covered agencies.

Moreover, the experience of states that have adopted reforms underscores the enormous potential of the NVRA:

North Carolina: After working with Dēmos, Project Vote and the Lawyers' Committee for Civil Rights Under Law to implement an improved voter registration program, North Carolina's public assistance agencies have experienced a five-fold increase in the average number of voters registering in agencies each month, from 484 to 2,529. *Between January and August 2007, North Carolina's agencies have registered more than 20,000 low-income voters — more than these agencies registered in the entire preceding two years.¹¹*

Iowa: After adopting plans in 2004 to improve agency-based registration, Iowa experienced an increase in the number of voter registrations by 700 percent over the previous presidential election cycle and an astounding 3,000 percent over the previous year.

In November of 2007, nearly one in five clients who were offered voter registration in Iowa's Department of Human Services agencies took advantage of the opportunity to register. Iowa already had one of the highest voter registration rates in the nation before implementing these improvements. Thus, its ability to register still more citizens in agencies suggests just how great the potential for the NVRA is in states with lower registration rates. (Table 2 shows that only 33 percent of low-income Iowans are unregistered, compared to a national average of 40 percent.)

“In November of 2007, nearly one in five clients who were offered voter registration in Iowa's Department of Human Services agencies took advantage of the opportunity to register.”

Tennessee: After being placed under a court order in 2002 for failure to provide voter registration in its public assistance agencies, Tennessee improved its procedures and is now a national leader in public assistance registration. *During 2005 and 2006, Tennessee's public assistance agencies generated more than 120,000 voter registration applications. This is more than twice as many registrations as the next highest performing state. Indeed, for 2005 and 2006, one in five registrations from assistance agencies in the nation occurred in Tennessee (see Table 1a).*

¹¹ See Lisa J. Danetz and Scott Novakowski, Dēmos: A Network for Ideas & Action, “Expanding Voter Registration for Low-Income Citizens” (updated November 2007), available at <http://demos.org/generatePub.cfm?pubID=1446>. Also note that improved procedures were not implemented in North Carolina until January 2007, so the state's increase in voter registrations is not reflected in Table 1a.

Maryland: Maryland registered only 982 public assistance agency clients in the first two years of implementation and was sued for not complying with the NVRA by a private party. While under a settlement agreement imposing a comprehensive implementation plan, the state's agency registrations increased to 32,250 in 1999–2000, only to drop again to 1,151 after the agreement expired in 2001.

As shown in Table 1a and depicted in Figure 1, states once collectively registered more than 2.5 million citizens through public assistance agencies but now register only a fraction of that number. In short, facts such as the large number of low-income citizens that remain unregistered, frequent changes of address among low-income citizens, sizeable participation in public assistance programs, the higher levels of registration achieved during the initial implementation period, and the current results from a few high-performing states all indicate that agencies could be a far more significant source of voter registration. Thousands of eligible low-income voters could be brought into the democratic process every day if states fully complied with the NVRA.

“Thousands of eligible low-income voters could be brought into the democratic process every day if states fully complied with the NVRA.”

Evaluating Agency Registration: State Reporting Problems

The NVRA requires the Election Assistance Commission to produce a biennial report to Congress on the impact of the law, including a count of voters registered in public assistance agencies. To write the report, the EAC must gather data from each state's chief election official. Beginning with the first report to Congress in 1997, many states have failed to provide the EAC (or the Federal Elections Commission (FEC), which previously was responsible for this data collection) with the required data on NVRA implementation. Table 3 lists those states that either failed to report data or reported data that was incomplete for the election cycles reviewed in this report.¹²

“The number of states reporting incomplete data or no data on agency registrations has reached an all-time high.”

The number of states reporting incomplete data or no data on agency registrations has reached an all-time high. For the 2005–2006 reporting period, 13 states failed to provide complete, or even nearly complete, data on public assistance registrations. An additional six states failed to provide any data on such registrations.

Most of the states providing incomplete public assistance data did a better job in reporting motor vehicle department registrations, an indication of the comparative neglect of the NVRA's public assistance provisions. In the 2005–2006 reporting cycle, of the states that provided no data or incomplete data on agency registrations, the majority reported more thoroughly for motor vehicle departments than for public assistance agencies.

¹² Information on the completeness of data provided by the states was derived from the published reports of the U.S. Election Assistance Commission (EAC). In each report, the EAC includes an assessment of the completeness of reporting by the states. Using this data, we calculated the percentage of the total jurisdictions in a state that reported data in any given reporting period. States were then classified as either complete or nearly complete if greater than 90 percent of jurisdictions provided data; incomplete if less than 90 percent of jurisdictions provided data; or as having failed to report if the state provided no data.

Twelve years after the law's implementation, and despite specific instructions from the EAC as to what data to collect and report, it remains unclear why so many states are still failing to meet their federal reporting obligations of the NVRA. Based on the experience and research of Project Vote and Dēmos, however, poor reporting is often an indicator of widespread problems with NVRA compliance.¹³

State Performance and Incomplete Reporting

To ensure that reported declines in public assistance registrations are not the result of erratic or incomplete state reporting, this section examines only those states that have provided complete data for both periods in the comparison.¹⁴ Figures for states with complete data for *both* periods in the comparisons are marked with a dagger (†) in Table 1b.

Even when controlling for poor reporting, we still find dramatic declines in the number of citizens registering in public assistance agencies, both for the nation as a whole and for the vast majority of states (see Table 4).

1995–1996 Compared to 2005–2006. This comparison shows the decline in registrations since the NVRA went into effect:

- Twenty states provided complete information for both the first (1995–1996) and latest (2005–2006) election cycles.
- Over this period, these 20 states collectively experienced a decline of nearly 1.2 million registrations from public assistance agencies. This represents a decline of 76 percent.
- Over this period, only Maryland and Montana have apparent increases, but this is due to very poor performance in the initial period, as reflected in Table 1a.
- Alaska, the District of Columbia, Florida, Indiana and Texas all experienced declines of over 90 percent during this time.

1995–1996 Compared to 2003–2004. Since it may appear unfair to compare registrations in a presidential election cycle (when greater numbers of people typically register) to registrations in a mid-term election cycle, we also compared the first and most recent presidential election cycles:

- Twenty-five states provided complete data for both periods.
- Public assistance registrations for these states declined by nearly 1.2 million, or 60 percent, over these two presidential election cycles.
- Eight states experienced declines of over 80 percent: Alaska, Arkansas, Connecticut, Indiana, Louisiana, Missouri, Texas and Utah.

2001–2002 Compared to 2005–2006. The next comparison includes the two most recent mid-term election cycles:

- Twenty-three states provided complete data in both periods.
- The data show a 25 percent decline between these two midterm elections.

¹³ For example, in New Mexico where less than half of the state's jurisdictions provided data for the 2005–2006 reporting period, surveys by New Mexico ACORN found violations in counties throughout the state.

¹⁴ Again, we categorize states with nearly complete reporting (i.e. those with between 90–99 percent of local jurisdictions reporting) as complete for the purpose of this analysis.

2003–2004 Compared to 2005–2006. Finally, we compare the two most recent election cycles:

- Twenty-three states provided complete data for both of these periods.
- The data indicate a 38 percent decline in public assistance registrations between 2003–2004 and 2005–2006, representing a drop from 692,217 registrations to 429,121.
- Notably, the previously mentioned improvements in Iowa in 2004 made the state one of the only to see a significant increase in registrations during this period.

Interpretations of the percent change columns in Table 1b need to be made with caution: a large percentage change may be due to a small change in the absolute number in small states or in states that previously reported few registrations. In addition, states may show a sizable improvement in recent numbers when it is really a small adjustment compared to their performance a decade ago.¹⁵ Finally, dramatically uneven county performance within a state can also mask significant problems when looking only at state-level data.¹⁶ In short, the best evaluation comes not from looking just at recent data, but from looking at the state's performance across several election periods (Tables 1a and 1b), the size of a state's unregistered population (Table 2) and the results achieved in states that have made efforts to improve their performance.

Toward Fulfilling the Promise of the NVRA

As this report documents, low-income citizens in numerous states across the country are being denied their rights under the National Voter Registration Act. A strong democracy requires equal access to voter registration across all segments of the population. Full implementation of the NVRA is an essential step in ensuring that low-income citizens are able to register to vote. States that have improved their compliance with the NVRA have done so through two means:

- Voluntary cooperation and commitment from state election and public assistance officials to implement known “best practices” that bring them into compliance
- Court orders and settlement agreements resulting from litigation brought by the Department of Justice, individual plaintiffs and/or civic organizations

In addition, this report outlines steps that can be taken by local democracy and anti-poverty organizations to help realize the potential of the NVRA. While litigation may be necessary in recalcitrant states, Dēmos and Project Vote are working to encourage states to voluntarily improve their compliance with Section 7 of the NVRA.

State Efforts to Improve NVRA Compliance

States such as North Carolina and Iowa have worked with Dēmos, Project Vote and others to cooperatively improve implementation of NVRA Section 7. In each state, a dramatic increase in voter registrations from public assistance agencies has followed.

¹⁵ For instance, when comparing the last two mid-term elections, Oklahoma appears to have increased registrations by at least one-third (or about 3,000 registrations); however, 3,000 registrations is much less than one-tenth of the total decline in performance since the NVRA first went into effect.

¹⁶ For example, between 2002 and 2004, Department of Job and Family Services offices in 10 Ohio counties did not register a single voter. DJFS offices in another 17 counties registered fewer than 10 clients, and another 32 additional counties registered fewer than 100 clients in the two-year period. See Complaint in *Harkless v. Brunner*, available at <http://www.demos.org/pub1025.cfm>.

Through our work in these states and others, we have identified a set of best practices, a general outline of which is sketched below:

- **Form an NVRA Improvement Team.** An NVRA Improvement Team consisting of representatives from the chief election official's office, the designated public assistance agencies, other relevant executive offices, and relevant civic organizations should be formed and should meet regularly to develop and coordinate improved NVRA procedures and monitor systematic reporting from agency sites regarding NVRA performance. The chief election official and state-level public assistance agency should each designate a staff member to be responsible for coordinating NVRA responsibilities.
- **Send an Immediate Directive to Agency/Office Personnel.**
 - A memo should be immediately sent to all offices covered by the NVRA from the agency director detailing the responsibilities of staff under the NVRA, including procedures for offering voter registration, how registration materials are to be ordered, how records are to be kept, how and to whom data are to be reported and detailed instructions on when and to whom to transmit completed voter registration applications.
 - In addition, the memo should request that each local office appoint an NVRA Coordinator to be responsible for the day-to-day functioning of the voter registration program.
- **Train Staff.**
 - Election officials and public assistance agencies should review any current NVRA procedural manuals or training materials for accuracy and update or amend if necessary. Specifically, states must make sure they have appropriate procedures for offering voter registration during "remote transactions" with clients (i.e., interactions that are not on-site).
 - All current agency employees should be re-trained in voter registration procedures, and all new employees should be trained as part of their orientation. Refresher training for agency employees should be conducted at least once a year.
- **Report and Monitor Performance Data.** Frequent reporting and monitoring of the numbers of voter registration applications and declination forms completed at each office is critical to a successful NVRA plan. All agency offices should be directed to begin tracking and reporting to the chief election official's office the following information on a weekly basis:
 - The number of declination forms marked yes
 - The number of declination forms marked no
 - The number of declination forms left blank
 - The number of completed voter registration applications transmitted to the appropriate election official

We have found that submitting these details via e-mail or a Web-based tracking system is easy for staff and helps with accuracy in reporting and monitoring. Data on the number of applications and declination forms should be made available for review by all NVRA Improvement Team members.
- **Explore New Technologies.** In addition to the procedural enhancements discussed above, states are also encouraged to explore new technologies to enhance and streamline voter registration procedures in agencies. One such technology, used by many motor vehicle departments, is simultaneous electronic registration (SER). SER electronically transfers information from the client's application for benefits to a voter registration application, which is then printed out, signed by the client and transmitted to election officials. The client no

longer needs to manually complete the voter registration form, saving time while also reducing language and literacy barriers. Furthermore, problems with legibility and incomplete voter registration forms are largely eliminated.

Dēmos and Project Vote have extensive experience in assisting states with NVRA compliance. States, agencies or local jurisdictions seeking to improve their NVRA programs are encouraged to contact us for *pro bono* technical assistance, including more detailed and situation-specific recommendations than those outlined above.

Legal Enforcement to Improve NVRA Compliance

For states refusing to implement effective NVRA procedures, litigation is the only option to secure compliance. The NVRA provides for the right of private individuals or groups and the U.S. Department of Justice to file litigation in federal court against noncompliant states.

Since the NVRA went into effect, private individuals and organizations have used the right to private action in the NVRA. ACORN is currently a plaintiff, along with individuals denied their rights under the NVRA, in a lawsuit against the Ohio Secretary of State and the Director of the Department of Job and Family Services. Letters informing officials of NVRA violations — a required first step for the initiation of litigation under the NVRA — have been sent to Arizona, Florida, New Mexico and Missouri at the time of this writing.

In the 1990s the Justice Department was an active participant in litigation forcing resistant states to comply with the law. More recently, however, the Department has largely ignored violations of the public assistance provisions of the NVRA; it has filed only one lawsuit to enforce the NVRA's public assistance registration requirements in the past seven years.¹⁷ Dēmos and Project Vote provided officials from the Justice Department's Voting Section with significant evidence of states' noncompliance in a face-to-face meeting in 2004 and several follow-up memos. The Department showed little interest in pursuing enforcement despite the recommendation of career attorneys in the Voting Section.¹⁸ Moreover, a 2005 letter from 30 members of Congress to then-Attorney General Alberto Gonzalez requesting an investigation into NVRA Section 7 non-compliance went unanswered.¹⁹

In August 2007, however, under intense scrutiny by the newly elected 110th Congress for its selective enforcement of voting rights laws, the Justice Department issued 13 letters to states requesting that they explain their low performance in public assistance registration. These recent actions are encouraging, but the Department's rationale for selecting states is somewhat confusing. For example, seven states received letters because they were "among the ten states with the lowest percentage of voter registration applications received from offices providing public assistance." Why only seven of the ten worst states received letters is unclear. Under the Department's stated criteria, at least Florida, Texas and Virginia should have also received letters.²⁰

As analyses and investigations by Project Vote and Dēmos indicate, noncompliance is by no means confined to the states that received letters from the Justice Department, and the omission of other states from this round of letters should not be taken to mean that all other states are in compliance. Indeed, even within states that perform generally well, there are many counties, and individual agencies, that do not.

¹⁷ That lawsuit was filed in Tennessee in 2002. The enormous increase in voter registration applications at Tennessee public assistance agencies resulting from that lawsuit makes it all the more disappointing that the Department has failed to follow up with additional enforcement actions since that time.

¹⁸ See Pam Fessler, National Public Radio, "Justice Dept. Accused of Partisan Voter-Roll Purge," (October 11, 2007), available at <http://www.npr.org/templates/story.php?storyId=15198501&sc=emaf>.

¹⁹ The letter is available at http://projectvote.org/fileadmin/ProjectVote/DOJ_Correspondences/Conyers_Letter_to_DOJ.pdf.

One final encouraging sign that the Justice Department may once again be serious about enforcing the NVRA is their recent submission of an *amicus* (friend-of-the-court) brief supporting plaintiffs in the *Harkless v. Brunner*²¹ case currently on appeal before the Sixth Circuit U.S. Court of Appeals.

Dēmos and Project Vote recommend that the Department of Justice follow up on their recent letters with full investigations and, where necessary, initiate enforcement actions in states that are failing to comply with the NVRA's requirements for voter registration in public assistance offices.

Recommendations for Advocacy Groups

National and state-based advocacy groups, especially those working to empower women, low-income communities and communities of color, should have a particular interest in ensuring that the NVRA is fully implemented. There are various measures advocacy organizations can take to improve NVRA compliance, including conducting compliance investigations at local public assistance agencies and informing officials of violations, informing community members of their right to be offered registration at assistance agencies and urging state legislative leaders to hold oversight hearings on their agencies' compliance with the law.

Conclusion

As this report documents, states across the country have failed to comply with the public assistance voter registration requirements of the National Voter Registration Act. The number of voter registration applications from these agencies has declined by 79 percent since implementation of the law in 1995. Analysis of available data suggests that these declines cannot be explained by reductions in public assistance caseloads or the greater availability of voter registration in general. Site visits to agency offices in many states confirm noncompliance with the law.

As a result, a large gap in registration rates remains between our wealthiest and our poorest citizens. A healthy and vibrant democracy can be achieved only when all eligible citizens, regardless of income, are given an opportunity to participate. Full implementation of the NVRA is a proven and effective way to ensure low-income citizens are provided with the opportunity to register to vote. Thirteen years after it was first to be implemented, the time has come to realize the full promise of the National Voter Registration Act.

²⁰ For more information and analysis of the Department's letters, see Dēmos and Project Vote's October 25, 2007, letter to the Chair and Ranking Member of the House Subcommittee on the Constitution, Civil Rights, and Civil Liberties, available at http://www.demos.org/pubs/HouseOversightStatement_Oct252007.pdf and Testimony of J. Gerald Hebert, Executive Director and Director of Litigation, Campaign Legal Center, Before the House Administration Committee's Subcommittee on Elections, November 16, 2007.

²¹ Nos. 07-3829, 07-4165 (6th Cir.).

Table 1a: Voter Registration Applications from Public Assistance Agencies

State	1995-1996	2001-2002	2003-2004	2005-2006
Alabama	80,096	13,621**	0**	0**
Alaska	3,673	102	151	119
Arizona	17,845**	9,351	11,347	5,323
Arkansas	28,324	8,623**	3,276	4,750
California	129,273*	45,976**	56,034**	20,355**
Colorado	12,255**	6,804*	21,123	10,222
Connecticut	21,061	11,603*	3,821	0**
Delaware	7,889	1,601	1,602**	2,338
District of Columbia	14,268	4,454	3,024	1,196
Florida	158,836	59,460	83,679	13,436
Georgia	103,942	35,802	51,892**	35,747
Hawaii	1,040	277	0**	343
Illinois	33,837	13,891*	10,398**	8,948**
Indiana	83,853*	13,281*	15,071	6,023
Iowa	26,345**	9,655	4,796	11,333
Kansas	8,419**	4,661	5,159	8,093**
Kentucky	63,477	27,269	27,312	25,328
Louisiana	74,636	10,522**	7,391	12,278
Maine	16,849**	7,839*	6,646**	0**
Maryland	982	1,151	1,867	8,788
Massachusetts	10,895**	13,521	7,092	0**
Michigan	79,538**	30,127**	58,401	60,364
Mississippi	33,203**	21,242**	245**	3,309**
Missouri	143,135	34,923	17,637*	15,568
Montana	473**	3,207**	22,959*	3,510
Nebraska	9,564	2,527	10,979	1,548**
Nevada	13,200**	39,444*	6,389	3,307**
New Jersey	54,579	11,611	24,501	5,423**
New Mexico	16,668	3,719	0**	1,214**
New York	358,105	164,924	157,116	0**
North Carolina	74,882	23,781	19,798*	11,607
Ohio	100,129	24,391	38,821	42,599
Oklahoma	58,811	9,633	15,535	12,724*
Oregon	38,446	53,538*	25,926	19,333*
Pennsylvania	59,462*	16,207	30,752	7,266
Rhode Island	3,822**	2,240*	0*	938
South Carolina	20,615	16,253	10,474	12,328*
South Dakota	13,906*	9,020**	7,039	4,360**
Tennessee	147,830	52,373	173,927	120,962
Texas	353,550*	97,644*	66,866*	17,034*
Utah	24,913	3,750**	3,299	611**
Vermont	^b	143**	0**	45**
Virginia	54,051**	15,817	8,807	7,030
Washington	22,859	13,067	14,771	7,119**
West Virginia	23,212	0**	14,556	7,261**
Total (all states)	2,602,748	949,045	1,050,479	540,080

Source: U.S. Federal Election Commission and U.S. Election Assistance Commission

* Approximately 90 to 99 percent of local election jurisdictions provided data. These states are treated as complete in the report's analyses.

** Either no data or incomplete data provided (less than 90 percent of local jurisdictions reported).

* Colorado election officials report 6,804 registrations for this period whereas FEC reported 56,801.

^b Vermont was not subject to NVRA in 1995-1996.^c South Carolina reported 0 registrations to the EAC. However, recent data from the South Carolina State Election Commission indicate the state's public assistance agencies registered 12,328 voters during this period. States not required to implement the NVRA are excluded from this table.

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Table 1b: Percent Change in Voter Registration Applications from Public Assistance Agencies

State	1995-1996 compared to 2005-2006	1995-1996 compared to 2003-2004	2001-2002 compared to 2005-2006	2003-2004 compared to 2005-2006
Alabama				
Alaska	-97%†	-96%†	17%†	-21%†
Arizona	-70%	-36%	-43%†	-53%†
Arkansas	-83%†	-88%†	-45%	45%†
California	-84%	-57%	-56%	-64%
Colorado	-17%	72%	50%†	-52%†
Connecticut		-82%†		
Delaware	-70%†	-80%	46%†	46%
District of Columbia	-92%†	-79%†	-73%†	-60%†
Florida	-92%†	-47%†	-77%†	-84%†
Georgia	-66%†	-50%	-0%†	-31%
Hawaii	-67%†	-100%	24%†	
Illinois	-74%	-69%	-36%	-14%
Indiana	-93%†	-82%†	-55%†	-60%†
Iowa	-57%	-82%	17%†	136%†
Kansas	-4%	-39%	74%	57%
Kentucky	-60%†	-57%†	-7%†	-7%†
Louisiana	-84%†	90%†	17%	66%†
Maine		-61%		
Maryland	795%†	90%†	664%†	371%†
Massachusetts		-35%		
Michigan	-24%	-27%	100%	3%†
Mississippi	-90%	-99%	-84%	1251%
Missouri	-89%†	-88%†	-55%†	-12%†
Montana	642%	4754%	9%	-85%†
Nebraska	-84%	15%†	-39%	-86%
Nevada	-75%	-52%	-92%	-48%
New Jersey	-90%	-55%†	-53%	-78%
New Mexico	-93%		-67%	
New York		-56%†		
North Carolina	-85%†	-74%†	-51%†	-41%†
Ohio	-58%†	-61%†	75%†	10%†
Oklahoma	-78%†	-74%†	32%†	-18%†
Oregon	-50%†	-33%†	-64%†	-25%†
Pennsylvania	-88%†	-48%†	-55%†	-76%†
Rhode Island	-76%		-58%†	
South Carolina	-40%†	-49%†	-24%†	18%†
South Dakota	-69%	-49%†	-52%	-38%
Tennessee	-18%†	18%†	131%†	-31%†
Texas	-95%†	-8%†	-83%†	-75%†
Utah	-98%	-87%†	-84%	-82%
Vermont			-69%	
Virginia	-87%	-84%	-56%†	-20%†
Washington	-69%	-35%†	-46%	-52%
West Virginia	-69%	-37%†		-50%
Total (all states)	-79%	-60%	-43%	-49%

† The state provided complete data or nearly complete data for both election cycles used in the comparison. States not required to implement the NVRA are excluded from this table.

Table 2: Residential Mobility, Voter Registration and Food Stamp Participation of Low Income* Adult Citizens, 2006

Numbers in 1000s	Low Income Adult Citizens, 2006	Low Income Adult Citizens Unregistered, 2006	Percent of All Low Income Adult Citizens Unregistered in 2006	Low Income Adult Citizens At Current Address for Two Years or Less, 2006	Adult Citizen Recipients of Food Stamps, FY2006 (Monthly Average)
Alabama	765	234	31%	255	261
Alaska	70	26	38%	33	28
Arizona	597	282	47%	259	206
Arkansas	545	228	42%	202	193
California	2,896	1,274	44%	1,101	566
Colorado	506	229	45%	281	110
Connecticut	282	118	42%	100	115
Delaware	57	21	36%	18	31
District of Columbia	73	23	32%	31	48
Florida	1,884	752	40%	576	553
Georgia	959	381	40%	440	427
Hawaii	100	56	56%	39	47
Illinois	1,185	431	36%	452	591
Indiana	789	385	49%	310	288
Iowa	444	147	33%	207	114
Kansas	421	200	48%	190	90
Kentucky	714	254	36%	261	330
Louisiana	660	221	34%	193	319
Maine	217	51	24%	68	94
Maryland	455	178	39%	151	151
Massachusetts	566	189	33%	194	228
Michigan	1,215	374	31%	402	598
Mississippi	666	202	30%	178	201
Missouri	765	257	34%	287	381
Montana	206	87	42%	94	43
Nebraska	248	107	43%	119	57
Nevada	199	106	53%	94	55
New Jersey	501	207	41%	149	173
New Mexico	335	144	43%	118	103
New York	1,759	711	40%	468	894
North Carolina	1,287	586	46%	470	418
Ohio	1,401	537	38%	530	535
Oklahoma	568	226	40%	244	213
Oregon	524	196	37%	229	232
Pennsylvania	1,544	678	44%	522	578
Rhode Island	96	27	28%	27	32
South Carolina	780	340	44%	262	277
South Dakota	142	45	32%	70	28
Tennessee	974	458	47%	333	451
Texas	3,114	1,273	41%	1,472	975
Utah	238	149	63%	106	58
Vermont	84	31	36%	28	28
Virginia	611	259	42%	170	254
Washington	622	234	38%	281	274
West Virginia	355	152	43%	102	147
Total	32,417	13,064	40%	12,113	11,795

Sources: Current Population Survey, November 2006 Supplement, Census Bureau; Characteristics of Food Stamp Households: FY 2006, USDA.
 * "Low income" for this table is defined as individuals from households with total income below \$25,000.

UNEQUAL ACCESS

Table 3: States Reporting Incomplete or No Data

	1995-1996	2001-2002	2003-2004	2005-2006
States Required to Implement the NVRA but Provided Incomplete Data*	Arizona, Colorado, Iowa, Kansas, Maine, Massachusetts, Michigan, Mississippi, Montana, Nevada, Rhode Island, Virginia	Alabama, Arkansas, California, Louisiana, Michigan, Mississippi, Montana, South Dakota, Utah, Vermont	California, Delaware, Georgia, Illinois, Maine, Mississippi	California, Illinois, Kansas, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, South Dakota, Utah, Vermont, Washington, West Virginia
States Required to Implement the NVRA, but Provided No Data		West Virginia	Alabama, Hawaii, New Mexico, Rhode Island, Vermont	Alabama, Connecticut, Maine, Massachusetts, New York, South Carolina

* For the purposes of this report we treat states that provided data from less than 90 percent of their local election jurisdictions as having provided incomplete data.

Table 4: Voter Registration Applications from Public Assistance Agencies and Percent Change, States with Complete Data

States included	Initial Implementation Period 1995-1996	Most Recent Reporting Period 2005-2006	1995-1996 compared to 2005-2006
AK, AR, DE, DC, FL, GA, HI, IN, KY, LA, MD, MO, NC, OH, OK, OR, PA, SC, TN, TX	1,537,780	369,767	-76%
States included	Presidential Cycle 1995-1996	Presidential Cycle 2003-2004	1995-1996 compared to 2003-2004
AK, AR, CT, DC, FL, IN, KY, LA, MD, MO, NE, NJ, NY, NC, OH, OK, OR, PA, SC, SD, TN, TX, UT, WA, WV	1,953,108	777,589	-60%
States included	Mid-term Cycle 2001-2002	Mid-term Cycle 2005-2006	2001-2002 compared to 2005-2006
AK, AR, CO, DE, DC, FL, GA, HI, IN, IA, KY, MD, MO, NC, OH, OK, OR, PA, RI, SC, TN, TX, VA	516,007	387,585	-25%
States included	Presidential Cycle 2003-2004	Mid-term Cycle 2005-2006	2003-2004 compared to 2005-2006
AK, AZ, AR, CO, DC, FL, IN, IA, KY, LA, MD, MI, MO, MT, NC, OH, OK, OR, PA, SC, TN, TX, VA	692,217	429,121	-38%

About the Organizations

Project Vote is a national nonpartisan, nonprofit organization that promotes voting in low-income and minority communities. Through community-based voter registration drives, voter education programs and voting rights advocacy, Project Vote works towards a vision of full participation by all Americans in the democratic process. Project Vote has offices in Washington, DC, and Little Rock, AR.

Dēmos is a national, non-partisan public policy, research and advocacy organization committed to helping America achieve its highest democratic ideals. Through publishing books, reports and articles; hosting debates and forums on key issues; and serving as a resource to policymakers and advocacy campaigns, Dēmos works across the country in pursuit of three overarching goals: a more equitable economy; a vibrant and inclusive democracy; and a public sector capable of addressing shared challenges and working for the common good.

Are you a citizen of the United States of America? Yes No This form for office use only.
 Will you be 18 years old on or before election day? Yes No
 If you checked "No" in response to either of these questions, do not complete form.
 (Please see instructions from 2008 for rules regarding eligibility to register prior to page 15.)

(Circle one)

1 Mr. Mrs. Miss Ms. Last Name First Name Middle Name(s) (Circle one)
 2 Here Address City/Town State Zip Code
 3 Address where you vote if different from above City/Town State Zip Code
 4 Date of birth (month/day/year) (Please use your state's format.)
 7 Choose one: I have not voted in a federal election since the 2004 election. I have voted in a federal election since the 2004 election. (Please check the appropriate box.)
 8 I have not voted in a federal election since the 2004 election. I need assistance to fill out this form. (Please check the appropriate box.)
 9 The above information is true and correct. (Please check the appropriate box.)

If you are a high school or college student, please provide your school name and address below.

Please provide your school name and address below.

A School name City/Town State Zip Code
 B Street City/Town State Zip Code

If you live in a rural area but do not have a street number, or if you have no address, please show on the map where you live.

Write in the names of the crossroads (or street's nearest) to where you live.
 Draw an X to show where you live.
 Use a dot to show any schools, churches, stores, or other landmarks near where you live, and write the name of the landmark.

C Example: NORTH ↑

About the Authors

Douglas Hess first worked for Project Vote in 1994, directing for three years an effort to secure fair and effective implementation of the NVRA. In 2004, and starting again in 2007, he has worked as a consultant on the NVRA at Project Vote. He is a Ph.D. candidate in Public Policy at George Washington University, and earned his M.A. in Policy Studies at Johns Hopkins University. In addition to voting rights, he has worked in other areas of civil and human rights, on children's food and nutrition policy, and with grassroots community organizations in the U.S. and Haiti.

Scott Novakowski joined Demos in September 2005. He holds a Master of Social Work degree with a concentration in Policy Practice from the University of Connecticut School of Social Work and a B.A. in Sociology, also from the University of Connecticut. In 2005, Scott was selected as Connecticut's Student Social Worker of the Year by the National Association of Social Workers. At Demos, Scott works primarily on securing state compliance with the public assistance provisions of the National Voter Registration Act and other reforms to ensure historically marginalized populations have access to the democratic process. Scott has spoken at various conferences and testified before the Election Assistance Commission on democracy issues and has had articles published in the Professional Development: The International Journal of Continuing Social Work Education and Tompaine.com among others.



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**Statement for the Record of
Jon Greenbaum
Director, Voting Rights Project
Lawyers' Committee for Civil Rights Under Law**

**before the
U.S. House of Representatives Committee on the
Judiciary**

**Subcommittee on the Constitution, Civil Rights, and
Civil Liberties
for the Oversight Hearing on Voter Suppression**

February 8, 2008



I. INTRODUCTION

Good morning Chairman Nadler, Ranking Member Franks, and Members of the Committee. The National Campaign for Fair Elections appreciates your leadership on this critical issue and requests that the following statement be entered in connection with the Committee's review of the Department of Justice's Civil Rights Division in tackling vote suppression and intimidation.

For more than forty years, the Lawyers' Committee for Civil Rights Under Law has fought against all forms of voting discrimination, including suppression and intimidation. In connection with the recent reauthorization of the Voting Rights Act, the Lawyers' Committee created the National Commission on the Voting Rights Act, which issued a report that was presented to this Committee about the persistence of discrimination in voting. In addition, the Lawyers' Committee leads the legal program for Election Protection - the nation's largest non-partisan voter protection coalition of more than one hundred partners, including the NAACP, the National Bar Association, and the People for the American Way Foundation. Through our hotline and a dedicated army of volunteers we have directly assisted hundreds of thousands of voters access the polls and overcome the obstacles to the ballot box.

We have just returned from running Election Protection hotlines in four areas - Los Angeles, New York City, Chicago and Georgia. We are gathering our data now and would be happy to brief the Committee on our findings at a later date. In addition, we will run an Election Protection program for the February 12th primaries in Virginia, Maryland and the District of Columbia. Our hotline (1-866-OUR-VOTE) will be actively staffed that day for those jurisdictions.

In addition to our leadership in Election Protection, the Lawyers' Committee advocates for progressive election reforms at the state and local level, serves as a watchdog for federal agencies that have enforcement or administrative responsibilities related to elections, litigates where voting rights are violated and brings communities together to educate and mobilize citizens. Our strategy is based on the premise that we cannot wait until Election Day to respond to the myriad problems voters face when participating in our democracy. In the spirit of this strategy, we applaud this committee for its future thinking on the issue of voter suppression before our 2008 election.

II. ELECTION PROTECTION DATA POINTS TO PROBLEMS

As mentioned above, the Lawyers' Committee manages the legal component of Election Protection. With our many partners, the Election Protection hotline (1-866-OUR-VOTE) responds to voters' calls in the days leading up to the election and throughout Election Day. In 2004, the hotline received over 200,000 calls. We expect 250,000 calls for the 2008 elections and we will be active in more than 30 states.

I have enclosed a copy of our 2006 Election Protection report, which provides a summary of election protection data compiled by our hotline volunteers and pro bono field attorneys from the 2006 election. The data from this report indicates that voter suppression remains a problem even after our national attention was raised in 2000.

In 2006, Election Protection responded to problems and inquiries from voters in 48 states and the District of Columbia. Over 2,000 lawyers, law students and paralegals dedicated their talents to make Election Protection 2006 a success. The 2006 program organized 27 Local Legal Coordinating Committees in 19 states and set up eight local call centers and six national call centers. As in 2004, the interaction between the legal field program, the hotline, and the Election Incident Reporting System (EIRS) database, creates the most comprehensive, independent picture of the American voting experience.

The frequency of calls in 2006 reporting either deceptive practices or voter intimidation was disturbing. These types of entries account for 8% of all problems reported to EIRS and came from 31 states. Election Protection received calls from voters in Virginia complaining of emails providing false and deceiving information about where to vote, calls from voters in Arizona reporting that armed gunmen were at heavily Latino precincts intimidating and mocking voters as they attempted to access the polling place, and calls from voters in Colorado who received phone calls providing deceptive information. And, many more examples from other states are detailed in our report.

In the face of these issues of voter intimidation, suppression, and deception, the Civil Rights Division of the Department of Justice has played a largely passive role in recent years. Though the Department sends observers and attorneys to monitor elections, it has filed only one case in recent years on behalf of minority voters that involved allegations of vote suppression or intimidation. Regarding deceptive practices, the Department took the position before Congress shortly after the November 2006 election that deceptive practices do not violate federal law. This led, in part, to the House of Representatives passing the Deceptive Practices and Voter Intimidation Prevention Act of 2007.

We urge you to demand that the Department of Justice create, implement, and publicize a plan to take action against voter intimidation, voter suppression, and deceptive practices for the 2008 election and beyond. This would serve a significant deterrent against voting discrimination and would ease the tremendous burden on non-governmental efforts, such as Election Protection, to protect the right to vote.

III. CONCLUSION

I believe we all share an interest in eradicating the problems detailed above for the 2008 election and beyond. We must ensure that voters have confidence that our elections are free from intimidation, suppression, and deception. To this end, we ask the Committee to underscore the importance of this work for the Department of Justice and offer ourselves and our data as a resource as we move forward together.

Thank you for the opportunity to submit this testimony today.



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A Dirty Trick Against Huckabee?

By MICHAEL SCHERER/DES MOINES Wednesday, Jan. 02, 2008



Republican candidate for president Mike Huckabee campaigns in Des Moines, Iowa.

DAVID K. PURDY / SIPA

Just in time for the caucuses, the specter of political dirty tricks has descended on Iowa's snow white corn fields.

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In recent days, at least two evangelical pastors who are personally supporting Mike Huckabee received anonymous mailings warning that their churches risk sanction by the Internal Revenue Service if they become too involved in politics. The pastors said that the letters, one of which is notable for exaggerated punctuation and a spelling mistake, appeared aimed at preventing church leaders from encouraging congregants to turn out on caucus night.

"The intention is to try to get us to back down," said Kevin Hollinger, the pastor of Algona's First Baptist Church and a letter recipient. Like dozens of other evangelical leaders in Iowa, Hollinger has personally endorsed Huckabee, a fellow Baptist pastor, while encouraging his church membership to participate in the caucuses. In Iowa, polls show that Huckabee has a significant advantage among evangelical voters over his closest competitor, Mitt Romney, a Mormon who has courted the support of evangelical leaders across the country with more mixed success.

Under federal rules, churches and other tax exempt organizations are barred from explicitly supporting or opposing a candidate. Church leaders, however, can still encourage congregants to participate in elections or caucuses, and they may discuss general political issues, like abortion and marriage, from the pulpit. Leaders can also endorse

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One of the anonymous mailings includes a seven-year-old news article about a church that lost its tax-exempt status after paying for a newspaper ad that criticized former President Bill Clinton. Another mailing warns church leaders against "campaigning" for a candidate, before announcing in capital letters: "IT WILL LAND YOU IN THE SLAMMER!" The letter, which is signed by "Concerned Christian," then suggests that churches should avoid even more anodyne political involvement. "With Sen. Grassley holding hearings

on exactly this issue in Washington DC, we can't be to careful!!!!" it states, with a notable misspelling. Hollinger said the letters were addressed to him, with no return address and a Des Moines postmark.

The letters became a topic of discussion on a Wednesday morning conference call with Iowa pastors that was organized by the U.S. Pastor Council and several Christian leaders who have personally endorsed Huckabee. "It's literature kind of indicating that churches better not be involved in politics," said another letter recipient and Huckabee endorser, Pastor Terry Amann, of the Walnut Creek Community Church in Windsor Heights. The call included about 50 leaders, including bestselling Christian author Tim LaHaye, who also supports Huckabee.

Rick Scarborough, another Huckabee supporter and prominent evangelical leader who heads the organization Vision America, told those on the call that the letters should further motivate pastors to get their congregants to the caucuses. "My response to that would be for all of you men to make ten phone calls before you go to bed tonight," Scarborough said on the call. "Tell your people that you have been listening to legal opinion and you can be involved." Throughout the course of the 30-minute call, which included the advice of an attorney, no specific candidates were mentioned.

In recent weeks, David Welch, the Pastor Council's director, has been traveling through Iowa to educate religious leaders about their legal rights to motivate evangelicals to attend the caucuses. He has provided churches with phone scripts and a automated phone calling service so pastors can encourage their members to turn out Thursday night. "God's word directs us in Exodus 18:21 to choose for rulers 'just men who will rule in the fear of God,'" reads one sample script. "We do that here by attending our precinct caucuses and bringing our faith and values with us."

In Algona, a town of about 5,500, Mike Rusch has taken that message to heart. A Huckabee supporter and church elder, he has been talking to his neighbors about the importance of attending the caucus, even though he is a registered independent who has never before participated in the event. "We will be making sure that our friends and neighbors have a ride so they can get there," Rusch said.

He said he is more interested in getting people to the caucus than in bending their ears about supporting Huckabee. "Rural Iowa, or rural Minnesota, in some ways, it's sort of timeless," he said of politicking in Algona. "It's still a lot of small-town elbow rubbing. It's not organized. It takes place over a piece of pie."

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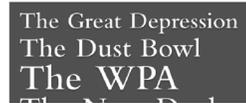
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Voter cited by opponents of Indiana's ID law registered in two states

By Cindy Bevington
cindyb@kpcnews.net

WASHINGTON – On the eve of a hearing before the U.S. Supreme Court, the Indiana Voter ID law has become a story with a twist: One of the individuals used by opponents to the law as an example of how the law hurts older Hoosiers is registered to vote in two states.

Faye Buis-Ewing, 72, who has been telling the media she is a 50-year resident of Indiana, at one point in the past few years also

claimed two states as her primary residence and received a homestead exemption on her property taxes in both states.

Monday night from her Florida home, Ewing said she and her husband Kenneth “winter in Florida and summer in Indiana.” **She admitted to registering to vote in both states, but stressed that she's never voted in Florida.** She also has a Florida driver’s license, but when she tried to use it as her photo ID in the Indiana elections in November 2006, poll workers wouldn’t accept it.

Subsequently, Ewing became a sort-of poster child for the opposition when the Indiana League of Women Voters (ILWV) told media that the problems Ewing had voting that day shows why the high court should strike it down.

But Indiana Republican Secretary of State Todd Rokita said Monday that Ewing’s tale illustrates exactly why Indiana needs the law. “This shows that the Indiana ID law worked here, which also calls into question why the critics are so vehemently against this law, especially with persons like this, who may not have a legal right to vote in this election,” Rokita said.

The law

In 2005, Indiana passed a law requiring Hoosiers to present photo identification when they vote in person on Election Day, or when they cast a ballot in person at a county clerk's office prior to Election Day. Voters without an ID may cast a provisional ballot, then bring an ID back to their county clerk or election board within 10 days.

The law does not apply to those voting absentee or to citizens whose polling place is in a state-licensed care facility where the voter resides.

Proponents of the law, including Rokita, believe it will better protect Hoosiers from voter fraud and identity theft. Critics say it unfairly burdens the poor, elderly and

members of certain faiths, such as Amish.

According to the National Conference of State Legislatures, other states have voter ID laws, but only Florida and Georgia join Indiana in requiring photo IDs to vote. Indiana's law has been called one of the strictest.

Even before Indiana's law was in place, opponents – including Democratic presidential candidate Barack Obama – were lining up against it, apparently in fear that, if it stood, other states would follow. In 2005 Obama introduced a Senate resolution urging the Department of Justice to challenge any state law mandating photo IDs for voting.

In Indiana, the Democratic Party, the League of Women Voters and numerous other groups or agencies representing elderly, minority and disadvantaged voters have been challenging the law in court with the help of the Brennan Center for Justice, which states on its Web site that it is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice.

So far, the law has been upheld by a federal judge and a panel in the 7th U.S. Circuit Court of Appeals.

The U.S. Supreme Court agreed to review the law today and, according to the Brennan Center, “(It) is the most important voting rights case since *Bush v. Gore*.”

A standing ovation

Gearing up for the high court's review, news media around the country have been trumpeting the ordeals that Ewing and others in Indiana allegedly suffered due to Indiana's voter ID law. One news story related how Ewing received a standing ovation from poll workers in Lafayette after she spent several hours on Election Day 2006 obtaining an Indiana photo ID.

When poll workers wouldn't accept her Florida license as a valid ID for voting, she was told she could cast a provisional vote, but she declined. Her birth certificate wasn't acceptable because it didn't have her married – and therefore identifying – name on it, according to a brief filed with the Supreme Court by the Brennan Center.

It took four hours and visits to two cities to secure the necessary documents for Ewing to vote, the brief and news stories said.

'I'm confused'

According to Ewing and Ann Nucatola, public information director for the Florida Department of Highway Safety and Motor Vehicles, Ewing surrendered her Indiana driver's license in 2000, when she moved to Florida and obtained her Florida license. Nucatola said that a driver must have a Florida address to obtain a Florida driver's

license.

“And if they own property in two states they have to get a license that says ‘valid in Florida only,’” Nucatola said.

Ewing said Monday that her license is a “regular” one that she uses in both states. She renewed it in 2007 on a Punta Gorda, Fla. address.

At the Charlotte County, Fla. voter registration office, Sandy Wharton, vote qualifying office manager, said Ewing registered to vote in Charlotte County on Sept. 18, 2002, and signed an oath that she was a Florida resident and understood that falsifying the voter application was a third-degree felony punishable by prison and a fine up to \$5,000. Wharton said her office checked Ewing’s Florida residency and qualified her on Oct. 2, 2002. On Oct. 4, 2002, they mailed her Florida voter card to her, to the West Lafayette, Ind. address that Ewing gave as a mailing address.

However, Ewing didn’t vote in Florida that year, nor has she ever voted in Charlotte County, Wharton said. But, just a month after receiving her Florida voter card, she did vote in the November 2002 elections in Tippecanoe County, Ind., according to Heather Maddox, co-director of elections and registration in Tippecanoe.

Ewing confirmed that she is registered in both states to vote, but at first said the Florida registration came automatically with her driver’s license. She repeatedly denied signing the oath on the Florida application. She also said Indiana mailed her an absentee ballot, but she didn’t use it or vote that year.

However, Heather Maddox, co-director of election registration in Tippecanoe County, said Ewing voted in Indiana in 2002, 2003 and 2004, before the Indiana ID law took effect in 2005.

When informed that the Florida voter office said she’d registered personally in 2002 for a Florida voter card, and that this newspaper had a copy of her application, Ewing said, “Well, why did I do that? I’m confused. I can’t recall.” She reiterated that, even though she’s registered in two states, she only votes in Indiana, adding that she does have a car plated in Florida.

That doesn’t satisfy Florida officials.

“She can only be registered to vote in the place where she claims residency,” Wharton said. “You can’t be registered in two states. She has to claim one place or the other.”

Ordinarily when someone registers to vote in Florida, the state informs the election board where the applicant was previously registered. But according to Wharton, Ewing did not inform Florida that she was ever registered to vote anywhere else.

“She signed an oath saying she was a qualified elector and a legal resident of Florida,” Wharton said. “And the space where she was supposed to tell us where she was previously registered, she left blank.”

Homestead

A check with Charlotte County, Fla.’s online property tax records shows that Ewing owns property there. One requirement in Florida to claim homestead is to show a valid voter ID or sign an affidavit of residency – which she did when she applied for her voter card there. She claimed a homestead exemption on the Florida property in 2003 – the same time she was claiming a homestead exemption on property she owned in Indiana, according to Tippecanoe deputy auditor Heather Satler. Satler said that Ewing’s Indiana exemption began in 1994 and ended in 2004, when the exemption was removed because the state discovered she wasn’t living there.

Tuesday Ewing said the homestead “problem came up” when she married in 2002. “But that was taken care of,” she said. She also said her main residence is in Indiana, and that she pays “some” taxes in Indiana on a “small annuity” she receives.

“But I feel like I’m a victim here,” Ewing said. “I never intended to do anything wrong. I know a lot of people in Florida in this same situation – they call us ‘Snowbirds,’ you know.”

‘It works’

Friday, Rokita said he believes the Indiana voter ID law protects against identity theft and voter fraud. It makes provisions for people who are too indigent to pay for a photo ID, and allows people to file a religious objection to it. It gives people who don’t have an ID a chance to file a provisional vote, and essentially doesn’t deny anyone who really wants to vote the right to vote, as opponents claim, Rokita said.

Rokita’s 83-page brief to the Supreme Court says that numerous voter-impersonation fraud reports have been recorded across the country, and that other types of alleged voter fraud are under investigation in Indiana.

It also points out that “the only published study of Indiana voter turnout since implementation of the Voter ID Law shows no negative disparate impact.”

He admits that no voter fraud has been proven yet in Indiana. But, he said, that doesn’t mean the law isn’t necessary.

Monday, Rokita said Ewing’s experience shows that Indiana’s law works.

“The facts as I have heard them go to the heart of one of the reasons we have a photo ID law,” Rokita said. “I want everyone to vote once ... but the evidence uncovered here brings up several questions of whether this person is a resident of Florida or Indiana –

and the fact of the matter is that Hoosiers should vote here.

No criminal intent

Contacted on her way to Washington for the hearing, Joanne Evers, president of the ILWV said she had no idea that Ewing – who is listed first in the ILWV’s Supreme Court brief – had dual voter registrations.

Even so, she said, it doesn’t diminish the opposition’s case.

“(Ewing) is an example of how difficult it was to get an ID, period,” Evers said. “This law was intended to catch someone who is impersonating someone else and votes twice, not to catch someone who is perhaps trying to understand the bureaucracy of two states.

“I don’t think Faye was trying to do anything illegal. The fact that she did not vote in Florida leads me to believe she did not intend anything criminal. I was at the poll when she was unable to vote and saw what she had to go through to get an Indiana ID card. I think (all of this) is part of the confusion. I hope the law is not to befuddle people trying to do the right thing.”

Evers pointed out that many other voters experienced similar problems, including a disabled senior citizen who had been voting all of her life and who didn’t have the proper ID for the new law.

Justin Levitt, counsel for the Brennan Center, said he hadn’t known that Ewing was registered in two states, either. But, like Evers, Levitt doesn’t think Ewing’s case has relevancy to the arguments the Supreme Court is considering.

“Certainly (Ewing’s) not a poster child for this,” Levitt said. “And those sorts of things unfortunately do happen. But for the vast majority they have the permanent residency in one place and haven’t gotten an ID or driver’s license somewhere else.

“I can certainly appreciate that on the eve of the hearing the secretary of state would say this is why we need the law. But I disagree. It’s to keep people from pretending to be somebody else, and there’s no indication that (Ewing) is going to polls pretending to be somebody else.

“The secretary has not yet shown a case of voter fraud. And there’s no question that the law is hurting real, eligible Indiana residents.”

Thursday: Local citizens and officials react to Indiana’s Voter ID law.





ELECTION PROTECTION **YOU HAVE THE RIGHT TO VOTE**

**Report on the Legal Program to
Board of Directors and Trustees,
Staff, and *Pro Bono* Partners**

December 2006



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Election Protection's legal program has created a new paradigm in *pro bono* providing opportunities to attorneys, paralegals and support staff as well as the space and resources of law firms across the country. Many firms generously donated their office space, staff time, and other resources on and before Election Day. A law firm in Washington, DC hosted the National Command Center and DC Hotline Call Center, including administrative and technical support and food for nearly 400 people over two days. Kirkland & Ellis LLP and Simpson Thacher & Bartlett LLP hosted New York Hotline Call Centers, including administrative and technical support and food for nearly 150 people per call center over two days. Proskauer Rose LLP's New York office hosted the Ohio Hotline Call Center, including administrative and technical support and food for nearly 75 people over two days. The Kapor Foundation hosted the San Francisco Hotline Call Center; Bingham McCutchen LLP, Heller Ehrman LLP, and Morrison & Foerster LLP provided food and materials for San Francisco. The NAACP hosted the Baltimore area and Michigan Hotline Call Center at their Baltimore, Maryland headquarters. People For the American Way Foundation hosted the Allegheny County, Pennsylvania Hotline Call Center at their Washington, DC offices.

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Many people helped lead the National Command Center in Washington D.C. by contributing their time and expertise on Election Day to support volunteers and respond to complex voting



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The Lawyers' Committee for Civil Rights Under Law partnered with Video the Vote, a coalition of filmmakers who document and report election irregularities and upload video footage to the internet, enabling the media and public to watch-dog the electoral process across our country. Adam Stofsky coordinated the program for the Lawyers' Committee, with Melissa Giraud, Ian Inaba, and James Rucker of Video the Vote.



Democracy in Progress: The Lawyers' Committee's Overview of the 2006 Elections

In 2006, Election Protection really hit its stride. Although it was a substantially smaller program than in 2004, it was more efficient. As in years past, the Lawyers' Committee was proud to coordinate and facilitate the legal effort and share leadership of the coalition with our friends at the NAACP, the National Bar Association, and the People For the American Way Foundation. What started in 2001 as a small, targeted program focused on a single congressional district grew in 2004 to the nation's largest *pro bono* project and has matured in 2006 into a year round effort. Thanks to the generosity of the private bar, primarily through the unprecedented commitment of the Lawyers' Committee Board of Directors and Trustees and our partner law firms, Election Protection is our nation's most comprehensive and effective non-partisan effort to protect the rights of American voters.

As past Election Protection programs have uncovered, there are persistent problems with the way we conduct elections in this country that lead to voters being disenfranchised. Described below, and in even more depth in the detailed state reports that follow, are the most common problems reported to Election Protection in this past election cycle. More than any other single issue, voters complained about their interactions with election machines. The second most common complaint highlighted the shortcomings of voter registration systems across the country. Next, voters called about problems with the administration of their polling place and interactions with poll workers. What was so sobering and dramatic about this year's program was the number of calls reporting voter intimidation and deception. Calls to the hotline on and before Election Day reported vast problems with the absentee ballot process.

On November 7, 2006, millions of Americans went to the polls and dramatically shifted the political landscape in the United States Congress and in many legislatures and governors' mansions. Just like in 2004, commentators proclaimed that the election moved forward without any structural problems or dismissed the obstacles voters faced as insignificant because electoral catastrophe was limited to a few races. The data collected by Election Protection, however, demonstrates that if we expand the diagnostics of success from those that are purely partisan to those that form our fundamental democratic identity as Americans, it is wrong to anoint Election 2006 a resounding success. At all points of the process – from registration to tabulating ballots – Election Protection responded to problems that too often led to eligible voters being disenfranchised. Although the program was very successful in helping many of these citizens cast a ballot that was counted as intended, countless eligible voters were blocked from the ballot box because of our electoral system's structural deficiencies.

It is critical that as we immediately enter the 2008 presidential election cycle, we undertake a more honest assessment of what happened in this election. To accomplish the dual goal of faith in our electoral outcomes and the constitutional promise of free and equal access to the polling place for all eligible Americans, it is critical that we understand the problems that voters experienced in 2006 and the causes of those problems so we begin to craft meaningful solutions.

Scope of Election Protection 2006

Election Protection responded to problems and inquiries from voters in 48 states and the District of Columbia. Although the program was smaller than 2004, it was more dynamic. By incorporating new strategies and new partners, Election Protection has evolved into a year-round, one stop shop for voter support, information, and assistance. Lawyers' Committee staff worked with voter registration groups to understand new, burdensome restrictions on their efforts to reach out to voters. Before Election Day, our Election Protection *pro bono* network protected the rights of students to have a say in their own communities, kept polling places open in Baltimore, Maryland during the primary, met with hundreds of election officials, and distributed state specific voter registration guides to partners in more than 10 states. In 2006, we expanded our coalitions, developed more comprehensive and streamlined legal materials, and refined our training program and hotline structure to better respond to the needs of the electorate.

Over 2,000 lawyers, law students and paralegals dedicated their talents to make Election Protection 2006 a success. This year's program organized 27 Local Legal Coordinating Committees in 19 states and set up eight local call centers and six national call centers. As in 2004, the interaction between the legal field program, the hotline, and the Election Incident Reporting System (EIRS) database, creates the most comprehensive, independent picture of the American voting experience.

Beginning this April, our coalition sprang into action to protect voters in New Orleans in that city's historic first election after the devastating gulf hurricanes of 2005. Election Protection worked with voters to address problems unique to post-Katrina New Orleans as well as the problems that show up in precincts across the country during every election cycle. In the weeks before the election, we trained attorneys and law students specifically on the electoral complications presented by the hurricane. Those volunteers staffed a targeted hotline call center dedicated to facilitating and explaining the complex absentee ballot rules passed by the Louisiana legislature. Our efforts helped ensure that New Orleans voters had an equal opportunity to cast a ballot, regardless of if they had returned to their homes or were displaced elsewhere.

Election Protection was there during the Maryland primary in September to keep polling places open in the wake of a wholesale breakdown in election administration in Montgomery County and a confluence of factors in Baltimore that lead to countless eligible voters being turned away from the polls.

As we moved forward to Election Day, Election Protection Local Legal Coordinating Committees worked with hundreds of local and state election officials to clarify confusing rules, establish effective lines of communication, and resolve problems in preparation for the vote. As the report details, our LLCCs and coalition partners were forced to file litigation in Utah and on two issues in Maryland.

Of course, the backbone of the program is our *pro bono* network. This year, Election Protection worked with over 30 of the nation's largest law firms to develop manuals, recruit and train volunteers, house Local Legal Coordinating Committees, and host local and national 866-OUR-VOTE Hotline call centers. Calls to the hotline are the gas that drives the engine of Election Protection. Unlike 2004 and despite the importance of this year's election cycle, we had to



make due with a significantly limited stream of resources from our traditional supporters. We asked for help from our Board and *pro bono* partners and, again, the response was overwhelming. Our partner law firms and members of the Board of Directors and Trustees engaged public relations experts to alert local and national media about Election Protection, the 866-OUR-VOTE number, and the solutions the Coalition provides for voters.

Data Collection¹

Over the past five years, Election Protection has identified a number of disturbing trends that frustrate eligible voters as they attempt to cast a ballot. In 2006, Election Protection uncovered a similar menu of obstacles that lead to disenfranchisement. We received more than 26,000 calls in October and November, including 17,964 on Election Day. Of the 21,143 calls that came in to the hotline on Election Day and the day before, 17,705 or 83% of callers communicated with an Election Protection volunteer. As of December 10, 2006 we have 8,566 incidents reported into EIRS.² The percentage of calls that resulted in EIRS reports – 40.1% of the calls from Election Day and the day before – is a dramatic improvement from 2004 where we had over 200,000 calls to the hotline, but recorded only 44,000 incidents, or about 21%.³ This success is attributable to both updated volunteer training at the hotline call centers and the efficiency of our hotline infrastructure, as well as the experience and ingenuity of our volunteers and Hotline Commanders.

On Election Day, we received 2334 calls from Ohio, more than any other state. We also received high call volume from Georgia (1399 Calls), California (1236 Calls), Pennsylvania (1088 Calls), Florida (1008 Calls) and Maryland (768 Calls). The average caller was on the line for a little over 4 minutes and call volume was highest between 7:00 a.m. and 8:00 a.m. eastern time. Summaries of the Election Day data regarding the number of calls, how they were answered, and their state of origin can be found in the charts at the end of this report.

Where we received calls from depended on a number of interrelated factors including: where voters have an ongoing relationship with Election Protection through our continued presence on the ground; where there are significant problems that warrant our close attention; and, perhaps most importantly, where the number gets out through methods trusted by the community (either by direct contact with voters or by advertising in media outlets that reach Election Protection target voters). The Lawyers' Committee and many of our partners and supporters engaged in an ambitious media campaign that resulted in the 866-OUR-VOTE hotline number appearing in

¹ The information contained in this report does not reflect a scientific analysis of election problems. Instead, it is a preliminary compilation of reports that came into the Election Protection Coalition. Percentages and statistics in this document are derived from compiling all of the reports that voters and volunteers logged with the Coalition. This is a preliminary document. No attempt has been made to analyze the individual reports outside of categorization of the reports and a thorough examination of a select, but small, group as reflected by the state reports.

² The statistics used in the executive summary reflect information derived from EIRS as of December 8, 2006. While the majority of information from the program has been entered, we continue to supplement the information in EIRS with additional intake forms. The information in the State Reports section is even more comprehensive. This information is drawn both from the reports contained in EIRS and the paper forms that are continually entered into the system.

³ In 2006, Election Protection began regularly entering EIRS forms into the system the day before Election Day. In 2004, that process began earlier. These numbers and comparison reflect those realities.

multiple national media outlets (*USA Today*, the Tom Joyner Morning Show, *The New York Times*) and on radio and in newspapers in target locations across the country.

It is critical that readers understand the context of many of these calls. In the case of a voter who calls and asks for her polling place, our Election Protection volunteers are providing necessary assistance to help that individual voter; however, a single call to the hotline or report to the EIRS system often documents the problems of hundreds of voters. For example, where we log complaints about four hour lines in St. Louis from five callers, those complaints must be aggregated to reflect the hundreds, perhaps thousands, of voters who are standing in those lines in order to appreciate the true impact of that report. Likewise, when we receive four calls from voters registered in the same Phoenix precinct that were not on the voter registration rolls, further investigation often shows that as a symptom to a much bigger problem that affects many more voters.

Although we have been very successful in accumulating Election Protection 2006 data and entering it into EIRS, the platform itself has been very disappointing and will certainly be improved as we move forward towards 2008. Unfortunately, EIRS was totally unreliable on Election Day, collapsing under the weight of its own success. Luckily, our talented volunteers, including our experienced Election Protection Hotline Commanders, quickly adapted to this unfortunate reality and directed volunteers to continue collecting data the old fashion way – with paper and pen. Thanks to our pro bono partners and volunteers from partner organizations, nearly all EIRS forms have now been entered.

Obstacles to the Ballot Box

In 2006, EIRS divided all of the reports into two categories, voter inquiries and election problems. Of the 8566 entries in EIRS, 4472 or 52.2% reported inquiries from voters about the voting process, while 4092 or 47.7% reported problems that had an impact on citizens exercising their right to vote. Of the inquiries in EIRS, 2382 or about 53% were from voters asking where to vote and 962 or 21% of inquiries were voters attempting to determine their registration status. In most of these cases, our volunteers were able to provide callers with this essential information, allowing them to exercise an effective ballot. Inquiry reports provide very useful information as we move forward with our reform efforts and future Election Protection programs. The frequency of these calls demonstrates both the importance of providing this necessary information to voters and the failures of many local jurisdictions to do so.

Of the 47.7% of entries that report problems, nearly 21% were callers reporting voting equipment problems. These problems came in from 39 states. As the state reports show, voters and poll workers had trouble using new electronic voting equipment. In a disturbing number of states, voters reported that machines either did not record their votes correctly or did not record their votes at all. These reports make clear that new electronic voting technology needs to improve in quality and be more user friendly.

The next most frequently reported problem derived from shortcomings in the voter registration system. Voter registration problems account for 16.3% of problems reported to EIRS. Election Protection received calls complaining of problems with the registration system from 38 states. Many of these calls were from voters eligible to register, who submitted a timely registration form, yet did not show up on the voter registration rolls. Many other calls concerned new voter registration technologies, including complaints about failures of new electronic poll books.

While some of these problems are familiar to Election Protection, some seem to be derivative of the complications in implementing the part of the Help America Vote Act that requires all states to transition from local control of the voter registration system to state control.

The third most common problem reported by voters in 42 states to EIRS (13% of problems) highlights issues with polling place administration. These problems included long lines, either late poll openings or early poll closings, and problems related to identification. As the state reports illuminate, problems with identification ranged from voters not being able to produce ID in states where it is required or, in over a dozen states, reports of poll workers demanding identification from voters in violation of state law.

Possibly most disturbing was the frequency of calls reporting either deceptive practices or voter intimidation. These types of entries account for 8% of all problems reported to EIRS and came from 31 states. Election Protection received calls from voters in Virginia complaining of emails providing false and deceiving information about where to vote, calls from voters in Arizona reporting that armed gunmen were at heavily Latino precincts intimidating and mocking voters as they attempted to access the polling place, and calls from voters in Colorado who received phone calls providing deceptive information.

We received reports from 31 states about absentee voting problems, accounting for 5.6% of all entries into EIRS. While some of those calls were voters inquiring about how to apply for an absentee ballot, many of those voters reported they had requested an absentee ballot that was never received. Other voters received an absentee ballot too late for that ballot to be counted. These problems were particularly pronounced in Maryland and Ohio.

Conclusion

While the scope of this report is limited to preliminary findings of the legal component of the Election Protection Program, the Lawyers' Committee is eager to work with policy makers to craft real solutions to the issues illuminated in the following pages. The infrastructure that supports our voting system should be strong and responsive to the will of the voters. We must treat the issues that prevent eligible citizens from exercising their right to vote as a national problem that demands serious, apolitical policy solutions. Real reforms, together with providing necessary resources to our election administrators, will strengthen citizen confidence in the system and expand access to all eligible Americans making our democracy the model for the world.

Election Protection 2006: Components of the Legal Program

During the 2004 election cycle, Election Protection mobilized 25,000 trained volunteers, including 8,000 legal volunteers, who were recruited to monitor polling places, educate voters, facilitate a dialogue with local and state election officials, provide legal support to poll monitors, and answer the voter assistance hotline, which received over 200,000 calls from voters in all 50 states.

To build on that success, Election Protection 2006 focused more intensely on fewer locations to provide more effective, efficient assistance to voters throughout the voting process, from registration through Election Day. While the 866-OUR-VOTE hotline assists voters across the country, Election Protection's legal field program in 2006 supported state and local efforts in targeted locations. The program was designed to be scalable, depending on resources and priorities of our partners at the national and state level, and local leaders adapted the program to their needs.

In preparation for 2006 and future programs, Election Protection invested heavily in new technology for the hotline, our data collection system, and our internal website. We also developed new partnerships with other organizations, to help us test best practices for 2008 and beyond.

As in 2004, the flexibility of Election Protection 2006 allowed us to provide the guiding structure and support for partners on the ground to create successful programs, even in those locations where the Lawyers' Committee did not target. We expanded the reach of the program by providing these partners with legal materials, organizing and programmatic guidelines and the support of the Hotline and national Election Protection staff.

Local Legal Coordinating Committees, Legal Materials, and Litigation

Several elements make up the core of Election Protection's legal program: creation of legal documents; meetings with election officials; coordination of legal and field components; support for voter registration; voter education; and legal volunteer mobilization on and before Election Day. All of these elements were supported and coordinated through the national Election Protection hotline, 866-OUR-VOTE, and the national Legal Command Center, as well as our Local Legal Coordinating Committees (LLCCs) in each targeted location. Our program was tailored to fit the needs of our local field partners through the experience and capacity of our legal volunteers.

Comprehensive legal research was conducted by the Lawyers' Committee and its *pro bono* counsel on state election law, legislation, rules, and directives. This research was incorporated into several documents that are made available to co-sponsoring organizations. Updated legal manuals, Voter's Bills of Rights, and Frequently Asked Questions, were created for all 50 states, as well as Voter Registration Guides in select states.

Election Protection met with election officials in each targeted location and utilized an Election Officials Survey to gather key information. In meeting with election officials, we determined if they were a cooperative partner and evaluated the overall voting process as it relates to our program and frequent voter problems. These meetings also allowed local organizations to



develop important relationships with election officials, crucial to solving problems before and on Election Day.

The Lawyers' Committee worked to help coordinate the legal and field components in each state to provide for maximum efficiency and communication at both the national and local level. Each LLCC worked directly with local staff and volunteers for national partners as well as grassroots organizations in their area on all aspects of the program. Legal and field volunteers also worked together on voter registration, meetings with election officials, creation of voter education materials, media outreach, and targeting precincts for legal volunteer deployment.

Prior to Election Day, LLCCs supported education efforts to provide direct assistance to voter education efforts, absentee ballot drives, and early voting. LLCCs worked with field partners and election officials to track and solve problems throughout the voting process, providing support to organizations and their staff, members, and volunteers assisting voters with registration. Legal manuals and, in some states, Voter Registration Guides, provided updated information to volunteers and organizations.

Volunteers participated in a multi-faceted program on Election Day. Each targeted location carried out a legal field program through the LLCC with a Legal Command Center, staffed by experienced Election Protection attorneys and other key staff. The Legal Command Center then communicated with hotline call centers to report and respond to problems and deploy mobile field attorneys, who were dispatched to polling locations throughout the day. Some locations had a larger-scale program that also included poll monitors at targeted precincts and local hotline call centers that responded to calls in their area. We tested different targeting and deployment models in our targeted states, to learn best practices for 2007 and 2008. Programs with mobile field attorneys carved targeted precincts into geographic zones for easier monitoring; some locations found it more efficient to deploy attorneys from the Legal Command Center as needed; and other locations relied on an attorney with a team of grassroots volunteers.

Litigation played an important part in Election Protection 2006. We filed three lawsuits, two in Maryland and one in Utah. The first resulted in an order by the Baltimore City Circuit Court that kept polls in Baltimore open for an extra hour in the September 12, 2006 primary. The lawsuit was instituted after dozens of voters from Baltimore called the hotline to complain because their polling place was not open on time. The second Maryland case, which we lost, sought to extend the deadline for the postmark for absentee ballots in the general election because the state mailed out thousands of absentee ballots late. In Provo, Utah, the court rejected our effort to keep the polls open later because of a massive breakdown of electronic voting machines. Additionally, Election Protection supported two ongoing lawsuits – our constitutional challenge to the grossly unequal and inadequate administration of elections in Ohio and our constitutional and statutory challenge to Arizona's voter identification law – by providing data and examples of the problems encountered by voters that relate to the issues in those lawsuits.

The Voter Assistance Hotline: 866-OUR-VOTE

The 866-OUR-VOTE hotline assists voters across the country during early voting as well as on Election Day. As the largest nonpartisan hotline to provide direct assistance to voters, 866-OUR-VOTE utilizes live volunteers to respond to voter's questions and input data for follow-up



and analysis. We are able to track problems at the national, state, and local level and by type of incident to look for patterns or persistent problems.

In response to our 2004 experience, we created a new hotline platform suited specifically to the needs of Election Protection, which greatly improved the hotline's efficiency and technology. The new technology, administered by Angel.com, allowed us to make real-time adjustments in the routing of calls and call answering options. It also enabled us to assist more voters in less time while also improving our data collection. For November 6 and 7, voters were automatically routed to the assigned call center based on the area code identified through caller ID (the voter was given the opportunity to inform us of the state he or she was calling from if it was a state different than that identified through caller identification, about 7% of callers utilized this option). When the hotline was not being answered live, voters could leave a voicemail and the voicemail file was sent to the proper call center based on where the caller lived. If a caller was an English-speaker (Spanish-speakers were directed to a parallel platform) and the caller ID properly reflected where they were calling from, the voter was connected to a volunteer without pressing a button.

The hotline was hosted at fourteen sites on Election Day. A law firm in Washington, DC hosted the National Command Center. Kirkland & Ellis LLP and Simpson Thacher & Bartlett LLP hosted New York Hotline Call Centers. Proskauer Rose LLP's New York office hosted the Ohio Hotline Call Center. The Kapor Foundation hosted the San Francisco Hotline Call Center. The NAACP hosted the Baltimore area and Michigan Hotline Call Center at their Baltimore, Maryland headquarters. People For the American Way Foundation hosted the Allegheny County, Pennsylvania Hotline Call Center at their Washington, DC offices. Additional local call centers were stationed in Broward County, Florida (hosted by Gordon Hargrove & James, P.A., in Miami-Dade County, Florida (hosted by Carlton Fields, P.A.), Palm Beach County, Florida (hosted by Proskauer Rose LLP); in Atlanta, GA (hosted by Kilpatrick Stockton LLP); in New Orleans, Louisiana (hosted by Proskauer Rose LLP on Monday and Loyola University on Tuesday); in Minneapolis, Minnesota (by Take Action Minnesota); and Chapel Hill, North Carolina (by the University of North Carolina Center for Civil Rights). In addition, the Lawyers' Committee began an exciting partnership with the National Association of Latino Elected and Appointed Officials (NALEO), which runs the other national hotline staffed by live, trained volunteers and targeted at the Latino Community. This partnership, which will lead to further coordination as the program moves into the 2008 cycle, brings the most efficient and effective voter protection service in the Latino Community into the Election Protection Coalition.

Volunteers began staffing the hotline during business hours on October 16 at the Lawyers' Committee. In addition, the local call center in Minnesota was open during business hours the weeks leading up to Election Day. During the weekend of November 4-5, the hotline was open from 1:00 p.m. to 5:00 p.m. On November 6, the day before the election, the hotline was expanded to the National Hotline Call Centers in Washington, DC (National Command Center); New York City (all 3 sites mentioned above), and San Francisco, and local call centers in Minnesota and Louisiana. The hotline answered calls live from 8:00 a.m. to 9:00 p.m. Eastern time.

On Election Day, all 14 call centers were operational. Calls were answered live from 6:00 a.m. to 9:00 p.m. Eastern time and from 6:00 a.m. to 9:00 p.m. Pacific time. The National Command Center and National Hotline Call Centers in New York handled calls from the Eastern and Central time zones that were not assigned to a local call center. The National Call Center in



San Francisco handled calls from the Mountain, Pacific, Alaskan, and Hawaiian time zones. On November 6 and 7, the National Command Center also handled "overflow" calls and answered calls before and after local call center hours.

Collecting Invaluable Data

Election Protection's unparalleled data collection provides invaluable support for potential litigation and prospective reform efforts and demonstrates the impact of provisions that disenfranchise voters (such as voter identification proposals). The Election Incident Reporting System (EIRS) allows us to monitor, track, record and respond to problems across the country in real time. EIRS is the first database of its kind and includes the most comprehensive reporting of election irregularities in the country. Calls to the national hotline and reports from the field were entered in to one database designed to be used for follow-up by our legal volunteers. Volunteers and staff can review data by location, type of incident, voter name, and other fields.

EIRS data from 2004 formed the basis for our special report, *Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections*, co-authored by the Lawyers' Committee with the NAACP and People For the American Way Foundation. Data from 2004 also helped locate plaintiffs for the historic lawsuit, *League of Women Voters of Ohio v. Blackwell*, where the Lawyers' Committee sued Ohio's Secretary of State for grossly unequal and inadequate election administration. EIRS data from the Orleans Parish primary election on April 22, 2006 was used to help improve election administration for the general election on May 20, 2006.

In 2006, significant changes were made to the EIRS with the intent of making it more effective and user friendly. Unfortunately, the system crashed on Election Day and was down for several hours because it could not handle the amount of traffic (which included public access to all data that did not identify callers). Volunteers adjusted by filling out reports on paper and communicating issues by telephone only. There will be a significant overhaul of EIRS in 2008 that is likely to include limited or no public access. Nonetheless, we have collected more than 8,000 reports that document the types of informational calls and problems we received through the hotline and also in the field.

State Reports

American election administration is deficient and needs to improve. As the following detailed report of the problems voters reported to Election Protection in particular states demonstrates, voters anywhere in the country are at risk of being disenfranchised because of the deterioration of our democratic infrastructure. As these reports demonstrate, this is not a problem of politics; voters in swing districts and safe districts experienced problems as they attempted to cast a ballot.

These State Reports compile information from a sampling of the states that Election Protection 2006 conducted legal field programs as well as where the hotline received the most calls. The following information relies on two key components – data from the hotline platform itself (the number of calls, from where, etc.) and reports entered into EIRS. This is only a preliminary snapshot of the data collected by Election Protection. The Lawyers' Committee attempted to highlight examples from each of the states that demonstrate some of the problems that were experienced by voters on the ground. This is by no means an exhaustive list of problems; instead, it is an initial snapshot of the American voting experience. The data contained in EIRS and collected by the Election Protection Coalition must be reviewed closely and analyzed to provide the most complete picture of the barriers that citizens encounter as they attempt to exercise the fundamental right to vote.

Arizona

The Lawyers' Committee and other advocates have been particularly concerned with Arizona's new voter identification requirements contained in Proposition 200, an initiative that passed in 2004 which requires citizens to present documentary evidence of their citizenship status when registering to vote, and further requires registered voters to present additional identification at the polling place on Election Day. The Lawyers' Committee and several other legal organizations filed a lawsuit in 2006 challenging the constitutionality Proposition 200, and that matter is currently pending in federal court.

The confusion generated by Proposition 200 was evident before and on Election Day, with voters being unsure about what type of identification was required at the polls. Additionally, as a state where the debate over immigration has been a central issue, voters in Arizona, especially minority voters, reported voter intimidation in several counties.

The Lawyers' Committee worked with Steptoe & Johnson LLP to form a Local Legal Coordinating Committee, and also partnered with the Arizona Advocacy Network on grassroots outreach and voter education programs in Maricopa and Pima counties.

Election Protection received 221 calls from Arizona, with 216 reported incidents, nearly 2/3 of which came from Maricopa County. Of the 156 EIRS reports, 81 were incidents and 75 were inquiries. An additional 60 reports were generated from volunteers in the field, mainly concerning problems with identification.



Problems at the Polls

Problems at the polls accounted for 58% of all reported problems in Arizona and we received reports from voters in 6 counties, primarily in Maricopa County. Problems ranged from disability access issues to faulty voting machines to a lack of signage at polling places.

- The assistive device for visually impaired voters was not working at a precinct in Maricopa County, and a voter was forced to vote by provisional ballot instead.
- At a polling place in Maricopa County, provisional ballots were being placed inside a Tupperware-type box with only a zip-tie to keep it securely closed.
- Multiple voters in Maricopa County reported that their names did not appear on the rolls although they were registered to vote.

Problems with Voting Machines

- In Tempe, in Maricopa County, ballots were getting stuck inside the voting machines and could not be scanned. A similar problem was reported from another precinct in Pima County, as well.
- In Yavapai County, a poll worker reported that candidate's names were missing from the ballot on machines in her precinct. The machines were still used and the names re-appeared later on in the day.
- At Monte Viste Elementary School in Pima County, all machines were down for over 20 minutes.
- In Coconino County, voters were not given sleeves to cover their voted ballot and were therefore unable to cast a secret ballot.
- At Mesquite Library in Maricopa County, the machines recorded 34 votes and then went blank.

Identification

Voters and poll workers faced confusion over Arizona's new identification requirements right up to and on Election Day. Eligible and registered voters were turned away because they did not have proper ID, while others were forced to vote by provisional ballot.

- A voter in Maricopa County reported that poll workers were selectively asking voters for ID and indicating on provisional ballots that no ID had been presented, even though voters had presented alternate identification.
- In Pima County, a voter reported that three voters ahead of him in line were turned away because they did not have proper ID.
- Also in Pima County, a voter was not allowed to use her Department of Defense photo ID, presumably because it did not contain her address.

Voter Intimidation and Deceptive Practices

The hotline received 10 (12 percent of reported incidents) reports of voter intimidation and deceptive practices, 3 from Maricopa County and 7 from Pima County.

- In Pima County, there were multiple reports of voters being videotaped as they went in to the polls and were being discouraged from voting. The police and the FBI were alerted to this on Election Day.

- At other polling places in Pima County, voters reported men in brown or black shirts who were intimidating voters, saying they were there to prevent illegal immigrants from voting.
- On November 6, we received a report that 20 polling places in Tucson were going to be targeted on Election Day by groups seeking to challenge voters based on citizenship status.
- In Maricopa County, a voter received a phone call from a congressional campaign, erroneously telling her that her polling place had been changed to a location 30 miles away.
- At Trevor Brown High School in Phoenix, voters were told they could not park in the school parking lot but police officers were ticketing voters who parked on the street.

California

Leading up to Election Day, the 866-OUR-VOTE hotline received calls from voters across California requesting information on how to register, confirming their voter registration, or inquiring about their polling place location.

Election Protection worked with *pro bono* legal partners in San Francisco, including Bingham McCutchen LLP, Heller Ehrman LLP, Morrison & Foerster LLP, and the Lawyers' Committee of the San Francisco Bay Area to help staff a national hotline call center at the Kapor Foundation on Election Day. Election Protection also created a unique partnership with the National Association of Latino Elected and Appointed Officials (NALEO) to staff their Spanish-language hotline and the legal field program in Southern California.

On Election Day, we received 1236 calls from voters in California, with the majority of calls from Los Angeles and Orange counties, as well as the Bay Area. Election Protection volunteers recorded 622 incidents in EIRS, of which 247 were voter inquiries and 375 were reports of voter problems.

Registration

Over 10% of all reported problems on Election Day involved registration problems, primarily in Los Angeles County. Over a dozen Los Angeles County residents reported that although they had registered to vote, their names did not appear on the voting rolls on Election Day.

- A voter at Rio Vista Elementary School in Los Angeles County reported that when she attempted to vote her name was not on the registration list despite the fact that she had received registration confirmation including a voter registration card.
- Another voter at Hughes Learning Center, also in Los Angeles County, went to cast a ballot at the precinct at which he had voted for the last six years and was told that he was not on the list, although his wife was.

Problems at the Polls

Most Election Day calls were from voters reporting polling place problems, accounting for 61.6% of reported problems. Problems included polling places that opened late, ran out of ballots,



and/or failed to provide sufficient privacy for voters casting ballots. Many voters were erroneously forced to vote by provisional ballot.

- A Los Angeles County voter called at 7:45 a.m., reporting that his polling place had still not opened (polling hours begin at 7:00 a.m.); as a result he was unable to vote.
- In Orange County, voters at the UC-Irvine Campus Housing Authority polling place had to switch to using paper ballots as a result of machine malfunctions. By 8:30 a.m., the polling place had run out of English and Spanish ballots, with only ballots in Vietnamese and Chinese remaining. The caller, as well as other voters, was unable to vote.
- A Merced County voter reported that there were insufficient poll booths in her polling place which led to voters voting in the open with little or no privacy.
- A voter at Cochran Baptist Church in Los Angeles reported that poll workers only brought provisional ballots with them to the polling place and neglected to bring all other proper materials with them. As a result, all voters had to vote provisionally.

Problems with Voting Machines

Voters in Del Norte, Orange, Los Angeles, San Diego, San Francisco, San Luis Obispo, Santa Clara, and Ventura counties reported machine problems, accounting for 26.6% of all problems in California. The most widely reported problem was the failure of optical scan machines in Los Angeles and San Francisco counties. In addition, voters in Alameda, Los Angeles, San Diego, and Sonoma counties reported several problems with using the official ink blot pens requisite to the Ink-A-Vote system used in California. Malfunctioning machines caused long lines throughout the state, as well as a shortage of paper ballots in many locations, especially Orange County.

- Several voters in Los Angeles and San Francisco counties reported a shortage of pens necessary to complete their ballots. One man in Los Angeles County reported that the ink pen he was given failed to scan properly leaving him with no way to know whether his votes would be considered undervotes or overvotes. Others reported that the scanners failed to record their votes for certain races.
- One San Diego radio station reported that machines were down all over the county, a report substantiated by voters' calls to the Election Protection hotline indicating that over a dozen San Diego polling places were affected.

Deceptive Practices and Voter Intimidation

Five percent of reported problems on Election Day involved reports of voter intimidation or deceptive practices. The hotline received reports from nine counties of poll workers asking for ID when none was required, of poll workers harassing voters, and of law enforcement intimidation.

- A voter in Los Angeles reported that a poll worker at Oakwood Apartments harassed voters who allegedly took too long to vote, although there were no lines to warrant the hurry. He also witnessed the same poll worker question an elderly man about whether he knew who he was going to vote for; when the voter replied that he did not, the poll worker said that the voter "might as well leave," and the voter left without voting. The same poll worker began closing down the polling place an hour early.
- Voters in both San Francisco and Los Angeles reported being asked for identification when not required. One poll worker explained that he was checking ID contrary to California law because he wanted to be sure no "foreign nationals" voted.

- Another San Francisco voter reported a deputy sheriff was inside the polling place; when asked, the deputy sheriff said he was there to “protect the voters.”
- A woman in Los Angeles said poll workers were asking voters for their party affiliation and dividing the lines accordingly. Voters in one line were told they could leave before their ballots were put in the box, with the poll worker assuring them that she “would sign them later.”

Absentee Ballot Problems

The Election Protection hotline received calls about absentee ballot problems from 10 California counties, making up 9% of reported problems.

- Several calls came from Alameda County where absentee ballots were returned due to insufficient postage. One voter reported that his ballot was returned “undeliverable” because of insufficient postage, despite the fact that he had returned his ballot in the prepaid envelope issued with the ballot.
- Voter in several counties reported receiving absentee ballots late, or not receiving their ballots at all. A poll worker at St. Clement’s Church in Los Angeles reported that at least three people had come to vote provisionally at her polling place because they never received their absentee ballots.

Florida

The Lawyers’ Committee created three Local Legal Coordinating Committees in Florida: Miami-Dade County, led by Carlton Fields; Broward County, led by Gordon Hargrove & James, P.A.; and Palm Beach County, led by Proskauer Rose LLP. Each LLCC staffed a local hotline call center and a Mobile Field Attorney program on Election Day. People For the American Way Foundation led a state-wide grassroots outreach program, with support from many other grassroots partners.

The hotline received 1008 calls from Florida. Election Protection volunteers recorded 529 incidents and, of the reports entered, 280 reported problems and 248 were inquiries.

Problems at the Polls

Problems at the polls accounted for 36% of all calls from Florida. As in most states, problems centered on voter’s names not appearing on the rolls, voter’s being given incorrect polling place information, and polls opening late or closing early.

- A voter in Duval County was not on the rolls at her precinct and was told to go to two other locations before finally being told to go back to original location. When she arrived, it was too late and she was not able to vote. The entire process took her nearly two hours.
- In Duval County, a voter had to go back and forth between two precincts several times before being allowed to vote; her voter information card said one precinct, but a poll worker told her to go to another.

- Another voter in Duval County was not on the rolls called Election Protection to find out how he could vote but the poll workers locked him out of the polling place when he called the hotline.
- EIRS received multiple reports from voters in Gadsden County who were in line when the polls closed complaining that they were not allowed to vote because the polls closed early.
- Voters were erroneously required to present photo ID in Broward, Miami-Dade, Seminole, St. John's, and St. Lucie counties. Additionally, there were several reports from Broward and Miami counties of voters being turned away entirely if they did not present ID. In St. John's County, a voter reported that he was asked for ID before entering the polling place.
- In Miami, there were three reports of no Spanish-language assistance at the polls, in violation of Section 203 of the Voting Rights Act.

Problems with Voting Machines

Voters in 12 counties called in problems with voting machines, with the overwhelming number of calls coming from Duval and Broward counties. Voting machine problems accounted for 22% of all problems and included: multiple machines being down in one polling place; voters placing ballots in unsealed boxes; chewed up ballots; vote switching (where a voter intended to vote for one candidate but their vote was registered for another candidate); and candidate's names not appearing on the ballot.

- Voters in Broward, Palm Beach, Broward, Pinellas, Hillsborough, Miami, and Sarasota reported vote switching.
- Several voters in Sarasota County reported that the names of the Congressional candidates were not on the ballot.
- At a polling place in Osceola County, voters were given the ballot for the wrong precinct for nearly an hour, until the problem was fixed at 7:45 a.m.

Voter Intimidation and Deceptive Practices

While Election Protection did not receive widespread reports of voter intimidation or deceptive practices in Florida (6% of all problems), we did receive reports that affected multiple voters or entire polling places.

- In Manatee County, voters reported robo-calls in the middle of the night that seemed to be from congressional candidate Christine Jennings but said paid for by the RNC at the end of the call.
- Police officers at a precinct in Miami were writing parking tickets at the polling place.
- A voter in Boca Raton in Palm Beach County said her employer was encouraging employees to vote a certain way on a ballot initiative because "their jobs depended on it."

Absentee Ballots

In addition to the normal inquiries about how to obtain an absentee ballot, the hotline received reports from multiple voters from across the state that were told they had already voted absentee. These voters were prevented from voting or had to vote provisionally.

- A voter in Orange County who has never voted absentee was told at the polls that she had to vote by provisional ballot because she had requested an absentee ballot.



- In Collier County, a voter was incorrectly told she had requested absentee ballot and would not be allowed to vote unless she presented her absentee ballot.
- A voter in Duval County was not allowed to vote because the poll book erroneously indicated she had already cast absentee ballot.

Georgia

Georgia had a strong Election Protection program in 2004, and, thanks to the hard work, outreach, and organization of the Local Legal Coordinating Committee, voters were aided by another excellent program in 2006. Led by attorneys from Sutherland Asbill & Brennan LLP and Kilpatrick & Stockton LLP, the LLCC recruited over 200 volunteers to staff a local hotline call center and serve as Mobile Field Attorneys.

Prior to Election Day, the Lawyers' Committee was particularly concerned with voters being asked for photo identification, in light of the legislative and legal battles over the past two years around this issue. A state court enjoined enforcement of Georgia's photo ID law for the November elections, and as a result, voters could show one of seventeen types of identification or if they lacked identification, could sign an affidavit attesting to their identity. Voters were indeed confused by the identification requirements, and poll workers across the state erroneously asked voters to show photo ID before allowing them to vote.

Election Protection received 1339 calls from Georgia, the second highest number of calls from any state. EIRS recorded a total of 612 reports, consisting of 325 problems and 287 inquiries. The hotline received calls from 57 counties in Georgia, with the majority of calls coming from the Atlanta metropolitan area. The reports include problems ranging from poll workers erroneously telling voters they had already voted, to broken voting machines, to voters being asked for photo ID.

Problems at the Polls

Voters in 29 counties reported problems at the polls, accounting for 47% of all problems in Georgia. Across the state, voters (including those who had voted in previous elections, even as recently as the 2006 primary) were not listed on the rolls, were not given provisional ballots, and encountered long lines and other obstacles when voting.

- A voter in Atlanta (Fulton County) reported that his name was not on the rolls when he went to vote and he was not offered a provisional ballot. Multiple voters in Cobb, DeKalb, Fulton, Gwinnett, and Worth counties also reported that they were not offered provisional ballots when their names did not appear on the rolls.
- Inexplicably, a van of senior citizens was turned away from the polls in DeKalb County.
- In Columbia County, a voter was at her polling place when polls opened at 7:00 a.m. but was told by the poll worker that she had already voted absentee, although the voter had neither requested nor received an absentee ballot. The voter also said she encountered a similar problem when voting in the last election.
- A voter reported long lines at Flint River Center, a predominantly African-American polling place in Clayton County. Other voters in Clayton County reported long lines, as well.
- A voter at the Youth Education Town Building in Fulton County went to vote at 7:00 p.m. The poll workers told her she was too late and locked the doors to the polling place.



- In Fulton County, a voter was told she could not vote by provisional ballot because provisional ballots could only be given out by the Secretary of State.
- Also in Fulton County, a voter reported that her polling location, Capital View Elementary School, was inaccessible. The voter said several elderly voters could not access the polling place and, for those who were able to, there were not enough chairs for voters to sit in while waiting.
- In Clayton and Cobb counties, several voters reported early poll closings.

Problems with Voting Machines

Over 16% of reported problems involved problems with voting machines. Reports came in from 20 counties including Burke, Chatham, Clayton, Cobb, Columbia, DeKalb, Douglas Effingham, Fayette, Forsyth, Fulton, Gwinnett, Henry, Houston, Lamar, Mitchell, Newton, Richmond, Rockdale, and Paulding.

- In multiple polling places in DeKalb County, voters reported that they were not able to view the summary screen. At 5:15 p.m., all machines in DeKalb were recalibrated because of the numerous problems reported to the Board of Elections.
- In Fulton County, a voter reported that a poll worker was holding completed ballots in her hand because they did not have a secure box. A voter in Clayton County reported that completed ballots were being kept in the poll worker's shirt pocket.
- At a polling place in Marietta in Cobb County, a voter tried to review her votes several times, all unsuccessfully, and before she could confirm her vote, her voting card popped out of the machine. The poll worker was not sure if her vote would be counted.
- At Welcome All Park in Fulton County, all machines were down and voters were forced to vote by provisional ballot.
- In Paulding County, the Libertarian candidate's name kept popping up when a voter selected a candidate from another party.
- In Burke County, a voter reported that she had problems switching her vote for Congress and the poll worker gave her incorrect instructions; the voter believes her vote was cast for the wrong candidate.

Identification

As anticipated, Election Protection expected widespread confusion over identification requirements in Georgia and voters were erroneously asked for photo ID in Bullock, Carroll, Clarke, Clayton, Cobb, DeKalb, Douglas, Fulton, Gwinnett, Henry, Monroe, Muscogee, and Thomas counties (13 total).

- A voter in Thomas County reported that poll workers were asking all voters to present a driver's license before voting.
- In Cobb County, at Russell Elementary School, voters were asked for photo ID and were also asked to sign an affidavit confirming their identity.
- At Briscoe Park in Gwinnett County, voters were asked to present photo ID.
- Also in Gwinnett County, at Shorty Howell Community Center, a voter was asked for photo ID. When the voter informed the poll worker that photo ID was not required, the poll worker implied that the voter was not a U.S. citizen.
- At Powell Park Art Center in Carroll County, there was a sign outside of the polling place that said, "Have ID Ready." Voters in Gwinnett, Henry, and Muscogee counties reported similar signs.
- In Clayton County, a voter was told her birth certificate was not sufficient ID.



- At Midvale Elementary School in DeKalb County, a voter said he and other African-American voters were asked to present identification but white voters were not asked for ID.
- A homeless voter in DeKalb County was disenfranchised because he could not list an address.

Voter Intimidation and Deceptive Practices

- Voters at two precincts in Clayton County reported armed police officers inside the polls. When one voter asked a police officer why he was at the polls, the officer responded that he was there in case people got "rowdy."
- In Fulton County, a voter reported a police officer was at Pointe South Middle School; the officer was rotating between three polling places throughout the day. The voter was informed by the poll worker that police were in most polling places.
- Police were parked in front of Briar Cliff Baptist Church in DeKalb County.
- In Walker County, a poll worker told a voter to "Do this for Bush."

Other

- Three voters in Fulton and Cobb counties reported that their employers would not let them take time off from work to go vote.

Illinois

The hotline received 724 calls from Illinois, due in large part to the successful poll monitoring operation spearheaded by People For the American Way Foundation. EIRS logged 306 reports, of which 124 were voter inquiries and 182 were reports of voter problems. Cook County (including the City of Chicago) accounted for 212 reports.

Polling Place Problems

Counties across the state, especially Cook County, reported numerous problems at the polls including long lines, late poll openings, early poll closings, disability access issues, and voters missing from the registration rolls.

- Multiple voters in Cook County reported long lines at the polls, some in excess of two hours, mainly resulting from broken voting machines.
- Voters in 10 polling places (7 in Cook County) reported late poll openings.
- In Will County, a voter reported that her polling place did not have any of the supplies necessary to operate the machines, nor did they have back-up paper ballots.
- In Cook County, five voters with disabilities reported problems voting. At a polling place on Dundee Avenue, a voter in a wheelchair had problems getting up a flight of stairs to cast her ballot. At another location, a voter who is blind reported that the audio machine was not working.
- Multiple voters in Cook County reported receiving literature from campaigns and third party organizations that listed incorrect polling locations.
- At the Ray School polling location in Cook County, several voters were missing from the rolls and were not given provisional ballots.

- In Johnson County, a voter reported that police were outside of a polling place in Vienna.

Problems with Voting Machines

EIRS logged 81 reports of problems with voting machines from 11 counties; 55 reports came from Cook County alone.

- Voters across Cook County reported broken machines, scanners that were not working, vote flipping (where a voter's attempt to vote for one candidate is actually recorded for a different candidate), and machines that would only display federal candidates. Some precincts also ran out of back-up paper ballots, and many voters left without casting a ballot.
- In Kane County, a voter reported that her machine only displayed federal candidates and her polling location did not have paper ballots.
- A voter in Rock Island County said that the machine she voted on had not recorded any votes since the polls opened.

Identification

Voters in Cook, DuPage, McHenry, Rock Island, and Will Counties reported being asked for photo identification.

- In Cook County, a voter reported that he was asked for photo ID and when he presented his driver's license, the poll worker told him he needed to show additional identification.
- At the #12 Fire Station polling place in DuPage County, all voters were asked to show photo ID; those who could not present photo ID were turned away.

Voter Intimidation and Deceptive Practices

There were reports of voter intimidation and deceptive practices from Johnson and Cook Counties.

- In Johnson County, police were outside of a polling place in Vienna.
- Multiple voters in Cook County reported receiving literature from campaigns and third party organizations that listed incorrect polling locations.

Maryland

In the chaotic aftermath of the September 12, 2006 primary, Maryland became a top priority for Election Protection. Because of numerous problems on the day of the primary election, the Lawyers' Committee filed suit against the Baltimore City Board of Elections and were successful in extending polling place hours in Baltimore to 9:00 p.m. The primary election gave a preview of potential problems to be faced as a result of poor election administration, inadequately trained poll workers, machine malfunctions, and deceptive practices.

In the days leading up to Election Day, the hotline received numerous reports from voters who had not yet received their absentee ballots. To address these problems, the Lawyers' Committee (with the assistance of Akin Gump Strauss Hauer Feld LLP) and a coalition of civil rights groups (including the ACLU of Maryland) filed a lawsuit in Maryland state court. Filed on



November 6, *Fritzsche v. State Board of Elections* sought to extend by one day the deadline for returning absentee ballots. Although thousands of absentee ballots were mailed to voters too late to permit them to meet the absentee ballot return deadline, the Anne Arundel County Circuit Court and Maryland Supreme Court denied the requested relief.

Local Legal Coordinating Committees were created in Maryland for Montgomery and Prince George's counties, as well as for the Baltimore metropolitan area. The NAACP, the ACLU of Maryland, the law firms of DLA Piper and Akin Gump Strauss Hauer Feld LLP, and other organizations provided key legal and grassroots assistance for Election Protection. Mobile field attorneys and poll monitors provided direct assistance to voters at the polls and relayed information to call centers at the NAACP's offices in Baltimore and the Washington, DC hotline.

On Election Day, we received 768 calls from voters in Maryland, with the majority of calls from Prince George's County. Election Protection volunteers recorded 448 incidents into EIRS, of which 105 were voter inquiries and 343 were reports of voter problems.

Problems at the Polls

More than half of our reports from Maryland, 223 reports total, involved polling place problems. We received 28 reports of excessively long lines at their precincts, primarily in Prince George's County and Baltimore, because of machine malfunction and mismanagement by election officials (12% of polling place problems). While some voters were able to withstand waiting periods in excess of an hour to cast a ballot, many left without voting.

- The Lawyers' Committee's Executive Director, Barbara Arnwine, experienced problems at the polls first-hand when she went to cast her ballot at Evangel Cathedral in Upper Marlboro, Prince George's County. There, she waited along with fellow voters in line for more than two and one-half hours before she was able to cast her ballot.
- A voter at Bishop McNamara High School in Prince George's County reported long lines because voting machines were without memory cards. The voter was unable to come back later to vote and she reported that other voters were turned away as a result of the machine problems.
- At the University of Maryland at College Park, lines averaged three hours for the entire day due to a shortage of machines. Although additional machines had been promised by election officials because of similar problems in the past, none were ever delivered and students continued to wait to vote on the four machines provided for a campus with over 35,000 students.
- In another precinct in Prince George's County, poor election administration resulted one polling place, James Madison, having over 500 people in line at 8:00 a.m.,

In addition to long lines and problems with accurate voting rolls, voters encountered problems with registration, provisional ballots, finding their polling place, and being asked for identification inconsistent with Maryland law.

- Several voters reported that they received notice only a week before the election that their registration forms were incomplete; as a result, they had to vote provisionally on Election Day.
- A poll worker in Montgomery County reported that at 7:00 a.m., when polls opened on Election Day, the poll book showed he had already voted even though he had not yet cast a ballot.

- In Prince George's County, a voter was told that she had already voted absentee although she had never requested nor received an absentee ballot. She was not allowed to vote.
- Only half of the referenda were on the provisional ballots given to voters in Prince George's County. One voter in Prince George's County reported that at her precinct, Hyattsville Middle School, her name was not on the rolls even though she had a voting card with both her name and current address. As a result, she was given a provisional ballot that she realized was incomplete because it contained only the first page of the referenda that were supposed to be on the ballot.
- We received over 80 polling place inquiries and reports from all over the state from voters confused as to where to vote because polling places were changed at the last minute without notification or signs at their old polling place directing them where to vote.

Many Maryland residents had questions about what identification was necessary to present to poll workers, and poll workers also were confused about what identification to request. While the law in Maryland only requires identification from first-time voters and in other limited circumstances, we received numerous reports of voters who were erroneously asked for ID before being allowed to cast a ballot.

- Poll workers at Potomac High School in Prince George's county were requesting photo identification from all voters before allowing them to cast a ballot.
- Several voters in Baltimore in multiple precincts were asked for ID before being allowed to vote.

Problems with Voting Machines

Twenty-two percent of all problems involved voting machine problems, with reports from Prince George's, Baltimore, Montgomery, Anne Arundel, and Howard counties, as well as Baltimore City. Reports included machines not being functional when polls opened and additional problems with machines throughout the day. There were accounts of poll workers having to continually reboot machines, votes being flipped, and machines that became completely inoperable.

- Voters in at least three precincts in Montgomery County reported incidents of vote flipping on the summary page of their electronic ballots, so that the vote they had cast for one candidate registered for another. A voter in Montgomery who reported vote flipping also reported that poll workers were "too busy to help" her cast a correct ballot.
- A voting machine technician called into the hotline to report that he had traveled all over the state to repair machines the day before Election Day and was unable to calibrate several machines as required.
- Machine problems also impeded voters with disabilities from casting a meaningful ballot in Maryland. One visually impaired voter in Cecil County was unable to read the voting machine screen. When she asked to use a machine she could listen to, she was told by the presiding election official that they had already put in the voting card and could not take it out. Attempts to enlarge the print were not successful in helping her cast her ballot.

Voter Intimidation and Deceptive Practices

Approximately 12 percent of reports (56 calls) we received from Maryland were from voters who encountered or witnessed voter intimidation and deceptive practices. We received reports from



six counties that ranged from deceptive flyers in Prince George's County to robo-calls in Potomac to voters being rushed when casting their ballots in Baltimore City.

- In Prince George's County, we received over 30 calls from voters who had received a flier claiming to be a "Democratic Sample Ballot" with boxes checked for Robert Ehrlich and Michael Steele without identifying them as Republicans. Their names were followed by a long list of Democratic candidates.
- In Baltimore City, a poll worker harassed voters by hurrying them to cast their ballots, claiming that the machines would shut off if they did not hurry their voting.
- A voter in Baltimore City at the Dumbarton Middle School precinct reported Ehrlich campaign volunteers were in the parking lot of her precinct discouraging people from voting by telling voters that there were long lines inside.
- At Evangel Temple in Prince George's County, a voter reported blatant electioneering inside the polling place. Flyers from the Steele campaign were on a poll worker's table and said that Ben Cardin, the opposing candidate, "promised to attack Jesus Christ and Christians" and would take away black people's freedom if elected; the flyer also had pictures of men kissing men as well as aborted babies.

Absentee Ballots

A combination of a high demand for absentee ballots by voters and poor election administration resulted in widespread absentee problems for voters in Maryland. We received 29 calls from voters in seven counties who received absentee ballots after the deadline for submitting ballots and from voters who never received their absentee ballot at all even though they submitted a timely request. In addition, in Prince George's County, the return envelope provided for absentee ballots was too small for the ballot, creating more hardship and confusion for voters.

- A married couple in Montgomery County requested absentee ballots several weeks before the election but did not receive them. The wife is bed-bound and could not travel to the polling place to vote, and her husband is 90 years old.
- A voter in Baltimore County said she, her daughter, and her son all requested absentee ballots in mid-October. While she and her daughter both received their ballots, her son's ballot never arrived.

Michigan

The Lawyers' Committee worked closely with the NAACP, the National Bar Association, and the law firm of Jaffe Raitt Heuer & Weiss, P.C to create a Local Legal Coordinating Committee in the Detroit metropolitan area.

On Election Day, the hotline received 584 calls from voters in Michigan, with the majority of calls from Wayne County. Election Protection volunteers recorded 257 incidents in EIRS, of which 155 were voter inquiries and 102 were reports of voter problems.



Registration

Voters in six counties reported 20 voter registration problems. Most reports were from registered voters who were not on the rolls at their polling place.

- A Genesee County voter's name did not appear on the voting rolls. She was only allowed to vote after calling the County Clerk's office.
- A voter in Wayne County who had registered at the DMV last spring was not on the voter registration rolls and was not able to vote, despite having received a voter registration card a month before the election.
- A Macomb County voter received a voter registration card directing her to a polling location that did not exist at the given address.

Problems at the Polls

EIRS recorded 54 reports (35 percent of all reported incidents) of polling place problems from twelve Michigan counties. Nearly two-thirds of all polling place reports came from Wayne County. Voters reported incidents of long lines, lack of privacy when casting ballots, incorrect identification procedures, and machine malfunctions.

- At McDowell Middle School in Wayne County, a voter reported that the wait to vote was more than one and one-half hours and many people were leaving without voting.
- Only one voting booth was available at Inkster Recreation Complex in Wayne County. Voters were casting ballots on chairs and people were talking to voters while they were attempting to vote, preventing voters from casting their ballots in privacy.
- A voter reported long lines at the polls in Van Buren County at 8:30 a.m.
- At the DARE Center in Wayne County, one voter reported that poll workers were requiring all voters to present identification. Another Wayne County voter was not permitted to vote because she did not have her voter registration card with her, even though she had other forms of identification.

Problems with Voting Machines

Voting equipment problems were the most widely-reported polling place problem in Michigan. Incidents, consisting mainly of problems with optical scanning machines, were reported from Macomb, Oakland, Saginaw, Washtenaw, and Wayne counties.

- At the Beth Eaton polling location in Wayne County, one voter reported that at least five of the available voting machines were not working, causing voters to wait over 90 minutes to cast a ballot.
- One voter at the St. Paul AME Zion Church in Wayne County reported that the optical scanning machine at his polling place had failed and the precinct was close to running out of back-up paper ballots.
- An Oakland County voter reported that there was a discrepancy in the number of voters reported by the ESS voting system and the number of votes cast.
- At the Free Methodist Church in Washtenaw, completed paper ballots were being placed on top of the broken machine.

Voter Intimidation and Deceptive Practices

The hotline received 10 reported incidents (10 percent of total reports) of voter intimidation and deceptive practices from Genesee, Ingham, Jackson, Macomb, and Wayne counties.



- One voter reported that police were blocking the entrance to a Barry County polling place.
- A Republican poll challenger at Ingham County Fire Station #3 challenged every African American attempting to vote.
- At the Indianapolis Church of Christ in Wayne County, one voter reported that challengers were preventing voters from waiting in approved areas prior to voting. The voter also said that the challengers were intimidating the poll workers.
- A person outside Van Buren Township Middle School in Wayne County was reportedly telling voters that the polls were closing at 7:00 p.m., an hour earlier than the actual 8:00 p.m. closing time.

Minnesota

Election Protection received 272 calls from voters in Minnesota. Because of the strong Mobile Field Attorney and poll monitoring program created by Take Action Minnesota, Election Protection volunteers in the field and hotline volunteers recorded 317 incidents in EIRS, of which 219 were voter inquiries and 98 were reports of voter problems.

Problems at the Polls

The hotline received reports of polling place problems from 18 counties. Calls included voting equipment malfunction (particularly with optical scanning machines), late poll openings, problems with language-minority assistance,

- A voter in Pine County reported that as of 9:45 a.m. her poll in Chengwatana had not yet opened.
- Voters throughout Hennepin County reported that the optical scanning machines at their polling places were not working throughout the day.
- Although Minnesota is not covered under language provisions of Section 203 of the Voting Rights Act, EIRS noted 22 reports from language-minority voters in Hennepin and Ramsey counties who had problems receiving assistance at the polls. Calls came from voters in the Hispanic, Hmong, and Somali communities.

Identification

Over 20% of all reports involved questions or problems about necessary identification for voting and Election Day registration. Although Minnesota only requires identification for voters who registered by mail and are voting for the first time since registering, poll workers asked other voters for ID as well and, in some cases, asked voters for photo ID. Additionally, poll workers were confused about the procedures for voters registering on Election Day, preventing many eligible voters, especially students, from casting a ballot.

- At several polling sites on and near the University of Minnesota, students encountered problems when attempting to register and vote on Election Day. A list of students living in residence halls was not sent to the county and students who would normally need only a student ID to register, had to present additional proof of identification. Many students did not have additional ID and other students left without voting because of the long lines caused by this problem.

- In Dakota County at St. Stephen's Lutheran Church, a polling place in a heavily Hispanic area, all voters were being asked to provide photo ID.
- A voter at St. Gerard Church in Hennepin County reported that voters were being turned away if they did not have ID.

Voter Intimidation and Deceptive Practices

Reports of voter intimidation and deceptive practices came in from 6 counties, accounting for nearly 11% of reported problems. Voters reported being given misinformation, disruptive election officials, and electioneering.

- A man in Anoka County received a call the night before Election Day from "Alliance for a Better Minnesota" telling him an incorrect polling place, one that was 20 blocks away from his actual polling location.
- A voter at the Mt. Olivet Lutheran Church reported that the election Judge was interrupting voters while voting making it difficult to concentrate on casting a meaningful ballot.

Missouri

The Lawyers' Committee worked closely with the National Bar Association to create Local Legal Coordinating Committees in St. Louis and Kansas City, with the help of attorneys from the Advancement Project.

On Election Day, the hotline received 666 calls from voters in Missouri, with the majority of calls from St. Louis County, St. Louis City, and Jackson County. Election Protection volunteers recorded 209 incidents in EIRS, of which 105 were voter inquiries and 104 were reports of voter problems.

Problems at the Polls

Election Protection received 64 reports of problems at the polls from 10 Missouri counties, 61.5% of all reported problems. Long lines in St. Louis and Kansas City accounted for many incidents, but voters encountered other problems as well.

- Lines of 1-3 hours were reported at Maplewood City Hall, First United Methodist Church, Craig Elementary School, Parkview Apartment Towers, and other polling locations in St. Louis.
- Several voters in St. Louis County were told they were not on the registration list and poll workers were not able to contact election officials. Many voters had to vote by provisional ballot because their registration status could not be confirmed, while some voters attempted to vote at the Board of Elections.
- Although the Cedar Hill Lutheran Church polling location in Jefferson County has a large number of registered voters, very few ballots were available and the polling place ran out of ballots at noon.
- At Mellow Memorial Methodist Church in St. Louis, poll workers only had voting rolls for the latter half of alphabet, preventing people from voting because poll workers could not verify that they were registered.

- A visually impaired voter in Jasper County was unable to cast a secret ballot as entitled under the Help American Vote Act at the Cecil Floyd Elementary School polling location because the audio accessible machine was not functioning.

Problems with Voting Machines

The over 40 reported problems with voting equipment included poll workers who did not have access codes to start machines, machines that were not tabulating votes, and lack of security for paper ballots. Voters in Christian, Clay, Franklin, Jackson, Jefferson, St. Charles, St. Louis, and Randolph counties and in the city of St. Louis reported voting machine problems.

- Many voters in Jackson County reported problems with machines throughout the day. Some machines were completely inoperable, resulting in shortages of paper ballots and long lines, and multiple voters reported tabulation problems.
- Voters across St. Louis also reported long lines at the polls because of broken machines.
- Voters in multiple counties reported that they received inconsistent information about how to complete optical scan ballots. While some were told that any marks outside of the oval would void their vote, others were told to only outline the ovals.

Identification

On October 16, 2006, Missouri's photo identification law was struck down by the State Supreme Court. On Election Day, however, poll workers (mainly in St. Louis) erroneously asked voters for photo ID or imposed other improper identification requirements. Also, many voters were also unsure of the identification requirements and called the hotline for guidance.

- A voter in St. Louis County was not allowed to vote because he did not have photo ID and he reported that other voters were turned away for the same reason.
- In St. Louis, a poll worker rejected a voter's government-issued photo ID because it did not have her signature on it but did allow the voter to cast a ballot after she presented a phone bill.
- A voter reported a sign outside of Nathaniel Hawthorne Elementary School in St. Louis, indicating that voters need identification with their signature on it. The voter also reported that poll workers told her they were trained to ask for photo ID.
- A voter was told she needed identification with her signature on it at St. Martin Episcopal Church in St. Louis.
- Poll workers at Normandy City Hall in St. Louis were requiring voters to present photo IDs to vote.
- Another voter in St. Louis married and changed her name after she received her voter registration card and was unsure if she would still be allowed to vote, given that her card still had her maiden name on it.
- At St. James Church in Buchanan, a voter was instructed to go to the Courthouse to vote because the address on her photo ID did not match the address on the rolls.

Ohio

The Lawyers' Committee has been working on election reform issues in Ohio since 2004, fighting voter-hostile legislation with People For the American Way Foundation and other



partners in the Ohio Voter Coalition, and filing lawsuits to improve the administration of Ohio's elections.

The Lawyers' Committee, with substantial *pro bono* support from Proskauer Rose LLP, created a legal field program in Ohio with five Local Legal Coordinating Committees (LLCCs) in Cincinnati, Cleveland, Columbus, Dayton, and Toledo and housed a hotline call center specifically for Ohio out of Proskauer's New York offices. Legal organizations such as the National Bar Association, Advocates for Basic Legal Equality, Ohio Legal Assistance Foundation, and Ohio Academy of Trial Lawyers contributed to the formation of LLCCs in targeted cities. Grassroots organizations across the state, including the Cleveland NAACP, Cleveland Voter Coalition, Coalition on Homelessness and Housing in Ohio, Common Cause Ohio, League of Women Voters of Ohio, Ohio Citizen Action, and People For the American Way Foundation helped publicize the 866-OUR-VOTE hotline number to help assist citizens with the voting process.

Prior to Election Day, voters called the Election Protection hotline with questions about registration, new and changing identification requirements, and other questions about where and how to vote. On Election Day, Ohio's longstanding record of poor election administration was again evident. Voters complained of widespread problems at the polls such as long lines, registered voters not showing up on the rolls, malfunctioning voting machines, continued confusion and misapplication of identification requirements, and, in many cases, improper implementation of Ohio election laws; and deceptive practices and voter intimidation.

Election Protection received 2334 calls from Ohio, more than from any other state. Hotline volunteers recorded 2139 reports into EIRS. Of those reports, 1037 were from voters reporting problems while 1102 were voter inquiries.

Registration

Over 24% of all reports came from voters in 23 counties with questions about registration. Many voters simply called to confirm that they were registered and others inquired about where and how to vote if they had moved since the last election. On Election Day, however, voters across the state were told their names were not on the rolls and were either turned away entirely or had to vote by provisional ballot.

- A poll worker in Franklin County reported that nearly 90% of the voters in her precinct were not on the rolls. Many were long-time residents and had voted in the primary.
- A voter in Hamilton County went to vote at her regular polling place but her name did not appear on the rolls. Poll workers told her she could not vote provisionally because they did not have any provisional ballots but she could see if her name was on the rolls at another polling place. Her name was not on the rolls at the second location and she went home without voting.
- A voter in Montgomery County reported that he and approximately 15 other voters at the United Methodist Church did not appear on the rolls. He had to vote provisionally.
- A voter in Cuyahoga County changed her address several months ago and received confirmation of her address change from the Board of Elections but her name was not in the poll book at her new polling location.
- A voter in Cuyahoga County had voted in the same precinct for 9 years. Her name did not appear on the rolls and the poll worker refused to call the Board of Elections to confirm her registration. She voted provisionally.



- In Franklin County, the hotline received multiple reports of voters being told their name were not on the rolls. Voters were directed to another polling place. Once at the second polling place, their names were still not on the list. Many voters gave up and voted provisionally, knowing that their vote would likely not be counted, rather than attempt to find their name on the rolls at a third polling place. Provisional ballots are only counted in Ohio if the voter is in the correct precinct.
- In a likely administrative error, many voters with last names that started with "A" were missing from the rolls at a polling place in Hamilton County.

Problems at the Polls

Problems at the polls accounted for 53% of all problems and reports came from 37 counties across Ohio. Voters were disenfranchised by inadequate distribution of election resources, poor poll worker training, long lines, late poll openings, and voters being erroneously told to vote by provisional ballot.

- The hotline received reports of long lines from over 30 polling places in Cuyahoga County, including a 2-3 hour wait in Bedford Heights. Seniors had to wait over an hour with nowhere to sit down at Glacemount School. In at least 10 precincts, voters left without voting because of long lines, including at Lonnie Burton Recreation Center, Oxford Elementary, and Shaker Heights Community Center.
- In Columbus, a polling place with two precincts, one predominantly African-American and the other predominantly white, only had long lines at the predominantly African-American precinct.
- In Montgomery County, a voter and his wife were not able to vote; four machines were broken and the wait to vote was over an hour.
- A voter in Highland County went to his usual polling place but the location had been moved. He was not notified, nor were the two other voters in his house. He reported that about 75 people had the same problem.
- Late poll openings were reported across the state.

Problems with Voting Machines

Nearly 25% of reported problems involved problems with voting machines, and nearly half of those reports came from Franklin and Cuyahoga counties alone. Many voters, especially in Franklin County, reported multiple machine failures in the same polling place. Poll workers were unsure how to use machines or solve errors, voters reported vote switching (where they voted for one candidate but another candidate's name appeared on the confirmation screen), and many precincts did not have an adequate supply of paper ballots, meaning voters had to leave without voting, vote by provisional ballot, or vote on a piece of paper.

- In Cuyahoga, Montgomery, and Hamilton counties, many voters walked out without voting when machines broke down.
- The hotline received reports of vote flipping from all over the state. A voter at a senior center in Franklin County had problems with the machine in his precinct; he received two error messages and the screen flipped his vote. The poll worker was uncooperative when he asked for assistance. He was finally told the machine was broken and they would call him when it was fixed. He never got a call and therefore never voted.
- Voters also reported candidate's names or certain ballot initiatives were missing from their ballots. The wrong ballot initiative was displayed on a machine in Hamilton County and no ballot initiatives were shown at all on a machine in Cuyahoga County. Several

Franklin County voters reported that they were not given the option of voting in their congressional race.

- In many precincts, poll workers did not know what to do if something went wrong or did not have the resources to respond to problems. A voter in Summit County reported that machines were not working and voters in his precinct were forced to vote on a piece of plain white paper because the polling place did not have paper ballots. In Cuyahoga County, numerous voters reported that many polling sites did not have enough machines. A voter with a disability in Cuyahoga County called the hotline because he tried to vote curbside but the machines at his polling place did not work; he was not offered a paper ballot and was told to come back later.

Identification

Identification problems accounted for 7% of all reports and reports came in from 16 counties. Across the state, voters and poll workers were confused by the ID requirements. Voters were turned away for not having ID, even when they presented a form of ID accepted by the state. Contrary to Ohio law, voters were also forced to vote provisional ballots when the address on their driver's license differed from the address on their registration; we received 61 reports from voters who encountered this problem.

- Seniors at a nursing home in Cuyahoga called the hotline to complain because they were forced to vote by provisional ballot because they did not have drivers' license that matched their address.
- As allowed by state law, a police officer in Toledo listed a P.O. Box on his license and poll workers demanded another form of identification because they did not know to accept his ID even though it did not display his home address.
- A voter in Fairfield County was not allowed to vote because his ID did not have his current address; he moved on September 1, filed a change of address with the Board of Elections, and received a notice informing him of his polling place at new address.
- Voters in Delaware, Hamilton, Lucas, and Montgomery Counties reported being turned away from the polls (not offered even a provisional ballot) because the poll workers implemented a stricter identification requirement than Ohio law mandates.
- A poll worker in Hamilton County told a voter to go home because she did not have proper ID.
- A voter in Butler County did not have photo ID but brought a check stub, which is sufficient under Ohio election law; she was not allowed to vote at all, even provisionally, and said others were also denied for similar reasons.

Voter Intimidation and Deceptive Practices

Five percent of all problems involved voter intimidation and deceptive practices. While some reports were isolated incidents, many stories from voters implied widespread voter intimidation because of lack of privacy at polling places or inappropriate questioning from poll workers. Voters reported intimidation due to the lack of privacy when voting from across the state. In several counties, voters also complained about being asked their party affiliation; they had to state their affiliation publicly, which made many voters uncomfortable.

- Voters from all over the state reported that they had been told the wrong polling place from third party sources.
- Voters said polling places did not have enough space between machines or did not have curtains around machines, leaving screens visible to others when voting.

- Others reported that when machines broke down or if voters were using provisional ballots, voters had to cast their ballot in the open on a table.
- A voter in Montgomery County was not allowed to declare herself an independent.
- Also in Montgomery County, a voter was not allowed to vote unless she declared her party affiliation.
- In Franklin County, a voter was told there were separate poll books for Democrats.

Pennsylvania

Since 2004, the Lawyers' Committee and People For the American Way Foundation have worked on election reform issues and with our grassroots partners in the Pennsylvania Voter Coalition. In addition to People For and other PVC members, we worked with the Committee of Seventy to help publicize the hotline number and educate voters about their rights. Through our affiliate, the Public Interest Law Center of Philadelphia, the Lawyers' Committee created a strong Local Legal Coordinating Committee in Philadelphia, led by DLA Piper LLP. People For the American Way Foundation led efforts in Allegheny County.

The Election Protection hotline received 1088 calls from Pennsylvania, before and on Election Day. EIRS has 769 reports from Pennsylvania – 372 inquiries, 397 reports of problems.

Registration

Nearly 20% of all reports from Pennsylvania involved problems or questions about voter registration and came from voters in 11 counties, primarily Philadelphia and Allegheny.

- In Philadelphia, 20 voters reported they were not on the rolls; many said they had voted in previous elections or had received a confirmation card or notice of their polling location from the Board of Elections.
- One voter in Philadelphia reported that he had to go to 5 different polling locations before being allowed to cast a provisional ballot.

Problems at the Polls

Over 22% of hotline calls involved problems at the polls, and nearly ¾ of the problems were from Philadelphia and Allegheny counties. Problems included long lines, late poll openings and early poll closings, access problems for voters with disabilities, and voters erroneously being asked for identification.

- The hotline received 40 reports of late poll openings or early poll closings; late poll opening reports indicated that voting machines were not yet operable.
- Numerous complaints were logged from voters in Philadelphia regarding poll locations that were moved without proper notification to voters and lack of signage at polling places.
- Voters in Philadelphia reported long lines due to a lack of poll workers at many precincts.
- Twenty-four voters reported that polling places were inaccessible to voters with disabilities; 13 reports were from Philadelphia.
- A voter in Allegheny County said "ID required" was stamped by her name in the poll book, and several others had the same stamp by their name.

- Tamara in Philadelphia was told she could not vote because she did not have her voter registration card, even though she was able to present photo ID.
- One voter said she was asked to show ID even though she was not first time voter

Problems with Voting Machines

Voters from 18 counties reported problems with voting machines, accounting for 13% of all problems from Pennsylvania. EIRS includes reports of machine problems in Allegheny, Philadelphia, Bucks, Clearfield, Chester, Columbia, Cumberland, Dauphin, Delaware, Erie, Jefferson, Lawrence, Mercer, Montgomery, Northampton, Pike, Westmoreland, and York counties.

- The hotline received widespread reports of machine problems in Allegheny. Poll workers told voters the polls were closed because machines were broken and many voters were not allowed to vote at all, even by paper ballot.
- A voter in Delaware County reported they were turning the machines off after every voter cast a vote.
- In Bucks County, a voter said that when she voted, an alarm went off and the poll worker unplugged the machine. The poll worker did not know she was supposed to offer the voter a paper ballot.
- Bloomsburg University in Columbia County had only one voting machine even though it is the largest precinct in the county; the Board of Elections promised 2 additional machines but they were never delivered.
- In Philadelphia, multiple machines would not allow split ticket voting.

Voter Intimidation and Deceptive Practices

Voters from 13 counties reported incidents of electioneering inside the polls by candidates, campaign workers, or poll workers (8% of all problems). The hotline received additional reports of voter intimidation and deceptive practices (5% of all problems).

- One voter called on behalf of a Spanish-speaking voter at a senior center in Allegheny County. A poll worker yelled at the voter, said it was his job to stop her from voting, and pulled her ballot from the machine.
- One report said African American voters at a large, private company in Philadelphia were not allowed to leave their shift to vote but white voters were allowed to leave.
- A voter in Allegheny County was told he is only allowed to vote in Presidential elections because he is an independent.
- Reports of electioneering inside polling places included: candidates pointing out their preferred candidate's name on the ballot; campaign workers saying to vote for specific candidates, passing out literature, or hanging signs within the polling place; and poll workers passing out only Democratic ticket or Republican ticket sample ballots.
- In Philadelphia, a voter reported a Republican Committeeman was blocking the door to the polling place and handing out political flyers; he was also saying "red" while holding the curtain for voters as they went in to vote.

Tennessee

Attorneys with Powell Goldstein LLP helped lead the Local Legal Command Center, with the assistance of Baker Donelson Bearman Caldwell & Berkowitz PC and Burch Porter & Johnson PLLC. On Election Day, the hotline received 372 calls from voters in Tennessee, with the majority of calls from Shelby and Davidson counties. Election Protection volunteers recorded 232 incidents in EIRS, of which 148 were voter inquiries and 86 were reports of voter problems.

Problems at the Polls

Over 45 percent of recorded problems involved polling place problems, and reports came from 10 counties. Voters reported long lines at polling places that were not allocated enough machines, confusion about polling place hours, and voters missing from the registration rolls.

- Several Davidson County voters reported a shortage of machines at their precincts. At the Cora Howe School, a voter said people waited in line to vote until 12:30 a.m., five and a half hours after polls closed, because the polling location only had two machines.
- Another Davidson voter reported that many elderly voters did not vote because they were unable to stand and wait in the long lines.
- Voters from Shelby, Hamilton, and Giles counties reported that their names were not on the registration rolls. At Labelle Church in Shelby County, a voter's name was not on the rolls, although she had voted in the August primary.

Problems with Voting Machines

Voters reported equipment failure and resulting long lines from five Tennessee counties, with the majority of reports coming from Shelby and Davidson Counties.

- One voter reported that, at Mitchell Road Community Center in Shelby County, five of the seven machines were down and 100 people were turned away without being offered paper ballots.
- At Hazelwood Elementary School in Montgomery County, one voter reported that there were 500 people in line waiting to vote and the estimated wait time was over two hours.
- A caller from Davidson County reported that only two voting machines were working at his polling place. Voters had been waiting as long as six hours and were still in line at 11:30 p.m.

Voter Intimidation and Deceptive Practices

There were reports of voter intimidation and deceptive practices from Shelby, Davidson, and Madison Counties.

- A voter at Union Grove Baptist Church in Shelby County witnessed a police officer ask an African American driver, who was bringing his mother to vote, for his license and registration in a polling place parking lot, even though he had not violated any traffic laws.
- At Cypress Junior High School, also in Shelby County, a voter reported that a poll worker gave erroneous information about a ballot initiative to multiple voters.

Texas

The Lawyers' Committee has worked on Election Protection in Texas since filing a lawsuit in February 2004 to protect student voting rights in Waller County. In 2004, Election Protection concentrated in programs in Houston and Dallas. For Election Protection 2006, the focus was again on Houston, although calls to the hotline came in from across the state. Weil Gotshal & Manges led the Local Legal Coordinating Committee. In addition, over 70 law students helped monitor polls to determine compliance with the language-minority assistance provisions of the Voting Rights Act.

On Election Day, the hotline received 695 calls with 334 EIRS reports from Texas, of which 170 were voter inquiries and 164 were reports of voter problems. Also, 132 edit poll surveys regarding language-minority assistance were completed in Travis and Harris counties.

Registration

Nineteen percent of reported problems involved voter registration, with reports from voters in 14 counties. Harris, Dallas, and Tarrant county voters reported the most problems with registration, with a large number of calls being from voters who, although registered, were not on the rolls.

- Voters from Bexar, Fort Bend, Galveston, Harris, Llano, and Williamson counties reported that they had been dropped from the voting rolls.
- One voter in Harris County, who has lived in the same location for eight years and voted in the previous election, was told that he was not on the voting rolls. The voter was not given the option of casting a provisional ballot and he left without voting.

Problems at the Polls

Polling place problems accounted for 55% of all problems. Most reports came in from Harris County but voters in 13 additional counties also reported problems.

- Voters in seven counties reported long lines. There were multiple reports from Burton Elementary School in Fort Bend County, where between 200 and 300 people waited in line to vote. Sunset Canyon Baptist Church in Hays County, a voter reported that the line to vote was two blocks long; there were not enough machines and only one election official was on hand to provide instructions.
- Four counties reported late poll openings. A voter at Julia W. Kahla Middle School in Harris County reported that her polling place did not open until 7:45 a.m. (45 minutes late) because only one poll worker was at the site.
- Voters in Collin, Dallas, Harris, and Travis counties reported that they were asked to present identification at the polls. One voter at Newman Smith High School in Dallas was asked to show her driver's license. Despite the fact that the voter had multiple alternative forms of identification, she was not allowed to vote.
- In Travis County, 63 voters reported problems with language assistance and 23 voters in Harris County reported similar problems.

Problems with Voting Machines

Voters from 13 counties reported problems with voting machines, 23% of all reported problems. Problems included machines that incorrectly registered votes, poll workers without the proper



access codes to operate machines, and precincts without any operable machines and no paper ballots to use as back-up.

- At a Harris County precinct, a handicapped accessible e-voting machine broke down twice. In order to fix the machine, half of the other voting machines also had to be taken offline. Long lines resulted and no paper ballots were available.
- At Thompson Elementary School, another Harris County precinct, all voting machines were down as a result of a power outage at the polling place. Again, no back up paper ballots were made available.
- An El Paso voter reported that his vote for state senator was flipped to a different candidate. A local radio station broadcasted a report of similar incidents throughout the area.
- One voter reported that all voting machines at John H. Wood Jr. Middle School, a polling place in Bexar County, were not functioning and voters were told to come back later. No paper ballots were made available.

Voter Intimidation and Deceptive Practices

Reports of voter intimidation and deceptive practices accounted for 7% of all problems and came from voters in seven counties.

- In Dallas, voters received intimidating flyers in their mailboxes advising them that police officers would be at voting locations to prevent voter fraud.
- One voter in Bastrop County reported that poll workers were demanding that some voters point to where they lived on a map (that did not include street names) before they were able to vote. The caller said this behavior discouraged many people from voting, particularly elderly voters.

Index to Charts

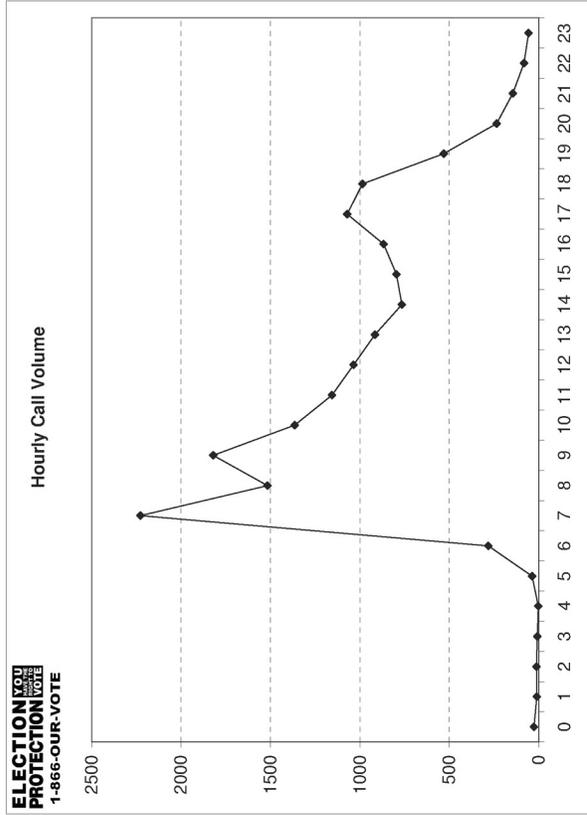
Chart 1: The Hourly Call Volume chart reflects the number of calls per hour to the hotline on Election Day. Calls were answered live between 6:00 a.m. Eastern time and 9:00 p.m. Pacific time and the remainder of the time they went to voicemails.

Chart 2: Calls by State indicates Election Day call volume for all 50 states in descending order. As noted in the report, we received the most calls from Ohio, followed by Georgia, California, Pennsylvania, Florida, and Maryland.

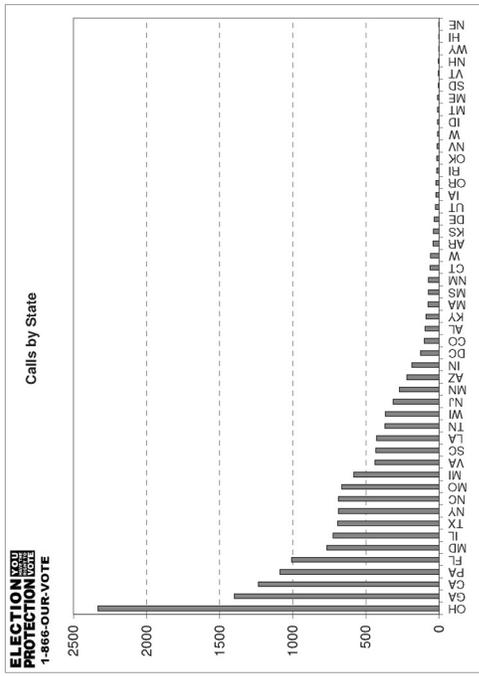
Chart 3: The Call Result chart shows how calls were handled after connecting to the hotline. A remarkable 70% of all calls were transferred to a live volunteer. Fourteen percent of calls went to voicemail. Voicemail messages were returned by live volunteers. The remaining calls were abandoned by callers.

Chart 4: Calls by Call Center reflects how many calls came in to each National Hotline Call Center and local call center. For the National Call Centers, NCC refers to the National Command Center in Washington, DC.; NYS refers to Simpson Thacher & Bartlett LLP; NYK refers to Kirkland & Ellis LLP; SF refers to the San Francisco hotline at the Kapor Foundation; NAACP refers to the Baltimore, Maryland and Michigan call center at the NAACP's offices in Baltimore; and PFAW refers to the Allegheny, Pennsylvania call center at People For the American Way Foundation's offices in Washington, DC. Local hotline call centers included Proskauer Rose LLP's hotline for Ohio (NYP); Georgia (GA); North Carolina (NC); Louisiana (LA); Minnesota; Broward County, Florida; Miami-Dade County, Florida; and Palm Beach County, Florida (PB).

Date	11/7/2006
CC Code	(Multiple Items)
Count of HH	Total
HH	27
1	11
2	13
3	8
4	2
5	37
6	282
7	2228
8	1517
9	1821
10	1365
11	1156
12	1036
13	916
14	765
15	796
16	867
17	1072
18	966
19	531
20	235
21	145
22	82
23	57
Grand Total	15955

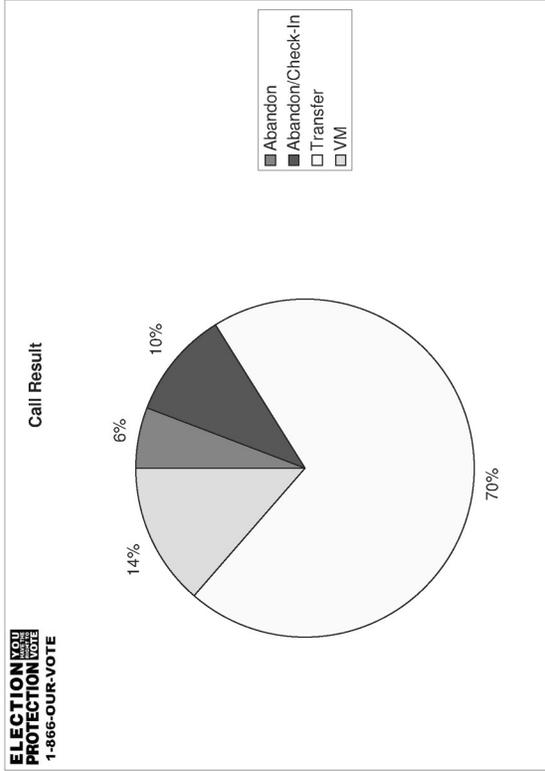


Date	11/7/2006
Count of State	Total
OH	2334
GA	1359
CA	1236
PA	1088
FL	1008
MD	768
IL	724
TX	695
NY	688
NC	687
MO	596
WA	439
SC	434
LA	426
TN	372
WI	369
NJ	313
WV	272
AZ	221
IN	186
DC	126
CO	100
AL	96
KY	89
MA	76
MS	74
MI	73
CT	61
WA	60
AR	41
KS	39
DE	32
UT	25
IA	21
OR	21
RI	16
OK	15
NV	13
WV	12
ID	10
MT	10
ME	10
SD	6
VT	6
NH	4
WY	3
HI	2
NE	2
Grand Total	15952

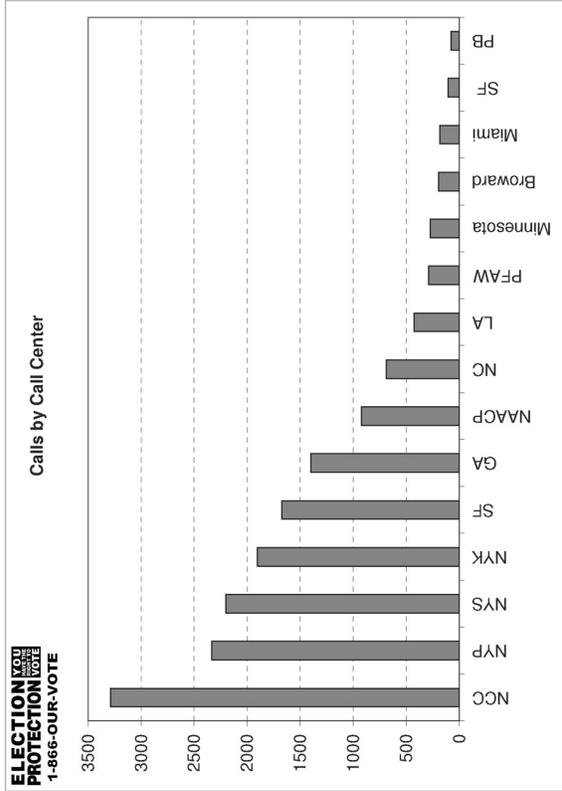


Date	11/7/2006
CC Code	(All)

HangUp Type	Total
Abandon	1092
Abandon/Check-In	1851
Transfer	12543
VM	2459
Grand Total	17885



Date	11/7/2006
Count of CC Code	Total
NCC	3291
NYP	2334
NYS	2200
NYK	1903
SF	1671
GA	1389
NAACP	920
NC	687
LA	426
PFAW	288
Minnesota	272
Broward	196
Miami	184
SF	105
PB	79
Grand Total	15955





February 25, 2008

Honorable Jerrold Nadler
Chair, Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Committee on the Judiciary
United States House of Representatives
2334 Rayburn House Office Building
Washington, DC 20515

Honorable Trent Franks
Ranking Member, Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Committee on the Judiciary
United States House of Representatives
1237 Longworth House Office Building
Washington, DC 20515

Dear Chairman Nadler and Ranking Member Franks:

As principals of national non-partisan organizations dedicated to protecting and enhancing the democratic rights of U.S. citizens, we commend the Subcommittee for its Oversight Hearing On Voter Suppression currently scheduled for February 26, 2008. We have reviewed a written statement prepared for presentation to the Subcommittee by Asheesh Agarwal, Deputy Assistant Attorney General for the Civil Rights Division of the U. S. Department of Justice (DOJ).¹ We take this opportunity to submit the following comments regarding one topic that Mr. Agarwal addresses in his statement: the Voting Section's record on enforcing the mandates of the National Voter Registration Act of 1993 ("NVRA").²

¹ Statement of Asheesh Agarwal, Deputy Assistant Attorney General, Civil Rights Division, Department of Justice, before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Committee on the Judiciary, U.S. House of Representatives, February 8, 2008 (hereafter "Agarwal Statement").

² 42 U.S.C. § 1973gg.

Specifically, we are concerned that Mr. Agarwal's statement fails to acknowledge or explain DOJ's record of largely ignoring evidence of state non-compliance with the NVRA's requirements for registering low-income voters, while focusing selectively instead on urging states to purge more voters from their rolls.

Under Section 7 of the NVRA, state public assistance agencies have been required to offer voter registration services to all individuals when they apply for benefits, recertify benefits, or change addresses since 1995. Recognizing that low-income citizens are less likely to own vehicles, Congress enacted these Section 7 mandates so that the NVRA's "motor voter" provisions did not further exacerbate disparities in registration rates between high- and low-income citizens. Whereas 82 percent of households earning \$75,000 or more were registered to vote in 1994, only 54 percent of those earning less than \$15,000 were registered in that same year.³

Dēmos and Project Vote have been working since 2004 to investigate, document and remedy states' failures to comply with the public assistance registration requirements of the NVRA. Our latest report, *Unequal Access: Neglecting the National Voter Registration Act, 1995-2007*, published in February 2008 (attached),⁴ shows that 12 years after the NVRA's requirements went into effect, voter registrations from public agencies that provide services to low-income Americans have declined dramatically.

Specifically, *Unequal Access* finds that voter registrations generated from public assistance agencies nationwide have declined 79% between 1995-96, when the NVRA was first implemented, and 2005-06, the most recent reporting period. In raw numbers, registrations declined from 2.6 million in 1995-96 to just 540,000 by 2005-06. This decline is even worse than the 59% decline that occurred between 1995-96 and 2003-04, as described in our 2005 report on Section 7 noncompliance, *Ten Years Later: A Promise Unfulfilled*.⁵

Our field observations in multiple states over the past four years also have revealed blatant violations of the law. We have found agencies failing to offer mandated voter registration services, not offering registration during all required interactions, especially when clients change address, failing to provide the notices and assistance required by the NVRA, and failing to train agency staff concerning their voter registration responsibilities.

³ Source: U.S. Census Bureau, November 1994 Voting and Registration Work Tables. Table 12: Voting and Registration of Family Members, by Age and Family Income: November 1994, available at <http://www.census.gov/population/www/socdemo/voting/vote-wtabcon.html>.

⁴ The report is also available at <http://demos.org/pub1531.cfm>.

⁵ See Dēmos, Project Vote, and ACORN, *Ten Years Later, A Promise Unfulfilled*, available at <http://www.demos.org/pub634.cfm>.

On several occasions, Dēmos, Project Vote and ACORN brought states' apparent disregard of Congress' Section 7 mandate to the attention of the Department of Justice. On August 16, 2004, we forwarded the Civil Rights Division a memo that highlighted such noncompliance and requested that the DOJ send a letter to states to remind them of their Section 7 obligations.⁶ Dēmos, Project Vote, and People for the American Way Foundation staff met with Hans von Spakovsky, Counsel to the Assistant Attorney General; Joseph Rich, Chief, Voting Section; and Chris Herren, Trial Attorney, Voting Section on September 10, 2004, to discuss the noncompliance outlined in the August memo. We encouraged the DOJ to investigate and take action on the implementation of Section 7's public assistance provisions across the country. Per request by the DOJ, Dēmos and Project Vote subsequently provided the Department with an extensive report on state noncompliance with Section 7, including specific violations in nine states.⁷ Thirty members of Congress also wrote to Attorney General Alberto Gonzales in September 2005, asking for an investigation into Section 7 compliance.⁸

To the best of our knowledge, DOJ took no action on these recommendations for the better part of three years following our initial contacts in August and September 2004. Indeed, we know of only one enforcement action initiated by DOJ regarding the public assistance provisions of the NVRA in the past six years (an action against Tennessee that was settled in 2002). Meanwhile, voter registration at public assistance agencies has continued to decline. As noted earlier, the latest data reveal a 79% nationwide decrease in voter registrations from such agencies between 1995-96 and 2005-06. Nine states reported decreases of 90 percent or more during this time period. States registered only half as many voters in public assistance agencies in 2005-06 as they did as recently as 2003-04.⁹

Mr. Agarwal's statement to the Subcommittee asserts that since 2006 the Voting Section "filed lawsuits containing NVRA claims in Indiana, Maine, New Jersey, Philadelphia, and Cibola County, New Mexico."¹⁰ What the statement fails to explain, however, is that four of these five lawsuits were filed not to enhance voter registration opportunities, but instead to force states to conduct massive purges of their registration lists under Section 8 of the NVRA.¹¹

⁶ Memorandum from Project Vote, Dēmos, and ACORN to R. Alexander Acosta, Assistant Attorney General, Civil Rights Division, and Joseph D. Rich, Chief, Voting Section (August 16, 2004).

⁷ Letter from Miles Rapoport, Dēmos and Maxine Nelson, Project Vote to Hans A. von Spakovsky, Counsel to the Assistant Attorney General, Joseph D. Rich, Chief, Voting Section, and Chris Herren, Trial Attorney, Voting Section (October 1, 2004).

⁸ Letter from Representative John Conyers, Jr., *et al.*, to Attorney General Alberto R. Gonzales (September 20, 2005).

⁹ See *Unequal Access*, Tables 1a and 1b.

¹⁰ Agarwal Statement at 6.

¹¹ The NVRA claims in the lawsuits against Indiana, Maine, New Jersey and Philadelphia were aimed primarily at requiring purging of voter rolls. Case documents are available at the Voting Section's website, <http://www.usdoj.gov/crt/voting/litigation/caselist.htm>. The DOJ's selective

Mr. Agarwal's statement to the Subcommittee also cites, as evidence of DOJ's attention to NVRA Section 7 compliance, letters of inquiry that former Voting Section Chief John Tanner sent to 18 states on August 31, 2007. Remarkably, after its years of inattention to Section 7 compliance, the Voting Section issued those letters just six weeks after the Subcommittee had first scheduled an oversight hearing at which Mr. Tanner was expected to testify. As you know, that hearing was postponed to October 2007 after DOJ advised the Subcommittee that Mr. Tanner was unavailable for the originally scheduled July 17, 2007 hearing.

We are of course encouraged to see that the Voting Section has begun to make inquiries to certain states regarding their Section 7 activities. However, both the timing and the content of the letters warrant investigation by the Subcommittee. Regarding the timing, we would urge the Subcommittee to seek an explanation of whether the Voting Section issued any such letters after the previous EAC NVRA reports were issued in June 2005 and June 2003, and if not, why not. As noted above, these reports have consistently indicated serious Section 7 compliance problems, and it remains important to understand why the Voting Section previously has chosen not to follow up to investigate such problems.

Regarding the content, the letters themselves raise a number of questions. For example, the DOJ's letters to seven of the states indicate that those states are "among the ten states" that had the "lowest percentage" of public assistance applicants (Alaska, Arizona, Hawaii, Illinois, Pennsylvania, Utah, and Vermont). The Subcommittee may wish to inquire why other states in that category, such as Florida, Texas and Virginia, did not receive similar inquiries.

In addition, the DOJ's focus on these states alone is based on a flawed methodology that overlooks serious compliance issues in many other states. The calculation of the ten states with the "lowest percentage" of public assistance applications appears to be based on figures in Table 2b of the June 2007 EAC report that show the percentage of public assistance applications among "categorized" applications.¹² While it is worthwhile to make inquiries of these states, it would be a mistake to assume that this one figure captures all of the states in which compliance is a problem. Nationally, only 57 percent of voter registration applications received by states are reported as "categorized," and in many states the percentage is even lower.¹³ The DOJ's measure therefore is an

enforcement efforts to require purges of state voter registration rolls are described in a letter dated May 8, 2007, from ACORN, Project Vote, Demos, and the Lawyers' Committee for Civil Rights Under Law, to Hon. John Conyers and Hon. Lamar Smith. The letter is available at http://projectvote.org/fileadmin/ProjectVote/Blog_docs/Conyers_NVRA_Letter_2007_Final.pdf.

¹² See Election Assistance Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006" (hereafter, "EAC 2005-06 Report"), available at http://www.eac.gov/docs/EAC_NVRArpt2006.pdf.

¹³ By "categorized" applications the EAC means only those applications reported by the states as being received from motor vehicle offices, public assistance offices, disability services offices,

incomplete indicator of non-compliance with the public assistance provisions of the law.

New Mexico is one example of this. New Mexico registered only 1,214 persons in public assistance agencies during the entire 2005-2006 period, according to the EAC's data, yet that reflects 20% of the "categorized" applications in New Mexico because only 6,072 total applications were "categorized" in that state.¹⁴ Thus, New Mexico received no compliance inquiry from the DOJ, even though other evidence, including the low overall number of registrations, the sharp drop-off in registration numbers compared to earlier periods, and the failure of over half of the state's jurisdictions to provide public assistance registration data clearly indicates a need for improved compliance in New Mexico.¹⁵ We believe a more in-depth analysis of the data is needed to assure that states are in compliance with the public assistance registration provisions of the NVRA.¹⁶

The DOJ's long delay in addressing states' responsibility to provide voter registration at public assistance agencies has serious consequences. Through our work to improve compliance in various states, we have seen that thousands of low-income voters are eager to take advantage of the opportunity to register at public assistance agencies when it is offered. In North Carolina, for example, voter registration at public assistance offices has increased dramatically since state officials began working cooperatively with advocates to address the serious problems with non-compliance that previously existed in that state. While North Carolina registered only 11,600 persons at public assistance agencies in the entire two-year period of 2005-06, that state registered at least 31,500 persons in 2007 alone, the first year of North Carolina's re-implementation program. Such results only underscore the fact that lack of enforcement nationwide over the past seven years has deprived hundreds of thousands of low-income Americans of the opportunity to register that Congress intended to provide through the NVRA.

In enacting the National Voter Registration Act, Congress clearly anticipated that state compliance with its provisions would require oversight and enforcement by the Department of Justice.¹⁷ We urge the Subcommittee to take this opportunity to press for answers about the DOJ's long delay in addressing Section 7 enforcement.

armed forces recruitment offices, and other designated agencies; this does not generally include mail-in applications or in-person applications at local registrars' offices.

¹⁴See EAC 2005-06 Report.

¹⁵ Dēmos and Project Vote have outlined the evidence indicating that New Mexico is not in compliance with the NVRA in a notice letter that we sent to the state on June 12, 2007. The letter is available at http://demos.org/pubs/scanned_NM_notice_letter_6.12.pdf.

¹⁶ It should be noted that five of the DOJ's letters do not address enforcement of the public assistance registration requirements of the NVRA. Letters sent to Iowa, Michigan, Mississippi, Montana and Nebraska instead seek information to identify which "additional" agencies, if any, have been designated to provide voter registration, beyond the public assistance, disability and other offices whose designation is mandatory under Section 7. See 42 U.S.C. § 1973gg-5(a)(3).

¹⁷ 42 U.S.C. § 1973gg-9.

Please do not hesitate to contact us with any questions.

Sincerely,

Handwritten signatures of Miles Rapoport and Maxine Nelson in black ink.

Miles Rapoport
President, Dēmos:
A Network for Ideas
& Action

Maxine Nelson
President,
Project Vote

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Article published Nov 27, 2007

Photo ID law didn't hurt turnout in Indiana

November 27, 2007

By Stephen Dinan - Voter turnout among Democrats improved slightly last year in Indiana, despite a new law requiring voters to show photo identification at the polls, according to a new report that comes months before the Supreme Court hears a case challenging the law.

Jeffrey D. Milyo, a professor at the University of Missouri, compared the 2006 midterm elections — the first since Indiana's law was enacted — to the 2002 elections and said voter turnout increased about two percentage points. He said the increase was consistent across counties with the highest percentage of Democrats.

"A lot of the claims out there about a new disenfranchisement are really just overblown rhetoric and fear-mongering," Mr. Milyo said.

He said the conventional wisdom is that voter-identification laws, particularly those that require a photo, keep voters away from the polls. But he said his findings suggest that isn't true, at least not in Indiana.

"Those fears, they're not supported by everything we know in theory and previous evidence, and this latest study also does not support that," he said.

But Michael P. McDonald, an assistant professor at George Mason University, said one election isn't enough to draw any conclusions about Indiana's law, and said Indiana's performance doesn't say anything about laws popping up in other states.

"We need more data to know this for sure, because 2006 was a good year for Democrats and 2002 was arguably a good year for Republicans, so saying that Democrats were turning out more in 2006 than in 2002 doesn't really tell us much," he said.

In particular, Indiana had several hotly contested U.S. House races which Democrats won.

Voter-identification laws have become a bitter battlefield, with Republican state legislatures moving to crack down on what they see as voter fraud and Democrats tarring the laws as a modern-day disenfranchisement scheme similar to a poll tax.

A federal appeals court has upheld Indiana's law, but the Supreme Court announced in September that it would hear the Indiana Democratic Party's challenge. A ruling is expected by the end of the court's session in June.

There are studies on both sides of the argument — some have found poor and minority voters are less likely to have identification and more likely to be Democratic voters, but other studies have found the effects to be minimal.

Even if overall turnout isn't affected, though, the Supreme Court could invalidate the law if it finds evidence that individual voters are likely to be disenfranchised. Indiana's law has been called the strictest in the nation.

Voters are required to show photo identification issued either by the state or the U.S. government. Those who cannot or refuse to show photo identification can cast a provisional ballot, which will be counted if the voter later produces identification or signs an affidavit citing religious concerns or indigency as reasons for not having photo identification.



THE POLITICS OF VOTER FRAUD

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KEY FINDINGS

- ***Voter fraud is the “intentional corruption of the electoral process by the voter.”*** This definition covers knowingly and willingly giving false information to establish voter eligibility, and knowingly and willingly voting illegally or participating in a conspiracy to encourage illegal voting by others. All other forms of corruption of the electoral process and corruption committed by elected or election officials, candidates, party organizations, advocacy groups or campaign workers fall under the wider definition of **election fraud**.
- ***Voter fraud is extremely rare.*** At the federal level, records show that only 24 people were convicted of or pleaded guilty to illegal voting between 2002 and 2005, an average of eight people a year. The available state-level evidence of voter fraud, culled from interviews, reviews of newspaper coverage and court proceedings, while not definitive, is also negligible.
- ***The lack of evidence of voter fraud is not because of a failure to codify it.*** It is not as if the states have failed to detail the ways voters could corrupt elections. There are hundreds of examples drawn from state election codes and constitutions that illustrate the precision with which the states have criminalized voter and election fraud. If we use the same standards for judging voter fraud crime rates as we do for other crimes, we must conclude that the lack of evidence of arrests, indictments or convictions for any of the practices defined as voter fraud means very little fraud is being committed.
- ***Most voter fraud allegations turn out to be something other than fraud.*** A review of news stories over a recent two year period found that reports of voter fraud were most often limited to local races and individual acts and fell into three categories: unsubstantiated or false claims by the loser of a close race, mischief and administrative or voter error.
- ***The more complex are the rules regulating voter registration and voting, the more likely voter mistakes, clerical errors, and the like will be wrongly identified as “fraud.”*** Voters play a limited role in the electoral process. Where they interact with the process they confront an array of rules that can trip them up. In addition, one consequence of expanding voting opportunities, i.e. permissive absentee voting systems, is a corresponding increase in opportunities for casting unintentionally illegal ballots if administrative tracking and auditing systems are flawed.
- ***There is a long history in America of elites using voter fraud allegations to restrict and shape the electorate.*** In the late nineteenth century when newly freed black Americans were swept into electoral politics, and where blacks were the majority of the electorate, it was the Democrats who were threatened by a loss of power, and it was the Democratic party that erected new rules said to be necessary to respond to alleged fraud by black voters. Today, the success of voter registration drives among minorities and low income people in recent years threatens to expand the base of the Democratic party and tip the balance of power away from the Republicans. Consequently, the use of baseless voter fraud allegations for partisan advantage has become the exclusive domain of Republican party activists.

- ***The historically disenfranchised are often the target of voter fraud allegations.*** Fraud allegations today typically point the finger at those belonging to the same categories of voters accused of fraud in the past – the marginalized and formerly disenfranchised, urban dwellers, immigrants, blacks, and lower status voters. These populations are mostly found among those still struggling for full inclusion in American life.
- ***Better data collection and election administration will improve the public discussion of voter fraud and lead to more appropriate policies.*** We need better data, better election administration, transparency and more responsible journalism to improve public understanding of the legitimate ways in which electoral outcomes can be distorted and manipulated. This will help ensure that new laws and rules to prevent fraud are narrowly targeted to solve legitimate problems rather than used as a strategy to shape the electorate for partisan advantage.

INTRODUCTION

The claim that voter fraud threatens the integrity of American elections is itself a fraud. It is being used to persuade the public that deceitful and criminal voters are manipulating the electoral system. No available evidence suggests that voters are intentionally corrupting the electoral process, let alone in numbers that dilute and cancel out "the lawful votes of the vast majority of Americans."¹ The lack of evidence is not due to a failure to codify voter fraud as a crime, nor is it due to the inability or unwillingness of local law enforcement agencies to investigate or prosecute potential cases of voter fraud. In fact, when we probe most allegations of voter fraud we find errors, incompetence and partisanship. The exaggerated fear of voter fraud has a long history of scuttling efforts to make voting easier and more inclusive, especially for marginalized groups in American society. With renewed partisan vigor fantasies of fraud are being spun again to undo some of the progress America has made lowering barriers to the vote.

The purpose of this report is to disentangle the myth from the reality and to separate the politics of voter fraud from legitimate administrative concerns about the integrity of the electoral process. To make the argument, we present a usable definition of voter fraud, discuss the problem of evidence, and explain how and why the dynamics of electoral competition drive the use of baseless fraud claims in American politics. We present several contemporary examples to illustrate how poor election administration and voter mistakes are misleadingly labeled "fraud." Recent allegations against voter registration campaigns highlight the need for an analysis sensitive to the partisanship and race and class issues just beneath the surface of most voter fraud claims. The last section of the report makes policy recommendations for improving public understanding and removing the canard of voter fraud from the election reform debate. The appendix discusses what to look for in evaluating voter fraud allegations.

¹ U.S. Senate Republican Policy Committee, "Putting An End to Voter Fraud," (February 15, 2005); available online at http://rpc.senate.gov/_files/Feb1504VoterFraudSD.pdf.

DEFINING VOTER FRAUD

Conceptual clarity is important in evaluating evidence of fraud. We begin with a discussion of what voter fraud is and what it is not. The first problem in defining voter fraud is that as a crime, it defies precise legal meaning. In fact, there is no single accepted legal definition of voter fraud. We have fifty different state electoral systems and fifty state criminal codes governing the administration of elections, plus a federal code that applies in national elections, and no uniform standards. In fact, some states do not actually criminalize 'voter fraud,' although they all criminalize acts that are commonly lumped together under the term, such as illegal voting, providing false information to register to vote, and multiple voting.² The legal incoherence contributes to popular misunderstandings.

We need a basic definition of voter fraud that cuts through the confusion without violating the way voter fraud is diversely treated in state and federal law. We can start with the U.S. Department of Justice's definition of **election fraud** and apply it to election crimes committed by **voters**. The Justice Department defines election fraud as "conduct that corrupts the process by which ballots are obtained, marked, or tabulated; the process by which election results are canvassed and certified; or the process by which voters are registered."³ Voter fraud is a sub-category of election fraud, or the intentional corruption of the electoral process by voters.

Voter fraud is the intentional corruption of the electoral process by voters.

This covers **knowingly and willingly** giving false information to establish voter eligibility, and **knowingly and willingly** voting illegally or participating in a conspiracy to encourage illegal voting by others.⁴ Apparent acts of fraud that result from voter mistakes or isolated individual wrongdoing or mischief making not aimed at corrupting the voting process should not be considered fraud, though sometimes these acts are prosecuted as such.⁵ All other forms of corruption of the electoral process and corruption committed by elected or election officials, candidates, party organizations, advocacy groups or campaign workers fall under the wider definition of **election fraud**.⁶

² There are many examples of states that criminalize what we think of as voter fraud without calling it voter fraud. Georgia, for example, has no election code offense for "voter fraud," but it does provide stiff penalties for "repeat voting" and "voting by unqualified elector." See, for example O.C.G.A. § 21-2-560 et seq. In New Hampshire, the crime of voting more than once is called "wrongful voting." See, N.H.R.S. § 63-659:34. In Alaska, voter impersonation, voting more than once, and registering to vote without being entitled to register are all simply called "voter misconduct." See, Ala. Statutes § 15.56.040 et seq.

³ Craig C. Donsanto and Nancy Stewart, *Federal Prosecution of Election Offenses*, 6th Edition, U.S. Department of Justice, Criminal Division, Public Integrity Section (January 1995), 21 (herein cited as "DOJ Manual").

⁴ Fraud is commonly defined as "deception deliberately practiced with a view to gaining an unlawful or unfair advantage" (*emphasis added*). See *Webster's Revised Unabridged Dictionary*, Version published 1913 by the C. & G. Merriam Co. (Springfield, Mass.), under the direction of Noah Porter, D.D., LL.D. Criminal intent is a feature of the election crime codes of most states and the federal system, although a showing of intent is not always required to obtain a conviction for some forms of voter fraud such as "alien voting" (voting by a non-citizen).

⁵ The proper venue for challenging mistakes that may have affected the outcome of an election is to follow state statutory procedures for an election challenge or contest. See, Barry H. Weinberg, *The Resolution of Election Disputes: Legal Principles That Control Election Challenges* (Washington, D.C.: IFES, 2006).

⁶ This definition of voter fraud is simpler and more coherent than others offered. See, for example, U.S. Election Assistance Commission, *Election Crimes: An Initial Review and Recommendations for Future Study* (December 2006), 13-16; available online

Allegations of “voter fraud” should be analyzed to determine 1) who is alleged to have committed the fraud, and 2) which stage of the electoral process is alleged to have been corrupted. This approach will go a long way toward clarifying whether electoral integrity is being breached and what needs to be done to secure the process (see the appendix for further discussion of how to identify fraud).

at www.eac.gov/docs/Voter%20Fraud%20&%20Intimidation%20Report%20-POSTED.pdf (herein cited as ‘EAC Report’). Moreover, although it is simple, it preserves the meaning of “fraud” in the electoral context as outlined by the Justice Department. The Department’s manual for training U.S. Attorneys in investigating and prosecuting election crimes divides “election frauds” into two categories, one that involves the participation of voters and another that does not. Those election fraud crimes involving the participation of voters include vote buying schemes, absentee ballot frauds, voter intimidation schemes, migratory voting (or floating voter) schemes, and voter assistance frauds, in which the wishes of the voters are ignored or not sought. See, Dossanto and Stewart (1995), 22-24. Acts of voter intimidation which are included in the election fraud definitions offered in both the EAC Report and the DOJ Manual are excluded here. While the intimidation of voters certainly corrupts the electoral process, it is a crime that more directly involves the deprivation of rights guaranteed by law and for that reason should be treated separately from acts of deceit.

THE POLITICS OF VOTER FRAUD

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VOTER FRAUD AND THE PROBLEM OF EVIDENCE

How prevalent is voter fraud? A 2005 U.S. Senate Republican Policy Committee report claimed that “voter fraud continues to plague our nation’s federal elections, diluting and canceling out the lawful votes of the *vast majority of Americans*” (emphasis added).⁷ This would be shocking if it were true. But the Committee made it without providing a single piece of evidence to support or clarify the claim. It cited no surveys, no statistics, no studies, no credible evidence whatsoever to back up its warning that election results are routinely distorted by fraud in the United States.

Evidence of voter fraud like all other crimes comes from law enforcement efforts to combat it

The Committee cited no data because there is very little to cite. Evidence of voter fraud like evidence of other forms of criminal behavior is primarily produced by law enforcement efforts to detect and prosecute it. And the available evidence here suggests that voters rarely commit voter fraud.⁸ As in the case of all other kinds of crime, it is simply unacceptable to allege law breaking without providing at least some supporting evidence.

What is that evidence? At the national level, a major new project at the U.S. Department of Justice, the Ballot Access and Voting Integrity Initiative (BAV²I) has resulted in only a handful of convictions.⁹ According to the Attorney General, since the inception of the program in 2002, “we’ve made enforcement of election fraud and corruption offenses a top priority.”¹⁰ The result? Government records show that only 24 people were convicted of or pleaded guilty to illegal voting between 2002 and 2005, an average of eight people a year. This includes 19 people who were ineligible to vote, five because they were still under state supervision for felony convictions, and 14 who were not U.S. citizens; and five people who voted twice in the same election, once in Kansas and again in Missouri.¹¹

⁷ U.S. Senate Republican Policy Committee (2005).

⁸ The idea that voter fraud is first and foremost a crime reaches substantially the federal concept of election fraud which “applies only to activity that is appropriately remedied through criminal prosecution, as distinguished from other less severe remedies such as election contest litigation or administrative relief.” See, Craig C. Downsanto, “The Federal Crime of Election Fraud,” prepared for the Russian election reform website, Democracy.Ru, n.d.; available online at www.democracy.ru/english/library/international/eng_1999-11.html.

⁹ On the origins of BAV²I, see Jeffrey Toobin, “Annals of Law: Poll Positions,” *The New Yorker* (September 20, 2004). Very little information about the program’s overall scope and performance has been released by the Justice Department’s Public Integrity Section; annual press releases announce the numbers of investigations and convictions obtained, and the Public Integrity Section’s annual reports to Congress briefly discuss some of the cases, but efforts to acquire more information about the program have been stymied by the Criminal Division’s failure to respond to a Freedom of Information Act request filed in July 2005. Nevertheless, it is difficult to imagine that the Department would withhold information about closed cases of deceitful voters, and therefore likely that the limited information it has released so far is all there is.

¹⁰ Prepared Remarks of Attorney General Alberto R. Gonzales, Ballot Access and Voting Integrity Symposium, Washington, D.C. (October 4, 2005).

¹¹ U.S. Department of Justice, Criminal Division, Public Integrity Section, *Election Fraud Prosecutions & Convictions, Ballot Access & Voting Integrity Initiative, October 2002 – September 2005* (n.d.).

Federal Prosecutions for Illegal Voting 2002 – 2005

CASTING A FALSE BALLOT	DISPOSITION				
	Dismissed	Acquitted	Pleaded Guilty	Convicted	Total
False claim of eligibility					
Non-citizen	4	1	3	11	19
Felon	4	1	3	2	10
Multiple voting	3	1	5		9
TOTAL	11	3	11	13	38

Source: U. S. Department of Justice, Criminal Division, Public Integrity Section, *Election Fraud Prosecutions & Convictions, Ballot Access & Voting Integrity Initiative, October 2002 – September 2005* (n.d.).

In addition, the BAVII uncovered several vote buying schemes that have resulted in the convictions or guilty pleas of about 30 people, though most of those convicted were party and election officials, candidates for public office and elected officials, and in one case, the commander of a local VFW post. The vote buying cases involved a handful of elections in the Appalachia regions of eastern Kentucky and West Virginia, East St. Louis, Illinois and Caldwell County, North Carolina.

The available state-level evidence of voter fraud, culled from interviews, reviews of newspaper coverage and court proceedings, while not definitive, is also negligible.¹² There are no reliable, officially compiled, national or even statewide statistics on voter fraud.¹³ Even though many criminal acts associated with “voter fraud” are classified as felonies, voter fraud fails to appear in the F.B.I.’s uniform crime reports. There are no publicly available criminal justice databases that include voter fraud as a category of crime. No states collect and publish statistics on voter fraud.¹⁴

The lack of evidence is not due to a failure to codify voter fraud as a crime

If fraud is such a persistent concern of those who run elections, government agencies responsible for election administration should collect statistics on it, as they do in other serious matters, certainly other crimes. It is not as if the states have failed to detail the ways voters could corrupt elections. There are hundreds of examples drawn from state election codes and constitutions that illustrate the precision with which the states have criminalized voter and election fraud.

If we use the same standards for judging voter fraud crime rates as we do for other crimes, which is to calculate the incidence of crime from law enforcement statistics on arrests, indictments and convictions, we must conclude that the lack of evidence of arrests, indictments or convictions for any of the practices defined as voter fraud means very little fraud is being committed relative to the millions of votes cast each year in state, local and federal elections.

¹² Lori Minnite and David Callahan, *Securing the Vote: An Analysis of Election Fraud* (New York: Demos: A Network for Ideas and Action, 2003). The author is engaged in a more thorough analysis of state-level voter fraud data and investigations which will be published in her forthcoming book. To-date, the findings only confirm Minnite and Callahan’s earlier conclusions.

¹³ This is an urgent concern. Law professor Spencer Overton persuasively argues for a more empirical cost-benefit approach to evaluating the value and constitutionality of new restrictive photo identification voting requirements. As Overton notes, this approach is hampered by the lack of systematic data on fraud. See, Spencer Overton, “Voter Identification,” *Michigan Law Review* 105(2007), 631-682.

¹⁴ The California Secretary of State’s Office compiled information on electoral fraud cases referred to its office from 1994 to 2003. The data were analyzed in an unpublished conference paper (see, R. Michael Alvarez and Frederick J. Boehmke, “Contemporary Election Fraud: A Quantitative Analysis of Election Fraud Cases in California,” paper prepared for Election Fraud Conference, Center for Public Policy and Administration, The University of Utah, and the Caltech/MIT Voting Technology Project, Salt Lake City, Utah, September 29-30, 2006; available online at www.vote.caltech.edu/events/2006/FraudConf/AlvBohm-paper.pdf), but they are not publicly available.

Examples Of How States Criminalize “Voter Fraud”

- In Texas, a person can be convicted of a third degree felony if he or she “votes or attempts to vote in an election in which the person knows the person is not eligible to vote; knowingly votes or attempts to vote more than once in an election; or knowingly impersonates another person and votes or attempts to vote as the impersonated person.”¹
- California’s election code has dozens of provisions that prohibit illegal activity associated with elections. It prohibits fraudulent registration, including registering under a false name, registering under a false address, and registering a non-existent person. It makes it a felony for a person to vote in an election that he or she is not entitled to vote in, to vote more than once, or impersonate another voter. Moreover, it is a felony in California to “give, offer, or promise any office, place, or employment, or promise to procure or endeavor to procure any office, place, or employment to or for any voter, or to or for any other person, in order to induce that voter at any election to² vote or not vote for a particular candidate.”
- Pennsylvania law gives the power to monitor elections to county boards of elections, and imposes a substantial number of penalties on people engaging in election fraud. Giving or receiving money in exchange for voting a certain way in an election can bring up to seven years in prison and \$15,000 in fines. Any person convicted of perjury “regarding any material matter or thing relating to any subject being investigated, heard, determined or acted upon by any county board of elections, or member thereof, or by any court or judge thereof, judge of election, inspector of election, or overseer” can receive up to five years in prison and a \$10,000 fine. Any person voting when they are not registered to vote, or voting more than once can be punished the same.³
- Nineteenth century language in the Alabama Constitution disqualifies from voting “all idiots and insane persons” and those convicted of crimes like murder, arson, and rape, but also wife battering, bigamy, sodomy, miscegenation and vagrancy. It also disqualifies from voting any person convicted of “selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make a false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector.”⁴
- In Minnesota, it is a felony to submit more than one absentee ballot, assist another in submitting more than one absentee ballot, or alter another’s absentee ballot in any way.⁵

¹ Tex. Gov’t Code Ann. § 64.012.

² Cal. Gov’t Code § 18520.

³ 25 Pa. Stat. Ann. Art. XVIII, generally.

⁴ Constitution of Alabama (1901), Section 182.

⁵ Minn. Stat. Ann. § 203B.03.

The lack of evidence of voter fraud is not due to law enforcement agencies ignoring their duties

Even if crime reports underestimate true crime rates because some crimes go unreported or undetected, or because criminal behavior is sometimes addressed by means other than prosecution, crime is still measured as a function of law enforcement efforts to address it. Under the rule of law, enforcement efforts establish the core evidence of crime. It is difficult to conceive of whole categories of criminal behavior that go almost completely undetected or ignored by law enforcement officials at all levels of government across the U.S. today. And yet, those who believe there is a lot of voter fraud despite the lack of evidence frequently fall back on this argument. When confronted they charge the paucity of evidence is due to the government's failure to undertake the investigations and prosecutions that would produce it.¹⁵ A more plausible explanation is that voters are not committing fraud, leaving little to investigate or prosecute.

The lack of evidence of voter fraud is not due to the inability of law enforcement agencies to pursue voter fraud investigations

Some argue that local officials are ill-equipped to detect voter fraud and poorly motivated to pursue investigations and prosecutions of voter fraud given their lack of expertise and resources and the public's demand for attention to more serious or violent crimes.¹⁶ If election crime, perhaps like international securities fraud or organized crime, were beyond the ken of local officials to investigate, then we might expect a dearth of prosecutions and little evidence of voter fraud. This is another explanation offered by those who argue that there is a lot of fraud despite the lack of evidence. Local officials, the argument goes, can't or won't prosecute fraud for a variety of reasons. The detection and prosecution of voter fraud, however, is not beyond the ken of local officials. In fact, as the Justice Department manual on how to investigate and prosecute election crime argues, "there are several reasons why election crime prosecutions may present an easier means of obtaining convictions than do other forms of public corruption." They are, 1) "election crimes usually occur largely in public," 2) "election crimes often involve many players," and 3) "election crimes tend to leave a paper trail."¹⁷ Without any evidence to support it, the notion that local law enforcement officials are unable or unwilling to investigate or prosecute voter fraud lacks merit. But, as the saying goes, if you repeat a rumor enough times people will start to believe it.

¹⁵ Recently, a federal appeals court judge repeated the rumor that, "...the absence of [voter fraud] prosecutions [in Indiana] is explained by the endemic under enforcement of minor criminal laws (minor as they appear to the public and prosecutors, at all events)." See, *Indiana Democratic Party v. Rokita*, U.S. Court of Appeals, 7th Circuit, Case No. 06-2218, 7. This is a contentious issue, but like most allegations of voter fraud, one that fails to rise above the level of anecdote.

¹⁶ For example, in affirming the lower court's decision upholding Indiana's new photo identification law, U.S. Court of Appeals Judge Richard Posner proposed the idea that as a crime, voter fraud is analogous to littering. See also Donsanto and Stewart, asserting, "...local law enforcement is often not equipped to prosecute election offenses" (1995, 8), and Donsanto's subsequent statement that, "Voter fraud investigations are labor intensive. Local law enforcement agencies often lack the manpower and the financial resources to take these cases on." (Donsanto, n.d.) Here, Donsanto, the director of the Elections Crimes Branch of the Justice Department's Public Integrity Section since its inception in 1978, undermines a claim he makes earlier in a *University of Baltimore Law Review* article, that, "Most election fraud is easily recognized." If it's easily recognized, why would local law enforcement agencies lack the manpower and resources to take on investigations and prosecutions? See, Craig C. Donsanto, "Federal Jurisdiction Over Local Vote Fraud," *University of Baltimore Law Review* 13(1), 4.

¹⁷ Donsanto and Stewart (1995), 6.

“FRAUD” THAT IS NOT FRAUD

A review of hundreds of news reports on voter fraud appearing over a recent two year period found that with few exceptions, fraud allegations and cases reported in the press were limited to local electoral contests and individual acts, and fell into three basic categories:

- 1) *unsubstantiated or false allegations of voter fraud made by the losers of close elections;*¹⁸
- 2) *mischief; and,*
- 3) *claims that later turn out to be based on cases of voter error or administrative mistakes, not fraud.*

Here are some examples:

Examples of fraud alleged by election losers

- Pittsburgh City Council President Bob O'Connor lost a close primary race to incumbent Mayor Tom Murphy and charged voter fraud cost him the election. Pittsburgh election officials allowed the two campaigns to review balloting while monitoring each other. Mayor Murphy's campaign found 81 ineligible voters in a sampling of 71 of the city's 404 precincts. The *Pittsburgh Post-Gazette* reviewed Murphy's data and found only three clearly improper ballots. The O'Connor campaign claimed it found 142 votes cast by people whose voter registration cards were missing but would not share its data with the *Post-Gazette* for independent verification.¹⁹
- The Pasco County Canvassing Board of Port Richey, Florida, denied a request for a recount filed by Bob Leggiere who lost to the incumbent by nine votes. Leggiere claimed that voter fraud and 11 ballots that did not register a vote for mayor were the cause of his defeat. He charged that owners of a gambling boat operation voted illegally because their boat, which was their legal residence, was outside the city limits, suggesting that "because of their gambling boat interests, they have attempted to take control of the city elections." The canvassing board informed Leggiere that he needed to file a protest with the board or a complaint in court, which he declined to do.²⁰

Examples of fraud as mischief

- A Ventura County, California woman was arrested and charged with voter fraud when her ex-husband noticed the names of two of their underage children on a list of registered voters in the March 2000 primary and turned her in. The woman was charged with fraudulently registering her 10- and 15-year old daughters, one of her daughter's friends, her ex-husband who was already registered, and a number of fictitious people.²¹

¹⁸ For a discussion of fraud and the sore loser, see Michelle L. Robinson, "Issue in the Third Circuit: Election Fraud – Winning At All Costs," *Villanova Law Review* 40 (1995), 869-1.

¹⁹ James O'Toole, "Voting Errors Suggest No Fraud," *Pittsburgh Post-Gazette* (June 17, 2001), B17.

²⁰ Chase Squires and Matthew Waite, "Fraud Alleged in Port Richey Vote," *St. Petersburg Times* (April 12, 2001), B4.

²¹ "Woman Faces Vote Fraud Charges," *The San Diego Union-Tribune* (October 29, 2000), A3.

- Prosecutors in West Palm Beach, Florida agreed not to charge a woman who registered her poodle, "Cocoa Fernandez," as a Republican on the condition that the woman stay out of trouble for a year. She averted a third-degree felony charge carrying a maximum 5-year prison term and a \$5,000 fine.²²
- A story appeared in the Marquette University student paper that 174 of 1,000 students surveyed said they voted more than once in the November 2000 presidential election. Another 170 claimed to have voted for write-in candidates, but the official canvass of the voting precincts surrounding the Marquette campus recorded only 12 write-in votes for president. One student told ABC News, the *Milwaukee Journal Sentinel* and the Marquette student paper that he voted four times. He later recanted when a list of voters from his precinct did not include his name at all. The Milwaukee County District Attorney said he had no evidence of any student voting more than once. The student who told the media he voted four times was later charged with selling other students fake Ohio drivers licenses he printed using his dorm room computer.²³

Examples of fraud as voter error

- The *Milwaukee Journal Sentinel* conducted a two-month review of 203,000 votes cast in Milwaukee and found that 361 felons still under state supervision cast votes in 2000. This was in violation of an "often misunderstood state law" that disqualifies felons on probation or parole from voting. Ninety percent of the 361 illegal votes were cast by African Americans living in central city neighborhoods, most with convictions for welfare fraud, forgery and other property offenses. The newspaper reasoned that the illegal votes probably went to Al Gore, since 92 percent of African Americans in the state voted for Gore. They estimated that if disqualified felons elsewhere in the state voted illegally at the same rate obtained in Milwaukee, as many as 1,100 illegal votes could have been cast statewide, a significant number given Gore's margin of victory was only 5,708 votes. None of the illegal voters contacted by the paper knew they were prohibited from voting, and a review of parole and probation procedures suggested they were never informed.²⁴ Charges were filed against three people but later dropped when prosecutors couldn't prove those charged knew they were breaking the law.
- A voter inadvertently filled out five ballots in a local election in Montgomery County, Texas. "It (the five ballots, sic) was just handed to me and I just put them in the box," said the culprit, 52-year old Ruben Jones. "I wasn't paying attention." An election judge allowed one of Jones' votes to count resulting in a tie at 83 votes each between two candidates who were then forced into a run-off. Fraud was charged. The city attorney acknowledged the judge's mistake but could not overturn his decision to allow one of the votes to count. There was no provision in Texas election law for overruling an election judge on such matters.²⁵

Examples of cases of administrative incompetence and mistakes leading to misplaced allegations of voter fraud in St. Louis and Milwaukee are discussed in detail below.

²² "In Brief/Florida: No Charges, But Pooch Can't Punch Ballot," *Los Angeles Times* (December 17, 2001), A23.

²³ "Marquette Student Admits He Didn't Vote Four Times," *Chicago Sun-Times* (November 16, 2000), 3; "Voter Fraud Inquiries Lead to Charges Against 3 in Milwaukee," *St. Louis Post-Dispatch* (December 21, 2000), A8.

²⁴ Dave Unhoffer and Jessica McBride, "361 Felons Voted Illegally in Milwaukee; Law Is Poorly Understood, Rarely Invoked Here," *Milwaukee Journal Sentinel* (January 21, 2001), 1A.

²⁵ Harvey Rice, "Ballot Error Won't Change Deadlocked Race," *The Houston Chronicle* (May 12, 2001), 33.

THE POLITICS OF VOTER FRAUD CLAIMS

There are many reasons why electoral reform is difficult to achieve, chief among them the benefits the *status quo* bestows on politicians in charge of making the rules. Voting rights advocates working to expand the electorate and make voting easier for more citizens must also overcome recurring arguments that reform will encourage more voter fraud. Indeed, the specter of voter fraud has been manipulated by elites to restrict and shape the electorate for nearly two centuries.

The Late Nineteenth Century and the “Good Government” Defense

The electoral reforms of the Progressive era dismantled Populist voting majorities and reflected the reformers' class and anti-immigrant biases. Following the turmoil of the election of 1896 when new immigrants, struggling farmers, and wage workers flooded into the electorate, wealthy elites pressed for tighter regulation of the electoral process. They promoted personal voter registration systems that had the effect of de-mobilizing the poor and working classes.²⁶ The reformers' rhetoric fastened on fraud and the need to eliminate it in order to protect 'the Democracy.' The perception of fraud and widespread electoral corruption gave their efforts moral ballast which obscured the class conflict at the center of the struggle for the vote.

The specter of voter fraud has been manipulated by elites to restrict and shape the electorate for nearly two centuries.

For Progressive era elites, voter registration was good government and universal voting was directly associated with corruption and voter fraud.²⁷

Municipal reformers drawn from the ranks of the new middle and upper class professional strata assumed the lower classes possessed inferior moral capacities that produced unscrupulous behavior in politics. They wrestled control of government away from the older political machine organizations by imposing administrative reforms on the electoral process. These reforms deliberately privatized and personalized the social act of voting in order to undercut the machine's capacity to mobilize majorities through ethno-religious and other group-based appeals.²⁸

²⁶ Frances Fox Piven and Richard A. Cloward, *Why Americans Don't Vote and Why Politicians Want It That Way* (Boston: Beacon Press, 2000), 91-2.

²⁷ Dayna Cunningham, "Who Are To Be Electors? A Reflection on the History of Voter Registration in the U.S.," *Yale Law and Policy Review* 9(2) (1991), 383.

²⁸ After the Civil War, the electorate was demobilized in different ways in the North and South. Black disenfranchisement was pursued through the use of violence and terror, and institutionalized through the re-writing of Southern state constitutions between 1890 and 1910. Mississippi pioneered the "Southern system" of burdensome residency requirements, periodic registration, poll taxes, literacy and "understanding" requirements, and exacting disqualification provisions, all designed to strip black men of the vote without reliance on overt racial classifications (Cunningham (1991), 377). There is a large scholarly literature on this subject. See, for example, classic works by V.O. Key, *Southern Politics in State and Nation* (New York: A.A. Knopf, 1949); and J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New Haven: Yale University Press, 1974). On efforts to reshape the electorate outside of the South during this period, see, Walter Dean Burnham, "The Appearance and Disappearance of the American Voter," in Walter Dean Burnham, *The Current Crisis in American Politics* (New York: Oxford University Press, 1983); and Paul Krieger, *Who Voted? The Dynamics of Electoral Turnout, 1870-1980* (New York: Praeger, 1982). For a fascinating account of how nineteenth century voters behaved at the polls on Election Day, see Richard Franklin Bensel, *The American Ballot Box in the Mid-Nineteenth Century* (New York: Cambridge University Press, 2004).

Much has been written about the colorful and varied forms of political corruption in the nineteenth century.²⁹ The debate over the extent of fraud among scholars, however, has failed to settle the question of whether it accounted for the extraordinarily high levels of turnout that disappeared with the adoption of personal voter registration systems.³⁰ Nor is it certain that the new voter registration laws were responsible for reducing the election fraud they were aimed at eliminating. But, election fraud documented by the reformers usually involved organized efforts by election officials and politicians, not by the voters who were the intended target of restrictive reforms like voter registration.³¹

Nevertheless, voting rights have been won. Most of the conditions that once gave rise to what we would characterize as fraudulent practices today, such as ballots produced and distributed by the political parties, have changed. In the nineteenth century, election fraud was sometimes perpetrated by partisans acting together to steal elections. Local party organizations competed for voters and controlled votes through patronage, and the stakes were high. In those days, parties, patronage and fraud were intertwined. Today, local party organizations are weak to nonexistent, in part because their access to patronage has all but disappeared. They no longer control lucrative franchises, run police and fire departments, set utility rates or build large-scale public works. The demise of local parties and patronage over the last century has undermined the logic and eroded the means of committing voter fraud.

The demise of local parties and patronage over the last century has undermined the logic and eroded the means of committing voter fraud.

The Civil Rights Era and Beyond

With each significant effort to protect and extend the right to vote, opponents have argued that the expansion of the franchise, whether through federal protections for voting rights or through reduced structural barriers to the franchise, would lead to more voter fraud. The threat of fraud was taken up by congressional opponents of the Voting

Rights Act of 1965; it was raised in the conflict over extending the Act during the first Reagan Administration; and again, in more recent debates over the National Voter Registration Act.³² It is the very success of these reforms that explains why fraud claims have re-emerged as a principle form of voter intimidation. The victories of the civil rights movement make it no longer easy or acceptable to suppress voting through the use of terrorism or violence, or with a poll tax or a literacy test. Today the intimidation is more subtle.

The dynamics of electoral competition in a two-party plurality system also contribute to the resurrection of the specter of voter fraud. When elections are close, the logic of competition drives opponents to fierce conflict. The winner in a two-party system needs only one vote more than his or her opponent; 51 percent of the votes wins it all, 49 percent wins nothing. Competing parties in

²⁹ See, for example, Glenn C. Altschuler and Stuart M. Blumin, *Rude Republic: Americans and Their Politics in the Nineteenth Century* (Princeton: Princeton University Press, 2000); and Tracy Campbell, *Deliver the Vote: A History of Election Fraud, an American Political Tradition – 1724-2004* (New York: Carroll & Graf, 2005).

³⁰ See, Piven and Cloward (2000), 25-6, discussing the work of Walter Dean Burnham, Philip Converse, Paul Kleppner and Jerrold G. Rusk. See also, Howard W. Allen and Kay Warren Allen, "Vote Fraud and Data Validity," in Jerome M. Clubb, William H. Flanagan, and Nancy H. Zingales, eds., *Analyzing Electoral History: A Guide to the Study of American Voter Behavior* (Beverly Hills: Sage Publications, Inc., 1981), 153-194.

³¹ See Cunningham (1991), 384, citing Joseph P. Harris, *Election Administration in the United States* (Washington, D.C.: The Brookings Institution, 1934).

³² For an important account of the movement to reform voter registration laws leading to the passage of the National Voter Registration Act of 1993, see Margaret M. Groarke, *Expanding Access to the Vote: An Analysis of Voter Registration Reform in the United States, 1970-1993* (Ph.D. diss., Department of Political Science, City University of New York, 2000).

close elections fight hard to maximize their chances of winning that 51 percent³³ because the closer the election, the fewer the number of voters that are needed to shift victory to one party or the other. Tight elections produce the biggest pay-off for the smallest shifts in vote share.

Theoretically, parties or campaigns can produce a shift by expanding votes for themselves or constraining votes for their opponents, or even pursuing both practices at the same time. But expanding the vote carries higher risks for incumbents. Elected officials try to preserve the majorities that elect them and are wary of the threat new voters pose. Both parties, therefore, are wary of expansion. Since the success of the Voting Rights Act prohibits them from carving out their majorities in ways that directly violate laws protecting voting rights, they shape and manage their electorates by more subtle means, through the rules that govern the electoral process. Both parties seek to control, enforce and bend electoral rules to their advantage. As the political scientist, E.E. Schattschneider once observed,

In politics as in everything else it makes a great difference whose game we play. The rules of the game determine the requirements for success. . . . and go to the heart of political strategy.³⁴

For example, today, Republican party officials and incumbents support restrictive interpretations of the rules governing voter qualifications when they anticipate that tightening access to the vote will hurt their rivals.

They insist that the votes of legitimate, qualified voters are threatened by the votes of ineligible voters, justifying their support for restrictive identification requirements.³⁵

The Democrats resist these efforts when they think the new rules will threaten their own party base; but if the new rules aren't likely to threaten the base, the Democrats, whose elected officials share the same interest in a stable, predictable electorate as their Republican colleagues, compromise and endorse new restrictions. The Democrats' concession to the inclusion of an identification requirement for first time voters who register to vote by mail in the Help America Vote Act of 2002 (HAVA), in the face of widespread opposition on the part of voting rights advocates, is a case in point.³⁶ New HAVA voter identification requirements apply to a diffuse category of new voters whose party loyalties were unknown and therefore in adding this rule at the national level, neither party could claim an uncontested advantage or disadvantage. In the partisan wrangling over the bill, the important questions about the extent of voter fraud and the effectiveness of new rules in combating it were lost.

Given the particular party and competitive dynamics of the current period, the use of baseless voter fraud allegations for partisan advantage has become the exclusive domain of Republican party activists.

³³ Or a plurality when the occasional third party candidate is in the race.

³⁴ E.E. Schattschneider, *The Semisovereign People: A Realist's View of Democracy in America* (New York: Holt, Rinehart and Winston, 1960), 48-49.

³⁵ U.S. Senate, Republican Policy Committee (2005).

³⁶ Emily Pierce, "Senate Standoff Over Voter Fraud Provision Threatens to Sink Election Bill," *CQ Monitor News* (February 28, 2002); Karen Foersted with Emily Pierce, "Hopes for Quick Accord on Election Standards Bill Face Liberals' Objections," *CQ Weekly - Elections* (April 13, 2002), 957; Geoffrey Gray, "Schumer's Identity Politics: Civil Rights Advocates Fight Compromise on Election Reform," *The Village Voice* (April 3-9, 2002), 42; Gabrielle B. Ruda, "Note: Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act," *Fordham Urban Law Journal* 31 (November 2003), 235.

In a competitive electoral environment it is easier and safer for the parties to try to stabilize the base and reduce the opposition's support than it is for either to recruit new voters. Given the particular party and competitive dynamics of the current period, the use of baseless voter fraud allegations for partisan advantage has become the exclusive domain of Republican party activists.

Take the American Center for Voting Rights (ACVR). This organization established a presence on the Internet in March 2005, just six days before a Republican-controlled U.S. House Administration Committee hearing on problems in the 2004 Ohio election, and was the only "voting rights" group allowed to testify. Although ACVR claims it is nonpartisan, its founders, leadership, and staff have strong ties to the Republican party.³⁷ Its report on "Voter Fraud, Intimidation and Suppression in the 2004 Presidential Election," professes to be "the most comprehensive and authoritative review of the facts surrounding allegations of vote fraud, intimidation and suppression made during the 2004 presidential election." It is little more than a compendium of poorly scrutinized newspaper articles sensationalizing election shenanigans allegedly instigated in all but two instances by Democrats.³⁸ Despite the not so veiled partisanship and absence of credentials, ACVR has achieved remarkable influence advocating for strict, government-issued photo identification requirements and promoting the idea that American elections are riddled with voter fraud. Its leader, attorney and political operative, Mark F. (Thor) Hearne, II, is a serial expert witness before Congress and other government bodies on the need for photo ID. His testimony repeatedly relies for evidence on anecdotes and misleading news reports that grossly overstate the problem of voter fraud.³⁹

The systematic use of baseless voter fraud allegations is strategic and in this sense rational, if unethical. In the late nineteenth century when freedmen were swept into electoral politics and where blacks were the majority of the electorate, it was the Democrats who were threatened by a loss of power, and it was the Democratic party that erected new rules they claimed were necessary to respond to the alleged fraud of black voters.

Today, the success of voter registration drives among minorities and low income people in recent years threatens to expand the base of the Democratic party and tip the balance of power away from the Republicans. Therefore, it is not difficult to understand why party operatives might seek to strategically generate enough public support for new restrictions on the vote that will disproportionately hinder opposition voters.⁴⁰ These efforts are misleadingly labeled "the electoral integrity" movement because after two hundred years struggling for the vote and winning it from below, ordinary voters are not so easily discredited in the name of democracy. Efforts to do so must appeal to misplaced moral sensibilities like the idea that "integrity" trumps rights. In the end, baseless voter fraud claims are essentially political acts because the contested history of party, race and class in American politics makes them so.

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³⁷ See bradblog.com (www.bradblog.com/ACVR.htm) for a collection of articles on the ACVR by Brad Friedman and his colleagues.

³⁸ Dimitri Vassiliadis, "Study is Political Fraud," *Pittsburgh Tribune-Review* (August 8, 2005); available online at: www.pittsburghlive.com/x/pittsburghtrib/s_360812.html.

³⁹ Hearne is listed as an "academic advisor" to the Commission on Federal Election Reform (the Carter-Baker Commission), despite his lack of academic credentials. For Hearne's testimony before government bodies, see, Testimony of Mark F. (Thor) Hearne, II, on "Voter Fraud in Ohio in the 2004 Presidential Election," U. S. House of Representatives, Committee on House Administration, March 21, 2005; "Regarding the Continuing Need for Federal Examiners and Observers to Ensure Electoral Integrity," Testimony of Mark F. (Thor) Hearne, II, Before the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution Civil Rights and Property Rights, July 10, 2006; "Assessing the Conduct of the 2004 Mid-term Elections," Testimony of Mark F. (Thor) Hearne, II, Before the U.S. Elections Assistance Commission, December 7, 2006.

⁴⁰ There is strong empirical evidence suggesting restrictive photo identification requirements place a disproportionate burden on low income people and minorities. See, Brennan Center for Justice at NYU School of Law and Spencer Overton, "Response to the Report of the 2005 Commission on Federal Election Reform," 2005; available online at www.carterbakerdissent.com. Overton served as a commissioner on the 2005 Commission on Federal Election Reform.

THE USUAL SUSPECTS

The Historically Disenfranchised Are Often the Alleged Perpetrators of Voter Fraud

Fraud allegations typically point the finger at those belonging to the same categories of voters accused of fraud in the past – the marginalized and formerly disenfranchised, urban dwellers, immigrants, blacks, and lower status voters. The targeting is not overt, the language is rarely explicitly racial. Instead, fraud claims tap into older elite associations of political corruption with minorities, big city machine organizations, and the poor. Allegations of voter fraud resonate with the public because they revive a familiar culture of corruption and legends about election fraud that enliven American political history. Today, the alleged culprits are mostly found among those still struggling for full inclusion in American life. This makes them suspect. That they are more likely to identify with one party than the other makes them doubly vulnerable to fraud accusations and to the collateral damage of high stakes competitive partisan politics.

Fraud claims tap into older elite associations of political corruption with minorities, big city machine organizations, and the poor.

Why Voter Registration Drives Are Vulnerable to Fraud Claims

Since at least the 1960s, the voter registration drive has played a central role in black politics and broader efforts to engage the electoral participation of low-income groups.⁴¹ The intensity of voter registration activities has waxed and waned over the years, with a recent upsurge in third party voter registration drive activity since the disputed 2000 presidential election. By 2004, approximately 12 million registered voters (or 8.5 percent of all registered voters) had registered as a result of a voter registration drive.⁴²

How Americans Were Registered To Vote in 2004 (Numbers in Thousands)⁴³

	Voters	Percent
Went to a town hall or county/government registration office	34,657	24.5
At a department of motor vehicles agency	27,126	19.2
By mail	17,642	12.5
Filled out form at a registration drive	11,973	8.5
Registered at polling place	9,118	6.4
Filled out a form at a school, hospital, or on campus	8,078	5.7
Through a public assistance agency	1,094	0.8
Other	8,819	6.2
Don't Know	22,901	16.2
TOTAL	141,408	100%

Source: U.S. Dept. of Commerce, Bureau of the Census. Current Population Survey, November 2004: Voter Supplement File.

⁴¹ In the 1980s, white Christian conservatives and other middle class groups adopted the registration drive with considerable success, but it remains an iconic expression of black political aspiration.

⁴² U.S. Dept. of Commerce, Bureau of the Census. Current Population Survey, November 2004: Voter Supplement File [Computer file]. ICPSR04272-v1. Washington, DC: U.S. Dept. of Commerce, Bureau of the Census [producer], 2005. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2006-01-16; author's calculations.

⁴³ The table reports method of registration for all registered voters, excluding missing cases. The data are estimates with sampling and non-sampling error, and are weighted by age, sex, race, Hispanic ancestry, and state of residence to partially correct for bias due to under-coverage.

Those registering through drives were more likely to be people of color and of lower income than other registered voters.

Method of Registration by Race and Income⁴⁴

Filled Out Form at Registration Drive	
Race	
Whites only, non-Hispanic	8.9
Blacks only, non-Hispanic	15.2
Hispanic (all races)	15.5
Asian only, non-Hispanic	12.7
Others	10.1
Total Annual Family Income	
Less than \$15,000	11.6
\$15,000 or more	10.0

Source: U.S. Dept. of Commerce, Bureau of the Census, Current Population Survey, November 2004; Voter Supplement File.

The number of low income drive registrants is three times the number of low income voters registering at public assistance agencies mandated by the National Voter Registration Act of 1993 (NVRA) to provide registration opportunities. Just four percent of registered voters with total annual family income below \$15,000 (approximately 470,000 people) were registered to vote through a public assistance agency. This compares to approximately 1,328,000 low income voters, or 11.6 percent of those with less than \$15,000 in annual family income, who said they were registered through a registration drive.⁴⁵ It is clear that despite the intent of NVRA to open registration opportunities to low income Americans, thousands of eligible citizens would be left out of the electoral process were it not for the third party groups who register and encourage them to vote.

Competitive or high interest elections like those of the last six years increase incentives to mobilize voters, including the recruitment of new voters – not only to the parties, but to all the other groups who believe they have a stake in the outcome. The use of thousands of volunteers and temporary workers in these drives contributes to the potential for mistakes and duplication in the registration process. This is one of the consequences of essentially “outsourcing” voter registration to the private sector rather than placing the burden of registration on the state as is done in many of the European democracies.⁴⁶ If voter registration were mandatory like paying taxes, voter registration drives would not be necessary.

⁴⁴ The table compares only those registered voters who could identify their method of registration. Data on income are limited to people living in families. Family income is the combined income of all family members over the previous year and includes money from jobs, net income from business, farm or rent, pensions, dividends, interest, Social Security payments and any other money income received by family members who are 15 years of age or older.

⁴⁵ U.S. Dept. of Commerce (2005); author’s calculations. For an analysis of the recent drop off in implementation of the agency-based requirements of the NVRA, see *Ten Years Later: A Promise Unfulfilled: The National Voter Registration Act in Public Assistance Agencies, 1995-2005*, a report compiled by Dierkes, A Network for Ideas and Action; ACCORN; and Project Vote (July 2005); available online at http://projectvote.org/files/admin/ProjectVote/pdfs/Ten_Years_Later_A_Promise_Unfulfilled.pdf.

⁴⁶ The National Commission on Election Reform Task Force on the Federal Election System notes that, “the registration laws in force throughout the United States are among the world’s most demanding...[and are] one reason why voter turnout in the United States is near the bottom of the developed world.” National Election Commission, *Report of the Task Force on the Federal Election System*, chapter 2, “Voter Registration,” (July 2001), 3; available online at www.tcf.org/Publications/ElectionReform/NCFER/hansen_chap2_voter.pdf.

With the upsurge in voter registration activity has come more media attention to the handful of cases in which organizations have been accused of submitting fraudulent registration applications to local elections officials. No amount of fraud in the registration process is acceptable, but the accusations that voter fraud "is breaking out all over"⁴⁷ as a result of "a coordinated effort by members of some organizations to rig the electoral system through voter registration fraud" that put "thousands of fictional voters"⁴⁸ on the rolls are unsupported by any credible evidence anyone has been able to bring to bear. In fact, the suspicions about a vast "left-wing" or "Liberal Democrat-sponsored" conspiracy to commit voter registration fraud border on the paranoid.⁴⁹

According to available government data, between October 2002 and September 2005, the federal government prosecuted just 33 people for various misdemeanor and felony crimes related to any form of election fraud that could have involved voter registration.⁵⁰ All but two people indicted were prosecuted for falsifying information about *their own* eligibility to vote, including: 20 people in four states who were prosecuted for registering or voting but who were ineligible under state law because they lacked U.S. citizenship; and ten people who voted in the 2004 presidential election in Milwaukee who were prosecuted for falsely certifying that they were eligible to vote when they were still under state supervision for felony convictions.⁵¹ Ten of the 33 – five of the non-citizen cases and five of the felon cases – were either acquitted of the charges against them or had their indictments dismissed.⁵² At least 19 of

Between October 2002 and September 2005, the federal government prosecuted just 33 people for various misdemeanor and felony crimes related to any form of election fraud that could have involved voter registration.

the 23 people convicted were alleged to have voted illegally because they were ineligible to vote, but notably, these people registered to vote and voted using their real names, hardly acts of conspiracy or of criminals trying to get away with committing fraud. Only two people were prosecuted for crimes related to fabricated voter registration applications for other people. One pleaded guilty to making false statements to a grand jury in connection with 11 fraudulent registration forms. The other, a St. Martinsville, Louisiana city councilwoman running in a hotly contested race for re-election in 2002, pleaded guilty to conspiring to submit false address

⁴⁷ Michelle Malkin, September 29, 2004 blog entry; available online at <http://michellemalkin.com/archives/000596.htm>.

⁴⁸ American Center for Voting Rights Legislative Fund, "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," ACVR Legislative Fund Report (August 2, 2005), 35; available online at www.acvr.com/reports/072005/080205report.pdf.

⁴⁹ See, for example, the postings of "Dean," on democratvotefraud.blogspot.com (accessed in October 2006). This blog collects dozens of news articles from the 2004 election, most of which report allegations of campaign dirty tricks and voter registration fraud, and discuss protests against new "anti-fraud" measures adopted in some states like Ohio, all perpetrated by Democrats or their supporters. Under the title, "Liberal Democrat Vote Fraud," Dean explains, "We all saw the results of the 2000 American election. This time, I'm personally going to fight back in the only way that I can, with a blog that documents as many news reports about Democrat fraud as I can."

⁵⁰ U.S. Department of Justice, Criminal Division, Public Integrity Section, "Election Fraud Prosecutions and Convictions; Ballot Access and Voting Integrity Initiative, October 2002 – September 2005" (n.d.); available online at <http://cha.house.gov/media/pdfs/DOJdoc.pdf>. Several of these people technically were not charged with voter registration fraud, but with making false statements to government agencies (i.e., a driver's license bureau or the INS) regarding their citizenship status or eligibility to vote. This number includes cases of illegal voting due to ineligibility, assuming they must have involved registration fraud, even if it wasn't charged.

⁵¹ One of those convicted, Kimberly Prude, worked as an election inspector in Milwaukee. As of February 2006, Prude was appealing her conviction. See, *United States of America v. Kimberly E. Prude*, "Criminal Complaint," United States District Court, Eastern District of Wisconsin, Case No. 2:05-CR-00162-RTR (June 22, 2005).

⁵² In ten cases of alleged illegal felon voting in Milwaukee, one defendant was acquitted at trial and four had their charges dismissed. Among the dismissals evidence was presented which suggested defendants did not knowingly commit fraud.

information on two voter registration cards for people who did not live in her district. Those people voted to help the councilwoman win re-election by a slim margin.⁵³

Federal Prosecutions of Voter Registration Fraud 2002 – 2005

VOTER REGISTRATION	DISPOSITION				
	Dismissed	Acquitted	Pleaded Guilty	Convicted	Total
False claim of eligibility*					
Non-citizen	4	1	3	13	21
Felon	4	1	3	2	10
False statements to grand jury about (1) voter registration forgeries			1		1
Conspiracy to submit false information on (2) voter registration applications			1		1
TOTAL	8	2	8	15	33

* All but two of those charged with making false claims about their eligibility to register (two non-citizens who were convicted) were also charged with casting a false or fraudulent ballot, as reported above.

Source: U. S. Department of Justice, Criminal Division, Public Integrity Section, *Election Fraud Prosecutions & Convictions, Ballot Access & Voting Integrity Initiative, October 2002 – September 2005* (n.d).

Registration drives in recent years have been more effective in registering low income voters than the agency-based requirements of the NVRA. Successful voter drives hold the potential for adding significant new numbers of voters to the rolls and threatening the balance of power between the two parties. Their effectiveness has made them a target for fraud allegations. Their own sporadic failings in the production of duplicate or improperly filled out registration cards, sloppy oversight, poor quality control, and occasional fraud have only fueled the allegations. Such problems are inevitable as long as voter registration is not mandated or universal.

⁵³ Press Release, "St. Martinsville Woman Sentenced in Federal Court for Voter-Fraud Charges," U.S. Attorney's Office, Western District of Louisiana (January 18, 2006); available online at: www.usdoj.gov/usao/law/news/wdl20060118c.html.

CASE STUDIES

The following case studies are illustrative of the politics of voter fraud claims. They do not tell us anything about the incidence of voter fraud in American elections today. That question is central and addressed above. It has always been difficult to measure fraud or even specify it, and it is important to stress that until better evidence comes to light, we will not be able to compile comprehensive statistics on levels of cheating by voters. Researchers are hampered in studying voter fraud because government agencies fail to track it and are often unresponsive to information requests. We can, however, make educated guesses from the available evidence, and what studies there are suggest voters rarely commit fraud. It is only in the public interest that we learn from real cases of voter fraud so that we can better understand where our electoral systems are truly vulnerable. Spurious cases of fraud like those discussed here are equally instructive because they expose the shrewd and partisan manipulation that makes real election reform so difficult.

The case studies presented below demonstrate the ways these partisan interests, database and clerical errors and incompetent electoral administration are sometimes exploited to exaggerate the problem of voter fraud. The intent of the exaggeration is to intimidate the general public and even law makers into believing that American elections face a security threat from a rising tide of deceitful and criminal voters. Unfortunately, in numerous places election administration is in crisis, and in general, faces much larger challenges from changing technology, inadequate resources, poor staffing and training, and especially, partisan manipulation. These are real issues deserving of attention, good ideas, resources and a democratic spirit. They won't be adequately addressed as long as the voter fraud hoax confuses and distracts us from confronting them.

ACORN and the Mac Stuart Affair

One important example of how the politics of fraud claims are used to manipulate the public about the threat of voter fraud is the political pillorying of ACORN for alleged wide scale registration fraud in the 2004 and 2006 election cycles.

ACORN (Association of Community Organizations for Reform Now) is the largest community-based organization of low and moderate income people in the U.S. It organizes locally and has developed ballot campaigns for a range of issues such as campaign finance reform and raising the minimum wage. Opponents of ACORN's minimum wage ballot initiative program deployed allegations of voter registration fraud, which then generated official investigations, media coverage and litigation, as a strategy to undermine ACORN's ability to qualify and pass referenda in several states.¹⁴ One of these cases involved a disgruntled former employee named Mac Stuart who for a while became a cause célèbre of ACORN's enemies and the pundits who fuel the fraud paranoia. The Mac Stuart affair is instructive because it highlights how politics construct the fraud debate.

In November 2003, Mac Stuart was hired by Florida ACORN and put to work as a petition gatherer collecting signatures supporting the placement of a Florida Minimum Wage Amendment on the

¹⁴ "ACORN Defeats Anti-Voter Legal Attacks; Group's Voter Registration Efforts Vindicated as Baseless Lawsuits Collapse," *Common Dreams Progressive Newswire* (December 14, 2005); Joni James, "Voter Fraud Charges Collapse," *St. Petersburg Times* (December 15, 2005).

2004 ballot. When Stuart was fired for suspicion of his involvement in an illegal check cashing scheme a few months later, he filed a Florida whistle blower lawsuit against ACORN claiming the organization engaged in a variety of illegal practices. He was represented by partisan attorneys at Rothstein, Rosenfeldt, Adler, a Fort Lauderdale law firm, and spoke secretly with an official at the Florida Chamber of Commerce which was in the midst of opposing ACORN's efforts to raise the state's minimum wage. Stuart provided his attorneys with 179 applications, many of them for Republican registrants, he claimed had been collected and withheld by ACORN.⁵⁵

In the course of petitioning for signatures, ACORN workers conducted voter registration activities to ascertain whether signatories were registered to vote. Stuart's lawsuit claimed that petitioners were paid an additional \$2.00 for each completed registration card they collected; that ACORN illegally copied the voter registration cards its workers collected and sold its lists for a profit; that ACORN committed fraud by failing to deliver registration cards for people who designated "Republican" as their party affiliation, and otherwise collected cards from ineligible individuals such as convicted felons. Stuart maintained that in July 2004, he refused to participate in these illegal activities and was fired in retaliation under the pretext that he had attempted to cash another person's check.⁵⁶

His lawyers filed a second suit against ACORN on behalf of 11 people whose names were among the allegedly withheld voter registration applications Stuart had provided.⁵⁷ Rothstein, Rosenfeldt, Adler attorneys claimed ACORN had deprived their clients of their constitutional right to vote and committed fraud against them.

After Stuart was fired, he held a news conference and contacted television and print news reporters claiming that "[t]here was a lot of fraud committed" by ACORN, asserting the organization knowingly submitted thousands of invalid registration cards while storing away cards for people designating their party affiliation as Republican. Stuart's allegations were immediately picked up by news organizations such as the *Washington Times*, the *Florida Times-Union*, and other Florida newspapers, and began to spread on rightwing Internet blogs. The Florida Department of Law Enforcement took the unusual step of announcing an investigation into ACORN.⁵⁸ In fact, for a while, Stuart's assertions were taken as fact and repeatedly reported as evidence that ACORN routinely engaged in fraud to promote its "radical political agenda."⁵⁹ That is, until the real facts about Stuart came to light and his case collapsed in court.

Fraud charges collapse but the damage continues

ACORN denied, and Stuart failed to prove, that canvassers were paid by the card to collect voter registration applications. ACORN's copying of voter registration applications was an element of their quality control program and well within the bounds of Florida law.⁶⁰ Finally, ACORN denied, and Stuart failed to produce evidence, that the organization prejudiced Republican voter registration applicants or misleadingly solicited registration cards from ineligible applicants. ACORN countersued Stuart for defamation and libel. On December 6, 2005, the matter of

⁵⁵ Brittany Wallman and Alva James-Johnson, "Filled-In Voter Forms Surface," *South Florida Sun-Sentinel* (October 27, 2004); Jeremy Mlarsky, "Ex-Worker Sues Activist Group," *South Florida Sun-Sentinel* (October 21, 2004).

⁵⁶ *Mac Stuart v. ACORN*, U.S. District Court, Southern District of Florida, Miami Division, Case No. 04-2276-cv (2004).

⁵⁷ *Charles Rousseau, et al. v. ACORN*, U.S. District Court, Southern District of Florida, Miami Division, Case No. 04-61636-cv (2004).

⁵⁸ News Release, "FDLE Investigates Statewide Voter Fraud," Florida Department of Law Enforcement (October 21, 2004).

⁵⁹ Quoting Mike Flynn, Director of Legislative Affairs for the Employment Policies Institute; see Press Release, "ACORN's Voter Fraud in Ohio is Part of Larger Pattern," Employment Policies Institute (August 11, 2006). See also Meghan Clyne, "ACORN and the Money Tree," *National Review Online* (October 31, 2004); and American Center for Voting Rights, "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," ACVR Legislative Fund Report (August 2, 2005), 41-44; available online at www.acvr.com/reports/072005/080205report.pdf.

⁶⁰ Nothing in Florida's election code prohibits private, third-party voter registration organizations from photocopying the voter registration applications they collect before submitting them to local elections officials.

Mac Stuart v. ACORN was dismissed with prejudice by a federal judge, exonerating ACORN of any and all wrongdoing.⁶¹ ACORN prevailed in their counterclaims and won a judgment of defamation against Stuart.

ACORN also prevailed in the second Rothstein, Rosenfeldt, Adler suit. Shortly after it was filed, nine of the 11 plaintiffs asked to be dismissed from the case. As ACORN's lawyers deposed the remaining two plaintiffs it became clear that their lawyers had not asked them if they were qualified to vote, if they had completed the applications Stuart had given the attorneys or whether the plaintiffs were in fact Republicans. One of the two was not qualified to vote, neither remembered completing the application used as the basis for the complaint and both said that, inconsistent with their applications, they were not Republicans and never would have checked off that they were. Stuart was inconsistent in his testimony in how he obtained the applications in the first place.⁶² This case, too, was dismissed with prejudice.

The Florida Department of Law Enforcement investigation found no evidence of illegal or fraudulent activity by ACORN. A public records request by Project Vote asking all Florida counties for any documents related to voter fraud elicited just three alleged cases of illegal activity, only one of which involved temporary ACORN workers.⁶³

The problem is that the end of this story has received considerably less media attention than the unfounded claims of organized voter fraud on the part of ACORN. Opponents of ACORN continue to spread false rumors that the organization engages in voter fraud. For example, the Employment Policies Institute (EPI) issues dozens of press releases and "reports" attacking ACORN every year. EPI is a non-profit organization that in 2004 paid over \$600,000 in "management" fees to its executive director's publicity firm which lobbies on behalf of the hotel, restaurant, alcoholic beverages and tobacco industries.⁶⁴ Those industries are opposed to ACORN's efforts to raise the minimum wage in Florida and elsewhere. As late as July 2006, months after ACORN was fully vindicated in court, EPI was still claiming they engaged in a "pattern and practice" of voter fraud, citing the Mac Stuart affair as more evidence of ACORN's "widespread practice of fraud."⁶⁵

Voter fraud allegations used to restrict voter registration programs

With ACORN under a cloud, Florida passed a law that carried stiff penalties for organizations failing to turn in voter registration applications later than ten days after they were collected. The law's reporting requirements were so draconian the League of Women Voters ended 77 years of voter registration activity in the state because it feared it could not comply and would be bankrupted if there were problems with just 16 registration forms collected by its volunteers. A federal judge later blocked the implementation of the law as unconstitutional.⁶⁶

⁶¹ Jani James, "Voter Fraud Charges Collapse," *St. Petersburg Times* (December 15, 2005).

⁶² Telephone interview with Brian Mellor, Senior Counsel, Project Vote (April 13, 2006).

⁶³ Mellor interview (2006).

⁶⁴ Employment Policies Institute, "2004 Form 990, Return of Organization Exempt From Income Tax," U.S. Department of the Treasury, Internal Revenue Service, Schedule A.

⁶⁵ A "pattern and practice" of wrongdoing evokes conspiracy and as a legal term refers to the crime of racketeering. See, Employment Policies Institute, *Rotten ACORN: America's Bad Seed* (July 2006), 18-19; available online at www.rottenacorn.com/downloads/060728_batSeed.pdf. In fact, ACORN, along with America Coming Together: the NAACP Voter Fund, and the Ohio AFL-CIO were defendants in an Ohio lawsuit that alleged the groups conspired to engage in a series of "predicate" or related acts of forgery, document tampering and drug trafficking in order to produce fraudulent voter registration cards. See, *Rubick v. America Coming Together, et al.*, State of Ohio, County of Wood, Court of Common Pleas, Case No. 04-CV650 (2004). Plaintiffs' complaint argued each fraudulent card submitted represented a predicate act. Under the federal Racketeer Influenced and Corrupt Organizations Act or RICO, a person or group can be charged with racketeering by a U.S. Attorney if they commit any two of 35 crimes (27 federal crimes and eight state crimes) within a 10-year period and the prosecutor believes those charged committed the crimes with similar purpose or results.

⁶⁶ *League of Women Voters of Florida v. Cobb*, U.S. District Court, Southern District of Florida, "Order Granting in Part and Denying in Part Plaintiff's Motion for Preliminary Injunction and Granting in Part and Denying in Part Defendant's Motion to

The Perils of List Matching

A common source of fraud claims is a list matching exercise gone wrong. The ready availability of high powered computing capacity and an ever expanding range of public records databases, have created a cottage industry of software programs and list management consultants ready to match lists for hire.

When databases contain errors or compile data differently, matching them against one another can cause a high degree of what statisticians call “false positive” errors or matches that are not really matches. A prime example is the infamous felon purge list compiled by a private firm for the Florida Secretary of State’s office in 2000. That list joined data on convicted felons with the voter registration rolls using rules that matched only the first four letters of the first name, 90 percent of the last name and an approximate date of birth.⁶⁷ The result was a highly inaccurate list of people whom the Secretary of State wanted to prevent from voting.⁶⁸

Voting in Connecticut and beyond

In October 2002, the Republican National Committee (RNC) claimed that in the course of “updating” its voter files, it discovered over 722,000 people nationwide were registered to vote in more than one state, and that at least 600 of these had voted more than once in a single election. In Connecticut, the Secretary of State was alarmed. The RNC released a report that said 7,700 registered voters in Connecticut were also on the rolls in other states and that 54 of them had voted more than once in the 2000 election. Secretary Susan Bysiewicz, a Democrat, asked the RNC for the names of the duplicate registrants and voters. “I am surprised by the numbers,” she said, “it sounds like a lot. We have two million (registered) voters, so I suppose it’s possible; but in four years we haven’t prosecuted one instance of voter fraud.”⁶⁹

At first the RNC refused to release the names and criticized Bysiewicz for not finding the problem first. When they finally turned over the names of the 54 alleged double voters, Bysiewicz found their claims baseless. Her office conducted a week long investigation of every suspect voter produced by the RNC and found that 29 had never voted in Connecticut, but did vote in another state; 18 voted in Connecticut, but not in the other state named in the report; four names had different birth dates than those on the RNC list, and three were turned over to criminal investigators because out-of-state data could not be obtained for verification.⁷⁰

⁶⁷ Dismiss, Case No. 06-21265-CIV (August 28, 2006).

⁶⁸ Greg Palast, “Florida’s Disappeared Voters: Disenfranchised by the GOP,” *The Nation*, (February 5, 2001); and Palast, *The Best Democracy Money Can Buy* (Sterling, Virginia: Pluto Press, 2002), 6-43.

⁶⁹ The U.S. Civil Rights Commission conducted an investigation into the 2000 election in Florida and concluded, “Many people appear on the [felon purge] list incorrectly.” One in seven people on the felon purge list supplied to the supervisor of the Miami-Dade election office was erroneously listed and therefore put at risk of disenfranchisement. These people were disproportionately African American. See, U.S. Civil Rights Commission, *Voting Irregularities in Florida During the 2000 Presidential Election* (2001), chapter 1. See also a disclaimer for the inaccuracy of the felon purge list posted on ChoicePoint’s website (“ChoicePoint’s Mythical Role in Elections Past and Present,” posted August 7, 2006, available online at www.choicepoint.com/news/statement_08072006.html). ChoicePoint is the parent company of Database Technologies (DBT), the firm hired for the period 1998 to 2000 by the Florida Division of Elections to create its voter exception list. ChoicePoint claims, “DBT Online was not required to provide a list of exact name matches. Rather, the matching logic only required a 90 percent name match, which produced ‘false positives’ or partial matches of the data. Moreover, the Division of Elections required that DBT Online perform ‘nickname matches’ for first names and to ‘make it go both ways.’ Thus, the name Deborah Ann would also match the name Ann Deborah. At a meeting in early 1999, the supervisors of elections expressed a preference for exact matches on the list as opposed to a ‘fairly broad and encompassing’ collection of names. DBT Online advised the Division of Elections that it could produce a list with exact matches. Despite this, the Division of Elections nevertheless opted to cast a wide net for the exclusion lists.”

⁷⁰ “Thousands Registered to Vote in Two or More States,” *The Associated Press State and Local Wire* (October 9, 2002).

⁷¹ Press release, “Voter Fraud Claims by Republican Party Unfounded,” Office of the Secretary of State Susan Bysiewicz (October 22, 2002); see also, “Bysiewicz: Double Voting Report Wrong,” *The Associated Press State and Local Wire* (October 22, 2002).

Double dipping in New Jersey

A few years later, in time for the next federal election cycle, the New Jersey state Republican party (RSC) claimed it had researched voter registration files in a number of states and found evidence of multiple voting. In September 2005, the state party sent a stern letter to New Jersey Attorney General Peter Harvey threatening a lawsuit for failing to enforce state election laws governing the voter registration rolls.⁷¹

The basis for the RSC claims was their own "exhaustive investigation" of voter files from New Jersey's 21 counties, matched internally county to county on first name, last name and date of birth, as well as against the voter registration files of five other states, New York, Pennsylvania, Florida, North Carolina and South Carolina. In addition, the RSC matched the New Jersey county files against lists of deceased persons from state and federal databases and other commercially available lists. Based on their analysis, the RSC said it found evidence of widespread multiple voting in the November 2004 general election – 4,397 people alleged to have voted more than once in New Jersey, and 6,572 people who "appear to have" voted in New Jersey and another state. Moreover, the RSC claimed that 4,755 dead people had voted and warned the problem could be even worse since the state's rolls contained tens of thousands of duplicate records and the names of some well known felons in the state.

There is little doubt that New Jersey's county voter registration lists contained registration records for people who moved away or died. The existence of so-called "deadwood" on voter registration records across the country is well-known. But the presence of deadwood is not in and of itself evidence of voter fraud.

A subsequent more thorough analysis of the data files the RSC supplied to the state suggests major problems with the accuracy of the RSC analysis and therefore the veracity of their claims. The Brennan Center for Justice working with Dr. Michael McDonald, an elections expert at George Mason University, concluded that "these lists simply do not prove what they purport to prove."⁷² Their report uncovered methodological errors in the RSC's list matching techniques, such as omitting middle initials and suffixes like "Jr.," which resulted in the listing of duplicate records for the same person then counted by the RSC as voting twice (from the same address). Mismatches of different people were presumed to be the same person, and again counted as voting twice. Statistical and database experts know that relying solely on non-unique identifiers such as name and date of birth to match records produces a high rate of false positives.⁷³ The Brennan Center/McDonald detailed analysis of the alleged 4,397 double votes recorded in the New Jersey county voter files accounted for them all as the likely product of false positives, errors in the data, duplicate records for the same person, and the statistical likelihood that two people will share the same name and birth date.

Voting from the grave in Detroit

Yet one more example of the damage flawed list matching efforts can inflict comes from an oft-cited news item appearing in the *Detroit News* in February 2006. The article, written by Lisa M. Collins, was headlined, "In Mich. Even Dead Vote," and continued, "From Holland to Detroit,

⁷¹ Letter from Mark D. Sheridan to Hon. Peter C. Harvey, dated September 15, 2005. Copy in author's possession. Election administration is decentralized to the county level in New Jersey, with the Attorney General serving as the state's chief elections officer.

⁷² The Brennan Center for Justice at NYU School of Law and Dr. Michael McDonald, "Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General," December 2005, 11; available online at www.brennancenter.org/dynamic/subpages/download_file_35010.pdf.

⁷³ Ted Selker and Alexandre Buser, "Voter Removal From Registration List Based on Name Matching Is Unreliable," Voting Technology Project – MIT Media Laboratory, October 28, 2004; available online at <http://72.14.209.104/search?q=cache:dE40vkjel.oj:www.vote.caltech.edu/reports/purging-vr1b.pdf+&hl=en&gl=us&ct=clnk&cd=1>.

votes were cast by 132 dead people; Detroit's voting records are riddled with inaccuracies, casting doubt on elections' integrity.⁷⁴ The allegations of voting from the grave in Detroit, a poor and majority black city, are repeatedly cited by conservative bloggers in their litany of purported evidence that voter fraud is rampant in America.

But a full reading of the article itself indicates that the News did not attribute these irregularities to voter fraud. Instead, they suggested the irregularities were more likely due to clerical errors.⁷⁵ Influential Republican political operative, Mark F. (Thor) Hearne, paid counsel to the Bush-Cheney 2004 re-election campaign and a member of the U.S. Elections Assistance Committee's Voter Fraud – Voter Intimidation Working Group, as well as Missouri's HAVA Advisory Commission, nevertheless repeated the misleading allegations of dead people voting in Detroit when he testified before a U.S. Senate panel in July 2006.⁷⁶ Versions of his testimony have appeared as a feature article in the magazine of the Bar Association of Metropolitan St. Louis,⁷⁷ and again as testimony given to the U.S. Elections Assistance Commission in December 2006.⁷⁸

This time the list matching was not performed by an elected official and presidential campaign co-chair, as it was in Florida, or a political party, as it was in the Connecticut and New Jersey examples. It was done by a newspaper which presented no assurances that it had the kind of expertise in computer programming, statistics, or records management required to make an accurate evaluation.⁷⁹

On March 5, 2006, the News printed a letter from Kelly Chesney, the Communications Director for the Michigan's Republican Secretary of State, which challenged the implication that dead people were voting in Michigan. Chesney reported that an analysis of the 132 alleged deceased voters found that this was the number of absentee ballots mailed out to voters who subsequently died in the weeks before Election Day. Of the 132 absentee ballots, she said "97 were never returned, and 27 were voted and returned prior to the voters' deaths."⁸⁰ This substantial correction to the implications of voter fraud in Michigan has been roundly ignored by activists who continue to cite what is now an out-dated news item reporting erroneous information.

⁷⁴ Lisa M. Collins, "In Mich, Even Dead Vote," *The Detroit News* (February 6, 2006).

⁷⁵ "Clerical errors [in the Michigan voter file are] so pervasive that it is difficult to determine in many instances who actually voted," and citing Mark Grebner, the list vendor and political consultant upon whose research the News relied, "...Grebner says he's never found evidence of organized fraud in Detroit." See, Collins (2006).

⁷⁶ Testimony of Mark F. (Thor) Hearne, II, Before the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Property Rights, "Regarding the Continuing Need for Federal Examiners and Observers to Ensure Electoral Integrity," July 10, 2006.

⁷⁷ Mark F. (Thor) Hearne, II, "The Missouri Voter's Protection Act: Real Election Reform for All Missouri Voters," *St. Louis Lawyer*, June, 2006; available online at www.bamsl.org/members/stlawyer/archive/06/june06.html#feature.

⁷⁸ Testimony of Mark F. (Thor) Hearne, II, Before the U.S. Elections Assistance Commission, "Assessing the Conduct of the 2006 Mid-term Elections," December 7, 2006.

⁷⁹ In fact, the News admitted in the article that they "did not review every vote cast, but instead targeted voter records based on several factors, such as the voter's birth year or voting history. Though limited and somewhat random searches were done, each search found voting records in error or highlighted names of voters who in fact could not have voted." This is hardly an adequate methodology.

⁸⁰ Editorial and Opinions, Special Letter, "Claims That the 'Dead' Voted Were Wrong," *Detroit News* (March 5, 2006).

St. Louis: More Bad Lists, Even Worse Election Administration

St. Louis, another majority black city with budget problems, presents a case study for how the mishandling of voter registration and elections procedures can be misperceived as fraud.

Whose mess on Election Day 2000?

There is little doubt that in the past St. Louis experienced election fraud and public corruption. St. Louis politics were long organized by political machines and fraud has a storied past which for some, at least, condemns the politics of the present.⁸¹ In 2000, the historical memory of fraudulent elections, bribery, conspiracies, ballot tampering, and voting from the grave colored the rush to judgment when administrative mismanagement and shockingly poor record-keeping combined to produce troubling election irregularities.⁸² Before the irregularities could be sorted out, they were seized upon by partisans. One of them, Missouri's senior Republican senator, Kit Bond, claimed the problems were evidence of a [Democratic party-driven] "major criminal enterprise designed to defraud voters," instead of what an extensive federal probe later determined to them to be – procedural incompetence and official failure to abide by the law.⁸³

For many voters attempting to cast ballots in the 2000 presidential election, Election Day in St. Louis was a chaotic mess. Many long-time voters were told that they were not registered to vote when they showed up at polling sites where they had cast ballots in the past. To re-establish their legitimacy, many of these rejected voters were told to go down to the St. Louis Election Board's headquarters at 300 North Tucker Boulevard and cast a ballot there since the phone lines to the Board were jammed and election judges staffing the polling sites were unable to establish whether such voters' names had been moved to an "inactive" list of registered voters.⁸⁴

The illegal "Inactive" list

It was this controversial inactive list and the failure of the St. Louis Elections Board to comply with the NVRA that later formed the basis for a federal lawsuit alleging the Board "denied or significantly impaired the voting rights" of thousands of city voters before the election.⁸⁵

Missouri law requires bi-partisan control of election administration. Local boards of election have equal representation of Democrats and Republicans as do positions staffed by the boards. The St. Louis Board has had problems maintaining accurate voter registration rolls, and leading up to the 2000 election, there were still no clear rules for specifying when a voter should be dropped from the rolls.⁸⁶

⁸¹ Secretary of State Matt Blunt, *Mandate For Reform: Election Turmoil in St. Louis, November 7, 2000* (July 24, 2001); available online at (herein cited as 'Blunt Report'), 39-46.

⁸² For an excellent example of the rush to judgement, see chapter four, 'Politically Active after Death,' in John Fund's *Stealing Elections: How Voter Fraud Threatens Our Democracy* (San Francisco: Encounter Books, 2004).

⁸³ For a tale of Depression-era ballot tampering linked to public corruption and waterfront development schemes in St. Louis, see chapter 7 "The Real Foundations of the Gateway Arch," in Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition, 1742-2004* (New York: Carroll & Graf Publishers, 2005). See also, Bruce Rushton, "Dead Man Voting," *Riverfront Times* (April 24, 2002). For Sen. Bond's remarks, see Carolyn Tuft, "Bond Wants Federal Investigation of Problems at City Polls; He Accuses Democrats of 'Criminal Enterprise' in Keeping Polls Open Late; Democrats Criticize Election Board," *St. Louis Post-Dispatch* (November 10, 2000), A1. According to the *Riverfront Times*, "In his letters to...two federal agencies, Bond wrote...of a 'deliberate scheme' planned in advance so unregistered voters could vote illegally." There is reason to believe that collusion existed to commit voter fraud and voter fraud occurred on a wide scale throughout the city of St. Louis." See, Safir Ahmed, "Slimin' the City: When It Comes to Election Day Problems in St. Louis, the Politicians' Rhetoric Doesn't Match the Reality," *Riverfront Times* (November 15, 2000).

⁸⁴ *U.S. v. Board of Election Commissioners for the City of St. Louis*, U.S. District Court, Eastern District of Missouri, "Stipulation of Facts and Consent Order," Civil Action No. 4:026V001235 CEJ (August 14, 2002), 5; (herein cited as 'St. Louis Election Board Consent Order').

⁸⁵ Karen Branch-Brisso and Doug Moore, "Board Denied Voters' Rights, U.S. Says: Election Officials Here Say They've Already Taken Steps to Correct Deficiencies From 2000," *St. Louis Post-Dispatch* (May 23, 2002), C1.

⁸⁶ Office of the State Auditor of Missouri, Board of Election Commissioners, City of St. Louis, Missouri, Report No. 2004-40 (May

Between 1994 and 2000, the Board conducted a series of mail canvasses of its voter registration rolls, none of which complied with the requirements of the NVRA.⁶⁷ Based on these improper canvasses, the Board removed more than 50,000 names of voters who had been on the rolls in 1996, and “made no effort to notify inactive voters that their registration status had changed, that their names would not appear on the voter registration lists provided to election judges in each voting precinct, or that they would face additional administrative steps on election day before they would be permitted to vote.”⁶⁸ This number represented roughly 40 percent of the total number of votes cast in St. Louis in the 1996 election, and was about twice the national and state averages for the proportion of inactive voters on the rolls.⁶⁹ Moreover, for all elections it conducted after 1994, the Board failed to provide precinct election judges a list of any of the voters it had designated as “inactive.” This failure created mass confusion at polling sites when many legitimate voters showed up to vote and were told they were no longer registered.⁷⁰

In the days leading to the November 7, 2000, election, the unprecedented administrative reclassification of thousands of active voter registration records in the overwhelmingly Democratic city was seen by Democrats, including national party officials with the Gore-Lieberman campaign, as an illegitimate Republican party-sponsored effort to restrict Democratic voting. When he spoke at a Gore-Lieberman campaign event, Democratic Congressional hopeful William Lacy Clay, Jr., told supporters not to “let anyone turn you away from the polls,” and warned, “If it requires leaving the polls open a little longer, we’re going to get a court order to do it.”⁷¹

The showdown

In fact, this is exactly what happened. Voters stood in line for hours. First, they had to check in with precinct workers, then, for those whose names were no longer on the precinct voter registration lists, they stood in another line to plead their case before their precinct’s election judge.⁷² When many of these officials were unable to confirm their registration status with headquarters because they couldn’t get through to elections officials at the Board, they sent voters down to the Board’s office to try to resolve the problems on their own. According to news reports, “It made for a wild hour at Board’s downtown office,

where hundreds of voters turned away from the polls because they were not registered or had problems voting filled the lobby throughout the day. By early evening, the lobby was shoulder to shoulder with people who wanted to vote.⁷³

In the afternoon, the Democrats and the Gore-Lieberman campaign filed suit in a state circuit court requesting the polls remain open for an additional three hours to accommodate voters victimized by the inaccessible and inaccurate inactive list.

⁶⁷ 26, 2004), 10; (herein cited as “Mo. State Auditor’s Report”).

⁶⁸ Section 8(d)(2) of 42 U.S.C. 1973gg-6(d). See, St. Louis Election Board Consent Order, 3.

⁶⁹ St. Louis Election Board Consent Order, 4.

⁷⁰ In 1996, 122,003 votes were cast in the general election in the City of St. Louis. In 2002, according to records from the Federal Election Commission, both nationwide and for the state of Missouri, 12 percent of all voters on the rolls were classified as “inactive,” compared to 22 percent in the City of St. Louis. See, Mo. State Auditor’s Report, 15.

⁷¹ St. Louis Election Board Consent Order, 4.

⁷² David Scott, “Ashcroft, Talent Decide Against Pursuing St. Louis Voter Fraud Claims,” Associated Press (November 8, 2000).

⁷³ The State Auditor found that the St. Louis Election Board frequently failed to secure the minimum number of precinct-level election judges as required by state law. Section 115.081, RSMo 2000, mandates four election judges, two from each major political party, for each polling place at each primary and general election, or about 1,600 election judges per major election. The Auditor found that the Board has not been able to attract more than 1,200 such judges in recent elections. See, Mo. State Auditor’s Report, 24.

⁷⁴ Scott (2000); see also, Ahmed (2000).

St. Louis Circuit Judge Evelyn Baker complied, but her order was overturned within 45 minutes of the regular poll closing time (7 PM) by a three-judge appeals panel. The St. Louis City Board of Elections successfully argued she lacked jurisdiction to change state law. Elections officials estimated that only about 100 extra people had been permitted to vote by Judge Baker's order. Republican officials charged there may have been a "preconceived plan" to misuse the judicial process to keep the polls open longer than their statutorily mandated closing time, as well as an "organized campaign" (by the Democrats) to abuse the procedure by which voters obtain court orders to vote, resulting in voter fraud and the casting of hundreds of illegal votes.⁴⁴

In a 51-page report, Republican Secretary of State Matt Blunt outlined the possible violations of law committed in the City of St. Louis by alleged illegal voters. He referred to an unspecified conspiracy "to create bedlam so that election fraud could be perpetrated,"⁴⁵ and to corrupt election judges put in place to manipulate the results of the election. The report claimed that, 1) 342 persons obtained court orders to vote even though the information provided by them on affidavits suggested they were properly disqualified from voting; 2) 62 convicted federal felons and 52 Missouri felons voted in either the City of St. Louis or St. Louis County; 3) 14 votes were cast in the names of dead people; 4) that there was a high probability of multiple voting by dozens of people; 5) 79 votes were cast by people registering to vote from vacant lots; and 6) 45 election judges were not registered to vote and therefore disqualified to serve.

Many of Blunt's allegations have been disproved or significantly weakened by the discovery of major records management problems at the Elections Board that resulted in grossly inaccurate voter rolls. The *St. Louis Post-Dispatch* conducted a canvass of over 2,000 alleged vacant lot addresses from which thousands of St. Louis voters were supposedly registered and found buildings on virtually all of them. The lots had been misclassified by the city assessor or misread by elections officials. They concluded that "most of the 79 people on the state's suspect voter list from last fall probably shouldn't be on it," including the city's budget director whose ten-year old condominium was mislabeled as a vacant lot.⁴⁶

The claim that more than 100 felons may have illegally voted is also unreliable since the data upon which it was based was inconclusive, as the report itself admits.⁴⁷ Later investigations by the State Auditor did find that three years after the 2000 election fiasco, St. Louis's voter rolls still included the names of over 2,000 felons prohibited by state law from voting or registering to vote. But the Auditor found no conspiracy to commit voter fraud on the part of voters and questioned instead why the Elections Board had failed to remove the names from their lists when they had been provided with monthly and quarterly felony conviction reports from state and federal authorities.

Like the Blunt Commission, the State Auditor also found thousands of duplicate records of voters registered to vote in St. Louis and elsewhere in the state, but only 28 instances across three recent election cycles in which a voter may have voted more than once. Without further investigation it is impossible to know whether these 28 cases represent actual illegal behavior or are more likely the product of clerical errors in the Board's voter registration files.

Throughout the months following the election, Republicans and Democrats alike called for a federal investigation, each side charging the other with fraud or with suppressing the vote. Both sides expected to be vindicated. The federal investigation provided a decisive end to the Blunt Commission's allegation that corrupt election judges allowed hundreds of patently unqualified voters to vote.

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⁴⁴ Blunt Report, 21-35.

⁴⁵ Blunt Report, 36.

⁴⁶ Jo Mannies and Jennifer LaFleur, "City Mislabeled Dozens as Voting From Vacant Lots; Property Records Appear To Be In Error; Survey Finds; Just 14 Ballots Are Found Suspect," *St. Louis Post-Dispatch* (November 5, 2001): A1.

⁴⁷ Blunt Report, 24, note 63.

St. Louis Board of Elections forced into federal consent decree

After an F.B.I. investigation that involved subpoenaing *all* of the registration and voting records from the St. Louis Elections Board for the months before the election, the Justice Department made a surprise announcement. They told the Board they were planning to sue them for violating the NVRA and threatening the voting rights of thousands of eligible voters in St. Louis by erroneously purging their records from the active voter file. The Board was forced into a consent decree that stipulated how they would change their procedures for maintaining accurate registration records, complying with federal requirements for notifying voters of their status on the list, and with handling voters whose names are not on the active voter list on election day.

Four years after the St. Louis Elections Board signed the consent decree acknowledging these failures, Mark (Thor) Hearne, the St. Louis lawyer and influential Republican activist, submitted Senate testimony that included citations to materials he produced after 2002 that ignored the Board's culpability and repeated misleading allegations of voter fraud in St. Louis.⁹⁸

Four years after the St. Louis Elections Board signed the consent decree acknowledging these failures, Mark (Thor) Hearne, the St. Louis lawyer and influential Republican activist, submitted Senate testimony that included citations to materials he produced after 2002 that ignored the Board's culpability and repeated misleading allegations of voter fraud in St. Louis.

⁹⁸ Hearne (June 2006), (July 10, 2006), and (December 2006).

Milwaukee: The Coup de Grâce

In 2000, Vice President Al Gore won Wisconsin by just under 6,000 votes out of more than 2.5 million cast. Heading into the last months of the 2004 presidential campaign candidates George W. Bush and John Kerry were neck-and-neck in the polls in Wisconsin and the race was once again projected to be razor close. As a battleground state Wisconsin attracted attention from the national campaigns and a host of non-profit and political consulting organizations that poured money, staff and volunteers into the state to increase voter registration before Election Day.

By September, the voter registration drives and heightened national interest in Wisconsin as a battleground state led elections director Kevin Kennedy to report that elections officials across the state had been swamped by an unprecedented increase of over 200,000 new applications submitted by mail.⁹⁹ The intensified focus on Wisconsin by outside voter registration groups pouring their volunteers into the state was unparalleled in recent elections, an anomaly associated with Wisconsin's swing state status and the closeness of the presidential contest – in Wisconsin and the nation – just four years before.¹⁰⁰

Pre-election news coverage in Wisconsin focused on three controversies: problems associated with some of the voter registration drives; a dispute between county and city officials over the number of ballots to be printed and provided to the city of Milwaukee; and a flap over thousands of alleged “bad addresses” on Milwaukee’s voter registration list.

Procedural breakdowns and discrepancies in the voter registration records were associated with what Kennedy called “volume” problems, but they helped create a climate of suspicion about the quality of record keeping at the Milwaukee elections commission and the commission’s ability to run a “clean” election.¹⁰¹ The pre-election disputes repeatedly invoked the language of “voter fraud,” though no evidence was produced that voters were intentionally committing it. The climate of distrust made it difficult to see clerical mistakes, illegible handwriting, and workload problems leading to backlogged voter registration applications as human error or problems related to resource issues. Instead, foul-ups and mistakes were assumed to be evidence of fraud perpetrated by partisans trying to “steal elections.”

Imperfect voter registration drives and simple human error, however, are not the same as voter fraud, nor do they inevitably lead to fraudulent voting.

Voter registration problems

Intensified political competition and the influx of outside organizations, campaign workers and volunteers into Wisconsin in the months and weeks before the election contributed to an inevitably flawed voter registration process. Duplicate registration cards, improperly filled out cards, cards from people who are not eligible to vote or who don't live in the district in which the card was submitted are not uncommon in the chaotic pre-election atmosphere of an intense political campaign. Imperfect voter registration drives and simple human error, however, are not the same as voter fraud, nor do they inevitably lead to fraudulent voting. As the Milwaukee case demonstrates, however, these deficiencies are easily exploited by partisans.

⁹⁹ Tom Kertscher, “Deputy Registrar May Have Violated State Election Law; He Says He Didn’t Witness Forms He Signed,” *Milwaukee Journal-Sentinel* (October 1, 2004), B1.

¹⁰⁰ Jenny Price, “Voter Registration Efforts Ramped Up In Wisconsin,” *Associated Press State & Local Wire* (October 10, 2004). Since voters can register to vote on Election Day, pre-election voter registration drives have been less common in Wisconsin than elsewhere.

¹⁰¹ Price (2004).

How many ballots for Milwaukee?

As stories of potential voter registration fraud circulated in the press, a political fight erupted in Milwaukee. In October the chief elections official in Milwaukee asked the county elections board for 260,000 extra ballots in anticipation of record turnout. Under Wisconsin law counties print and pay for all ballots for their localities. Milwaukee county elections officials rejected the request, with County Executive Scott Walker writing in support of the county board's decision to give Milwaukee roughly the same number of ballots it had received in the previous presidential election. In 2000, the number of ballots on hand exceeded the eligible voting population in Milwaukee by at least 200,000. But in planning for the number of ballots needed, local officials must compensate for the fact that in order to scan and count the ballots after they are cast, a bar code is assigned that prevents ballots from being counted outside the ward in which they are issued. In other words, unused ballots can't be moved around from ward to ward to cover shortfalls. Estimating probable turnout involves estimating turnout in each ward rather than citywide. This could have the effect of inflating the overall estimated number of ballots needed citywide. In 2004 Milwaukee requested 938,000 ballots for a voting population of about 424,000. The county board agreed to give the city 679,000 ballots, and a firestorm of protest erupted when County Executive Walker defended the decision by suggesting that he was concerned about potential voter fraud and didn't want people to be able to "grab" extra ballots at the polling site.¹⁰²

Milwaukee Mayor Tom Barrett accused Walker of trying to foment chaos at the polls and suppress the central city vote. Barrett is a Democrat and served as a state co-chair of John Kerry's campaign, while Walker is a Republican and served as state co-chair of George W. Bush's campaign. In press reports, the dispute was repeatedly referred to as "ugly," generating partisan recrimination on both sides. On the morning of October 14, about a hundred protesters, including students, elected officials and union activists, stormed Walker's office while he was meeting with municipal election clerks, chanting, "Let the people have their voice!" and demanding that Walker issue the extra ballots to Milwaukee. Wisconsin Governor Jim Doyle intervened by asking the state elections board to help resolve the dispute and offered state aid to pay for the extra ballots. The next day Walker and Barrett held a joint press conference on the steps of Milwaukee city hall to announce a compromise between the city and county: the county would supply the extra ballots, giving the city the 938,000 ballots it originally requested, the city would split the cost, estimated at about \$40,000, and promise to return all unused ballots to the county election commission to ensure that all ballots were accounted for.¹⁰³ Approximately 665,000 unused ballots were later returned to the county board of elections.¹⁰⁴

Inaccurate lists of "potentially fraudulent voters"

At 4:57 p.m. on Wednesday, October 27, 2004, three minutes before the legal deadline for filing a complaint with the city elections commission, the state Republican Party challenged the validity of 5,619 names on the city voter rolls. State GOP chairman Rick Graber said, "This is a black eye on the city of Milwaukee and the state of Wisconsin. These 5,600 addresses could be used to allow fraudulent voting. Whether it's deliberate or not, something's wrong when you have people

¹⁰² Dave Umhoefer and Greg J. Borowski, "City, County Spar Over Ballot Supply; Walker Cites Fraud Concerns; Barrett Cries Foul," *Milwaukee Journal-Sentinel* (October 13, 2004), A1; Greg J. Borowski and Dave Umhoefer, "Walker-Barrett Ballot Dispute Heats Up More; County, City Accuse the Other of Trying to Make Election Day Controversy," *Milwaukee Journal-Sentinel* (October 14, 2004), B1.

¹⁰³ Associated Press, "Governor Sends Election Board Into Milwaukee Ballot Fray," *Capital Times* (October 15, 2004), 4A; Dave Umhoefer and Steve Schultze, "Doyle Joins Rift Over Ballot Supply; Governor Seeks State Inquiry; After Protest, Walker Agrees to Review City's Request," *Milwaukee Journal-Sentinel* (October 15, 2004), A1.

¹⁰⁴ Greg J. Borowski, "665,000 Unused Ballots Returned; Review Finds City's Original Allotment Would Have Been Sufficient," *Milwaukee Journal-Sentinel* (November 25, 2004), B1.

from addresses that don't exist."¹⁰⁵ First the local elections board voted 3-0 when the board's lone Republican appointee joined the two Democrats in finding the challenge lacked sufficient evidence. The Milwaukee City Attorney, Grant Langley, conducted a review that he said in a letter to the city elections commission executive director casts "doubt on the overall accuracy" of the list supplied by the state GOP.¹⁰⁶

Then, just four days before Election Day the state GOP demanded that Milwaukee city officials require identification from 37,180 people it said its review of the city's voter rolls turned up as living at questionable addresses. The list was produced in the same manner as the first list of 5,619 names using a computer program to match data from the city's voter database with a U.S. Postal Service list of known addresses. It included 13,300 cases of incorrect apartment numbers and 18,200 cases of missing apartment numbers. City Attorney Langley, a non-partisan officeholder, called the GOP's request, "outrageous," adding, "We have already uncovered hundreds and hundreds and hundreds of addresses on their (original list) that do exist. Why should I take their word for the fact this new list is good? I'm out of the politics on this, but this is purely political."¹⁰⁷ Langley's review did find some addresses that do not appear to exist, and the *Milwaukee Journal-Sentinel* did its own limited investigation, finding 68 questionable addresses. "Others, though," it said, "were likely to be clerical errors."¹⁰⁸

By Monday, officials from the state GOP and the City of Milwaukee worked out an agreement on how the registrations of voters with addresses challenged by the GOP would be dealt with at the polls. The list of 37,000 was pared back down to 5,512 and the city agreed to provide poll workers with the names of people in their wards from the list whose addresses appeared to be incomplete or inaccurate. Those people would be flagged if they showed up to vote and asked to show identification and/or re-register to update their records.¹⁰⁹ At the time Wisconsin law did not require pre-registered voters to show identification to vote at the polls, they only needed to state their name and address to receive a ballot.¹¹⁰ The compromise deal with the Republican party imposed an identification requirement not mandated by law on people who made their way onto the GOP's list.

Who bears responsibility for sloppy records and procedural meltdown?

The *Journal-Sentinel* reviewed Milwaukee's voting records and found a number of unexplained discrepancies. The most troubling finding from the newspaper's detailed computer analysis was that as many as 1,242 votes, three-quarters of them cast by people registering on site on election day, appeared to have come from invalid addresses. Another 1,305 registration cards with discernible flaws such as missing addresses or missing names were accepted from voters on election day who were then allowed to vote.¹¹¹

¹⁰⁵ Greg J. Borowski, "GOP Fails To Get 5,619 Names Removed From Voting Lists: City Commission Says Party Didn't Prove Case; Challenges Could Move to Polling Places," *Milwaukee Journal-Sentinel* (October 29, 2004), A1.

¹⁰⁶ Greg J. Borowski, "Vote Inquiry Sharpens Focus; Prosecutors Find Many Disputed Addresses Exist," *Milwaukee Journal-Sentinel* (October 30, 2004), A1.

¹⁰⁷ Greg J. Borowski, "Election 2004: GOP Demands IDs of 37,000 in City; City Attorney Calls New List of Bad Addresses 'Purely Political,'" *Milwaukee Journal-Sentinel* (October 31, 2004), A1.

¹⁰⁸ Borowski (October 31, 2004).

¹⁰⁹ "Milwaukee Vote Deal Reached on Dubious Addresses," *The Capital Times* (November 1, 2004), 5A.

¹¹⁰ Wisconsin allows for election day registration. Same-day registration rules require new registrants to show some form of proof of residency, or, for those lacking proof, another registered voter may vouch for them.

¹¹¹ Greg J. Borowski, "Over 1,200 Voters Addresses Found Invalid; Some Mistakes Easily Explained, But Milwaukee Flaws Raise Concerns About Shoddy Record Keeping, Possible Fraud," *Milwaukee Journal-Sentinel* (January 25, 2005), A1; Greg J. Borowski, "Fraud or Bumbling, Voter Problems Still Unnerving to Public," *Milwaukee Journal-Sentinel* (January 30, 2005), A1.

The newspaper opined on its own investigation and reporting:

Republicans are quick to jump on the discrepancies, real or imagined, in voting data in Milwaukee as proof of widespread fraud in the big city. In their minds, the *Journal Sentinel's* findings fit that pattern. A more plausible explanation, however, is that the findings reflect the unfortunate tendency of voting systems throughout America to err.¹²

By the end of January, the Mayor had appointed an internal task force to review the city's electoral procedures, and federal and county law enforcement agencies began a joint investigation into whether breakdowns in procedure, poor record-keeping, human error or fraud explained the discrepancies. On February 10, the bipartisan Joint Legislative Audit Committee of the state legislature voted unanimously to direct auditors to review voter registration and address verification procedures. All of these investigations produced clear evidence that Milwaukee's Board of Elections was overwhelmed by its own incompetence and under-staffing on election day, resulting in massive record-keeping problems. Poll workers failed to follow procedures; the number of votes cast in Milwaukee failed to match the number of people recorded as voting; same day registration cards were not filled out properly and follow up was not performed when post-registration address verification efforts identified address discrepancies; some voters were allowed to register to vote in the wrong ward.

The dénouement

The scrutiny from federal, state and local law enforcement and elections officials produced several reports, an intensive review of voter registration practices in a number of Wisconsin cities, many recommendations for improving election administration and voter registration procedures, several later-vetoed photo ID bills in the state legislature, a variety of other legislative proposals, and very little conclusive evidence of voter fraud.

Widespread ignorance among the public and elections officials alike of Wisconsin's seldom enforced felony disenfranchisement laws account for the hundreds of ineligible felons post-election audits have found voted since 2000. Alleged illegal felon voting constitutes nearly all of the "voter fraud" reported on by the media in Wisconsin over the last six years, and represents most of the handful of cases prosecuted by the federal government. Wisconsin election crime laws require the establishment of a willful effort to defraud. Most of those identified as ineligible have not been prosecuted because they were never informed that they lost their voting rights until they completed their entire sentence. Until recently, Wisconsin's voter registration application form did not clearly indicate that felons on probation or parole were ineligible to vote. One of the federal cases against the dozen or so people charged with illegal (felon) voting in the 2004 election was dropped when it was revealed that the defendant had registered to vote on election day in Milwaukee using his state offender ID card.¹³

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¹² Staff, "Widen Election Day Focus," *Milwaukee Journal-Sentinel* (January 26, 2005), A14.

¹³ Gina Barton, "A Felon But Not A Fraud: No Charges For Voter With Prison I.D.," *Milwaukee Journal-Sentinel* (March 17, 2006). See, *United States of America v. Derek G. Little*, "Motion to Dismiss Indictment," United States District Court, Eastern District of Wisconsin, Case No. 05-CR-172 (LSA) (March 14, 2006).

POLICY RECOMMENDATIONS

This report has illustrated how the public is being manipulated about the problem of voter fraud.

Voting is a right, it's not a gift and it's not a privilege. Moreover, we can't have a democracy without the voters, and that means all voters, contributing to self-government. Therefore, layers upon layers of rules and bureaucracy to administer elections do not serve us well if they hinder electoral participation, which they do especially when the electorate expands. It is simply naïve to argue that the rules have nothing to do with turnout. On the other hand, it's true, the rules don't on their own increase turnout – issues, passion, competition, good candidates, effective communication and a diverse media – these are some of the factors that contribute to higher levels of electoral participation. But high interest campaigns and elections present precisely those conditions under which a complex regime of rules will have a depressing effect. When voter interest is high, partisans exploit the rules to determine the size and shape of the electorate they want.

Today partisans use the threat of voter fraud as an intimidation tactic. As our history shows, it is an old and reliable instrument for shaping the electorate by influencing the rules and procedures governing access to the vote. It is difficult to openly suppress voting in a democratic culture. The threat of fraud, however, if it's real, is enough to scare most people into accepting new rules that undermine the electoral participation of other voters - the unfortunate price, we are told, we must pay to keep our elections clean. The unraveling logic of this argument should be obvious. Unfortunately, reason flies out the window when we're scared.

We need better data, better election administration, transparency and more responsible journalism to improve public understanding of the legitimate ways in which electoral outcomes can be distorted and manipulated. Specifically:

1. States' chief elections officers should collect and maintain data on fraud allegations and enforcement activities and routinely report this information to the public. The data and methods used to collect it should be transparent and in the public domain.
2. To protect the right to vote and improve public confidence in the electoral process improvements to statewide, centralized voter registration databases must continue. Accurate registration records and methods for instantaneously certifying voter eligibility are the best defense against voter fraud.
3. To minimize mistakes, clerical errors, and duplication, state and local elections officials need to develop good, cooperative working partnerships with third party voter registration organizations that do a service to democracy by encouraging more people to register and vote.
4. States can go further and reduce the need for registration drives by fully implementing the agency-based voter registration requirements of NVRA and instituting same-day voter registration procedures. Ultimately, the states and federal government should provide a means to automatic universal voter registration.
5. To improve public understanding of voter fraud and more balanced reporting, state elections and law enforcement officials should educate journalists to ask for and recognize evidence of fraud when reporting on fraud allegations.

APPENDIX: HOW TO IDENTIFY VOTER FRAUD

Elections are instruments of democracy. They are the mechanisms for choosing representatives of the people's will, and they are widely regulated by law. Many different actors participate in the electoral process. Legislators and administrators make and implement the rules, candidates organize campaigns to run for office, voters cast their ballots, administrators count the ballots and elected officials certify the results.

The voters' role is simple – to make choices about candidates by casting legal ballots. Voters don't set deadlines for registering to vote, nor do they make the rules about how ballots are designed, displayed, or marked. They don't decide where the polls are located, when they are open, or what voting technology will be used. Voters have nothing to do with receiving completed ballots, determining valid ballots, counting or recounting ballots, tallying election results, or ensuring that the vote totals are accurate.

Voters, like all other actors or groups in the electoral process, can only corrupt that part to which they have access.

Voters, like all other actors or groups in the electoral process, can only corrupt that part to which they have access. They can do this directly, for example, by providing false information about their identity and/or eligibility in order to vote illegally, or indirectly through participation in a conspiracy, usually with others who have more authority and access to the marking and counting of ballots than the voters themselves possess.

If the alleged fraud does not involve voters it should not be considered voter fraud.

The first step in confronting any allegation of voter fraud is to identify who is alleged to have committed the fraud and to figure out if any voters are involved. If the alleged fraud does not involve voters it should not be considered voter fraud.

The second step is to identify which part of the electoral process was corrupted by fraud. Given their limited access, voters can only corrupt the registration and voting phases. They can't corrupt the vote tallying and counting phases where most election fraud has occurred in the past because they lack access to votes after they've cast them.¹⁴ A fraudulent ballot

¹⁴ The most thorough analysis of election fraud in the early twentieth century is the landmark 1929 study of voter registration procedures for the Brookings Institution by the inventor of the punch card voting machine, Joseph P. Harris. See, Joseph P. Harris, *The Registration of Voters in the U.S.* (Baltimore: The Lord Baltimore Press, 1929). Harris was a public administration reformer who promoted government modernization and the use of scientific administrative practices to remove politics from the business of governing. He concluded that elections were more badly managed than just about any other area of public administration and that political machines were responsible for much of the fraud he analyzed. The case studies of election fraud in Chicago, Philadelphia and Louisville, Kentucky, Harris presents all involved large scale conspiracies orchestrated by politicians and political machines which Harris thought rigged elections through ballot box stuffing and the manipulation of the count. His conclusion that most fraud occurred during the vote counting stage spurred him to invent the Votomatic Vote Recorder (the first punch card voting machine) which Harris hoped would reduce opportunities for election fraud by removing the ballot counting function from precinct workers. See, Joseph P. Harris, *Oral History*, interview by Harriet Nathan, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, California, 1980, available from <http://bancroft.berkeley.edu/ROHO/Vote/>.

is one that was not cast legally. But the definition of a legal ballot varies according to the rules that qualify eligible voters to vote and govern the procedures for casting a ballot in the different states.

Fraud in Voter Registration

To its earliest proponents, voter registration was intended as an anti-fraud safeguard. Registration fraud is typically punished less severely than fraud in voting and this is as it should be. What matters most to the integrity of electoral outcomes is the casting and counting of an illegal ballot. A person who provides false information on a voter registration application but never casts a ballot is less of a threat to electoral integrity than one who negates or dilutes the will of the voters by casting an illegal ballot. This is not to say that voter registration fraud is a negligible crime or should be tolerated. The available evidence suggests voter registration fraud is rare, but when it does occur, if it goes undetected it can compromise the accuracy of the voter rolls. When it's caught it burdens the elections and law enforcement officials who find it and must address it.

Since voters can perpetrate it, even if they rarely do, for purposes of this report we will consider voter registration fraud a form of voter fraud, along with all forms of illegal voting. However, when voter registration fraud is committed by a campaign volunteer or a paid canvasser, we should not consider the crime 'voter fraud.'¹⁵ Doing so only adds to public confusion about what should be done to eliminate opportunities for fraud.

Fraud in Voting

Under most state and federal laws a vote is considered illegal when it is cast improperly by an unqualified or ineligible voter. The voter must be qualified and the vote cast according to the rules governing the act of voting under state and federal law. Both elements – the voter and the act of voting – must be legal or the vote is illegal.

The difference between an eligible and a qualified voter

To be legal, an **eligible** voter must be **qualified** by the state to vote. This raises questions about the difference between an 'eligible' voter and a 'qualified' voter. The centuries long struggle for the franchise in the U.S. established a common law right to vote and constitutional bans on voter discrimination by race, color, gender, or age (over the age of 18), but no constitutional right to vote. The lack of an affirmative right to vote in the Constitution and the delegation of authority to the states to determine voter qualifications and oversee election administration are peculiar features of American democracy. The Constitution explicitly grants the states the power to set voter qualifications, reserving authority to Congress to regulate only "the times, places and manner of holding elections for Senators and Representatives."¹⁶

"Eligible" voters are those whose age and citizenship status, and in some cases absence of a felony conviction allows them to be credentialed or "qualified" by the states as legitimate or legal voters. "Qualified" voters, therefore, are those eligible voters who complete a state's procedures for casting a legal ballot.

Because the Constitution vests power to 'qualify' voters in the states, as long as they do not unconstitutionally discriminate against people by race, color, gender or age, they may make different rules for qualifying voters, and they do. This is why the definition of a legal vote varies across the states, especially with regard to residency and felony disqualification rules. Consider,

¹⁵ For an example of how the voter fraud label is commonly misused, see "2 Signature Gatherers Sentenced in Orange County Voter Fraud Case," Associated Press (1/14/07), 17 News Online, available online at www.kqzt.com/news/state/story.aspx?content_id=6b487526-37ac-43e9-a5b0-496674b9d5e1.

¹⁶ But, "the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators." See, U.S. Constitution, Article 1, section 4.

for example, the ballot of an otherwise eligible and qualified voter with a felony conviction who is no longer under state supervision. If that citizen lived in Maine and registered to vote by or on Election Day, his or her vote would count as a legal ballot. If that citizen lived and voted in Florida where a felony conviction eliminates the right to vote until clemency is granted, he or she could be prosecuted for casting an illegal ballot.

In fact, states make lots of rules for qualifying voters. The most important is the requirement that all eligible voters register. All states except North Dakota require eligible voters to register before casting a ballot.¹¹⁷ Thus, all states except North Dakota qualify eligible voters by requiring them to meet certain conditions in order to register their names on the rolls of legitimate or valid voters. Voter registration, therefore, is a means of voter qualification, and in nearly all states, otherwise eligible voters must be registered properly or the vote they cast is illegal.¹¹⁸ In addition, ineligible voters, such as those disqualified by state law for a felony conviction or because they do not possess U.S. citizenship,¹¹⁹ could register to vote either mistakenly or by deceit, thus appearing on the voter rolls as 'qualified' voters despite their ineligibility. Their votes would be treated as legal votes when in fact they would be illegal.

There are a few known cases of ineligible persons such as non-citizens making it on to the voter registration rolls due to a misunderstanding about who has the right to vote in American elections, or to mistakes made by elections officials who misinformed such applicants or failed to note their lack of citizenship. One involves the case of Mohsin Ali, a long-time legal permanent resident living in Florida at the time of his arrest for "alien voting." He pleaded guilty but claimed a clerk in the Department of Motor Vehicles issued a voter registration application to him when he renewed his license. In a letter begging the judge to intercede with immigration authorities considering Ali's deportation back to Pakistan, Ali claimed he told the clerk he was a Florida resident but not a U.S. citizen.¹²⁰ He states that the clerk told him as the husband of an American citizen he was eligible to vote. When Ali received a voter registration card in the mail he assumed he was qualified to vote and voted in the 2000 presidential election.¹²¹

Voters have limited access to the electoral process, but where they do interact with it they confront an array of rules that can trip them up and change depending on where they live. The more rules and restrictions, the more stumbling blocks voters face when trying to cast legal ballots. For example, in Pennsylvania where a voter must qualify with an excuse when applying for an absentee ballot, it is illegal to vote that ballot if the voter's plans change and he or she remains physically present at home (barring a disability that prohibits the voter from visiting the polling place). A voter must apply for an absentee ballot a full week before Election Day. What happens if plans change or the business trip gets canceled and the voter is present on Election Day, after all? If that voter then mails in the ballot instead of striking out for the line at the polling place, that voter is breaking the law in Pennsylvania. Who knew? Who wouldn't make

¹¹⁷ North Dakota repealed its voter registration law in 1951. To vote in North Dakota eligible voters must have proper identification showing their name and current address. If they lack identification, they may still vote by filing a voter's affidavit attesting to their identity and address, or if a poll worker knows them and can vouch for them. Poll workers use lists of previous voters to track voting on Election Day.

¹¹⁸ The courts have dealt with the question of whether voter registration is an unconstitutional burden on the vote by using a balancing test, weighing the alleged burden on rights against a state's legitimate interest in ensuring electoral integrity. State laws mandating voter registration have been upheld repeatedly by the Supreme Court as reasonable administrative burdens on the right to vote ("a person does not have a federal constitutional right to walk up to a voting place on election day and demand a ballot," *Marston v. Lewis*, 410 U.S. 679, 680, (1973)).

¹¹⁹ Federal law does not require persons be U.S. citizens to vote, but all states do, as it is their constitutional prerogative to set citizenship as a condition for voter eligibility and qualification.

¹²⁰ Letter from Mohsin Ali to the Honorable William C. Sherrill, Jr., Chief U.S. Magistrate Judge, U.S. District Court, Tallahassee, Florida, dated November 3, 2006. The judge denied Ali's request.

¹²¹ *U.S. v. Mohsin Ali*, U.S. District Court, Northern District of Florida, Tallahassee Division, Case No. 4:05cr47-WCS.

things easier and drop the ballot in the mailbox? The more complex are the rules regulating voter registration and voting, the more likely voter mistakes, clerical errors, and the like will be wrongly identified as "fraud."

Eligible voters may nevertheless fail to *qualify* as legal voters because they fail to register properly – usually their ballots would be considered illegal. Illegal ballots, however, may also result from qualified – or properly registered – voters failing to follow the rules for casting a ballot under state law. As the following table suggests, expanding rules create more ways to cast an illegal ballot than a legal one.

Voter Eligibility, Voter Registration and Legal Balloting

Voter	Registered	Voter Is	Vote Is Cast	Ballot
Eligible	Yes	Qualified	Properly	Legal
			Improperly	Illegal
	No	Not Qualified	Properly or Improperly	Illegal
Not Eligible	Yes	Improperly Qualified	Properly	Illegal
			Improperly	Illegal
	No	Not Qualified	Properly or Improperly	Illegal

As states and localities continue to loosen restrictions on the time and place for casting a legal ballot, qualified voters will face more options for casting their ballots. The lack of uniformity increases complexity of the rules and unintended consequences proliferate. For example, the growth of early and mail voting is generally considered positive because these reforms make voting more convenient by opening up more avenues for casting legal ballots. Voters in many

But one consequence of expanding voting opportunities is a corresponding increase in opportunities for casting unintentionally illegal ballots if administrative tracking and auditing systems are flawed.

states may now cast their ballots at a town clerk's office two weeks before the election, by mail, or in person at the polling booth on Election Day. But one consequence of expanding voting opportunities is a corresponding increase in opportunities for casting unintentionally illegal ballots if administrative tracking and auditing systems are flawed.

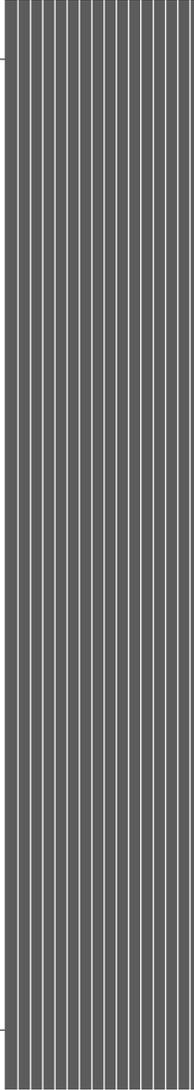
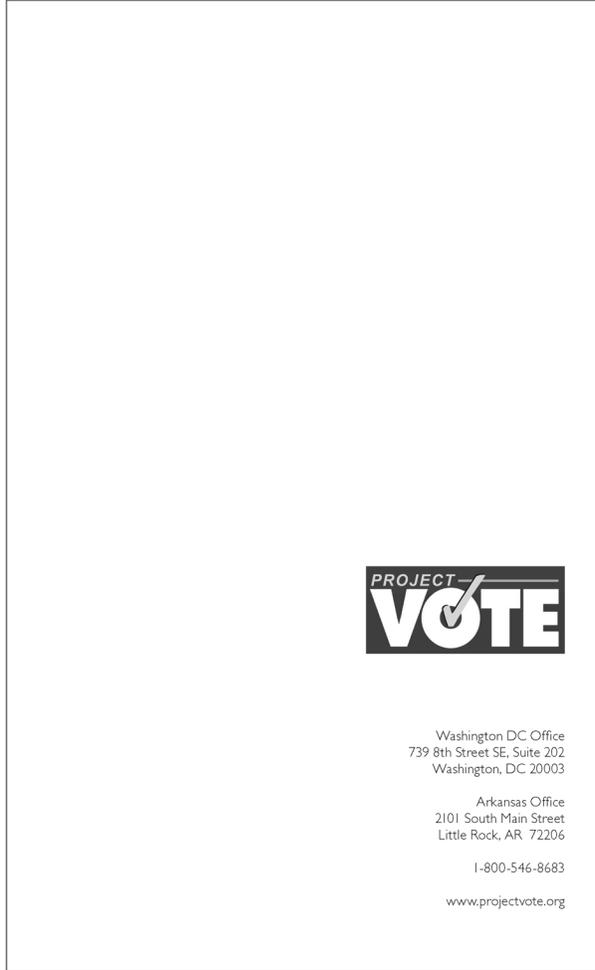
In fact, several recent cases of alleged voter fraud involved legal voters who mailed in their ballots and then showed up at the polls on Election Day because they either forgot mailing in their ballots or,

distrusting the absentee balloting process, wanted to be sure that their votes were counted by voting again. They used their real names to try to vote twice because they were confused.¹²² Poor record management on the part of elections officials was the problem, but voters got the blame. As the options and rules expand they increase the possibility that voter misunderstandings will be labeled 'voter fraud.'

¹²² See, for example, Susan Greene and Karen Crummy, "Voter Fraud Probed in State; Double Dippers, Felons Targeted," *Denver Post* (March 24, 2005).

ABOUT THE AUTHOR

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Denial and Suppression of the American Indian Vote

House Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil
Liberties

February 26, 2008

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The Denial and Suppression of the Indian Vote

Introduction

Mr. Chairman and members of the subcommittee, I want to thank you for providing me an opportunity to submit this statement on denial and suppression of the American Indian vote. The examples discussed below are taken mainly from litigation brought by the ACLU Voting Rights Project in Indian Country. Techniques for vote denial and suppression have included the maintenance and manipulation of discriminatory election procedures, the refusal to provide access to registration and

voting, the adoption of discriminatory ID requirements for voting, and unwarranted allegations of voter fraud.

The Long History of Discrimination Against Indians in Voting

The United States has a long history of denying and suppressing the Voting Rights of American Indians. Throughout the nineteenth century Indians were regarded as non-citizens, and in the absence of being naturalized were not entitled to vote.¹ With passage of the Dawes Act of 1887 and the Burke Act of 1906, citizenship was granted to any Indian who accepted an allotment of reservation land, on condition that he or she reside "separate and apart from any tribe of Indians therein and has adopted the habits of civilized life."² A substantial number of Indians became citizens, but only by ceasing to be Indians.³

More than 7,000 Indians, most of whom were not citizens, served in the armed forces during World War I.⁴ In recognition of that service, Congress provided in 1919 that all Indians who had served honorably in the armed forces were eligible for American citizenship.⁵ Subsequently, Congress passed the Indian Citizenship Act of 1924 which gave Indians as a group United

¹Elk v. Wilkins, 112 U.S. 94, 102 (1884).

²Draper v. United States, 164 U.S. 240, 246 (1896).

³Jeanette Wolfley, "Jim Crow, Indian Style: The Disenfranchisement of Native Americans," 16 Amer. Ind. L. Rev. 167, 176-78 (1991).

⁴Id. at 179 n. 72.

⁵Act of Nov. 6, 1919, ch. 95, 41 Stat. 350.

States citizenship, and thus, at least in theory, the federally protected equal right to vote.⁶

Some commentators, taking a page from the history of black disfranchisement in the South after passage of the Fifteenth Amendment, which prohibited discrimination in voting "on account of race, color, or previous condition of servitude," suggested that it would still be proper for the states to "discriminate" in voting between tribal Indians on reservations and other citizens. They argued that states could enact literacy tests or poll taxes or deny the franchise absolutely to Indians living on reservations and enjoying immunity from state authority.⁷ Many states did in fact blunt the impact of the Indian Citizenship Act by making registration more difficult, requiring reregistration,⁸ or simply denying registration altogether.

South Dakota, despite passage of the act, continued to deny residents of unorganized counties, which had substantial Indian populations, the right to vote and hold office until the 1940s.⁹ Five other states (Idaho, Maine, Mississippi, New Mexico, and Washington), prohibited "Indians not taxed" from voting, although

⁶8 U.S.C. § 1401 (a)(2).

⁷N. D. Houghton, "The Legal Status of Indian Suffrage in the United States," 19 Calif.L.Rev. 507, 520 (1931).

⁸See, e.g., Mont. L. 1937, p. 527 (requiring deputy voter registrars to be "taxpaying" residents of their precincts); Mont. L. 1937, p. 523 (requiring reregistration of all voters).

⁹Buckanaga v. Sisseton Independent School District, 804 F.2d 469, 474 (8th Cir. 1986).

there was no similar disqualification from voting by non-taxpaying whites.¹⁰ Arizona denied Indians living on reservations the right to vote on the ground that they were "under guardianship" of the federal government and thus disqualified from voting by the state constitution. The practice was not struck down until 1948, when the state supreme court ruled that the language in the state constitution referred to a judicially established guardianship, and had no application to the status of Indians as a class under federal law.¹¹ Utah denied Indians living on reservations the right to vote on the ground that they were non-residents under state law. The law was upheld by the state supreme court, but was repealed by the legislature in 1957 after the Supreme Court, at the request of the state attorney general, agreed to review the case.¹²

The Indian Citizenship Act did not translate into significant Indian participation in the federal and state political processes. It did, however, reflect an increasing awareness and concern by Congress of the plight of Indians and set the stage for passage of additional federal legislation protecting Indian rights, including voting rights.

Continued Denial and Suppression of the Indian Vote

¹⁰Wolfley (1991), 185.

¹¹Harrison v. Laveen, 67 Ariz. 337, 196 P.2d 456, 463 (1948).

¹²Allen v. Merrell, 352 U.S. 889 (1956), and Act of Feb. 14, 1957, ch. 38, 1957 Utah Laws 89-90. See also Allen v. Merrell, 353 U.S. 932 (1957) (vacating the state court decision as moot).

Despite the protections afforded by federal law, non-Indians in the west, particularly in areas containing or adjacent to reservations, have continued to deny and suppress the Indian vote. They have done so through the maintenance and manipulation of discriminatory election procedures, the refusal to provide access to registration and voting, and unwarranted allegations of voter fraud.

In a case involving Big Horn County, Montana, decided in 1986, the federal court made extensive findings of past and continuing discrimination against Indians residing on the Crow and Northern Cheyenne Reservations. Following a lengthy trial, the court held that at-large elections for the county commission and school board diluted Indian voting strength in violation of Section 2 of the Voting Rights Act. In doing so, the court found:

- There was "substantial probative evidence that the rights of Indians to vote has been interfered with, and in some cases denied, by the county."
- The evidence "tends to show an intent to discriminate against Indians."
- "[T]here has been discrimination in the appointment of deputy registrars of voters and election judges limiting Indian involvement in the mechanics of registration and voting."
- "[I]n the past there were laws prohibiting voting precincts on Indian reservations."
- Politics in Big Horn County was "race conscious" and "racially polarized."
- "[T]here is racial bloc voting in Big Horn County and . . .

there is evidence that race is a factor in the minds of voters in making voting decisions."

- "[D]iscrimination in hiring has hindered Indian involvement in government, making it more difficult for Indians to participate in the political process."
- "[R]ace is an issue and subtle racial appeals, by both Indians and whites, affect county politics."
- There was "a strong desire on the part of some white citizens to keep Indians out of Big Horn County government."
- "Indians who had registered to vote did not appear on voting lists."
- "Indians who had voted in primary elections had their names removed from voting lists and were not allowed to vote in the subsequent general elections."
- Indians were "refused voter registration cards by the county."
- "When an Indian was elected Chairman of the Democratic Party, white members of the party walked out of the meeting."
- "Unfounded charges of voter fraud have been alleged against Indians and the state investigator who investigated the charges commented on the racial polarization in the county."
- A depressed socio-economic status makes it "more difficult for Indians to participate in the political process and there is evidence linking these figures to past discrimination."¹³

Efforts to suppress the Indian vote in Big Horn County did not end with the federal court decision. Members of two organizations which support termination of the reservation system, Citizens Equal Rights Alliance (CERA) and Montana

¹³Windy Boy v. County of Big Horn, 647 F.Supp. 1022, 1008-09, 1013, 1016-18, 1022 (D. Mont. 1986).

Citizens Rights Alliance (MCRA), filed suit in June 2007 alleging that various forms of voter fraud took place on the Crow Reservation - double voting, insecure ballot boxes, and the endorsement of candidates by the tribal government.¹⁴ One of the remedies the groups sought was the removal of all polling places from the reservation, which would have effectively disfranchised large numbers of Indians and facilitated control of county elections by whites.

Tribal and county election officials insisted the charges were baseless, and noted that one of the plaintiffs, Christopher Kortlander, made similar allegations of fraud in the past. When the charges were proven to be groundless, he apologized and sent the Clerk and Recorder a bunch of roses.

Nellie Little Light, a member of the Crow Tribe, works for the Big Horn County Clerk and Recorder, where she has been employed for 16 years. "No double voting took place," she said. "That is just not true. I am personally familiar with about everybody at Crow, and there was no double voting." "This is a very prejudiced place," she added. "We have grown up with it. When it comes to the elections, the whites are sore losers. That's why they brought this suit."

On November 5, 2007, the federal court granted a motion to dismiss filed by county and state election officials, and held

¹⁴Citizens Equal Rights Alliance v. Johnson, CV-07-74 BLG-RFC (D. Mont.).

the plaintiffs failed to state a violation of federal law. The court also held the plaintiffs failed to show the defendants acted with any discriminatory intent or racial animus towards the plaintiffs or white voters. The litigation, however, is not yet over. The plaintiffs were granted leave to file an amended complaint which adds additional defendants and claims.

South Dakota: A Case Study

For most of the twentieth century, voters in South Dakota were required to register in person at the office of the county auditor.¹⁵ Getting to the county seat was a hardship for Indians who lacked transportation, particularly for those in unorganized counties who were required to travel to another county to register. Moreover, state law did not allow the auditor to appoint a tribal official as a deputy to register Indian voters in their own communities. There was one exception, however. State law required the tax assessor to register county property owners in the course of assessing the value of their land. Thus, taxpayers were automatically registered to vote, while nontaxpayers, many of whom were Indian, were required to make the trip to the courthouse to register in person.¹⁶ Mail-in registration was not fully implemented in South Dakota until

¹⁵S.D. Codified Laws §§ 16.0701-0706 (Michie 1939).

¹⁶*Bone Shirt v. Hazeltine*, 336 F.Supp.2d 976, 1024 (D. S.D. 2004).

1973.¹⁷

The disdain of some state officials for Indian voting rights was apparent from the state's refusal to comply with Section 5 of the Voting Rights Act. Ten years after its enactment in 1965, Congress amended the Voting Rights Act to cover American Indians, to expand the geographic reach of the special preclearance provisions of Section 5, and to require certain jurisdictions to provide bilingual election materials to language minorities. As a result of the amendments two counties in South Dakota, Shannon and Todd, which are home to the Pine Ridge and Rosebud Indian Reservations respectively, became subject to preclearance.¹⁸ Eight counties in the state, because of their significant Indian populations, were also required to conduct bilingual elections - Todd, Shannon, Bennett, Charles Mix, Corson, Lyman, Mellette, and Washabaugh.¹⁹

William Janklow, at that time the Attorney General of South Dakota, was outraged over the extension of Section 5 and the bilingual election requirement to his state. In a formal opinion addressed to the secretary of state, he derided the 1975 law as a "facial absurdity." Borrowing the States' Rights rhetoric of southern politicians who opposed the modern civil right movement, he condemned the Voting Rights Act as an unconstitutional federal

¹⁷Act of Mar. 27, 1973, ch. 70, 1973 S.D. Laws 111.

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encroachment that rendered state power "almost meaningless." He quoted with approval Justice Hugo Black's dissent in South Carolina v. Katzenbach (which held the basic provisions of the Voting Rights Act constitutional) that Section 5 treated covered jurisdictions as "little more than conquered provinces."²⁰ Janklow expressed the hope that Congress would soon repeal "the Voting Rights Act currently plaguing South Dakota." In the meantime, he advised the secretary of state not to comply with the preclearance requirement. "I see no need," he said, "to proceed with undue speed to subject our State's laws to a 'one-man veto' by the United States Attorney General."²¹

Although the 1975 amendments were never in fact repealed, state officials followed Janklow's advice and essentially ignored the preclearance requirement. From the date of its official coverage in 1976 until 2002, South Dakota enacted more than 600 statutes and regulations having an effect on elections or voting in Shannon and Todd Counties, but submitted fewer than ten for preclearance. The state did not comply with Section 5 until it was sued in 2002 by Elaine Quick Bear Quiver and other members of the Oglala and Rosebud Sioux Tribes in Shannon and Todd Counties.²²

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²¹1977 S.D. Op. Atty. Gen. 175; 1977 WL 36011 (S.D.A.G.).

²²Quick Bear Quiver v. Hazeltine, No. 02-5069 (D. S.D. Dec. 27, 2002).

Unfounded allegations of voter fraud have also frequently been made against Indians in South Dakota, and have been used as a pretext for limiting Indian access to registration. In 1978, a coalition of Indian and civic organizations sponsored a voter registration drive focused on members of the state's Indian Tribes. Just before the election, allegations surfaced that some Indians who might be convicted felons were registering voters and that federal dollars were being used illegally by the tribes to finance the registration effort. Both the South Dakota Division of Criminal Investigation and the Federal Bureau of Investigation sent agents to investigate the allegations of fraud on the Pine Ridge and Rosebud Reservations. The investigations, however, ended without any charges being brought.²³

Charlene Black Horse, who worked on the registration drive, believes the allegations of fraud were racially motivated. "We felt that," she said. "We always feel that because we're always being intimidated by somebody. And when you grow up there, that's just how you live with things."²⁴

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²⁵American Horse v. Kundert, Civ. No. 84-5159 (D. S.D. Nov. 5, 1984).

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of application forms, ordered that more forms be provided, and extended the deadline for voter registration for an additional week.²⁷

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In another suit in South Dakota, the district court invalidated the state's 2001 legislative plan as diluting Indian voting strength. It found there was "substantial evidence that South Dakota officially excluded Indians from voting and holding office." Indians in recent times have encountered numerous difficulties in obtaining registration cards from their county auditors, whose behavior "ranged from unhelpful to hostile."

²⁷Fiddler v. Sieker, No. 85-3050 (D. S.D. Oct. 24, 1986).

²⁸United States v. Day County, South Dakota, No. CV 99-1024 (D. S.D. June 16, 2000).

Indians involved in voter registration drives have regularly been accused of engaging in voter fraud by local officials, and while the accusations have proved to be unfounded they have "intimidated Indian voters."²⁹

Bennett County did not comply with the provisions of the Voting Rights Act requiring it to provide minority language assistance in voting until 2002, and only then because it was directed to do so by the Department of Justice.³⁰

Indians launched another major voter registration drive before the 2002 election, and it too was hit with allegations of voter fraud. Susan Williams, the auditor of Bennet County, announced publicly that Indians doing voter registration were committing fraud. Once again investigators fanned out on the Pine Ridge and Rosebud Reservations, but again no one was ever charged with registering or attempting to register anyone illegally. After the investigation, Attorney General Mark Barnett announced there was "no basis" for the claimed widespread Indian voter fraud.³¹

Dr. Dan McCool, the director of the American West Center at the University of Utah and who has written extensively about Indian voting rights, said the accusations of voter fraud were "part of an effort to create a racially hostile and polarized

²⁹Bone Shirt v. Hazeltine, 336 F.Supp.2d at 1019, 1025-26.

³⁰Id. at 1028.

³¹Id.

atmosphere. It's based on negative stereotypes, and I think it's a symbol of just how polarized politics are in the state in regard to Indians and non-Indians."³²

Following the 2002 elections, which saw a surge in Indian political activity, the legislature passed laws that added additional requirements for voting, including a law requiring photo identification at the polls. Rep. Tom Van Norman, a member of the Cheyenne River Sioux Tribe, said that in passing the burdensome new photo requirement "the legislature was retaliating because the Indian vote was a big factor in new registrants and a close senatorial race."³³ During the legislative debate on a bill that would have made it easier for Indians to vote, representatives made comments that were openly hostile to Indian political participation. According to one opponent of the bill, "I, in my heart, feel that this bill . . . will encourage those who we don't particularly want to have in the system." Alluding to Indian voters, he said "I'm not sure we want that sort of person in the polling place."³⁴

The county auditor admitted there had been "an Indian versus white mentality" in recent elections in Bennett County.³⁵ A prime example of that was the 2002 election for the county

³²Id.

³³Id.

³⁴Id. (quoting Rep. Stanford AddeIstein).

³⁵Id. at 1035.

commission. After three Indians won the Democratic primary, Gary Nelson the chair of the county Democratic Party, got the county auditor to file a complaint with the Department of Justice that two of three Indian candidates, Gerald Bettelyoun and Francis Rough, were federal employees and were thus barred by the Hatch Act from seeking public office. As a result of the complaint, Rough withdrew from the election. Bettelyoun took early retirement, which cost him a significant cut in pay. The county Democratic Party, in a further attempt to avoid having Indians on the county commission, recruited a slate of three whites to run as independents in the general election against its own duly nominated candidates.

Martin, the county seat of Bennett County, has a population of just over 1,000 people, nearly 45% of whom are Native American. The city is near the Pine Ridge and Rosebud Reservations, and like many border towns it has had its share of racial conflict. The district court ruled that the at-large system diluted Indian voting strength. Among its findings were:

There is a long, elaborate history of discrimination against Indians in South Dakota in matters relating to voting in South Dakota. . . . Indians in Martin continue to suffer the effects of past discrimination, including lower levels of income, education, home ownership, automobile ownership, and standard of living. . . . Martin city officials have taken intentional steps to thwart Indian voters from exercising political influence. . . . [T]here is a persistent and unacceptable level of racially polarized voting in the City of Martin.³⁶

³⁶Cottier v. City of Martin, 446 F.Supp.2d 1175, 1184-88 (D. S.D.

The City was given an opportunity to propose a remedial plan, but refused to do so. The court then implemented a system of cumulative voting,³⁷ and at the elections held in June 2007, three Indian-friendly candidates were elected. The city has filed a notice of appeal.

One of the most blatant schemes to disfranchise Indian voters was used in Buffalo County. The population of the county was approximately 2,000 people, 83% of whom were Indian, and members primarily of the Crow Creek Sioux Tribe. Under the plan for electing the three-member county commission, which had been in effect for decades, nearly all of the Indian population - some 1,500 people - were packed in one district. Whites, though only 17% percent of the population, controlled the remaining two districts, and thus the county government. The system, with its total deviation among districts of 218%, was not only in violation of one person, one vote, but had clearly been implemented and maintained to dilute the Indian vote and insure white control of county government.

Tribal members, represented by the ACLU, brought suit in 2003 alleging that the districting plan was malapportioned and had been drawn purposefully to discriminate against Indian voters. The case was settled by a consent decree in which the

2006).

³⁷Cottier v. City of Martin, 475 F.Supp.2d 932, 936 (D. S.D. 2007).

county admitted its plan was discriminatory and agreed to submit to federal supervision of its future plans under Section 5 of the Voting Rights Act through January 2013.³⁸

In 2005, members of the Yankton Sioux Tribe filed suit against Charles Mix County alleging that the three districts for the county commission were malapportioned and had been drawn to dilute Indian voting strength.³⁹ The total deviation among the districts was 19%, and almost certainly unconstitutional. Moreover, each district was majority white, despite the fact that Indians were 30% of the population of the county and a compact majority Indian district could easily be drawn. No Indian had ever been elected under the challenged plan.

South Dakota law prohibited the county from redistricting until 2012.⁴⁰ In an effort to avoid court supervised redistricting following a finding of a one person, one vote or Voting Rights Act violation, the county requested the state legislature to pass special legislation establishing a process for emergency redistricting. The legislature complied and passed a bill, which the governor promptly signed, allowing a county to redistrict, with the permission of the governor and secretary of state, at any time it became "aware" of facts that called into

³⁸Kirkie v. Buffalo County, S.D., Civ. No. 03-3011 (D. S.D. Feb. 12, 2004).

³⁹Blackmoon v. Charles Mix County, CIV. 05-4017 (D. S.D.).

⁴⁰SDCL 7-8-10.

question whether its districts complied with federal or state law.⁴¹ Despite the fact that the new law applied to every county in the state, including Shannon and Todd, and was thus required to be precleared under Section 5 as well as the consent decree in the Quick Bear Quiver case, Charles Mix County immediately sought permission from the governor to draw a new plan. The plaintiffs in Quick Bear Quiver then filed a motion for a preliminary injunction before the three-judge court to prohibit the county from proceeding with redistricting absent compliance with Section 5. The court granted the motion.

In a strongly worded opinion, the court noted that state officials in South Dakota "for over 25 years . . . have intended to violate and have violated the preclearance requirements," and that the new bill "gives the appearance of a rushed attempt to circumvent the VRA."⁴² Implementation of the new emergency redistricting bill was enjoined until the state complied with Section 5. The state submitted the bill and the Department of Justice precleared it.

The county, for its part, argued that the deviation in the challenged plan was constitutional because it was necessary to avoid splitting townships. The court rejected the contention, pointing to redistricting maps prepared by the plaintiffs that

⁴¹House Bill 1265.

⁴²Quick Bear Quiver v. Nelson, 387 F.Supp.2d 1027, 1031, 1034 (D. S.D. 2005).

achieved almost perfect population equality among districts without splitting any townships. The court ruled that the challenged plan violated one person, one vote and gave the county an opportunity to propose a remedial plan.⁴³

The county ultimately adopted a plan proposed by the plaintiffs, which created one majority Indian district out of three with an Indian VAP of just over 60%. The first election was held under the plan in 2006, and Sharon Drapeau, a tribal member and a plaintiff in the lawsuit, defeated a non-Indian challenger in the Democratic primary. She went on to win unopposed in the general election, and took office in 2007. But the fight over redistricting in Charles Mix County was far from over.

Voters in the county, who opposed Indian representation on the county commission, circulated a petition to increase the number of commissioners from three to five. The petition garnered enough signatures to put the issue on the ballot, and it was approved in the November 2006 election. The county redrew the districts in early 2007, creating one majority Indian district out of five, thus diluting Indian voting strength as well as minimizing the Indian presence on the commission.

Even though the court ruled in favor of plaintiffs on the malapportionment issue, their claim that the challenged plan had been adopted and implemented for racially discriminatory reasons

⁴³Blackmoon v. Charles Mix County, 2005 WL 2738954 (D. S.D.).

remained pending. The parties were subsequently able to agree that the county would be subject to Section 5 until 2024, and that it would submit its five member plan for preclearance.⁴⁴ The plan was submitted in January 2008, and a decision by the Department of Justice is pending.

Conclusion

Modern day efforts to deny and suppress the Indian vote have run the gamut from the maintenance and manipulation of discriminatory election procedures, to the refusal of election officials to provide access to registration and voting, to unfounded allegations of voter fraud, to the adoption of discriminatory ID requirements for voting. The examples discussed above are illustrative and not intended to be exhaustive. They are mainly taken from litigation brought by the ACLU Voting Rights Project in Indian Country. Other examples of Indian vote denial and suppression, however, can be found in the recent hearings on the extension and amendments of the Voting Rights Act,⁴⁵ and other sources.⁴⁶

⁴⁴Blackmoon v. Charles Mix County, December 4, 2007, Consent Decree.

⁴⁵Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Reauthorization and Amendments Act of 2006, Pub. Law 109-246, 120 Stat. 577.

⁴⁶E.g., Daniel McCool, Susan M. Olson, and Jennifer L. Robinson, *Native Vote: American Indians, the Voting Rights Act, and the Right to Vote* (Cambridge; Cambridge U. Press, 2007).

Denial and Suppression of the American Indian Vote

House Committee on the Judiciary
February 8, 2008

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The Denial and Suppression of the Indian Vote

The United States has a long history of denying and suppressing the Voting Rights of American Indians. Throughout the nineteenth century Indians were regarded as non-citizens, and in the absence of being naturalized were not entitled to vote.¹ With passage of the Dawes Act of 1887 and the Burke Act of 1906, citizenship was granted to any Indian who accepted an allotment of reservation land, on condition that he or she reside "separate and apart from any tribe of Indians therein and has adopted the habits of civilized life."² A substantial number of Indians became citizens, but only by ceasing to be Indians.³

More than 7,000 Indians, most of whom were not citizens, served in the armed forces during World War I.⁴ In recognition of that service, Congress provided in 1919 that all Indians who had served honorably in the armed forces were eligible for American citizenship.⁵ Subsequently, Congress passed the Indian Citizenship Act of 1924 which gave Indians as a group United States citizenship, and thus, at least in theory, the federally

¹Elk v. Wilkins, 112 U.S. 94, 102 (1884).

²Draper v. United States, 164 U.S. 240, 246 (1896).

³Jeanette Wolfley, "Jim Crow, Indian Style: The Disenfranchisement of Native Americans," 16 Amer. Ind. L. Rev. 167, 176-78 (1991).

⁴Id. at 179 n. 72.

⁵Act of Nov. 6, 1919, ch. 95, 41 Stat. 350.

protected equal right to vote.⁶

Some commentators, taking a page from the history of black disfranchisement in the South after passage of the Fifteenth Amendment, which prohibited discrimination in voting "on account of race, color, or previous condition of servitude," suggested that it would still be proper for the states to "discriminate" in voting between tribal Indians on reservations and other citizens. They argued that states could enact literacy tests or poll taxes or deny the franchise absolutely to Indians living on reservations and enjoying immunity from state authority.⁷ Many states did in fact blunt the impact of the Indian Citizenship Act by making registration more difficult, cancelling all voter registration, requiring reregistration,⁸ or simply denying registration altogether.

South Dakota, despite passage of the act, continued to deny residents of unorganized counties, which had substantial Indian populations, the right to vote and hold office until the 1940s.⁹ Five other states (Idaho, Maine, Mississippi, New Mexico, and

⁶8 U.S.C. § 1401 (a) (2).

⁷N. D. Houghton, "The Legal Status of Indian Suffrage in the United States," 19 Calif.L.Rev. 507, 520 (1931).

⁸See, e.g., Mont. L. 1937, p. 527 (requiring deputy voter registrars to be "taxpaying" residents of their precincts); Mont. L. 1937, p. 523 (requiring reregistration of all voters).

⁹Buckanaga v. Sisseton Independent School District, 804 F.2d 469, 474 (8th Cir. 1986).

Washington), prohibited "Indians not taxed" from voting, although there was no similar disqualification from voting by non-taxpaying whites.¹⁰ Arizona denied Indians living on reservations the right to vote on the ground that they were "under guardianship" of the federal government and thus disqualified from voting by the state constitution. The practice was not struck down until 1948, when the state supreme court ruled that the language in the state constitution referred to a judicially established guardianship, and had no application to the status of Indians as a class under federal law.¹¹ Utah denied Indians living on reservations the right to vote on the ground that they were non-residents under state law. The law was upheld by the state supreme court, but was repealed by the legislature in 1957 after the Supreme Court, at the request of the state attorney general, agreed to review the case.¹²

The Indian Citizenship Act did not translate into significant Indian participation in the federal and state political processes. It did, however, reflect an increasing awareness and concern by Congress of the plight of Indians and set the stage for passage of additional federal legislation

¹⁰Wolfley (1991), 185.

¹¹Harrison v. Laveen, 67 Ariz. 337, 196 P.2d 456, 463 (1948).

¹²Allen v. Merrell, 352 U.S. 889 (1956), and Act of Feb. 14, 1957, ch. 38, 1957 Utah Laws 89-90. See also Allen v. Merrell, 353 U.S. 932 (1957) (vacating the state court decision as moot).

protecting Indian rights, including voting rights.

Despite the protections afforded by federal law, non-Indians in the west, particularly in areas containing or adjacent to reservations, have continued to deny and suppress the Indian vote. They have done so through the maintenance and manipulation of discriminatory election procedures, the refusal to provide access to registration and voting, and unwarranted allegations of voter fraud.

In a case involving Big Horn County, Montana, decided in 1986, the federal court made extensive findings of past and continuing discrimination against Indians residing on the Crow and Northern Cheyenne Reservations. Following a lengthy trial, the court held that at-large elections for the county commission and school board diluted Indian voting strength in violation of Section 2 of the Voting Rights Act. In doing so, the court found:

*There was "substantial probative evidence that the rights of Indians to vote has been interfered with, and in some cases denied, by the county."

*The evidence "tends to show an intent to discriminate against Indians."

*" [T]here has been discrimination in the appointment of deputy registrars of voters and election judges limiting Indian involvement in the mechanics of registration and voting."

*" [I]n the past there were laws prohibiting voting precincts on Indian reservations."

*Politics in Big Horn County was "race conscious"

and "racially polarized."

*" [T]here is racial bloc voting in Big Horn County and . . . there is evidence that race is a factor in the minds of voters in making voting decisions."

*" [D]iscrimination in hiring has hindered Indian involvement in government, making it more difficult for Indians to participate in the political process."

*" [R]ace is an issue and subtle racial appeals, by both Indians and whites, affect county politics."

*There was "a strong desire on the part of some white citizens to keep Indians out of Big Horn County government."

*"Indians who had registered to vote did not appear on voting lists."

*"Indians who had voted in primary elections had their names removed from voting lists and were not allowed to vote in the subsequent general elections."

*Indians were "refused voter registration cards by the county."

*"When an Indian was elected Chairman of the Democratic Party, white members of the party walked out of the meeting."

*"Unfounded charges of voter fraud have been alleged against Indians and the state investigator who investigated the charges commented on the racial polarization in the county."

*A depressed socio-economic status makes it "more difficult for Indians to participate in the political process and there is evidence linking these figures to past discrimination."¹³

Efforts to suppress the Indian vote in Big Horn County did not end with the federal court decision. Members of two

¹³Windy Boy v. County of Big Horn, 647 F.Supp. 1022, 1008-09, 1013, 1016-18, 1022 (D. Mont. 1986).

organizations which support termination of the reservation system, Citizens Equal Rights Alliance (CERA) and Montana Citizens Rights Alliance (MCRA), filed suit in June 2007 alleging that various forms of voter fraud took place on the Crow Reservation - double voting, insecure ballot boxes, and the endorsement of candidates by the tribal government.¹⁴ One of the remedies the plaintiffs sought was the removal of all polling places from the reservation, which would have effectively disfranchised large numbers of Indians and facilitated control of county elections by whites.

Tribal and county election officials insisted the charges were baseless, and noted that one of the plaintiffs, Christopher Kortlander, made similar allegations of fraud in the past. When the charges were proven to be groundless, he apologized and sent the Clerk and Recorder a bunch of roses.

Nellie Little Light, a member of the Crow Tribe, works for the Big Horn County Clerk and Recorder, where she has been employed for 16 years. "No double voting took place," she said. "That is just not true. I am personally familiar with about everybody at Crow, and there was no double voting."

"This is a very prejudiced place," she added. "We have

¹⁴Citizens Equal Rights Alliance v. Johnson, CV-07-74 BLG-RFC (D. Mont.).

grown up with it. When it comes to the elections, the whites are sore losers. That's why they brought this suit."

On November 5, 2007, the federal court granted a motion to dismiss filed by county and state election officials, and held the plaintiffs failed to state a violation of federal law. The court also held the plaintiffs failed to show the defendants acted with any discriminatory intent or racial animus towards the plaintiffs or white voters. The litigation, however, is not yet over. The plaintiffs have filed an amended complaint adding additional defendants and claims.

For most of the twentieth century, voters in South Dakota were required to register in person at the office of the county auditor.¹⁵ Getting to the county seat was a hardship for Indians who lacked transportation, particularly for those in unorganized counties who were required to travel to another county to register. Moreover, state law did not allow the auditor to appoint a tribal official as a deputy to register Indian voters in their own communities. There was one exception, however. State law required the tax assessor to register county property owners in the course of assessing the value of their land. Thus, taxpayers were automatically registered to vote, while nontaxpayers, many of whom were Indian, were required to make the

¹⁵S.D. Codified Laws §§ 16.0701-0706 (Michie 1939).

trip to the courthouse to register in person.²³ Mail-in registration was not fully implemented in South Dakota until 1973.²⁴

The disdain of some state officials for Indian voting rights was apparent from the state's refusal to comply with Section 5 of the Voting Rights Act. Ten years after its enactment in 1965, Congress amended the Voting Rights Act to cover American Indians, to expand the geographic reach of the special preclearance provisions of Section 5, and to require certain jurisdictions to provide bilingual election materials to language minorities. As a result of the amendments two counties in South Dakota, Shannon and Todd, which are home to the Pine Ridge and Rosebud Indian Reservations respectively, became subject to preclearance.²⁵ Eight counties in the state, because of their significant Indian populations, were also required to conduct bilingual elections - Todd, Shannon, Bennett, Charles Mix, Corson, Lyman, Mellette, and Washabaugh.²⁶

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³⁴Fiddler v. Sieker, No. 85-3050 (D. S.D. Oct. 24, 1986).

³⁵United States v. Day County, South Dakota, No. CV 99-1024 (D. S.D. June 16, 2000).

invalidated the state's 2001 legislative plan as diluting Indian voting strength. It found there was "substantial evidence that South Dakota officially excluded Indians from voting and holding office." Indians in recent times have encountered numerous difficulties in obtaining registration cards from their county auditors, whose behavior "ranged from unhelpful to hostile." Indians involved in voter registration drives have regularly been accused of engaging in voter fraud by local officials, and while the accusations have proved to be unfounded they have "intimidated Indian voters."³⁶

Indians launched another major voter registration drive before the 2002 election, and it too was hit with allegations of voter fraud. Susan Williams, the auditor of Bennet County, announced publically that Indians doing voter registration were committing fraud. Once again investigators fanned out on the Pine Ridge and Rosebud Reservations, but again no one was ever charged with registering or attempting to register anyone illegally. After the investigation, Attorney General Mark Barnett announced there was "no basis" for the claimed widespread Indian voter fraud.³⁷

Dr. Dan McCool, the director of the American West Center at the University of Utah and who has written extensively about

³⁶Bone Shirt v. Hazeltine, 336 F.Supp.2d at 1019, 1025-26.

³⁷Id.

Indian voting rights, said the accusations of voter fraud were "part of an effort to create a racially hostile and polarized atmosphere. It's based on negative stereotypes, and I think it's a symbol of just how polarized politics are in the state in regard to Indians and non-Indians."³⁸

Following the 2002 elections, which saw a surge in Indian political activity, the legislature passed laws that added additional requirements for voting, including a law requiring photo identification at the polls. Rep. Tom Van Norman, a member of the Cheyenne River Sioux Tribe, said that in passing the burdensome new photo requirement "the legislature was retaliating because the Indian vote was a big factor in new registrants and a close senatorial race."³⁹ During the legislative debate on a bill that would have made it easier for Indians to vote, representatives made comments that were openly hostile to Indian political participation. According to one opponent of the bill, "I, in my heart, feel that this bill . . . will encourage those who we don't particularly want to have in the system." Alluding to Indian voters, he said "I'm not sure we want that sort of person in the polling place."⁴⁰ Bennett County did not comply with the provisions of the Voting Rights Act requiring it to

³⁸Id.

³⁹Id.

⁴⁰Id. (quoting Rep. Stanford Addelstein).

provide minority language assistance in voting until prior to the 2002 elections, and only then because it was directed to do so by the Department of Justice.⁴¹

The county auditor admitted there had been "an Indian versus white mentality" in recent elections in Bennett County.⁴² A prime example of that was the 2002 election for the county commission. After three Indians won the Democratic primary, Gary Nelson the chair of the county Democratic Party, got the county auditor to file a complaint with the Department of Justice that two of three Indian candidates, Gerald Bettelyoun and Francis Rough, were federal employees and were thus barred by the Hatch Act from seeking public office. As a result of the complaint, Rough withdrew from the election. Bettelyoun took early retirement, which cost him a significant cut in pay. The county Democratic Party, in a further attempt to avoid having Indians on the county commission, recruited a slate of three whites to run as Independents in the general election against its own duly nominated candidates.

Martin, the county seat of Bennett County, has a population of just over 1,000 people, nearly 45% of whom are Native American. The city is near the Pine Ridge and Rosebud Reservations, and like many border towns it has had its share of

⁴¹Id. at 1028.

⁴²Id. at 1035.

racial conflict. The district court ruled that the at-large system diluted Indian voting strength. Among its findings were:

There is a long, elaborate history of discrimination against Indians in South Dakota in matters relating to voting in South Dakota. . . . Indians in Martin continue to suffer the effects of past discrimination, including lower levels of income, education, home ownership, automobile ownership, and standard of living. . . . Martin city officials have taken intentional steps to thwart Indian voters from exercising political influence. . . . {T}here is a persistent and unacceptable level of racially polarized voting in the City of Martin.⁴³

The City was given an opportunity to propose a remedial plan, but refused to do so. The court then implemented a system of cumulative voting,⁴⁴ and at the elections held in June 2007, three Indian-friendly candidates were elected. The city has filed a notice of appeal.

One of the most blatant schemes to disfranchise Indian voters was used in Buffalo County. The population of the county was approximately 2,000 people, 83% of whom were Indian, and members primarily of the Crow Creek Sioux Tribe. Under the plan for electing the three-member county commission, which had been in effect for decades, nearly all of the Indian population - some

⁴³Cottier v. City of Martin, 446 F.Supp.2d 1175, 1184-88 (D. S.D. 2006).

⁴⁴Cottier v. City of Martin, 475 F.Supp.2d 932, 936 (D. S.D. 2007).

1,500 people - were packed in one district. Whites, though only 17% percent of the population, controlled the remaining two districts, and thus the county government. The system, with its total deviation among districts of 218%, was not only in violation of one person, one vote, but had clearly been implemented and maintained to dilute the Indian vote and insure white control of county government.

Tribal members, represented by the ACLU, brought suit in 2003 alleging that the districting plan was malapportioned and had been drawn purposefully to discriminate against Indian voters. The case was settled by a consent decree in which the county admitted its plan was discriminatory and agreed to submit to federal supervision of its future plans under Section 5 of the Voting Rights Act through January 2013.⁴⁵

In 2005, members of the Yankton Sioux Tribe filed suit against Charles Mix County alleging that the three districts for the county commission were malapportioned and had been drawn to dilute Indian voting strength.⁴⁶ The total deviation among the districts was 19%, and almost certainly unconstitutional. Moreover, each district was majority white, despite the fact that Indians were 30% of the population of the county and a compact majority Indian district could easily be drawn. No Indian had

⁴⁵Kirkie v. Buffalo County, S.D., Civ. No. 03-3011 (D. S.D. Feb. 12, 2004).

⁴⁶Blackmoon v. Charles Mix County, CIV. 05-4017 (D. S.D.).

ever been elected under the challenged plan.

South Dakota law prohibited the county from redistricting until 2012.⁴⁷ In an effort to avoid court supervised redistricting following a finding of a one person, one vote or Voting Rights Act violation, the county requested the state legislature to pass special legislation establishing a process for emergency redistricting. The legislature complied and passed a bill, which the governor promptly signed, allowing a county to redistrict, with the permission of the governor and secretary of state, at any time it became "aware" of facts that called into question whether its districts complied with federal or state law.⁴⁸ Despite the fact that the new law applied to every county in the state, including Shannon and Todd, and was thus required to be precleared under Section 5 as well as the consent decree in the Quick Bear Quiver case, Charles Mix County immediately sought permission from the governor to draw a new plan. The plaintiffs in Quick Bear Quiver then filed a motion for a preliminary injunction before the three-judge court to prohibit the county from proceeding with redistricting absent compliance with Section 5. The court granted the motion.

In a strongly worded opinion, the court noted that state officials in South Dakota "for over 25 years . . . have intended

⁴⁷SDCL 7-8-10.

⁴⁸House Bill 1265.

to violate and have violated the preclearance requirements," and that the new bill "gives the appearance of a rushed attempt to circumvent the VRA."⁴⁹ Implementation of the new emergency redistricting bill was enjoined until the state complied with Section 5. The state submitted the bill and the Department of Justice precleared it.

The county, for its part, argued that the deviation in the challenged plan was constitutional because it was necessary to avoid splitting townships. The court rejected the contention, pointing to redistricting maps prepared by the plaintiffs that achieved almost perfect population equality among districts without splitting any townships. The court ruled that the challenged plan violated one person, one vote and gave the county an opportunity to propose a remedial plan.⁵⁰

The county ultimately adopted a plan proposed by the plaintiffs, which created one majority Indian district out of three with a an Indian VAP of just over 60%. The first election was held under the plan in 2006, and Sharon Drapeau, a tribal member and a plaintiff in the lawsuit, defeated a non-Indian challenger in the Democratic primary. She went on to win unopposed in the general election, and took office in 2007. But

⁴⁹Quick Bear Quiver v. Nelson, 387 F.Supp.2d 1027, 1031, 1034 (D. S.D. 2005).

⁵⁰Blackmoon v. Charles Mix County, 2005 WL 2738954 (D. S.D.).

the fight over redistricting in Charles Mix County was far from over.

Voters in the county, who opposed Indian representation on the county commission, began circulating a petition to increase the number of commissioners from three to five. The petition garnered enough signatures to put the issue on the ballot, and it was approved in the November 2006 election. The county redrew the districts in early 2007, creating one majority Indian district out of five, thus diluting Indian voting strength as well as minimizing the Indian presence on the commission.

Even though the court ruled in favor of plaintiffs on the malapportionment issue, their claim that the challenged plan had been adopted and implemented for racially discriminatory reasons remained pending. The parties were subsequently able to agree that the county would be subject to Section 5 until 2024, and that it would submit its five member plan for preclearance.⁵¹ The plan was submitted in January 2008, and a decision by the Department of Justice is pending.

Conclusion

The instances discussed above of efforts to deny and suppress the Indian vote are illustrative and not intended to be exhaustive. They are mainly taken from litigation brought by the ACLU Voting Rights Project in Indian Country. Other examples of

⁵¹Blackmoon v. Charles Mix County, December 4, 2007, Consent Decree.

Indian vote denial and suppression can be found in the recent hearings on the extension and amendments of the Voting Rights Act,⁵² and other sources.⁵³

⁵²Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Reauthorization and Amendments Act of 2006, Pub. Law 109-246, 120 Stat. 577.

⁵³E.g., Daniel McCool, Susan M. Olson, and Jennifer L. Robinson, *Native Vote: American Indians, the Voting Rights Act, and the Right to Vote* (Cambridge: Cambridge U. Press, 2007).

**REPUBLICAN BALLOT SECURITY PROGRAMS: VOTE
PROTECTION OR MINORITY VOTE SUPPRESSION—OR BOTH?**

A REPORT TO THE CENTER FOR VOTING RIGHTS & PROTECTION

SEPTEMBER 2004

By

Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise

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**REPUBLICAN BALLOT SECURITY PROGRAMS: VOTE PROTECTION OR
MINORITY VOTE SUPPRESSION—OR BOTH?**

EXECUTIVE SUMMARY

Police brutality in the spring of 1965 against civil rights marchers on the Edmund Pettus Bridge in Selma, Alabama was a watershed event in American history. The beating of the defenseless, unarmed marchers protesting the disfranchisement of blacks in the South was captured by TV cameras and the images were quickly beamed around the world. The event served as a catalyst for passage of the Voting Rights Act that same year. The act was widely perceived as the climax of the post-World War II black civil rights movement. It gave the U.S. Department of Justice broad new powers to enforce the voting rights of African Americans (and, in subsequent amendments, various other minority groups as well), particularly in the South where those rights had been most seriously curtailed throughout the Twentieth Century.

Yet, despite the reach of the new act, despite the aggressive enforcement of it early on by the Justice Department and the courts, and despite the extension and expansion of the non-permanent features of the act in 1970, 1975, and 1982, efforts to disfranchise people of color, not only in the South but throughout the nation, continues into the Twenty-first Century.

This Report focuses on vote suppression connected with what the authors call *ballot security programs gone bad*. These are programs that, in the name of protecting against vote fraud, almost exclusively target heavily black, Latino, or Indian voting precincts and have the intent or effect of discouraging or preventing voters in those precincts from casting a ballot. In some cases, these programs have been found by courts to be illegal. Still, they continue to exist in spite of strong criticism by leaders of minority communities, their allies, and voting rights lawyers.

Until the mid-1960s the political entity most closely associated with efforts to disfranchise people of color was the southern wing of the Democratic Party. However, as explained in Chapter 2 of this Report, a sea change in American politics occurred in the decade of the 1960s. Both the presidential campaigns of Barry Goldwater in 1964 and Richard Nixon in 1968 employed the so-called “southern strategy,” in which conservatives in the GOP, long identified as the Party of Lincoln, began making racial appeals to whites in the states of the former Confederacy who were angry at the federal government for its abolition of the Jim Crow system in the 1950s and 1960s. Such appeals have continued to be a Republican stock-in-trade, even though they have become attenuated with the passing of the rabid white segregationists of an earlier era.

Until the 1960s, Republican presidential candidates stood a reasonable chance of gaining as much as a third of the African-American vote and, with a progressive racial platform, it seems reasonable to suppose they could have gotten even more in the future. However, once the conservative wing of the GOP began to court white southerners by appealing to “states’ rights,” a code word of the day for white supremacy, blacks began to vote heavily for Democrats—as did Latinos in the Southwest, albeit to a lesser extent.

In the 1960s, then, a party realignment occurred in American politics, with race as the cleavage plane. The Republican Party became worried by the potential for high

turnout in black and Latino precincts, which would add disproportionately to the Democratic vote. The GOP also publicly expressed concern that vote fraud in these same minority precincts would shift even more votes into the Democratic column.

These concerns gave rise to the widespread phenomenon of the Republican ballot security program, implemented ostensibly to guard against Democratic and minority vote fraud. But, as became obvious from the first major nationwide GOP ballot security program in 1964, named “Operation Eagle Eye,” such programs had the potential for discouraging legitimate minority citizens from voting at least as much as for discouraging vote fraud.

Indeed, efforts that discouraged minority voting were carried out in such southwestern states as Arizona even before Goldwater campaign adopted the southern strategy in 1964. The Senate confirmation hearings of William Rehnquist, when he was nominated to the U.S. Supreme Court in 1971 and again when he was nominated as Chief Justice in 1986, brought to light his involvement in ballot security programs in the 1950s and early 1960s that, according to a number of credible witnesses, employed tactics that could very well have depressed the votes of registered minority citizens in Phoenix. There is reason to believe that programs in states such as Arizona provided a model for Operation Eagle Eye in 1964 and were precursors of similar programs in New Jersey, Louisiana, Texas, and California, among others, in the 1980s. Some of these programs drew national attention not only because of their egregious tactics but because of the Republican National Committee’s involvement in them, and the scrutiny the programs received by state and federal courts.

There are several noteworthy characteristics of these programs. They focus on minority precincts almost exclusively. There is often only the flimsiest evidence that vote fraud is likely to be perpetrated in such precincts. In addition to encouraging the presence of sometimes intimidating Republican poll watchers or challengers who may slow down voting lines and embarrass potential voters by asking them humiliating questions, these programs have sometimes posted people in official-looking uniforms with badges and side arms who question voters about their citizenship or their registration. In addition, warning signs may be posted near the polls, or radio ads may be targeted to minority listeners containing dire threats of prison terms for people who are not properly registered—messages that seem designed to put minority voters on the defensive. Sometimes false information about voting qualifications is sent to minority voters through the mail.

The purpose of this Report is to provide a brief history of some of the most indefensible Republican ballot security programs from the 1950s on, but particularly, in Chapter 6, from 1981 through 2002. These case studies, along with the description of events in Louisville, Kentucky in 2003, presented in Chapter 1, are intended to give the reader a sense of the nature of Republican ballot security excesses, and why they continue to pose a threat to minority voters some forty years after the Voting Rights Act was passed.

In the concluding chapter, the authors address the question of how to abolish these “ballot security programs gone bad.” In so doing, the authors stress that not all ballot security programs are illegitimate. There is undoubtedly some voter fraud in the U.S., engaged in not only by Democrats but by Republicans. How to accommodate the need for voting integrity with the rights of legitimate minority voters not to be harassed in the

name of ballot security is a challenging problem, especially in a time of highly polarized partisanship such as the present. The authors discuss legal remedies as well as political ones. Among the latter, the authors suggest that the newly created Election Assistance Commission, created by the Help America Vote Act of 2002, might be able to play a useful role.

CHAPTER I

INTRODUCTION

Marie Foster, an African-American dental technician, died on September 6, 2003 at the age of 85. She received national attention when she, along with others, was brutally beaten by state troopers at the foot of the Edmund Pettus Bridge in Selma, Alabama, on March 7, 1965 in the first of three attempts by voting rights activists to march to Montgomery, the state capital, to demand voting rights for African Americans. The unprovoked violence of the troopers was captured in sickening detail on television and the images were quickly beamed around the world. The event came to be called "Bloody Sunday" in the annals of the Civil Rights Movement. The second attempt occurred two days later, and it was stopped without violence. Mrs. Foster attempted to hobble in that march as well.

Four days after that, President Lyndon Johnson announced on national television that he would send a voting rights bill to Congress. Dr. Martin Luther King, Jr. watched the president's speech in Mrs. Foster's living room, and famously wept—something his close friends and aides had never seen him do before. The march to Montgomery was finally allowed to proceed two weeks later. Despite injuries to both her knees from the earlier beating by state troopers, Marie Foster, then forty-six years old and a mother of three, walked fifty miles in five days.

Like many participants in the civil rights movement, Mrs. Foster had humble origins. She had dropped out of high school to marry, and when her husband died, leaving her with three young children, she went to work. Years later she finished high school, went to junior college, and became a dental hygienist. She worked for her brother, a dentist, and was therefore not dependent on a white employer and the pressure that could be exerted through such a relationship. She became involved in voting rights activities, passing out leaflets door to door and urging ministers to announce voter registration drives from their pulpits. She was threatened several times by the Ku Klux Klan. Mrs. Foster was herself able to register to vote only after having tried eight times. By then she had already begun coaching other blacks on how to pass "the deliberately bewildering voter registration tests," as one writer described them.

According to friends, Mrs. Foster's efforts on behalf of social justice continued to her death. In recent years she led a successful effort to obtain public housing for poor people in Selma. She helped remove a statue of the founder of the Klan from a public park. She taught reading to poor children, and took them to Sunday school. "She never quit," a friend told the *New York Times* after her death.¹

¹ This account of Marie Foster's life is taken from Douglas Martin, "Marie Foster, Early fighter for Voting Rights, Dies at 85," *The New York Times*, 12 Sept. 2003, C18. See also David Halberstam, *The Children* (New York: Random House 1998), 421, 516-17; and Taylor Branch, *Pillar of Fire: America in the King Years 1963-65* (New York: Simon & Schuster, 1998), 64, 391, 553. On King's weeping in Foster's home, see David J. Garrow, *Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference* (New York: Vintage Books, 1988, 2d ed.), 408-9.

Louisville 2003

The summer Marie Foster died, almost forty years after passage of the Voting Rights Act, an event unfolded in Louisville, Kentucky, which to many blacks in that city was redolent of the Jim Crow institutions Mrs. Foster had fought to abolish. A gubernatorial campaign was in progress, pitting Republican Ernie Fletcher against incumbent attorney general Ben Chandler, a Democrat. Mike Czerwonka, who had lost a race for state representative the previous year, circulated a one-page handbill to fellow Louisville Republicans entitled "Gubernatorial Election Integrity Call to Arms." Following his defeat in 2002, Czerwonka had alleged there were a number of voting irregularities in the election, although Jefferson County (Louisville) voting officials said they found none. Local Republicans also believed there was vote fraud in some minority precincts in 1995, but subsequent investigations were indeterminate.²

His handbill asserted that various previous GOP candidacies in the area and in Louisiana had been

adversely impacted by the presence and influence of the Democratic National Committee, the A. Phillip Randolph Institute (the black militant division of the AFL-CIO and funded in part by the DNC); and the NAACP and their efforts to marshal the Get Out To Vote [sic] efforts targeted toward the black, poor voters in selected communities and selected targeted races of national impact.³

Czerwonka alleged that the tactics of these organizations included encouraging the unregistered to vote and to engage in other illegal practices, "(i.e., vote buying, etc.), all for the sole singular intent of getting the Democratic nominee in Gubernatorial, and National Congressional and Senatorial races elected."⁴

Czerwonka's flier said he had "been asked by the Fletcher campaign for Governor to serve in the capacity of insuring the integrity of the election process in the [predominantly black] West End/Portland areas of Louisville. We will require approximately Three Hundred (300) Republican Precinct Poll Workers to achieve this goal." He urged readers to "join Ernie Fletcher and me for an informational meeting at the ABC Office's [sic]" in Louisville on July 21.⁵

What happened at the July meeting was not reported in the news media at the time. However, as the gubernatorial campaign heated up in the fall and it became public knowledge that the Fletcher campaign in cooperation with the state Republican party would be fielding poll-watchers at voter precincts around the state, the county GOP in Louisville announced it planned on placing Election-Day challengers at fifty-nine of the city's voting precincts. Kentucky law allows a political party to assign one challenger per precinct on Election Day to question the credentials of voters who the challengers have reason to believe are not legitimate. All but four of the fifty-nine precincts named by the

²Sheldon S. Shafer, "GOP to put challengers in black voting precincts; Critics call strategy intimidation," *The Courier-Journal* (Louisville), 23 Oct. 2003, A1; "Targeting black voters," *The Courier-Journal* (Louisville), 24 Oct. 2003, 6A.

³Copy of handbill in senior author's possession.

⁴Ibid.

⁵Ibid.

Republicans were in the predominantly black West End of the city, and the other four were in a low-income, racially mixed area.⁶

African-American leaders in the community expressed outrage, as did Democratic Party officials. Raoul Cunningham, a Louisville resident and former Kentucky NAACP Voter Empowerment Coordinator, asserted in an op-ed in the local daily, *The Courier-Journal*, that the purpose of the challengers was to "question and intimidate voters and suppress the African-American vote." He pointed out that there were 483 precincts in the county, yet virtually the only ones targeted by challengers were African-American. He noted that the Republican party had not been able to fill a complete slate of election officials in the county, yet they had no trouble coming up with almost sixty Republicans whose job it would be to monitor the voting of blacks. Moreover, of the fifty-eight challengers whose names he had seen, "only five have zip codes in or near the targeted areas." Cunningham added:

The vast majority of the challengers will need detailed directions from the Internet to even find their assigned precinct. How will a challenger who lives in the East End know who is a resident of a particular precinct in the West End or who is a convicted felon? What criteria will the challengers use to object to a voter? The color of one's shoes? Whether one's hair is braided? Sculptured nails? Or the color or size of one's earring? There is absolutely no way possible for these challengers to properly execute their responsibilities under the law.⁷

Cunningham's questions were particularly apt inasmuch as Kentucky law states that voters cannot be challenged indiscriminately; challengers must have "a reason to believe" a potential voter has dubious qualifications.

The GOP stoutly defended their ballot security effort. Ellen Williams, chairwoman of the Kentucky Republican party, said she was "saddened that some have chosen to brand our efforts as an attempt to intimidate voters. If anything, we believe our efforts actually encourage voter turnout because people are more likely to participate in an election if they believe their vote is counted fairly and not diluted by a flood of illegitimate votes."⁸ However, she could not give a reporter specific reasons for the statewide "Kentucky Ballot Security Taskforce" which the Republicans had put in place. "We're like Boy Scouts and Girl Scouts," Williams said; "we want to be prepared. We want to make sure that people are comfortable on Election Day, that they feel confident."⁹

The county GOP chairman, Jack Richardson IV, at first denied the precincts were chosen on the basis of race or voting patterns. They were chosen either at random or because Republicans had had difficulty finding qualified voters in those precincts to serve as election workers, he said.¹⁰ A few days later he was quoted as saying the GOP strategy was not to target minority precincts but rather Democratic ones, and he

⁶ Shafer, "GOP to put challengers in black voting precincts"; Raoul Cunningham, interview with senior author, 8 Aug. 2004; Raoul Cunningham, "Action targets African-American participation," *The Courier-Journal* (Louisville), 26 Oct. 2003, D1.

⁷ Cunningham, "Action targets African-American participation."

⁸ Ellen Williams, "Perfectly legal' practice will ensure fair results," *The Courier-Journal* (Louisville), 26 Oct. 2003, D1.

⁹ Joe Biesk, "State Parties Field Legal Teams for Election Day," Associated Press (Frankfort, Kentucky), 28 Oct. 2003.

¹⁰ Shafer, "GOP to put challengers in black voting precincts."

estimated that about a third of the fifty-nine precincts with Republican challengers were predominantly white—an assertion disputed by Cunningham, the former NAACP official.¹¹ (Richardson's latter reason for choosing the black precincts was the one used by the Republicans' defense lawyer when a suit against the challenger program was subsequently heard in court.)¹²

A Fletcher campaign representative was contacted by a reporter who asked whether Fletcher had attended the July 21 meeting at the ABC offices in Louisville which Czerwonka had urged his fellow Republicans to attend. The representative said that to the best of his knowledge Fletcher had not attended the meeting. In addition, he said he thought Czerwonka was not connected to Fletcher's campaign but to the state party. Later, another Fletcher campaign spokesman said the candidate had indeed attended a meeting on July 21 at the Associated Building Contractors (ABC) offices mentioned in Czerwonka's flier, but that it was a normal meeting with supporters, and the candidate did not discuss ballot security.¹³ A few days later county GOP chairman Richardson added that while he had asked Czerwonka to help recruit volunteers, he wasn't authorized to speak for the party. Some, though not all, Republican officials seemed anxious to disavow Czerwonka's earlier recruiting flier charging black organizations with vote fraud.¹⁴

As Election Day approached, African Americans and Democrats rallied potential black voters. Leaders held a forum that included Democratic candidate Ben Chandler at a black Baptist church. All nine major presidential candidates in the Democratic primaries signed a letter deploring the Louisville ballot security program. The Kentucky Democratic party published a flier titled "Know Your Rights—You Can Vote," which it planned to distribute in the fifty-nine targeted precincts. Included on the flier were directions on how to respond to a challenger, and a toll-free telephone number for obtaining legal advice. The ACLU of Kentucky filed suit in state and federal courts claiming that the Republican challenger program in Louisville was intended to intimidate black voters and slow the voting process in black precincts. The U.S. Department of Justice announced it was sending staff to Louisville to monitor the election.¹⁵

Some days before the election, a cross-section of African-American, Democratic, and labor leaders held an intense meeting at the local Urban League Office. Also attending were eight members of the Louisville Metro Council, some present and former members of the legislature, and a smattering of students and residents—about one hundred in all. In an atmosphere one reporter likened to a religious tent meeting, a

¹¹ Al Cross, "Presidential hopefuls urge halt to poll challenges," *The Courier-Journal* (Louisville), 26 Oct. 2003, B3.

¹² Joseph Gerth and Sheldon S. Shafer, "Judge allows vote challengers," *The Courier-Journal* (Louisville), 4 Nov. 2003, A1.

¹³ "There They Go Again," *Talking Points Memo*, 27 Oct. 2003, http://www.talkingpointsmemo.com/archives/week_2003_10_26.php.

¹⁴ Andrew Wolfson, "GOP defends vote challenge; activists call flier to recruit poll workers racially biased," *The Courier-Journal* (Louisville), 31 Oct. 2003, B1.

¹⁵ Cross, "Presidential hopefuls urge halt to poll challenges"; Tom Loftus, "Parties add lawyers to handle queries on wrongdoing at polls," *The Courier-Journal* (Louisville), Kentucky State Edition, 28 Oct. 2003, B1; "State News," *Democracy Dispatches* No. 38, 11 Nov. 2003, 1-2, <http://www.demos-usa.org/pub78.cfm>.

series of rallies in black neighborhoods was planned, a goal of 60-percent turnout in those same areas was adopted, and the president of the local Urban League announced a fund drive to raise \$30,000 to \$40,000 to support turnout efforts, including printed materials and radio ads. Amidst the excitement, former state senator Georgia Powers, 80, the first African-American (and the first woman) elected to Kentucky's upper house, addressed the absent Republicans: "We won't let you roll back the clock. I marched at Selma in 1965. . . . We will go to the polls with our armor of dignity," she vowed. The chairman of the county GOP, interviewed after the meeting and obviously under pressure from Fletcher's campaign, said the local party had decided on its challenger program without consulting Fletcher or the state party.¹⁶

On Election Day the Louisville *Courier-Journal* reported that instead of the original fifty-nine challengers announced earlier by the local GOP, only eighteen would go to polling locations. The remainder had either been reassigned as poll workers or had not attended training sessions for challengers.¹⁷ This occurred after a judge refused to prevent the challengers from going into Democratic precincts but remarked, "It's a shame that you can't get people to work in all these precincts but you can get people to volunteer as challengers."¹⁸

The reduced number of challengers did not, however, mollify black leaders, who had led motorcades, rallies, and a door-to-door canvassing drive to get out the vote in their neighborhoods. "If they [the GOP] had one challenger in one precinct, we would be up in arms," averred a black minister. "It would still send the message that black voters are not honest when they go to the polls, and that they are untrustworthy."¹⁹

In response to the white challengers, the NAACP on Election Day sent volunteer monitors to polling sites to keep an eye on the behavior of the eighteen challengers. A Democratic attorney told a reporter he didn't expect the Republicans to try to suppress the minority vote at that point. "I think some of the advance publicity made it impossible for them to do anything. . . . What they have done is, they have gotten people out to vote."²⁰

In fact, virtually nothing out of the ordinary was observed either by the challengers or their monitors as the election took place. One of the challengers who lived elsewhere in the city arrived around 5:15 a.m. at the polling site, a senior citizen housing complex on Muhammad Ali Boulevard—a street named for the famous Louisville native. For most of the day he sat quietly near a voting registration table as black people filed in to vote. A photo of him in the newspaper depicted an older white man with black women on either side of him, looking rather out of place. He admitted to a reporter that he didn't know any of the voters. His being there, he allowed, didn't "make much sense."²¹

Shortly after the polls closed that night, Republican Fletcher was declared the winner of the gubernatorial contest by a ten-point margin statewide, although Chandler

¹⁶ Sheldon S. Shafer, "Group aims for higher turnout in black areas," *The Courier-Journal* (Louisville), 31 Oct. 2003, B1.

¹⁷ Gerth and Shafer, "Judge allows vote challengers," A1.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Joseph Gerth and Sheldon S. Shafer, "Precincts see no trouble with monitors; some think GOP plan encouraged blacks to vote," *The Courier-Journal* (Louisville), 5 Nov. 2003, A9.

narrowly carried Jefferson County.²² In a post-election analysis, a University of Louisville political scientist compared turnout in the city with that in the 2002 mid-term elections the year before. In predominantly white precincts, turnout fell 7 percent. In predominantly black precincts as a whole, however, it was nearly identical with the previous year's. The only precincts in which turnout actually rose were twenty-one among the fifty-nine which the Republicans had originally targeted for challengers—a pattern the political scientist attributed to a backlash against the Republicans' ballot security program. However, Jack Richardson, the Jefferson County GOP chairman, said he thought the party's program, along with the Democrats' response to it, spurred Republican voters "in other parts of the county" to vote, and he vowed to send more poll-watchers out the next year—a vow perhaps influenced by the fact that voters in the targeted black precincts voted 8-1 in favor of Chandler and helped him carry the county. True to his word, Richardson announced in July 2004 that the party planned to place challengers "in predominantly Democratic precincts" in November.²³

Ballot Security Programs Gone Bad: A Model

Ballot security programs have played a salient role in American politics over the past half-century, as this Report will show. They sometimes are nothing more than legitimate efforts to prevent vote fraud. But at other times they clearly involve attempts to suppress minority votes. Virtually nothing has been written about either function of these programs in the scholarly literature, however. *Elections A to Z*, John L. Moore's excellent encyclopedic guide to American elections, doesn't contain an entry on them, or refer to them in its index.²⁴ Moore's work is not alone in this respect.²⁵

A list of key aspects of the events in Louisville might serve as a rough model for a phenomenon that is the focus of this Report—excesses of ballot security programs, or what might be called "ballot security programs gone bad."

First, a group of Republicans planned and organized what they hoped would be a well-publicized effort to place white Republicans primarily at black Democratic polling places, ostensibly to protect against vote fraud through challenging anyone not qualified to cast a ballot.

Second, while some of the Republican leaders first denied to reporters any rationale for choosing the precincts in which to place challengers, and others insisted they were not focusing on black precincts *per se* but on heavily Democratic ones, the ballot security effort was clearly aimed at black neighborhoods far removed from the overwhelmingly white Republican ones., as well as from white precincts in which many Democratic votes were typically cast.

²² Michael Janofsky, "Kentucky Elects a Republican Governor," *The New York Times*, 5 Nov. 2003, A22; Joseph Gerth, "Jefferson Turnout: Challengers likely raised black vote, observers say," *The Courier-Journal* (Louisville), 6 Nov. 2003, A6.

²³ Gerth, "Jefferson Turnout: Challengers likely raised black vote, observers say," A6; Rebecca Neal and Joseph Gerth, "Some critics call plan intimidation," *The Courier-Journal* (Louisville), 30 July 2004, 8B.

²⁴ John L. Moore, *Elections A to Z* (2d ed.) (Washington, D.C.: CQ Press, 2003). There is an entry, however, on election fraud, a portion of which briefly mentions efforts by Republican or conservative groups to monitor—and in some cases target disinformation to—minority voters. See 151-2.

²⁵ See, for example, Peter G. Renstrom and Chester B. Rogers, *The Electoral Political Dictionary* (Santa Barbara, California and Oxford, England: ABC-CLIO, 1989).

Third, some of the Republicans claimed they were concerned with ballot security because of recent voting fraud in the same black precincts, although county officials denied it. Perhaps more to the point, even Mr. Czerwonka, the Republican candidate who made the allegation of fraud and who played a key role in getting Republican party officials involved in ballot security efforts, had not claimed that all fifty-nine precincts that his group hoped to blanket with challengers had engaged in vote fraud.

Fourth, although the Republican party's legal right to place challengers in the black precincts was not at issue, none of the Republicans had an answer to the question posed by a black leader as to how a white Republican challenger living on the other side of town would be able to determine—simply by watching blacks march up to the polling place, sign in, and cast a ballot—whether these voters, whom they had presumably never seen before and would probably never see again, were qualified to vote.

Fifth, the leadership in the black community was outraged to the point of holding rallies, conducting a spirited get-out-the-vote drive, and denouncing the Republicans' ballot security program as nothing more than a means of harassing black voters. Some of the leadership found particularly galling the fact that what appeared to them as harassment directed solely at their community was being organized by whites against a racial minority many of whose members could vividly recall the disfranchisement of their race during the era of Jim Crow, when southern Democrats were responsible for preventing blacks from voting.

These features of the events in Louisville in the summer and fall of 2003 were by no means unique to that time and place. On the contrary, forays by white, affluent poll-watchers or challengers into minority neighborhoods that the same whites would almost never go into otherwise, in the name of "ballot security," has been a prominent feature of Republican political strategy for at least fifty years. On many occasions these forays on Election Day have also been accompanied by other measures, such as posting at the polls uniformed men, sometimes with badges or guns, who are intended to look like law enforcement officers; posting off-duty police officers at the polls; photographing or videotaping voters; aggressive, hostile questioning of potential voters or polling officials in ways that can embarrass or humiliate; spreading false information about voting requirements, candidates, and the election date in the days before the election; challenging voters on the basis of inaccurate registration lists that disproportionately winnow out low-income people; or a combination of these tactics. When successful, these measures are a form of vote suppression, which is a polite term for the disfranchisement of eligible minority voters.²⁶

Moreover, ballot-security programs gone bad are often not simply the work of a few renegades who are out of touch with the GOP leadership structure. On the contrary, as this Report will demonstrate, evidence indicates that some of the unsavory practices of ballot security efforts are approved or winked at by the top echelons of the party hierarchy and conducted by well-educated professionals, particularly lawyers, and sometimes paid for by the Republican National Committee.

It is not the contention of this Report that all Republican efforts to protect against vote fraud are intended to suppress minority votes. Vote fraud occurs with some

²⁶ For an investigation of other forms of vote suppression in use today, see Stephen Donziger, *America's Modern Poll Tax: How Structural Disfranchisement Erodes Democracy* (Washington, D.C.: The Advancement Project, 2001).

frequency in the United States today, although there have been almost no systematic efforts to ascertain its incidence nationally or within states, or whether certain populations or political parties are more likely to engage in it than others.²⁷

Over the past half century there have been well-documented instances of fraudulent practices in black and Latino precincts. There are also equally well-documented instances of voter fraud in white Anglo precincts, as well. In the words of a Republican state election official addressing lawyers for a Latino voting rights organization, “although there is probably a larger number of problems regarding minorities and the election process, fraud in Texas knows no race.”²⁸ And there are, to be sure, numerous Republican as well as Democratic perpetrators of fraud.²⁹ Moreover, even if vote fraud across the nation is gradually declining, as two political scientists have recently argued, the fact remains that it still exists, and in close elections it can determine the outcome.³⁰ The purpose of this Report, therefore, is not to argue against members of any political party taking reasonable steps to prevent ballot fraud. Rather, it is simply to highlight efforts that appear to be designed primarily to intimidate, misinform, stigmatize, and ultimately suppress the vote of minority citizens who are eligible to vote.

²⁷ The most systematic efforts to tabulate and analyze vote fraud focus on other nations. See Fabrice Lehoucq, “Electoral Fraud: Causes, Types, and Consequences,” *American Review of Political Science* 6 (2003):233-56.

²⁸ Testimony of Shadrick Jefferies, Texas Secretary of State’s Office, *An Inquiry into Texas Voting Irregularities in Texas*, Southwest Voter Education Project, 22 Oct. 1980, Austin, Texas, 44. For examples of white vote fraud in South Texas aimed at minority voters, see, in the same document, the testimony of voting rights lawyer George Korbel, 188-206.

²⁹ For a more extended discussion of fraud, see Chap. VI below.

³⁰ Lori Mennite and David Callahan, *Securing the Vote: An Analysis of Election Fraud* (New York: Demos, 2003), 10.

CHAPTER II

RACE AND PARTY REALIGNMENT IN THE UNITED STATES

To appreciate the outrage of minority voters at the sort of programs exemplified by events in Louisville, it is useful to understand the tremendous sea change that has gradually taken place in American politics—one that has fundamentally restructured partisan alignments and played an important role in the Republican ascendancy during the last third of the Twentieth Century.

What happened, in essence, was a reversal of the roles the two major parties had played from the end of the Civil War to the New Deal. During that period of roughly eighty years, the Republican Party was identified as “the party of Lincoln.” Particularly in the eyes of African Americans, the GOP was seen as responsible not only for emancipation but also for Reconstruction, events in which Republicans had provided the leadership necessary to pass the Civil War Amendments giving civil rights—including voting rights—to blacks. The Democratic Party, particularly in the South, took the lead in curtailing those same rights for many African Americans. In consequence, most blacks who could still vote, from the Nineteenth Century on, gave strong support to the national Republican Party until the election of Franklin Roosevelt presaged the rising influence of a northern faction of the Democratic Party concerned with the needs of the poor, the working class, and ethnic and racial minorities. By the 1940s a racially and economically liberal wing of the Democratic Party began to emerge even in the South—one that was concerned with securing the right of blacks (and in Texas, Latinos) to be treated as equal citizens.¹

As the post-World War II civil rights movement gathered momentum, liberal factions of both parties gradually joined in common cause to attack the barriers blacks faced nationwide. This bipartisan coalition—encouraged by the monumental 1954 *Brown* decision (handed down by a unanimous Supreme Court whose chief justice was a Republican); by two Congressional civil rights acts in 1957 and 1960 passed by Congress with bipartisan support and signed by a Republican president; and by the growing mass protest movement—gradually set its sights on abolishing the southern Jim Crow institutions that, under state law, continued both to prevent blacks from receiving equal treatment in public accommodations and to prevent blacks from voting. Put differently, by the late 1950s racial progressives of both parties were sufficiently numerous and sufficiently concerned with racial justice to collaborate more and more effectively in efforts to achieve it.²

This bipartisanship on civil rights continued with passage of the Civil Rights Act of 1964—which outlawed the southern Jim Crow laws—and the Voting Rights Act of 1965, a tough new law guaranteeing the right to vote through effective, wide-ranging enforcement mechanisms overseen by the U.S. Department of Justice. The most cohesive bloc of Democrats voting against both laws consisted of southern white

¹ For a description of the racial realignment described here and in the paragraphs below, see Edward G. Carr-Saunders and James A. Stimson, *Issue Evolution: Race and the Transformation of American Politics* (Princeton: Princeton University Press, 1989), Chapter 2.

² *Ibid.*, 37.

legislators—a fact that was deeply troubling to Lyndon Johnson, the southern Democratic president whose superb leadership on racial matters at that crucial point in American history was in large measure responsible for the so-called “Second Reconstruction.”³

Reversing the Democrats’ successful efforts during and after the first Reconstruction to wall blacks out of public life, these two laws presented tantalizing possibilities to the two parties, both of which consisted of a liberal and conservative wing. The conservative Democrats were based disproportionately in the South, and the whites in that region, led by such figures as Mississippi Senator James Eastland, Alabama Governor George Wallace, and South Carolina Senator Strom Thurmond—the latter of whom had headed a “Dixiecrat” third-party presidential ticket in 1948 to protest civil rights planks in the national Democratic Party’s platform—fought hard to maintain racial segregation and black disfranchisement. Their rallying cry was “states’ rights,” shorthand for the maintenance of the Jim Crow system. Liberal Republicans, such as New York Governor Nelson Rockefeller, Pennsylvania Senator Hugh Scott and Governor William Scranton, and Connecticut Senator Prescott Bush (father and grandfather of men who as presidential candidates would actively court southern whites, sometimes with racial appeals), were concentrated in the Northeast. Many in the progressive Republican leadership ranks belonged to the wealthy Eastern Seaboard establishment. There were, of course, sections of the nation in which conservative Republicans were gaining strength, such as the southwestern states—particularly Texas, Arizona, and California—areas where “Anglos,” or non-Hispanic whites, were worried by the potential growth of the Hispanic population, which tended to vote Democratic.

Republicans nationally were at a crossroads with regard to party ideology generally and racial strategy in particular. While blacks had gradually begun to desert the party of Lincoln from the New Deal on, their voting patterns in the 1950s had demonstrated that they were not securely in the Democratic camp. In 1956 Dwight Eisenhower, whose Democratic opponent Adlai Stevenson had soft-pedaled civil rights to pacify southern whites, received 40 percent of the black vote (and as much as 60 percent in many southern black communities).⁴ And while Kennedy won about 70 percent of the black vote in 1960, that support could not be attributed to a significantly stronger civil rights posture than Nixon’s—there was little distinction between them on that score—but primarily to Kennedy’s having sent a letter expressing concern to Coretta Scott King when her husband had been sentenced, on a technicality, to four months in a backwater Georgia prison for participating in a sit-in at an Atlanta restaurant. (Neither Nixon nor President Eisenhower expressed concern.)⁵

The racially liberal wing of the GOP saw that the black vote was not firmly Democratic and estimated that, in close elections such as the one in 1960, a unified black vote could provide the margin of victory in certain key northern states. Republican advocates of civil rights therefore urged it to remain true to its tradition as the party of Lincoln. They argued that the best course of action, not only for narrow partisan purposes but for the sake of racial justice, was to support the civil rights struggle, destroy the Jim Crow system, and not cede this important voting bloc to the Democrats.

³ *Ibid.*, 40–42.

⁴ *Ibid.*, 35–36, 46.

⁵ *Ibid.*, 46; Theodore H. White, *The Making of the President 1960* (New York: Atheneum Publishers, 1961), 315, 321–23.

Republican conservatives, on the other hand, saw a great opportunity to entice into their party the southern white Democrats who had so desperately—and sometimes murderously—tried to maintain Jim Crow. The whites in the eleven states of the old Confederacy were more numerous than those of the nation's blacks, and—even more important—southern whites greatly outnumbered blacks in the southern states, although blacks were disproportionately concentrated there. The Republican national convention in 1964 would become a referendum of sorts on which strategy the party would pursue—not only in that year's presidential campaign but, as it turned out, in succeeding campaigns right into the Twenty-first Century. The top contenders for the nomination were New York Governor Nelson Rockefeller and Pennsylvania Governor William Scranton, representing the civil rights wing of the party, and Arizona Senator Barry Goldwater, whose hard-right positions on a host of issues gave the convention a dramatic choice.

Goldwater and the Republican Southern Strategy

Goldwater, a native Arizonan and heir to a department store fortune in Phoenix, was a libertarian conservative, deeply suspicious of the federal government except for purposes of national defense. On racial matters, however, he had liberal instincts, supporting local integration efforts in Phoenix, a city which in the 1950s had a small black and Latino population.⁶ Even so, he was on record by 1960 as favoring a "states' rights" solution to school desegregation and opposing on that basis the U.S. Supreme Court's recently decided *Brown v. Board of Education* decision. The tenor of his speeches to southerners in the presidential election that year caused presidential candidate Kennedy on one occasion to refer to Goldwater's "Confederate uniform that he has been using in the South."⁷

The following year, 1961, Goldwater went a step further, blaming Nixon's defeat on his progressive civil rights plank, which Nixon had adopted at the urging of Governor Rockefeller.⁸ Also in 1961, speaking to the Republican Southern States Regional Conference in Atlanta, Goldwater said, "I wouldn't like to see my party assume that it is the role of the Federal Government to enforce integration in the schools." This statement occurred four years after President Eisenhower, by mobilizing federal troops to ensure the desegregation of Little Rock High School in Arkansas, had done just that—an action Goldwater had criticized.⁹ The senator then went on to tell the same audience, "We're not going to get the Negro vote as a bloc in 1964 and 1968, so we ought to go hunting where the ducks are."¹⁰ In short, Goldwater seemed ready to point his party in a very different direction on civil rights policy from the one it had traditionally taken.

In the wake of events in Birmingham in the summer of 1963, when the city's Commissioner of Public Safety, Bull Connor, directed that dogs, fire hoses, and club-wielding policemen be used to quell peaceful civil rights protests in that Alabama city, President Kennedy delivered what has been called "the most memorable speech of his

⁶ Fred J. Cook, *Barry Goldwater: Extremist of the Right* (New York: Grove Press, Inc., 1964), 52.

⁷ Barry Goldwater, *The Conscience of a Conservative* (Shepherdsville, Kentucky: Victor Publishing Company, Inc., 1960), 31-37; White, *The Making of the President 1960*, 327.

⁸ White, *Ibid.*, 203.

⁹ Cook, *Barry Goldwater*, 155.

¹⁰ *Ibid.*, 155-6.

presidency,” defending the civil rights of African Americans.¹¹ A few days later, on June 19, Kennedy sent a comprehensive civil rights bill to Congress—one much stronger than the bill he had initially sent the previous February. However, civil rights advocates feared that Goldwater’s rise to national prominence would cause Kennedy to proceed cautiously and perhaps compromise key provisions. That fall Andrew Young, an aide to the Rev. Martin Luther King, Jr., told him that Kennedy’s moderation on civil rights—and that of his brother Robert—reflected their fear that Goldwater would be the Republican presidential candidate in 1964. The Kennedys’ effort “to maintain a more moderate image,” Young told King, “could do us a great deal of harm between now and the ’64 elections.”¹²

Shortly thereafter, President Kennedy was assassinated, and Lyndon Johnson, his successor, made passage of the Civil Rights Act of 1964 a top legislative priority. He made it clear that he would use his formidable knowledge and skills developed as a U.S. Senator to shepherd it through Congress intact. As summarized by political scientists Edward Carmines and James Stimson, the bill

Barred discrimination in public facilities and accommodations, granted the attorney general the power to initiate suits against public schools that practiced segregation, forbade job discrimination by employers or unions, extended efforts to assure the right to vote, allowed the Justice Department to sue to desegregate state and local facilities, and provided that federal funds would be withheld from any federally funded program or activity that practiced discrimination.¹³

The historical context in which the bill was debated was extraordinary. That summer Mississippi Klansmen “were responsible for at least 35 shooting incidents and 6 murders, the burnings of 65 homes and churches, and the beatings of at least 80 [civil rights] volunteers,” according to the historian Joshua Zeitz.¹⁴ It was the summer young civil rights workers Andrew Goodman, Michael Schwerner, and James Cheney, two whites and a black, were murdered in Neshoba County, Mississippi. The House of Representatives voted by a margin of 290 to 130 in favor of the bill. A larger proportion of Republican representatives (78 percent) than Democrats (61 percent) supported it. The strongest opposition in both parties came from southerners. In the Senate, southern senators led the longest filibuster in history against it. Finally, in June a vote for cloture—then requiring a two-thirds majority—brought the filibuster to an end. In this vote, too, a higher proportion of Republicans than Democrats voted affirmatively. Only 6 of the 33 Republicans voted against cloture and thus for continuing the southerners’ filibuster. Goldwater was one of them. Then a final roll-call vote on the bill was taken on June 19, and it passed 73 to 27, with Goldwater again voting no. His was one of only eight no votes from outside the South.¹⁵ Why did he do so? The Republican southern “duck hunting” strategy undoubtedly played a part. But perhaps there were other causes

¹¹ Carmines and Stimson, *Issue Evolution*, 40.

¹² David J. Garrow, *Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference* (New York: Random House, Vintage edition, 1988), 303.

¹³ Carmines and Stimson, *Issue Evolution*, 43.

¹⁴ Joshua Zeitz, “Democratic Debacle,” AmericanHeritage.com (June-July 2004)

http://www.americanheritage.com/xml/2004/3/2004_3_feat_0.xml.

¹⁵ Carmines and Stimson, *Issue Evolution*, 42-43.

as well. A friend of the senator told President Nixon's counsel, John Dean, that Goldwater had explained his vote this way:

[H]e said he had sought the best legal advice he could get, at the time, as to whether the law was constitutional. He said he was advised that it was unconstitutional, and likely would be so found by the Supreme Court. His advice came from the most conservative lawyer he'd ever met—Bill Rehnquist.¹⁶

It is almost impossible to convey, in 2004, how important the passage of the 1964 Civil Rights Act was perceived to be at the time—both by advocates of civil rights and by segregationists. It was one of those defining watershed moments in American history—“a time to stand and be counted,” in the words of presidential campaign historian Theodore H. White. “Barry Goldwater stood in Washington to be counted. And he voted against cloture, in effect voting against the Civil Rights Bill (which he was to do nine days later); and also, in effect, declaring that the apparent Republican nominee for the Presidency was unalterably opposed to intervention by the Federal Government to secure the human liberties and civil rights of all its citizens, black or white, in any state where such fundamental rights might have been denied by previous Constitutional interpretation of states' rights.”¹⁷

“Almost overnight,” historian Adam Fairclough writes, “the South's elaborate structure of racial segregation collapsed. Jim Crow had finally expired.”¹⁸ When Goldwater was nominated as the Republican standard-bearer on July 15, less than two weeks after Johnson had signed the Act, the Rev. King denounced the event as “unfortunate and disastrous.” Goldwater, King said, “articulates a philosophy which gives aid and comfort to the racist.”¹⁹ As if to bear him out, the only states in addition to Arizona to give their electoral votes to Goldwater in November were the five Deep South states of Mississippi, Alabama, South Carolina, Louisiana, and Georgia, in which a relatively small proportion of African Americans were able to vote. (Less than 1 percent of voting-age blacks in Mississippi were registered to vote in 1964, a state in which Goldwater received 87 percent of the total vote.)²⁰

The Southern Strategy Endures

LBJ's landslide victory in November appeared initially to be an overwhelming repudiation of Goldwater's racial conservatism, as did the strong bipartisan support the next year for the Voting Rights Act. But appearances were deceiving. Gradually, the influence of the civil rights wing of the Republican Party began to shrivel, partly because the Democrats continued to champion civil rights (thus maintaining strong black

¹⁶ John W. Dean, *The Rehnquist Choice: The Untold Story of the Nixon Appointment That Redefined the Supreme Court* (New York and other cities: The Free Press, 2001), 129. The friend of Goldwater's quoted by Dean is Richard Moore. Goldwater also asked the advice of Yale Law Professor Robert Bork, who concurred with Rehnquist. See Rick Perlstein, *Before the Storm: Barry Goldwater and the Unmaking of the American Consensus* (New York: Hill and Wang, 2001), 363.

¹⁷ Theodore H. White, *The Making of the President 1964* (New York: Atheneum Publishers, 1965), 155.

¹⁸ Adam Fairclough, *Better Day Coming: Blacks and Equality, 1890-2000* (New York: Viking 2001), 282.

¹⁹ Garrow, *Bearing the Cross*, 340.

²⁰ Cammines and Stimson, *Issue Evolution*, 45, 49.

support), partly because many succeeding Republican candidates and almost all Republican presidents made racial appeals—some subtle, some otherwise—to southern whites still angry at federal abolition of the Jim Crow system, the re-enfranchisement of African Americans, and various federal policies supported by Democrats seen as giving special consideration to blacks.²¹

One of the least subtle of these appeals was presidential candidate Ronald Reagan's decision to launch his post-convention campaign in 1980 by appearing at the Neshoba, Mississippi, County fair—the county still notorious for the murders of Goodman, Schwerner, and Cheney.²² The fair, first organized in 1889, had a long tradition of featuring segregationist politicians as speakers. Reagan, who was well-known for having voiced opposition to both the 1964 Civil Rights Act and the 1965 Voting Rights Act, gave a speech advocating “states' rights” to the almost all-white audience of 10,000, which responded with thunderous applause.²³

In summary, the election of 1964 is crucial to understanding the dynamics of partisan politics in the forty subsequent years. The American party system, observe Carmines and Stimson, “was fundamentally transformed during the mid-1960s. The progressive racial tradition in the Republican Party gave way to racial conservatism, and the Democratic Party firmly embraced racial liberalism. These changes unleashed political forces that permanently reshaped the contours of American politics.”²⁴

The national black and Latino leadership, as well as many of the rank-and-file in minority communities across the nation, are still poignantly aware of the role race has played in transforming the American party structure over the past generation. The efforts of some Republicans to focus ballot security programs primarily in black and Latino neighborhoods thus rubs salt in old wounds. To many minority voters, it is as though the historic animus towards their racial and ethnic groups harbored by segregationist white Democrats of yore has been passed on to modern white Republicans, and finds dramatic expression in the behavior of “ballot security activists” in minority precincts at election time. Acting on an unproven stereotype of minority precincts as rife with fraud and chicanery, such Republicans eagerly send teams into these precincts to “observe,” to challenge—and sometimes to misinform and to intimidate—racial and ethnic minority voters, who still live in the shadow of massive historical disfranchisement.

²¹ For a discussion of these post-1964 trends, see *ibid.*, 47-58.

²² Andrew Jacobs, “Southern Town Struggles With a Violent Legacy; Impact of Killings Lingers After 40 Years,” *The New York Times*, 29 May 2004, A9.

²³ Douglas F. Kneeland, “Reagan Campaigns at Mississippi Fair,” *The New York Times*, 4 Aug. 1980, A11; Kneeland, “Reagan Urges Blacks to Look Past Labels and to Vote for Him,” *The New York Times*, 6 Aug. 1980, A1.

²⁴ Carmines and Stimson, *Issue Evolution*, 58.

CHAPTER III

**THE REHNQUIST CONFIRMATION HEARINGS:
SHEDDING LIGHT ON BALLOT SECURITY PROGRAMS IN ARIZONA**

GOP ballot security programs gained national attention in the fall of 1971, after President Richard Nixon nominated William H. Rehnquist to the U.S. Supreme Court. The nomination surprised observers. Nixon and his staff had kept their consideration of Rehnquist quiet, and Nixon, in fact, had decided on him only the day before the public announcement.¹ His hesitation and secrecy was a consequence of previous confirmation battles. Opposition in 1969 to Nixon's Supreme Court nominees, conservative southerners Clement Haynsworth and G. Harrold Carswell, forced the president to withdraw their names. A weary Senate later confirmed Harry Blackmun and Warren Burger.² In 1971 few senators opposed Nixon's nomination of Lewis Powell, but public concern about Rehnquist's stance on civil rights arose soon after the surprise announcement. Opponents believed he had worked against civil rights, and part of the evidence they offered was information about his involvement in the Arizona Republican Party and GOP ballot security programs.

Rehnquist became active in the Arizona Republican Party after completing his clerkship for Supreme Court Justice Robert H. Jackson in June 1953.³ It was an exciting time to join the Arizona GOP. The state had become a Democratic stronghold in the 1930s, with the number of Republican registered voters declining to an all-time low of 12 percent by 1940.⁴ The narrow victories of Republicans Barry Goldwater to the U.S. Senate and John Rhodes to the U.S. House of Representatives (the first Arizona

¹Justices Hugo Black and John Harlan had fallen ill and left two vacancies on the court in September 1971. Nixon wanted a southerner, a conservative, and a relatively young candidate. After considering several candidates, he finally settled on Lewis Powell and Rehnquist. The latter had been responsible for vetting the candidates in the Department of Justice until his name was taken seriously into consideration. For detailed information on the nominating process see John Dean, *The Rehnquist Choice: The Untold Story of the Nixon Appointment that Redefined the Supreme Court* (New York: The Free Press, 2001).

²Dean argues that Nixon intended to significantly reshape the court when he became president, even intimidating Supreme Court justices to try to secure their resignations. Dean, *The Rehnquist Choice*, 1-9.

³William Hubbs Rehnquist was born on October 1, 1924 in Milwaukee, Wisconsin. He graduated Phi Beta Kappa with a degree in political science from Stanford in 1948. He later earned an M.A. in political science from Stanford and an M.A. in government from Harvard. In 1952 he graduated from Stanford Law School and then clerked for Justice Jackson for eighteen months. In 1953 Rehnquist moved to Phoenix where he practiced law with four different firms until he moved to Washington, D.C. in 1969 to work as Assistant Attorney General in the Office of Legal Counsel, Department of Justice. Richard Kleindienst had recommended Rehnquist to head the Office of Legal Counsel after he took the No. 2 position in the Justice Department. (Rehnquist had become a trusted friend and adviser to then-Arizona state party chairman Kleindienst in the 1950s.) In 1971 Rehnquist was 47 years old. Derek Davis, *Original Intent: Chief Justice Rehnquist and the Course of American Church/State Relations* (Buffalo, New York: Prometheus Books, 1991), 3-6. On Rehnquist's relationship with Kleindienst, see David G. Savage, *Turning Right: The Making of the Rehnquist Supreme Court* (New York: John Wiley & Sons, Inc., 1993), 39.

⁴Republican voter registration dropped from 33 percent of the total in 1928 to just 12 percent in 1940. Between 1933 and 1951, the GOP did not elect a single representative to the Arizona senate. In the Arizona house during those same years, "Republican representation reached a high of 11 out of 72 seats." David R. Berman, *Arizona Politics and Government: The Quest for Autonomy, Democracy, and Development* (Lincoln: University of Nebraska Press, 1998), 48-50.

Republican ever elected to the U.S. House) in 1952 revived the state's competitive two-party system. Particularly noteworthy was the fact that Goldwater defeated Ernest McFarland, the Democratic majority leader of the Senate. Republicans also made sharp inroads in the state legislature that year, and the GOP was suddenly a force to be reckoned with in Arizona. Goldwater won a landslide victory in 1958, although Arizona's black precincts voted heavily against him.⁵ He won this election, in part, with the help of volunteers like Rehnquist and Sandra Day O'Connor—bright, aspiring white professionals who wanted to build a national Republican party reflecting their conservative values.⁶

Several factors aided the Republicans. Conservative newcomers from other states, hardworking volunteers, a pro-GOP press, and popular candidates like Barry Goldwater contributed to their success. They also benefited from a split in the Democratic Party between liberal activists, many of whom had moved to Arizona after 1945, and the so-called Pinto Democrats, traditional conservatives who were alienated by the national Democratic Party's increasing support for black civil rights.⁷

Nonetheless, while Republicans made steady progress after 1952, electoral contests in the state remained highly competitive.⁸ In this context, blacks and Latinos played an important role. Both groups on the whole were desperately poor. Their situation—as measured by the degree of residential and school segregation, exclusion from public accommodations by an informal Jim Crow system, and exclusion as well from the local political system—was not all that different from that of blacks in the South.⁹ Barry Goldwater's butler, Otis Burns, told an interviewer many years later that the city "wasn't any better than a southern town."¹⁰

Blacks in 1960 made up 4.8 percent of Phoenix's residents, having declined from 6.5 percent in 1940. Residents with Hispanic surnames, while growing in numbers along with the general population, composed 8.2 percent in 1960.¹¹ For various reasons, including their low socioeconomic status and their younger average age, these two groups composed a much smaller percentage of the city's actual voters—probably less than 10 percent combined.

⁵ Robert Alan Goldberg, *Barry Goldwater* (New Haven: Yale University Press, 1995), 132; Sheryl Gay Stolberg, "Daschle Has Race on His Hands and Interloper on His Turf," *The New York Times*, 23 May 2004, 20.

⁶ Goldberg, *Barry Goldwater*, 127.

⁷ Berman, *Arizona Politics and Government*, 52-53, 63. According to Berman, many conservative Democrats retained their registration in the Democratic Party to influence politics in their counties but often voted for Republicans. "Pinto" is Spanish for a horse of two colors.

⁸ Republican gains increased faster in the 1966 election because that year a federal court instituted a new population-based apportionment system for the Arizona senate and house. The previous geographically based system favored farmers, ranchers, and miners. The new plan gave significant weight to the Republican stronghold in Phoenix (Maricopa County). For the first time in Arizona history, Republicans captured the state house and senate. Berman, *Arizona Politics and Government*, 54-56.

⁹ Bradford Luckingham, *Phoenix: The History of a Southwestern Metropolis* (Tucson: The University of Arizona Press, 1989), 171-76; Calvin Goode interview with Mary Melcher on January 24, 1990 (Arizona Historical Foundation, Hayden Library, Arizona State University). See also Melcher's article, "Blacks and Whites Together: Interracial Leadership in the Phoenix Civil Rights Movement," *Journal of Arizona History* 32 (Summer 1991): 196-216.

¹⁰ Goldberg, *Barry Goldwater*, 88. See also 37-38, 88-89.

¹¹ Leonard E. Goodall, "Phoenix: Reformers at Work" in Goodall, ed., *Urban Politics in the Southwest* (Tempe: Institute of Public Administration, Arizona State University, 1967), 111.

Still, in spite of their small proportion of the electorate, Republicans took minority voters seriously—not as a group to be won over, but as one that could frustrate their aims, particularly when elections were tight. Historical memory also came into play. Democrats, after all, had taken over the state in the 1930s with the support of new voters and Latinos. And blacks had demonstrated they were not Goldwater fans.¹²

It is in this context that ballot security measures in Phoenix and elsewhere in Maricopa County, made famous by the Rehnquist hearings, can best be understood. The Republicans were especially blessed at this time with a perfect rationale for focusing on minority, low-income precincts that just happened to vote Democratic: a state law requiring that voters be literate in English. This law had been enacted shortly after statehood, as one historian described it, “to limit ‘the ignorant Mexican vote’ As recently as the 1960s, registrars applied the test to reduce the ability of blacks, Indians, and Hispanics to register to vote.” The literacy test would continue in use until prohibited by the Voting Rights Act of 1965. However, the state of Arizona went to court and succeeded in getting it reinstated. Amendments to the Voting Rights Act in 1970 imposed a temporary nationwide ban on literacy tests, and this became permanent as a result of a 1971 court decision. The Arizona legislature did not officially repeal the test until 1972—the year Rehnquist became a member of the Supreme Court. But during the Republican ascendancy in Arizona, the literacy test was a key tool of minority vote suppression. As Arizona political historian David Berman describes it:

Anglos sometimes challenged minorities at the polls and asked them to read and explain “literacy” cards. Intimidators hoped to discourage minorities from standing in line to vote.¹³

Challenging Voters in Phoenix Minority Precincts

Experiments with ballot security in Phoenix began at least as early as 1954, but the first large-scale ballot security drive took place in 1958 when the Arizona Republican Party sent volunteers and party leaders to 90 percent of Maricopa county’s 220 polling places in order to turn out the Republican vote and to challenge Democratic voters’ qualifications. The first basis for challenge was residency. Republicans had mailed campaign literature to 18,000 Democrats marked “Do not forward” and “Return postage guaranteed,” a tactic that the GOP would continue to use in various states for many years. The returned mail was collected to form challenge lists. Equipped with these lists of voters whose current address apparently did not correspond to their address of registration, GOP challengers tried to disqualify the Democratic voters if they showed up at the polls.¹⁴ In terms of minority voting rights, a serious problem with this tactic was

¹² Berman, *Arizona Politics and Government*, 48–49.

¹³ *Ibid.*, 75. See also Venita Hawthorne James, “Arizona’s legacy of prejudice,” *Arizona Republic*, 12 Jan. 1991, A2; *Apache County v. United States*, 256 F. Supp. 903 (D.D.C. 1966); and *Ely v. Klahr*, 403 U.S. 108 (1971). For more on the relationship between minority voters and the political parties, see Berman, 64–65, 74–80.

¹⁴ “Some GOP Vote Challengers Face Criminal Charges For Holding Posts,” *Arizona Republic*, 5 Nov. 1958, 4. The pro-GOP paper reported that Democrats were “obviously surprised by the Republican program.” Some Democrats retaliated in 1960 with postcards to 349 Republican voters in District 15 warning them of “punishment” if they moved and voted in their former precinct. The unspecified punishment included the loss of vote and perjury penalties for making false affidavits. The Democratic list

that, in general, there are many reasons why a “Do Not Forward” letter can be returned: it might have been delivered to the wrong address, for example; or the registration list the challengers worked with might have been out of date or inaccurate. Moreover, partisan activists can make mistakes—unintentional or otherwise—in matching the names on the returned letters with the names on the registration lists they are using.

Voting rights lawyer Dayna Cunningham has marshaled evidence to raise serious questions about the fairness of challenges or purges based on address verification. Among the most important of these is simply poor mail delivery in such areas. Both Internal Revenue Service and census data “suggest that a major contributor to low response rates in minority communities may be ineffective mail delivery,” she writes.¹⁵ Yet once a voter’s name is on the Republicans’ challenge list, he or she is the target of a challenge on Election Day, even if qualified to vote. Each voter confronted by a challenge slows down the line. And, depending on how self-confident the voter (and how knowledgeable about the voting process), and how aggressive the challenger, the voter will either persevere or give up.

The second basis for challenge in 1958 was literacy: voters had to be able to read from the U.S. Constitution, if challenged. On Election Day, Republicans sent challengers to confront potential voters with passages from this document. According to witnesses, the challengers (described as Anglos) flanked voters (described as blacks or Latinos, and often elderly) and asked them to read aloud a passage from the Constitution printed out on a note card. If the voter refused or could not read satisfactorily, the challengers often asked the person to leave the voting line, although the law stipulated that the challenger could not harass or intimidate the voter.¹⁶ To make matters even more confusing in this particular election, contrary to the law, the Maricopa Republican county chairman assigned poll-watchers and challengers to selected precincts, when the official precinct committee had sole legal jurisdiction to do so.¹⁷

Opponents of these practices argued that the GOP ballot security programs attempted to disfranchise qualified minority voters. Richard G. Kleindienst, Arizona GOP chairman in the late 1950s and later Attorney General under President Nixon, denied it, and claimed in 1962 that Republicans “challenge in precincts where it has been demonstrated in the past that some parts of the Democratic organization in Maricopa County try to crowd into the polls at the last minute people who are not qualified to vote.” *The Arizona Republic* only mentioned southside minority precincts, however, as

was compiled on the basis of returned mailings to registered Republicans. See Bill King, “Postcards Threaten GOP Voters,” *Arizona Republic*, 5 Nov. 1960, 8.

¹⁵Dayna L. Cunningham, “Who Are to be the Electors? A Reflection on the History of Voter Registration in the United States,” *Yale Law and Policy Review* 9 (1991): 393-4.

¹⁶For descriptions of such challenges, see *Nominations of William H. Rehnquist and Lewis F. Powell, Jr.: Hearings Before the Committee on the Judiciary, United States Senate, Ninety-Second Congress, First Session on Nominations of William H. Rehnquist, of Arizona, and Lewis F. Powell, Jr., of Virginia, to be Associate Justices of the Supreme Court of the United States* (Washington D.C.: U.S. Government Printing Office, 1971), 295-6. (Hereinafter *Nominations 1971*.) This text describes challengers using the Arizona State Constitution. Under Arizona law, it was legal to use the U.S. Constitution to challenge voters. The Rev. George B. Brooks of Phoenix also described these kinds of challenges in an interview with Mary Melcher on January 31, 1990, (Arizona Historical Foundation, Hayden Library, Arizona State University). See also Melcher, “Blacks and Whites Together,” 208-9.

¹⁷“Some GOP Vote Challengers Face Criminal Charges For Holding Posts,” *Arizona Republic*, 5 Nov. 1958, 4.

the ones in which Republican challengers were active that year. County Democratic chairman Vince Maggiore claimed that some of the challengers were arrogating authority reserved for precinct election officials. "There should be no place in Arizona for deliberate attempts to impede the voting of groups which have fought so hard for their rights," he said. Other Democrats claimed some Republican challengers were asking voters to read sections of the Constitution "containing a lot of big and difficult words."¹⁸ This interparty dispute over the focus and rationale of GOP ballot security efforts continues into the present century.

Events at a Polling Place in 1962: The 1971 Hearings

Rehnquist's involvement in these disputed ballot security programs came to light near the end of the 1971 Judiciary Committee hearings when five witnesses sent sworn affidavits accusing him of challenging and harassing voters with literacy tests in the predominantly black Bethune precinct in 1964.¹⁹ Although they seem to have confused Rehnquist with Wayne Bentson, a Republican who challenged voters to read from his note card at the Bethune precinct in 1962 and was involved in a scuffle with a Democratic Party representative that year, accurate information that Rehnquist had trained GOP challengers prevented the Senate from ignoring the charges.²⁰ The fact that the FBI had investigated voting interference in Arizona in the 1960s; relevant testimony from Clarence Mitchell, director of the NAACP Washington Bureau and legislative

¹⁸ Gene McJain, "Fight Erupts At South Side Precinct," *Arizona Republic*, 7 Nov. 1962, 11. The fight here involved Republican challenger Wayne Bentson and Democratic Party representative Pat Marino. Several witnesses in Rehnquist's 1971 confirmation hearings apparently confused Rehnquist with Bentson. Poll-watchers were active in seven minority south side precincts plus Sky Harbor, Parkview, and Okemah. *Ibid.* The 1962 Phoenix ballot security campaign also included turning out the Republican vote. In this non-presidential election, more than 70 percent of registered voters made the trip to the polls. The *Arizona Republic* credited the turnout to Republican organization. "Election Puzzles Experts," *Arizona Republic*, 8 Nov. 1962, 11.

¹⁹ GOP ballot security programs were not the only reason for opposition to Rehnquist. After his 1971 nomination, a memo came to light which Rehnquist wrote during his clerkship for then-deceased Justice Robert Jackson in support of the 1896 *Plessy v. Ferguson* decision upholding the segregationist doctrine of "separate but equal." Rehnquist claimed that the views were those of Jackson, not his—a contention strongly denied by Jackson's long-time secretary, who called Rehnquist's account "incredible on its face" and adding that Rehnquist has "smeared the reputation of a great justice." See Tinsley E. Yarbrough, *The Rehnquist Court and the Constitution* (Oxford and New York: Oxford University Press, 2000), 1-5. A very strong case that the memo expressed Rehnquist's views and not Jackson's is found in Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Alfred A. Knopf, 1975), Vol. II, 765-82. Other issues that opponents raised included Rehnquist's opposition to a public accommodations ordinance in Phoenix in 1964, to a civil rights march in Arizona during the spring of 1964, and to desegregation in Arizona high schools in 1967. Opponents also questioned his opposition to the publication of the Pentagon papers and his support for government powers of surveillance. *Nominations 1971*, 289-361, 483-92.

²⁰ The five witnesses were Democratic poll-watchers Robert Tate and Jordan Harris, the Rev. George B. Brooks, and the Rev. and Mrs. Snelson W. McGriff. Fred P. Graham, "2 Negroes From Phoenix, Ariz., Say Rehnquist Harassed Blacks at Polls in 1964," *The New York Times*, 16 Nov. 1971, 32; Donald Janson, "Rights Aide Calls Rehnquist Racist," *The New York Times*, 28 Nov. 1971, 46. For the information on Wayne Bentson, see McJain, "Fight Erupts At South Side Precinct," 1, 11. Rehnquist denied ever being in the Bethune Precinct on Election Day 1964, which sheds little light on his role in this situation since the event took place in 1962. *Nominations 1971*, 492.

chairman for the Leadership Conference on Civil Rights; and a letter from Superior Court Judge Charles L. Hardy explaining in general terms how some of the state's voters were intimidated in 1962, prompted the Senate to submit written questions to Rehnquist.²¹ Judge Hardy's letter shed a harsh light on the GOP ballot security activities:

In each precinct [with overwhelmingly Democratic registrants] every black or Mexican person was being challenged on this latter ground [that he or she was unable to read the Constitution of the United States in the English language] and it was quite clear that this type of challenging was a deliberate effort to slow down the voting so as to cause people awaiting their turn to vote to grow tired of waiting and leave without voting. In addition, there was a well organized campaign of outright harassment and intimidation to discourage persons from attempting to vote. In the black and brown areas, handbills were distributed warning persons that if they were not properly qualified to vote they would be prosecuted. There were squads of people taking photographs of voters standing in line waiting to vote and asking for their names[.] There is no doubt in my mind that these tactics of harassment, intimidation and indiscriminate challenging were highly improper and violative of the spirit of free elections."²²

The Senate committee's questions on ballot security issues concerned Rehnquist's involvement in elections from 1958 to 1968. Rehnquist was asked if he had ever personally challenged voters; if he had trained or counseled poll-watchers or challengers; if he had explained the bases on which proper challenges could be made; if he had ever prepared, selected, or advised on the use of printed passages from the Constitution for literacy challenges; when such practices came to his attention; and if he thought the practices lawful or took action to curb them. Rehnquist responded: "In none of these years did I personally engage in challenging the qualifications of any voters." He denied recruiting challengers but admitted that he had spoken at a challengers' school to train them.²³ He also distanced himself from the practice of literacy challenges, which he asserted he never prepared, selected, or advised on. "No such practice came to my attention until sometime on Election Day, 1962," Rehnquist claimed. "The manner in which I saw this type of challenge being used, when I visited one precinct, struck me as amounting to harassment and intimidation, and I advised the Republican challenger to stop using these tactics."²⁴

Rehnquist also claimed that when he saw one Republican challenger "going down the line and requiring prospective voters to read some passage of the Constitution, rather than presenting his challenge to the Election Board in an orderly way," that he "advised him to stop this practice, and to make any challenges in the manner provided by the law."²⁵ In response to Judge Hardy's description of GOP challengers in 1962 deliberately slowing down voting lines to discourage people from voting, and intimidating and

²¹ For Mitchell's testimony see *Nominations 1971*, 289-98.

²² Letter from Hardy to Mississippi Senator James Eastland, Chairman of the Committee on the Judiciary, as quoted in *Nominations 1971*, 486.

²³ *Nominations 1971*, 491. "The purpose of my talk [he wrote] was to advise the various persons who were to act as challengers as to what authorization was required in order to enable them to be present in a polling place during the time the election was being conducted, and also as to the various legal grounds for challenging as provided by applicable Arizona law. My recollection is that I simply recited the grounds set forth in the Arizona Revised Statutes as to the basis for challenge, the method of making the challenge, and the manner in which the challenge was to be decided by the Election Board of the precinct in question."

²⁴ *Ibid.*

²⁵ *Ibid.*

harassing voters by photographing them and recording their names, Rehnquist explained that before 1962 Republican challengers concerned themselves with preventing unregistered persons or persons who had moved from voting. “I did not realize the change in emphasis of some of the Republican challengers in 1962 until sometime during Election Day of that year. I therefore feel that there was no connection between my role and the circumstances related by Judge Hardy.”²⁶

Rehnquist’s sworn response forced senators to decide whether they believed the nominee—who stated he had neither intimidated and harassed voters nor supported such ballot security measures—or whether they believed his opponents, who linked him to GOP ballot security efforts but who could not prove that Rehnquist himself had harassed and intimidated voters. (Affidavits from witnesses in the 1971 hearings confused Rehnquist with Benton and the year 1964 with 1962.) John P. Frank, “a leading constitutional and Supreme Court expert” in Phoenix, wrote in the *Washington Post* that Rehnquist “has been an intellectual force for reaction. . . . He honestly doesn’t believe in civil rights and will oppose them.”²⁷ The American Civil Liberties Union joined the debate, breaking a fifty-two year position of never opposing a nominee for public office, when it publicly called for the defeat of Rehnquist as “a dedicated opponent of individual civil liberties.”²⁸

The Court had been in session since early October with two vacancies. And a national debate on Rehnquist’s resistance to civil rights brought attention and controversy to the hearings. The senators were under pressure, and a vote was finally taken. It was not an easy confirmation for Rehnquist: 68 senators sided with him and 26 with his opponents. Lewis Powell’s simultaneous confirmation was much more decisive at 89-1.²⁹

Events at a Polling Place in 1962: 1986 Hearings

Publicity about ballot security programs in Arizona resurfaced in 1986 when President Reagan nominated Rehnquist for Chief Justice. Ironically, 1986 was the same year the GOP was involved in a major scandal regarding efforts to disfranchise blacks in Louisiana using a type of return-mail registration verification Arizona Republicans had used in the 1950s.³⁰ This time Rehnquist’s opponents were better organized and more credible. During his confirmation hearings, Senator Edward Kennedy of Massachusetts charged that Rehnquist “led a Republican Party ballot security program designed to disenfranchise minority voters” in the early 1960s.

In accord with a 1971 *New York Times* article stating that Rehnquist was co-chairman of the GOP ballot security program in 1960, as well as chairman of the lawyer’s committee of the Maricopa County Republican Party who also trained challengers in 1962, and chairman of the ballot security program in 1964, Kennedy asserted that Rehnquist “held a high and responsible position in the election day apparatus from at

²⁶ *Ibid.*, 492.

²⁷ Quoted in Donald E. Boles, *Mr. Justice Rehnquist, Judicial Activist* (Ames, Iowa: Iowa State University Press, 1987), 77.

²⁸ *Ibid.*, 11.

²⁹ Davis, *Original Intent*, 7.

³⁰ See Chapter VI below, Case 4.

least 1960 to 1964, a period that saw very substantial harassment and intimidation of voters in minority group precincts.”³¹

New and credible witnesses also testified or submitted sworn affidavits about Rehnquist’s roles in ballot security programs. James Brosnahan, an Assistant U.S. Attorney in Arizona in 1962, later a U.S. Attorney, and in 1986 senior partner in a San Francisco law firm (with cases before the Supreme Court), provided the strongest refutation of Rehnquist’s sworn statements. During the Judiciary Committee hearings, he explained that he had not come forward in 1971 because he had not known that events in south Phoenix in 1962 were a focus of the hearings.³²

Unlike previous witnesses at the earlier hearings who mistook Rehnquist for another challenger, Brosnahan knew Rehnquist personally. He had attended bar association functions with him and had introduced his wife to him.³³ Brosnahan testified that he did not personally see Rehnquist challenge voters. However, in his official capacity as an Assistant U.S. Attorney, he was called to a polling place in 1962 in order to investigate claims of harassment. “At that polling place, I saw William Rehnquist, who was known to me as an attorney in the city of Phoenix,” Brosnahan asserted.³⁴ Rehnquist, he said, was the only challenger present when he arrived. The atmosphere was very tense, and the voters waiting in line told him that Rehnquist was challenging, and they complained about the aggressiveness of the challenging. Brosnahan talked with Rehnquist who “did not deny he was a challenger. At that time in 1962, he did not raise any question about credentials or any of that. He did not deny that.”³⁵

Brosnahan further testified that while talking to Rehnquist about the complaints against him, Rehnquist’s comments indicated that he had been challenging voters.³⁶ Brosnahan stated his views on events in south Phoenix in 1962. “Based on interviews with voters, polling officials, and my fellow assistant U.S. attorneys, it was my opinion in 1962 that the challenging effort was designed to reduce the number of black and Hispanic

³¹ *Nomination of William H. Rehnquist to be Chief Justice of the United States*, 99th Cong., 2nd sess., *Congressional Record*, 132, no. 118, daily ed. (11 September 1986): S12387; Fred P. Graham, “Rehnquist Role in Election Confirmed,” *The New York Times*, 13 Nov. 1971, 37. Rehnquist’s responsibilities, according to Kennedy, included the following: In 1960, Rehnquist supervised and assisted in the preparation of envelopes mailed to Democrats—largely in black and Mexican-American districts—which were the foundation of residency challenges; he recruited lawyers to serve on a lawyer’s committee; he advised challengers on the law; and he supervised in assembling returns of the mailings for challenging purposes. In 1962, Rehnquist again taught challengers the procedures they were to use. And, as in 1960, “he served as a troubleshooter, going to precincts at which disputes had arisen in order to help resolve them. In 1964, Rehnquist had overall responsibility for mailing out envelopes, recruiting challengers and members of the lawyer’s committee, and speaking, or seeing that someone spoke, at a training session of challengers.” (*Congressional Record*, S12387.) For more information on other contentious issues during the 1986 hearings, see Yarbrough, *The Rehnquist Court and the Constitution*, 1-11.

³² He came forward in 1986 because he received a call ten days prior to his appearance before the committee requesting his testimony. He claimed he would have had misgivings if he had not come forward. *Nomination of Justice William Hubbs Rehnquist, Hearings Before the Committee on the Judiciary, United States Senate, Ninety-Ninth Congress, Second Session*, Serial No. J-99-118 (Washington, D.C.: U.S. Government Printing Office, 1987), 1007.

³³ *Ibid.*, 1001, 1012. For Brosnahan’s entire testimony, see 984-1040.

³⁴ *Ibid.*, 985.

³⁵ *Ibid.*, 994.

³⁶ *Ibid.*, 1008-1009, 1011-12, 1038-39. For descriptions of voters identifying Rehnquist as an aggressive challenger see *Ibid.*, 1024-1026.

voters by confrontation and intimidation.³⁷ “The thrust of the effort,” he continued later, “was to confront voters, to challenge them, in hope that they would be intimidated, that they would not stand in line, that they would be fearful that maybe they would be embarrassed.”³⁸

Other witnesses corroborated Brosnahan’s testimony that the nominee challenged minority voters in Phoenix and that the effects of those challenges were intimidating. Dr. Sydney Smith, a professor of psychology and former professor at Arizona State University, was not certain if it was Election Day in 1960 or 1962, but he was certain he heard Rehnquist tell two black voters in line, after asking them to read, “You have no business in this line trying to vote. I would ask you to leave.”³⁹ Melvin Mirkin, an attorney in Phoenix who supported Rehnquist’s nomination, testified that he saw Rehnquist intimidate voters by encouraging them to leave the line at a minority polling place and by instructing Republican challengers loudly enough for voters to hear that unregistered or illiterate people would not be allowed to vote.⁴⁰

These charges became a central obstacle to Rehnquist’s confirmation as Chief Justice. He again denied them and claimed that his recollection was not good enough to give more detailed information.⁴¹ When Kennedy asked Rehnquist if he challenged individuals, Rehnquist replied: “I don’t think you—I think it was simply watching the vote being counted.” Kennedy bore in: “Well you’d remember whether you challenged them now, Mr. Justice, wouldn’t you. Did you at any time challenge any individual?” Rehnquist tried to explain that a challenger was authorized by law to go to a polling place most often to watch the vote being counted. Kennedy then read aloud from Rehnquist’s 1971 affidavit in which the nominee swore that he did not intimidate or harass voters or encourage such behavior in 1964 or at any other time from 1958-1968. “So you might have challenged them,” Kennedy queried, “but you didn’t intimidate or harass them, I guess is the way I should conclude.” Rehnquist responded: “Well, I’ve answered all of your questions the best I can, I think.” Kennedy did not press further for an answer.⁴²

Senators again faced the choice of siding with Rehnquist or his opponents, only this time they had to decide whether a sitting Supreme Court Justice rather than a mere nominee to the court was lying. In making their decision, senators had to sort through confusing aspects of Rehnquist’s testimony. In 1986 Kennedy pressed Rehnquist on his 1971 affidavit in which Rehnquist wrote: “In none of these years [1958-1968] did I personally engage in challenging the qualifications of any voters.”⁴³ This carefully crafted statement did not mean that Rehnquist denied ever having been involved in the process of challenging voters at the polls. It seemed to mean that he did not personally confront or question them during those years. He could have presented a challenge to the

³⁷ *Ibid.*, 989.

³⁸ *Ibid.*, 1007.

³⁹ *Ibid.*, 1054. For the entire testimony of Dr. Smith, see 1054-65.

⁴⁰ *Ibid.*, 1040-48. See also Stuart Taylor Jr., “Rehnquist Says He Didn’t Deter Voters in 1960’s,” *The New York Times* 31 July 1986, A1, A15; and Robert Lindsey, “Rehnquist in Arizona: A Militant Conservative in 60’s Politics,” *The New York Times*, 4 Aug. 1986, A7.

⁴¹ Rehnquist had to refute testimony from several witnesses, including Arizona State Senator Manuel Peña. For an overview of the charges against Rehnquist, see “Excerpts from Questioning of Rehnquist in the Senate Judiciary Committee,” *The New York Times*, 31 July 1986, A14.

⁴² “Excerpts from Questioning of Rehnquist in the Senate Judiciary Committee,” A14.

⁴³ *Nominations 1971*, 491.

election board official “in the manner provided by the law,” and the official would have personally challenged the voter.⁴⁴ This, of course, contradicted the testimony of Brosnahan and Smith. There was also a question of chronology. Rehnquist denied “personally challenging” voters between 1958 and 1968, but according to a *New York Times* article, he admitted that he may have personally questioned voters’ literacy in 1954.⁴⁵

Senators also had to decide what defined harassment and intimidation in the context of legal literacy challenges to Arizona voters before 1964. Stuart Taylor, a journalist for *The New York Times*, opined that Rehnquist may not have equated challenging with stopping people in line at polling places and asking them to demonstrate their qualifications.⁴⁶ John Dean, former counsel to President Nixon, who claims he was the first to suggest Rehnquist as a candidate for the court in 1971, believes “that Rehnquist was not truthful about his activities in challenging voters.” But he added, contrary to the testimony of Brosnahan and others, “I don’t believe Rehnquist ‘harassed’ black voters ever, for that is not his style or nature. Yet I have no doubt he challenged black voters at a time when it was perfectly legal in Arizona to do so.”⁴⁷ Rehnquist’s careful language and his status as a sitting Supreme Court Justice were persuasive in the end. He was confirmed as Chief Justice.

Yet while the 1986 hearings did not prevent his elevation to Chief Justice, they dramatically brought attention to the Republican Party’s practice of purposefully targeting and intimidating minority voters under the guise of ballot security in the 1950s and 1960s. And they raised the question of how common that practice was a quarter century later, when Rehnquist was being grilled about it. To get a historical grasp of ballot security and vote suppression by the GOP since Rehnquist’s days as an activist lawyer, it is useful to examine the 1964 presidential election and the momentum the Republican ballot security program provided to such efforts in later years.

⁴⁴ “in the manner provided by the law” is the advice Rehnquist reportedly gave to a Republican challenger whom Rehnquist claimed he reprimanded in 1962 for personally questioning voters as they stood in line to vote. See above, 20.

⁴⁵ “Justice Rehnquist . . . also said he did not recall approaching any voters in those years [1958-1968] to question them about their qualifications or to ask them to prove their ability to read, as several people have alleged. But he said it was possible he had taken such an action in 1954.” Stuart Taylor, Jr., “Rehnquist Says He Didn’t Deter Voters in 1960’s,” *The New York Times*, 31 July 1986, A1.

⁴⁶ Stuart Taylor, Jr., “Rehnquist Says He Didn’t Deter voters in 1960’s,” A15.

⁴⁷ Dean, *The Rehnquist Choice*, 273.

CHAPTER IV

BALLOT SECURITY IN THE GOLDWATER CAMPAIGN:
OPERATION EAGLE EYE

Near the time of the controversial events in which Justice Rehnquist figured in 1962, the Republican National Committee (RNC) incorporated a new, nationwide ballot security program called "Operation Eagle Eye" into its national strategy to win elections after Nixon's narrow defeat in 1960. Republican leaders were convinced that voting irregularities in Texas and Illinois cost Nixon the election, the most closely decided presidential contest in history in terms of popular votes, and they were determined that fraud would not defeat their candidate in the future. (Evidence suggests the Daley machine in Chicago probably did steal the vote for Kennedy in Illinois. In Texas, however, irregularities favoring Democrats appeared to be counterbalanced by those favoring Republicans. Nixon needed both states to win in the electoral college.)¹ Operation Eagle Eye, outlined in the RNC's 1964 ballot security handbook for party officials and volunteers, surpassed all previous attempts to organize and coordinate Republican efforts to monitor and win elections.²

Prior to 1964, regional and local GOP officials like those in Arizona had experimented with ballot security measures. Their success encouraged national GOP leaders to launch nationwide programs.³ The RNC first organized Operation Eagle Eye in 1962 to watch for vote fraud in the large cities.⁴ It was a trial run for the 1964 election,

¹ Nixon, who lost by 118,574 votes out of 68,838,219 cast, claimed he was defeated because Republicans failed to have enough poll-watchers. John H. Kessler, *The Goldwater Coalition: Republican Strategies in 1964* (Indianapolis: The Bobbs-Merrill Company, Inc., 1968), 171. References to voting irregularities in 1960 to justify the nationwide ballot security program are scattered throughout the Ballot Security Program folder of box 3H513 from the Barry Goldwater Collection, The Center for American History, The University of Texas at Austin. For examples see the unnumbered pages at the beginning of the handbook, 1, 34, 44, and the unnumbered pages near the end of the handbook entitled "Protect Our Victory." Allen J. Matusow discusses the Republican charge that the 1960 election was stolen from them in *The Unraveling of America: A History of Liberalism in the 1960s* (New York: Harper and Row, 1986), 25-29.

² Harlington Wood, *Ballot Security: "Why not Victory?" for . . . The Republican Party in 1964*, "Republican National Committee—Special Projects 1964: Operation 'Eagle Eye' (copy of kit given key party workers)," Papers of the Democratic National Committee, Series 1, Box 55, LBJ Library. (Hereinafter, "RNC 1964 Special Projects, LBJ Library.")

³ The extent to which the RNC actually relied on Arizona ballot security experiments is not clearly established in documents, but several factors indicate that the Arizona experiments did capture the attention of Republican leaders. 1) Many Arizona Republicans held top positions in the highly centralized 1964 campaign, including candidate Barry Goldwater's legislative assistant and campaign official, Dean Burch (who was also the 1964 RNC chairman). 2) Goldwater's successful 1958 senatorial campaign, which used ballot security measures, received widespread attention because of his landslide victory. 3) RNC directions to use challenge lists based on returned mail closely resemble the Arizona pattern, although other state GOP parties employed this method to establish challenge lists too. Other tactics, like publicly announcing FBI interest in the election procedures, precede the 1964 handbook. For information on FBI and law enforcement attention to Arizona elections, see "U.S. to Scan Arizona Vote," *Arizona Republic*, 3 Nov. 1960, 11; Gene McLain, "Fight Erupts at South Side Precinct," *Arizona Republic*, 7 Nov. 1962, 1.

⁴ The 1962 ballot security plan developed out of a study on "big-city politics" that the RNC began in 1961 under the directorship of Ray C. Bliss, a national committeeman from Ohio. Cabell Phillips, "G.O.P. Opens Drive to Prevent Fraud," *The New York Times*, 30 Oct. 1964, 25; James MacNeess, "Republicans Set Up Program To Check Ballots In Coming Election," *The Sun* (Baltimore), 13 Oct. 1964. MacNeess' article

when Republican strategists pushed to have poll-watchers in every precinct in the country (of which there were 176,500 in 1964).

Although the plan to cover every precinct proved to be overly ambitious, Eagle Eye was highly successful, at least in terms of organization. In 1964 the party enlisted the support of tens of thousands of volunteers to observe the election process. These volunteers concentrated their efforts in thirty-six metropolitan areas where Democratic majorities had overturned or threatened to overturn Republican leads built up in other parts of the state.⁵ Eagle Eye's concentration in Democratic metropolitan strongholds followed the 1962 pattern, but the attempted extension of the program in 1964 to every precinct in the nation was unprecedented. In largely rural Louisiana, for example, the GOP aimed to have 2,000 poll-watchers for the state's 2,219 precincts. In 1960, only 50 poll-watchers had worked Louisiana precincts.⁶

Hierarchies of Command

The RNC initiated the nationwide extension with a clear chain of command. At the head of the Ballot Security Program stood Harlington Wood, deputy director for ballot security, who worked under the director of political education and training Raymond Humphreys and RNC chairman Dean Burch.⁷ Wood's job was to promote the institution of state ballot security programs and to coordinate the efforts of state ballot security officers. Most of the responsibility for Republican ballot security programs fell to these state officers who were appointed by the Republican state chairmen.

Because states have their own voting laws and control their own election machinery, the state ballot security officer tailored the program to the particular

was sent with Wood's "Ballot Security Current Report," No. 4, 21 Oct. 1964. RNC 1964 Special Projects, LBJ Library. The emphasis on "big-city politics" continued after 1962 when RNC analyses of the mid-term elections concluded that Republicans had problems winning in big cities. "Republican National Committee Analysis, 1962," 25. Guide to the Alabama Republican Party Records, RG 545, Campaign and Elections Series, Box 9 - Accession 81-226, Auburn University.

⁵ According to the *Chicago Daily News*, Operation Eagle Eye had 10,000 poll-watchers for Chicago's 3,552 polling places. Most were to be concentrated in "the so-called 'river wards,' areas close to the Loop where the Democratic machine is traditionally strong." Eagle Eye in Chicago worked in conjunction with the Joint Civic Committee on Elections (2,000 watchers), the Citizens Honest Election Foundation (7,500 watchers), and the Non-Partisan Law Student Committee for Honest Elections (200 watchers paid \$15 per day). "250,000 Accredited to Watch City Polls," *Chicago Daily News*, 2 Nov. 1964, 1, 14. In Texas, Republicans had made arrangements for 10,000 Eagle Eye poll-watchers to work "in 5525 precincts, representing 96.8% of Texas registered voters." Stewart Davis, "10,000 Poll-watchers to Saturate State," *Houston Chronicle*, 29 Oct. 1964, 1-3. See also Cabell Phillips, "G.O.P. Begins Drive to Prevent Fraud at the Polls," *The New York Times*, 30 Oct. 1964, C25; "GOP Says Honest Vote Aim of Eagle Eye," *Washington Star*, 2 Nov. 1964. "Republican National Committee—Operation 'Eagle Eye' and Related Anti-vote Fraud Operations, 1964," Papers of the Democratic National Committee, Series I, Box 55, LBJ Library. (Hereinafter, "RNC Operation Eagle Eye, LBJ Library.")

⁶ Stanley Penn, "Policing the Polls," *Wall Street Journal*, 22 Oct. 1964, 1, 16. This article was sent out with Wood's "Ballot Security Current Report," No. 5, 23 Oct. 1964. RNC 1964 Special Projects, LBJ Library.

⁷ Wood reported directly to Burch. In October 1964 he was sending Burch weekly reports about ballot security measures across the country and posting particular information on large charts in the national conference room. "Ballot Security Current Report," No. 1, 7 Oct. 1964, 1. RNC 1964 Special Projects, LBJ Library.

circumstances of the state. After researching past voting irregularities and all state electoral laws and regulations, the state officer was expected to establish training courses for poll-watchers and, where permitted, challengers; to publicize the statewide ballot security program (to deter voting irregularities); to provide for the Election Day security network; and to act as a liaison with the national office. The state officer also divided the state into geographic districts and appointed district ballot security officers with the approval of the state chair. The district officer implemented the statewide program and helped secure the appointment of county or city ballot security officers. These local leaders recruited and trained volunteers in their own jurisdiction, publicized the local program, and oversaw Election Day activities.⁸

The General Outline of the 1964 Ballot Security Program included the following instructions:

- Create in each state an effective Ballot Security Organization under leadership of the State Ballot Security Officer.
- Research and study State Election Laws, irregularities and errors, and how to combat and correct.
- Attend national educational conferences for Ballot Security Officers.
- Observe and report pre-election violations.
- Recruit and train poll watchers and challengers, where permitted, to secure each precinct.
- Appoint qualified and true Republicans as election officials in each precinct.
- Determine that registration is being properly conducted.
- Strive to improve canvassing methods to identify unqualified, non-existent voters and eliminate them from the lists.
- Plan, schedule, supervise and teach training courses designed to eliminate fraud and error for Republican election officials, watchers, and challengers.
- Prepare and distribute materials and check lists for study and reference by precinct officials.
- Focus press attention on the problem and program.
- Secure effective cooperation of law enforcement officials.
- Set up an Election Day security network to advise and act on ballot irregularity matters.
- Collect information in the event of prosecution or other proceedings following an election.
- Determine that ballots and machines are safeguarded after the election.
- Develop new plans and ideas to improve future operations by Ballot Security Officers, considering possible legislative amendments to improve the election laws for future elections.⁹

⁸ Wood, *Ballot Security*, 1-2.

⁹ Wood, *Ballot Security*, 2-3. In practice this outline proved difficult to follow. In the first place the RNC sent out the handbook at the end of September 1964. Oregon state ballot security officer Michael Walsh, for example, began work in mid-October. Yet within two weeks, Walsh accomplished a remarkable amount. See his report to Harlington Wood, 26 Oct. 1964, "Reports," Ballot Security Program folder, box 3H513, Barry Goldwater Collection, The Center for American History, The University of Texas at Austin.

The new ballot security program was basically precinct politics writ large, and its success depended on the precinct officials, poll-watchers, and, where permitted, challengers. RNC leaders knew that the task they turned over to the states presented unparalleled organizational challenges, so they encouraged state ballot security officers to find loyal and energetic volunteers.¹⁰ Wood acknowledged in his *Ballot Security* handbook that “it is obvious that this new effort, organized on such a scale and spreading into and throughout each state will require much effort, thought, initiative, energy, ingenuity, and pioneering which, under other circumstances, might be considered beyond the ‘call of duty.’ This must be borne in mind when selecting officer personnel.” He advised recruiting “physically and mentally capable ‘true’ Republicans,” from citizens’ groups, Young Republicans, Republican Women, Junior Chambers of Commerce, or other civic groups.¹¹

Keeping an Eagle Eye on Precinct Activities

The neighborhood activists and Republican precinct officials had several responsibilities. Before Election Day, they were asked to conduct a thorough canvass to eliminate from the lists all unqualified, deceased, transient, non-existent voters, or voters who had moved. Part of this canvass involved traveling around the precinct to check that vacant lots did not serve as voter addresses and that addresses were in fact residential buildings. Wood recommended using first-class mailings with a return address and instructions not to forward the mail in order to compile voter challenge lists—a tactic likely to discriminate against minority and low-income registered voters, as noted in Chapter III above. Referring to previous regional ballot security programs like those in Arizona, he noted that this method “has been used to advantage . . . to secure revision of voting lists.”¹² Poll-watchers and challengers also had to become familiar with past voting irregularities in their areas and with the state electoral laws. Wood included in his 1964 handbook an informative seven-page list of examples of fraud, irregularities, problems, or errors encountered or alleged in previous elections.¹³

Wood also made clear to his readers that the poll-watchers and challengers “must be encouraged to remain alert, and to immediately challenge whatever or whomever may be suspicious, with politeness but firmness, and with courage and persistence.” They should not be deterred even if others charged them with browbeating voters. As Wood explained, “‘Browbeating’ is a common defense to cover irregularities.” Instructions for watchers and challengers “must cover not only what to look for, but what action is to be

¹⁰ Wood justified these instructions for recruiting “capable and true” Republicans for each precinct with the following information: “Thousands of precincts in 1960 were unmanned by Republicans, and others by ‘Republicans’ in name only.” *Ballot Security*, 31.

¹¹ *Ibid.* Quotation marks in the original. He stressed to local ballot security officers that “All must be cautioned not to leave prematurely in the late hours of election night when exhaustion sets in, as this is a dangerous time. Replacements or shifts may need to be arranged so that meals or other personal problems do not interfere.” See the second page of the handout entitled “Step 4 in Four Steps to Victory,” RNC 1964 Special Projects, LBJ Library.

¹² Wood, *Ballot Security*, 32. These mailings incurred serious expenses. According to *The New York Times*, Eagle Eye workers sent out “about 1.8 million pieces of first-class mail at five cents each to the entire registration lists in many of the more suspect precincts in 15 key cities such as Chicago, Philadelphia, Detroit, Kansas City and St. Louis.” Cabell Phillips, “G.O.P. Begins Drive to Prevent Fraud at the Polls,” *The New York Times*, 30 Oct. 1964, C25. RNC Operation Eagle Eye, LBJ Library.

¹³ Wood, *Ballot Security*, 24-30.

taken, such as advising the election judge, the police officer on duty, calling election officials, and the [County or City] Ballot Security Officer for help and advice. They must remember to locate phones, and to have change ready in advance.” He also cautioned the volunteers to “check the credentials of the others present, and not to surrender theirs to anyone without proper authority.”¹⁴

Flying Squads, Command Posts, and Deterrence

When poll-watchers and challengers could not get adequate redress from precinct officials or the election judge, they were supposed to call the party’s county or city ballot security officers who had a staff to receive the information and to give advice and assistance. The staff, Wood suggested, could include an influential businessman and “roving teams of ‘inspectors,’ made up of lawyers, or others, or teams available for immediate dispatch.”

The teams of lawyers, or “flying squads,” became quite popular in 1964. Republicans dispatched them from what they called a “command post.” Some squads served a single city; others covered an entire state. Oklahoma, for example, had three command posts. If a command post received a report of flagrant election law violations, the ballot security officer in that county investigated the complaint. If the complaint was meritorious, the command post sent a team of lawyers, by plane if necessary (in which case the squad was literally flying!), to protest or take other necessary action.¹⁵ The flying squads had three main purposes: “to investigate, give first-hand advice and assistance, and produce *psychological deterrent*.”¹⁶

Deterrence was an important part of the RNC program. Wood recognized that roving teams had been used as effective deterrents in the past. He also recommended the following as deterrents:

- Getting local press coverage about Republican organization, personnel, training, and ballot security preparation.
- Calling attention to the law and criminal penalties involved with voter fraud and “[m]aking known that the FBI may be involved in federal violations.”
- Submitting editorials to support ballot security programs.
- Using a camera as a prop.
- Having local press, law enforcement officials, or election officials come to the polling site to investigate events.
- Securing press coverage of early events or incidents in later editions of news media.¹⁷

¹⁴ Wood, *Ballot Security*, 32. The handbook also has a lengthy “Voting Machine Supplement” that includes a sample “Check List for Precinct Election Officials and/or Watchers,” and guidelines for voter education on voting machines, 35-49.

¹⁵ In other states poll-watchers could be sent by plane if there was a shortage in particular areas. Wood, “Ballot Security Current Report,” No. 2, 14 Oct. 1964, 1-2. RNC 1964 Special Projects, LBJ Library.

¹⁶ Wood, *Ballot Security*, 33. Emphasis added.

¹⁷ Wood, *Ballot Security*, 31-33.

Republicans used local press coverage effectively. There were so many newspaper articles covering Eagle Eye in October and November 1964 that the ballot security operation became quite well known before the election. This was intended. The RNC sent suggested press releases to all state ballot security officers to encourage press coverage in a uniform manner. The stated purpose was to publicize ballot security efforts so that potential perpetrators of electoral fraud would be wary.

The Paraphernalia of Deterrence

RNC leaders also believed that the presence of cameras threatened Democratic skulduggery. Like the flying squads, cameras were intended to create a psychological deterrent. Republicans would continue to use cameras—including videocameras—at polling places over the next forty years, although the Justice Department later warned against their use.¹⁸ *The Wall Street Journal* reported that one GOP official in a southern state planned to give cameras to his poll-watchers. In theory, *The Journal* wrote, the poll-watchers “could obtain photographic evidence of flagrant irregularities, but the official notes that even if the poll watchers don’t know how to use the cameras, potential Democratic wrongdoers may be frightened off.”¹⁹ The fact that legitimate Democratic voters might also be frightened off apparently did not concern the leadership. (In Houston, Texas poll-watchers not only used cameras to photograph voters as they entered the polls, but they also used tape recorders to capture conversations between election judges and voters.) In Alice, Texas—deep in the southern, heavily Latino part of the state—Republicans took pictures of voters entering three booths. *The Houston Chronicle* reported that Republican county chairman Harold Wakehouse denied that his group had sanctioned the picture-taking.²⁰ He personally may not have, but the RNC certainly did. In his third report to ballot security officers under the subtitle “Security Network,” Wood simply stated, “Remember cameras.”²¹

The presence of law enforcement officers at election sites was believed to deter electoral fraud too, but law enforcement was not the only reason for having officers on hand. In his first report to ballot security officers across the country, Wood highly recommended the *Ballot Security Book of Louisiana*, prepared by Jim Reeder, an attorney in Shreveport and state ballot security officer. “We think you ought to have a copy as it is an outstanding example of what each state can do to develop such a program to fit its own laws and problems,” Wood wrote.²² According to Stanley Penn of *The Wall Street*

¹⁸ See, for example, letter to the Honorable Constance Slaughter-Harvey, Assistant Secretary of State, Jackson, Mississippi, from John K. Tanner, Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice, 14 June 1964, expressing the Justice Department’s view that “the actions of white people in videotaping black voters at or near the polls could constitute a violation of Section 11 (b) of the Voting Rights Act, 42 U.S.C. 1973i(b), and, under the circumstances you described, would constitute a change subject to the preclearance requirement of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c.” Letter in possession of senior author.

¹⁹ Penn, “Policing the Polls,” 16. RNC 1964 Special Projects, LBJ Library.

²⁰ “East, South Texas Vote Charges Hurlled,” *Houston Chronicle*, 4 Nov. 1964, 1-23. RNC Operation Eagle Eye, LBJ Library.

²¹ Wood, “Ballot Security Current Report,” No. 3, 19 Oct. 1964, 4. RNC 1964 Special Projects, LBJ Library.

²² Wood, “Ballot Security Current Report,” No. 1, 7 Oct. 1964, 1. RNC 1964 Special Projects, LBJ Library.

Journal, this book emphasized the pivotal role law officers can play in an election. "Police cooperation is essential in efforts to prevent skulduggery and enforce the rules at polling places," Penn wrote.

Politicians are well aware that a police officer who is unfriendly to one party can ignore its poll-watchers' complaints, while they know a party can often count on the help of a sympathetic officer. In Louisiana, GOP poll-watchers and other party officials are urged [here Penn quoted from Reeder's book] "to make every effort to obtain the cooperation of the sheriff and local police and law enforcement officers on Election Day." The book adds, "*We are advised that all sheriffs in the State of Louisiana, except one, are sympathetic with Senator Goldwater's election. We should take full advantage of this situation.*"²³

Louisiana was not the only state to rely on law enforcement officers. According to Wood, the Alabama state ballot security officer "found trouble" with his security program so he offered a reward for the arrest and conviction of persons for certain election violations.²⁴

Election Day deterrents were to be planned carefully. Wood's handbook recommends ballot security officials "consider and plan in advance for the effective use of cameras, radio, telephone, warning signs or posters, press, or other original ideas. Some metropolitan areas have used cars with two way radio communication."²⁵ He also counseled that "certain counties, target counties, in your area may require more attention than others. Please advise which areas these may be."²⁶ The plan to target certain counties required RNC officials to distance themselves from possible charges of discrimination. "This program," the handbook claimed, "is in no way intended to reflect upon the character or reputation of any community, precinct, or individual, but only to better the operation of the electoral process."²⁷ However, the ballot security programs did not always "better the operation of the electoral process." In many of the targeted counties, Democrats complained that Republican poll-watchers and challengers caused intentional delays and disruptions to discourage Democratic voters. Voters most often mentioned as experiencing delays were African Americans, but elderly voters also faced challengers who lengthened the time required to vote.²⁸

The two parties were sharply divided over GOP ballot security drives. Democrats claimed that Operation Eagle Eye was a deliberate attempt to intimidate voters, especially ethnic minority voters. Republicans insisted its sole purpose was to prevent vote theft. But of course ballot security programs were also a partisan effort to win elections, and

²³ Penn, "Policing the Polls," 16. RNC 1964 Special Projects, LBJ Library. Emphasis added.

²⁴ Wood, "Ballot Security Current Report," No. 5, 23 Oct. 1964, 1. RNC 1964 Special Projects, LBJ Library.

²⁵ Wood, *Ballot Security*, 32-33.

²⁶ Wood, "Ballot Security Current Report," No. 1, 7 Oct. 1964, 1. RNC 1964 Special Projects, LBJ Library.

²⁷ Wood, *Ballot Security*, 1. Reference to the community indicates that several individuals of a particular community, not necessarily a precinct, would be singled out and challenged. A similar quote was given in a suggested press release from the RNC. See Enclosure 7 sent with a memorandum from Wood to Republican Ballot Security Officers, 7 Oct. 1964. RNC 1964 Special Projects, LBJ Library.

²⁸ "Dems Say GOP Pollwatchers Kept Some Negroes From Voting," *Houston Chronicle*, 4 Nov. 1964, 1-23; "Eagle Eye' Disrupts the Polls," *New York Herald Tribune*, 4 Nov. 1964, 9. RNC Operation Eagle Eye, LBJ Library.

this partisan motive sometimes conflicted with the stated motive of “good-government.”²⁹

Quotas, Canvasses, and Election Day Tactics

GOP ballot security measures built on three other aspects of the RNC’s precinct-politics strategy: establishing quotas for the number of Republican votes per precinct, conducting a voter canvass, and preparing for Election Day. Like the new, nationwide ballot security program, the precinct quota program was incorporated into the RNC strategy after it proved successful in regional elections. Director of Political Education and Training Ray Humphreys worked out the quota program in several congressional campaigns. His 1962 success in North Carolina’s Eighth District established the pattern for the national campaign in 1964. After assembling basic political data from previous elections in the district, Republicans examined the data and assigned quotas for Republican votes in each precinct, assuming a 10-percent increase over the previous four years in voting population. GOP officials characterized the data the workers would obtain as “direct, specific information so your vote hunt this fall can be with a rifle and not a shotgun.”³⁰

In 1964, vote quotas were assigned for every state, county, and congressional district in the country. State assessment was thorough, based on multiple factors including the expected degree of support from blacks and other minorities.³¹ The general idea behind the program was to concentrate campaign efforts where they would result in the greatest pay-off in Republican votes. When this vote quota program was presented to the state and local leaders at nine regional workshops, the state leaders were encouraged to implement it by selecting target counties and target precincts where they would focus their effort. Generally they were to be guided by the assumption that the greatest potential for increasing the Republican vote would come from increasing the turnout in areas already casting a heavy Republican vote.³²

Once the quotas were established, Republicans canvassed the voters. They recorded names of all known Republican voters on tally lists used on Election Day. Poll-watchers equipped with the lists checked off the names of those Republicans who voted early in the day and telephoned those who had not yet voted to encourage them to get to the polls.³³

A ballot security canvass differed from the quota canvass in two ways. The former targeted Democratic voters in an attempt to challenge and depress Democratic votes. Eagle Eye’s national director Charles Barr said that he expected “1.25 million voters to be *either successfully challenged or discouraged* from going to the polls.”³⁴ A kit organized for Republican poll-watchers in Minnesota explained that the purpose of the ballot security plan was to “safeguard the investment of time, money and effort that the

²⁹ The national field representative of Eagle Eye, Carlyle Steward, described this single purpose in “GOP Says Honest Vote Aim of Eagle Eye Plan,” *Washington Star*, 2 Nov. 1964. RNC Operation Eagle Eye, LBJ Library.

³⁰ Kessler, *The Goldwater Coalition*, 162-63. Quote from Kessler, 163.

³¹ *Ibid.*, 163.

³² *Ibid.*, 166-67.

³³ *Ibid.*, 169, 171.

³⁴ “GOP’s ‘Operation Eagle Eye’ At Polls Stirs Democrats,” *The Evening Star*, Washington, D.C., 2 Nov. 1964, A-4. RNC Operation Eagle Eye, LBJ Library. Emphasis added.

Republican party, its volunteers, its candidates and their volunteers have made in this election. Your job is partisan," the kit clarified. "*When to our [i.e., the Republican Party's] benefit insist that all requirements for assisting illiterate or handicapped voters in the voting booth be carried out.*" Similarly the kit directed poll-watchers to insist that procedures be carried out if they advanced the GOP cause. "Raise a challenge," the kit instructed, "when certain supposedly improper assistance is given to a voter *'and you have good reason to believe these are not Republicans.'*"³⁵ When reporters inquired about these instructions at a Minneapolis press conference a week before the election, Minnesota GOP chairman Robert Forsythe acknowledged that the state headquarters distributed the literature and that "each county GOP organization was free to use or disregard all or part of the instructions contained in the poll-watching booklet." Forsythe told reporters that "someone might have been overzealous in writing this poll-watching instruction" and that particular instructions for watchers to discourage prompt closing of the polls in GOP-dominated precincts and to encourage it in Democratic precincts would not be followed.³⁶

Democratic vote suppression was also a motive for GOP ballot security in Oregon. Poll-watchers there could legally challenge Democratic voters if the voter was not the person listed in the poll book, could not read or write the English language, or did not reside at the address listed in the poll book.³⁷ Democrats could contest some of the challenges, a poll-watching manual instructed. If, for example, the Democratic voter had moved and signed a statement that her residence address had changed, she could re-register but was only allowed to vote a limited ballot, losing her votes for city and county offices.

The success rate in challenging incorrectly registered Democratic voters depended on the thoroughness of pre-election canvasses of the precinct. The Oregon manual for poll-watchers and challengers issued by state ballot security officer Michael Walsh emphasized that a committeeman or woman should conduct a complete canvass in order to challenge all incorrectly registered Democrats. Yet if a complete canvass was impossible, "incomplete efforts are better than nothing, because every Democrat who is challenged for incorrect registration loses his city and county vote; therefore, an attempt should be made to challenge even one or two names if complete checking was not done in the precinct."³⁸

Chicago . . . and Elsewhere: How Much Fraud?

Republican claims that ballot security was needed to safeguard against pre-election violations and all other irregularities or errors in the 1964 election were particularly credible in places like Chicago, where the Democratic machine had a long history of corruption. Poll-watchers on duty there on election day documented some of the worst abuses in the country, including vote buying, chain voting, illegal voter

³⁵ Frank Wright, "GOP Poll-Watchers Told to Be Partisan When It Helps Party," *Minneapolis Tribune*, 24 Oct. 1964, 1, 6. RNC Operation Eagle Eye, LBJ Library. Emphases added.

³⁶ Frank Premack, "Part of GOP Poll-Watching Plan Scrapped," *Minneapolis Tribune*, 27 Oct. 1964, 1. RNC Operation Eagle Eye, LBJ Library.

³⁷ "Instructions for Poll Watching at Receiving Board," included in Michael Walsh's 26 Oct. 1964 letter to Harlington Wood, "Reports," Ballot Security Program folder, box 3H513, Barry Goldwater Collection, The Center for American History, The University of Texas at Austin.

³⁸Ibid.

assistance, failure by election officials to compare signatures, multiple voting, unauthorized persons allowed to count ballots, and alcohol provided for voters and election judges.³⁹ Republicans also complained that persons serving as Republican election judges were really Democrats.⁴⁰

The list of electoral abuses in Chicago played right into Republican fears of massive Democratic Party dirty tricks in the Windy City, but it was questionable whether they were widespread. An editorial in the *Chicago Sun Times* said there was “no particular reason for suspecting the Eagle Eye people of faking their reports, or of making them up out of whole cloth.” But it cited GOP county chairman Timothy P. Sheehan as saying that “many of the comments are from workers who have been in only a single precinct of a ward and they assume the entire ward was the same. It should also be remembered,” he added, “that Eagle Eye teams were sent to the worst possible precincts in the various wards.”⁴¹

Sheehan’s caution is an exception to many reports that encouraged Republican fears. A controversy in Chicago surrounding efforts to update voter registration lists before the November 3 election is suggestive of the complexity of developing accurate registration lists. In Chicago, “Operation Double Check” was the name Republicans gave their ballot security canvass to verify voter registration addresses. On the basis of their canvass, Republican volunteers and party officials challenged 4,000 names on voter registration lists in six traditionally strong Democratic wards, which had been compiled after the election board conducted an official canvass on October 7 and 8. In a bitter partisan dispute that followed the challenges, including a failed Republican attempt to employ a handwriting expert to confirm signatures on pre-election voter affidavits against registration cards, Operation Double Check leader and GOP candidate for circuit judge Reginald Holzer condemned the election board for an incomplete canvass and charged that Democrats intended to perpetrate fraud with padded voter registration lists.⁴²

It is more likely that the election board simply erred. After their early October canvass, but before the Republican allegations, the board had sent challenge notices to 141,000 voters, only 2,000 of whom responded. The board struck the remaining 139,000

³⁹ Chain voting involved stealing a blank ballot, filling it out, and giving it to a voter who returned with a blank ballot for the next voter. This scheme gave more control to those who organized the electoral fraud.

⁴⁰ This was a typical problem in strong Democratic precincts across the country. Locals were supposed to serve as election judges so they would have the best information to make rulings, but in strong Democratic precincts there was no Republican to serve as a judge, and a Democrat was appointed as Republican judge. Hence the RNC handbook’s focus on “true” Republicans recruited for Eagle Eye. For information on the abuses, see Thomas Heagy, “Poll Watcher For Chicago’s GOP Discovers Cheating He Can’t Stop,” *World-Herald*, Omaha, Nebraska, 29 Nov. 1964, 7F; “Machine Politics at the Polls,” *Chicago Tribune*, 13 Nov. 1964, 1-20; George Tagge, “Voting Fraud Data Pours in to G.O.P. Group,” *Chicago Tribune*, 30 Jan. 1965, 1-4. RNC Operation Eagle Eye, LBJ Library.

⁴¹ John Dreiske, “A Look At Operation Eagle-Eye,” *Chicago Sun Times*, 31 Jan. 1965, 2-5. RNC Operation Eagle Eye, LBJ Library.

⁴² “Some [registered voters] had moved away as much as a year ago,” Holzer said. “Yet, the official canvassers of the election board did not strike their names from the registration rolls when they checked October 7-8. I’m confident that if we hadn’t challenged these names, someone would have voted them November 3.” Robert Wiedrich, “G.O.P. Files Challenges Against 2,500 New Voters,” *Chicago Tribune*, 21 Oct. 1964, 1, 2. RNC Operation Eagle Eye, LBJ Library.

voters from the registration lists.⁴³ Board canvass members undoubtedly did miss some names of additional voters who had moved, in the sense of failing to send out even more than 141,000 letters, but the GOP volunteers erred in the other direction. In the eighteenth precinct of the First Ward, for example, twenty of the twenty-five persons challenged by the volunteers appeared before the board and proved their legal residency.⁴⁴ Their names were obviously not part of “padded lists.” In the end Operation Double Check resulted in another 2,963 voters stricken from the rolls.⁴⁵

Charges of Minority Vote Suppression

The late-October Chicago controversy was just one of many partisan disputes that broke out over Eagle Eye across the nation. In Miami, Republican vote challenges at the polls resulted in a circuit court injunction banning “illegal mass challenging without cause, conducted in such manner as to obstruct the orderly conduct of this election.” In St. George, South Carolina, the NAACP asked the FBI to investigate “irregularities being perpetrated against Negroes trying to vote.” An NAACP spokesman alleged that “about every third Negro seeking to vote was being ‘challenged on various grounds,’” and some whites suspected of voting for President Johnson were also being challenged without cause. In Atlanta and Savannah, Georgia, Republican challengers also targeted black voters. Intentional delays caused by Eagle Eye volunteers were reported in Miami, Columbus, Cleveland, and the state of New Jersey.

In San Francisco, Democrats charged that Republicans asked Latino voters for non-existent registration certificates. Voters in California also complained that unidentified telephone callers warned them they would be challenged at the polls and would be subject to prosecution if they had moved since registering to vote. Others said that telephone callers misinformed them that they had to bring a registration stub to the polls. In Texas’ heavily Hispanic Rio Grande Valley, letters were sent to 2,000 residents advising recipients: “It probably would be wiser to simply stay at home and not go near the voting place on election day, rather than get arrested for interfering with the election judge.” In both English and Spanish, the letters claimed to be from the Brownsville office of PASSO (Political Association of Spanish-Speaking Organizations), but PASSO did not have a Brownsville office.⁴⁶ The *Houston Post* reported on Election Day that handbills had been distributed in black and Hispanic neighborhoods falsely informing voters that police would be stationed at polling places to arrest voters who had outstanding traffic tickets, among other offenses. The handbills read as follows:

⁴³ Robert Wiedrich, “Begin Challenging 4,000 on Vote Lists,” *Chicago Tribune*, 20 Oct. 1964, 1, 8. RNC Operation Eagle Eye, LBJ Library.

⁴⁴ Robert Wiedrich, “900 Names Purged in Vote List Hearing,” *Chicago Tribune*, 23 Oct. 1964, 2. RNC Operation Eagle Eye, LBJ Library.

⁴⁵ “2-To-1 Board Ruling Cuts 2,963 Names Off Voting Lists,” *Chicago Sun Times*, 28 Oct. 1964, 18. RNC Operation Eagle Eye, LBJ Library.

⁴⁶ “G.O.P. Watch on Polls Runs into Trouble,” *Chicago Tribune*, 4 Nov. 1964, 1-8; Robert Hentges, “‘Evil Eye’ Doesn’t Work,” *The Democrat*, 6 Nov. 1964, 4; “GOP’s ‘Operation Eagle Eye’ At Polls Stirs Democrats,” *The Evening Star*, 2 Nov. 1964, A-4; “GOP Denies Any Knowledge of Write-In Campaign for Dr King,” *Evening Star*, 3 Nov. 1964, A3; “Keeping Elections Honest,” *The Des Moines Register*, 4 Nov. 1964, 10. RNC Operation Eagle Eye, LBJ Library.

PUBLIC NOTICE

If any voters or members of their family who are planning to vote Tuesday, are wanted by Law Enforcement Officials for the following offenses, information has been received that a list of voters has been drawn to be arrested after voting for the following offenses, committed in the past five years:

- 1. Traffic tickets**
- 2. Speeding or negligent collision tickets**
- 3. Parking Tickets**
- 4. Child Support Payments ordered by the Courts in divorce suits or child desertion**
- 5. Questioning by the Police for any offense**
- 6. Voters who have not appeared in Court as witnesses or Defendants in criminal or civil matters**
- 7. Voters who have not paid fines ordered by the Court**

Please take care of these matters before voting or else contact a Bail Bondsman or Lawyer before voting in order to be sure that you won't miss work or have to spend the night in jail by being arrested.

(Harris County Negro Protective Association)⁴⁷

The Harris County Negro Protective Association did not exist, and Houston's mayor Louis Welch, as well as police chief Herman Short, both condemned the attempt at voter intimidation. While the Democratic county chairman thought that Republicans were behind the handbills, the GOP chairman denied the allegations, saying, "we have a Republican alliance of Negro people working very hard to get out the vote."⁴⁸

The anonymity of those behind the most disturbing tactics—the phone calls, letters, and handbills—makes it difficult to prove that Eagle Eye was responsible. But the partisan thrust of those directed at Democratic voters was clear. In New Jersey a printer identified a person who, he alleged, claimed connections to the RNC as the man who placed an order for 1.4 million leaflets—many later circulated in Harlem—urging black voters to write in the Rev. Martin Luther King's name for president. The RNC denied knowledge of the write-in campaign.⁴⁹ Across the continent, John Luce, a Johnson campaign worker in California who "volunteered" for the Goldwater campaign, charged that a ballot security officer for Eagle Eye in San Francisco tried to enlist his help to frighten voters in heavily Democratic districts with low literacy rates. Luce was asked to represent himself as a "survey reporter" for a non-existent "ministers' union" in an attempt to determine how long voters had resided in the precinct.⁵⁰

When Republicans faced charges of discrimination, they denied it. Eagle Eye National Director Charles Barr argued that "there is nothing discriminatory in Eagle Eye

⁴⁷ "FBI Probe Into Phony Vote Handbills Promised," *Houston Post*, 3 Nov. 1964, 1-1 and 1-13.

⁴⁸ Ibid. See also "GOP Denies Any Knowledge of Write-In Campaign for Dr King," *The Evening Star*, 3 Nov. 1964, A3.

⁴⁹ A protest to the Federal Communications Commission was also filed after an unidentified group requested broadcast time from several black-audience radio stations regarding the write-in campaign. "GOP Denies Any Knowledge of Write-In Campaign for Dr King," *The Evening Star*, 3 Nov. 1964, A3.

⁵⁰ Sydney Kossen, "The Political 'Counter-Spy,'" *San Francisco Examiner*, 30 Oct. 1964, 23. RNC Operation Eagle Eye, LBJ Library.

against any race, creed or economic status.” Yet Republicans concentrated their efforts on minority precincts. Don McDaniel, president of the Los Angeles County Young Republicans, told the Los Angeles Registrar of Voters that “his group intends to assign watchers to the predominantly Negro 21st Congressional District, ‘where we have first-hand knowledge of election code violations.’”⁵¹ The city’s registrar of voters did not provide specific information on the alleged violations. In the District of Columbia, GOP chairman Carl Shipley stated that he had three poll-watchers for each precinct and an additional forty private detectives available. The poll-watchers and detectives, he explained, would only challenge ballots when there was “reasonable cause” to suspect a voter. In an attempt to clarify his position, Shipley claimed, in a reporter’s words, that he did not intend “to insult the public generally; well-dressed persons will not be challenged . . . only ‘the kind of guy you can buy for a buck or a bottle of booze.’”⁵² It may be true that some votes were bought for a buck or a bottle of booze, but this statement gave new meaning to “reasonable cause” and clearly contradicted Eagle Eye national director Barr’s statement that the program did not discriminate on the basis of economic status.

Before the election, the Democrats’ plans for ballot security were not as well organized as the Republicans’, to put it mildly, but Democrats quickly mounted a counteroffensive against Eagle Eye. Party officials denounced the operation as often as reporters would listen in an attempt to publicize GOP tactics to their own supporters. They also took counter measures like placing their own poll-watchers to observe Republican poll-watchers. Two attorneys from the Joint Democratic Campaign Committee even issued a public statement “warning of criminal penalties ranging up to five-year jail terms for ‘groundless challenges’ of voters and otherwise interfering with voting.”⁵³ In San Francisco, federal officers kept their eyes open for “organized attempts to intimidate voters.” In Oklahoma, officials alerted challengers that they had to have “a good and bona fide reason” for their challenges. New Jersey officials were also on the lookout for “attempts to interfere with voters’ rights.”⁵⁴

The countermeasures may have had some impact. The DNC’s 1966 registration manual claimed that “due to the vigilance and careful preparation of Democrats to combat these [Eagle Eye] techniques, the Republican effort was largely thwarted in 1964.”⁵⁵ Others attributed Johnson’s landslide victory to an increase in minority voter turnout and a backlash against Eagle Eye efforts. James Sanderlin, a St. Petersburg, Florida attorney and chairman of the nonpartisan Pinellas County Voter Education Committee, claimed that the turnout for Johnson was so heavy because people “were determined to vote for him. I think in the voters’ minds the Republicans became the hostile enemy—someone trying to deprive them of their vote,” Sanderlin explained. “I

⁵¹ “GOP’s ‘Operation Eagle Eye’ At Polls Stirs Democrats,” *The Evening Star*, 2 Nov. 1964, A4.

⁵² Ihsie Carper, “GOP Plan to Challenge Voters Called an Attempt to Intimidate,” *Washington Post*, 30 Oct. 1964, A7; “Orderly Voting,” *Washington Post*, 1 Nov. 1964, F6. RNC Operation Eagle Eye, LBJ Library.

⁵³ Laurence Stern, “Democrats Will Watch GOP Watchers at Polls,” *Washington Post*, 31 Oct. 1964, A1, A4. See also Beth Sundquist, “GOP Issues Warning on Unqualifieds,” *Northern Virginia Sun*, 2 Nov. 1964, 1, 3. RNC Operation Eagle Eye, LBJ Library.

⁵⁴ “Law Officers To Keep Eye On Polls, Too,” *Washington Post*, 2 Nov. 1964. RNC Operation Eagle Eye, LBJ Library.

⁵⁵ “Democratic Route to Victory Registration and Get-Out-the-Vote Manual,” 1966, 28. “DNC ‘Get Out the Vote’ Manual,” Office Files of Bill Moyers, Box 115, LBJ Library.

attribute that to the lack of ticket splitting. Our committee voted to endorse both Republicans and Democrats, and some Negroes wanted to split their ticket, but didn't after being upset by challengers."⁵⁶ Thus, in some cases, well-publicized ballot security efforts heightened voter awareness and, instead of depressing minority votes, may actually have encouraged them—apparently not a unique result of such measures in succeeding decades.

Operation Eagle Eye: A Forty-year Retrospective

Operation Eagle Eye must be understood in the historical context of the GOP's southern strategy. It was a nationwide operation directed by the RNC during a presidential election campaign in which the Republican candidate was on record as endorsing "states' rights" in the special sense that phrase had assumed in the popular mind since Strom Thurmond's 1948 Dixiecrat revolt—opposition to federal laws to destroy legally enforced racial segregation then under attack in the South. "Goldwater showed how Republicans could develop a powerful appeal in the white South without becoming outright segregationists," observe two leading scholars on racial realignment.⁵⁷ This southern strategy has continued into the Twenty-first Century.

As noted earlier, one of the models for Operation Eagle Eye was the Republicans' ballot security program as it developed in Arizona in the years after Goldwater was elected to the Senate in 1952. An important figure in that program was Rehnquist, Goldwater's friend and counselor, whose regard for states' rights in many of its forms found vigorous expression after he was appointed to the Supreme Court in 1971. An earmark of the Phoenix Republican ballot security program was the effort of some challengers to suppress black and Latino votes at the polling place.

Finally, some of the methods employed by Eagle Eye became part of the modus operandi of subsequent Republican campaigns. These include challenging of Democratic voters at polls without cause, humiliation of uneducated voters, efforts to slow down voting in Democratic precincts, special targeting of minority, low-income neighborhoods for challenges, instructions to Republican poll-watchers that encourage unfair treatment, brandishing cameras at polling sites, and developing an attitude among ballot security teams that encourages stereotyping low-income and minority voters as venal and stupid. And while they often cannot be traced to the Republican Party, anonymous disinformation schemes tend to accompany such campaigns.

This approach undoubtedly leaves many Republicans feeling uncomfortable, even when they, like fair-minded Democrats, acknowledge the legitimacy of some forms of monitoring certain Democratic voting precincts. A noteworthy example is Charles Stevens, once head of the Young Republicans in Phoenix, who told a reporter of having gotten a call from Rehnquist to join Operation Eagle Eye in 1964. Stevens, who later became a prosperous lawyer who helped Sandra Day O'Connor get her start in law, was the son of Greek immigrants who had been driven out of Turkey and arrived in the United States speaking broken English. While he knew that challenging voters to read

⁵⁶ Sam Adams, "Vote Challenge May Hurt GOP, Negroes Say," *St. Petersburg Times*, 5 Nov. 1964, 5B. See also "GOP 'Poll Watcher' Probe Hinted," *St. Petersburg Times*, 20 Nov. 1964. RNC 1964 Special Projects, IBJ Library.

⁵⁷ Edward G. Carrines and James A. Stimson, *Issue Evolution: Race and the Transformation of American Politics* (Princeton: Princeton University Press, 1989), 58.

the Constitution was legal in Arizona, he did not approve of it. “I didn’t think it was proper to challenge my dad or my mother. . . . It just violated my principles,” he said. “I had a poor family. I grew up in the projects in Cleveland, Ohio.” He remembered Rehnquist telling him that if he felt that way about it, he didn’t have to participate.⁵⁸ But many lawyers did, along with other volunteers. And many continued to do so in succeeding election campaigns.

⁵⁸Dennis Roddy, “Just Our Bill,” *Pittsburgh Post-Gazette*, 2 Dec., 2000, D1.

CHAPTER V

BALLOT SECURITY FROM 1968 TO 2004

Republican ballot security campaigns from 1966 onward built on the guidelines developed in 1962 and 1964. The hierarchy of ballot security officers was amended slightly after 1964 with the addition of area ballot security directors. These area directors coordinated GOP efforts within multiple precincts (wards or election districts) of a city or county and reported to county or city ballot security officers. One of their primary functions was to contact precinct workers several times on Election Day to monitor results, and to encourage poll-watchers and offer them support. Many volunteers needed encouragement because they were assigned to precincts outside of their home districts. GOP leadership continued to perceive the most acute need for Republican watchers in “core city areas” where Republicans did not have a core constituency.¹ Volunteers serving in these areas were particularly vulnerable to charges that the Republicans were targeting minorities. The RNC wanted the area director to make sure that the volunteers did not feel “deserted in a strange place.”²

GOP ballot security retained its emphasis on precinct workers from 1966 to 1984, but the demands of recruiting what the leadership deemed enough of them ultimately led to a change in emphasis. The RNC early on had called volunteer poll-watchers the key to successful ballot security and established an ideal of three poll-watchers for every two precincts (the third to circulate between the two). This would have required more than 250,000 volunteers in 1964. By 1972, Republicans were pushing for much more: one poll-watcher for each voting machine and for each paper ballot box.³ Efforts to recruit tens of thousands of people taught Republicans to appeal to business corporations, using an ostensibly bipartisan approach. Even though the law required that the employees who volunteered had to be allowed to work for the party of their choice, experience showed that seven out of ten volunteers from the business community were Republicans.⁴ Ultimately, however, it proved too difficult to identify and train enough volunteers. Voting machines and ballot boxes in many precincts, especially those with Democratic majorities, had little or no Republican oversight.⁵

One way the Republicans confronted this problem was by vigorously publicizing their efforts to keep an eye on elections. As one ballot security organizer put it, “Although we clearly could not cover all precincts, we had one great advantage: no one

¹ “Ballot Security Organizers Guide,” 3. Prepared by the Registration Division of the RNC under the chairmanship of Ray C. Bliss. Box 1, Paul Theis Collection, Gerald R. Ford Library.

² *Ibid.*, 5.

³ Memo, J. Richard Benett and James N. Allison to Alabama GOP county chairmen, 12 Oct. 1972. Guide to the Alabama Republican Party Records, RG 545, “Ballot Security - 1972,” Attorney’s Papers Series 2, Box 4 – Accession 81-226, Auburn University.

⁴ “Ballot Security Organizers Guide,” 3-4.

⁵ “As stated in the precinct judges/officials section[,] we have been woefully inept at having poll watchers and challengers at the targeted precincts.” “1984 Ballot Security” Memorandum from J. Michael Farrell to J. Kenneth Kling, Special Projects Director to the 1984 Reagan-Bush Campaign Committee, July 1984, 4. Guide to the Alabama Republican Party Records, RG 545, National Convention 1984 Dallas Series, Box 14 – Accession 86-078, Auburn University.

could know *where* we would be watching.”⁶ Thus Republicans sometimes announced they were sending poll-watchers with cameras and tape recorders to unnamed target areas.⁷ In Alabama, where Republicans as late as 1980 were still trying to build a state party organization that could compete with Democrats, state GOP leaders sought to remind voters that sheriffs and their deputies were legally required to be present at all precincts on Election Day and that the sheriff could “specially deputize a sufficient force to act at all election precincts on the day of any election.”⁸ For its part, the RNC offered in each state rewards “of \$1,000 to any citizen who gives information leading to the arrest, conviction and punishment of any election official who violates state or federal laws against vote fraud.”⁹ Although the RNC released most of its publicity through official news media, GOP leadership discovered in the 1964 campaign “that ‘leaking’ information to the opposition [was] most effective.” Rumors, according to the *RNC Ballot Security Organizers Guide*, “always get blown up as they circulate.”¹⁰ Accurate information on Republican ballot security efforts clearly was not given a high priority in these cases.

The Merging of Law Enforcement with Ballot Security

The psychological deterrents mentioned in Chapter IV had been an integral part of the 1964 ballot security campaign, but professional law enforcement officers began to play prominent roles after 1964. Louis B. Nichols, an FBI investigator for twenty-three years before joining Nixon’s senior advisory committee in 1968, wrote an article on vote fraud for *The Reader’s Digest* appearing in 1969, in which he stated that his army of 100,000 volunteers had “mounted a powerful ‘psychological warfare’ campaign” as part of GOP ballot security efforts in 1968. With the help of former FBI colleagues, lawyers, Vietnam veterans, students and other volunteers, Nichols’ army “distributed thousands of pamphlets on federal election laws and posted red-letter placards warning that ‘information of violations should be reported IMMEDIATELY TO THE OFFICE OF THE U.S. ATTORNEY.’”¹¹

To justify these actions, the author recounted a wide range of alleged Democratic fraud, including the provision of too few voting machines which caused long lines in Republican precincts, and Democratic poll workers instructing minority voters on which candidates to vote for and even temporarily disabling Republican volunteers by offering

⁶ Louis B. Nichols, “The Battle Against Vote Fraud,” *The Reader’s Digest*, 1969, 3. Box 12, Paul Theis Collection, Gerald R. Ford Library. Emphasis in original.

⁷ Letter from Alabama GOP Ballot Security Chairman, William M. Acker, Jr., to Mr. Al Fox of the *Birmingham News*, 28 Oct. 1980; and Proposed Press Release From William D. Harris, Chairman, Republican Party of Alabama, and William M. Acker, Jr., Chairman of Ballot Security for the Republican Party. Guide to the Alabama Republican Party Records, RG 545, “Ballot Security 1980,” Miscellaneous Files Series, Box 6 – Accession 88-046, Auburn University.

⁸ Proposed Press Release From William D. Harris, Chairman, Republican Party of Alabama, and William M. Acker, Jr., Chairman of Ballot Security for the Republican Party. Guide to the Alabama Republican Party Records, RG 545, “Ballot Security 1980,” Miscellaneous Files Series, Box 6 – Accession 88-046, Auburn University.

⁹ Letter from RNC official Bill Brock to the secretary of state, 20 Oct. 1980. See also the Proposed Press Release from Harris and Acker. Guide to the Alabama Republican Party Records, RG 545, “Ballot Security 1980,” Miscellaneous Files Series, Box 6 – Accession 88-046, Auburn University.

¹⁰ “Ballot Security Organizers Guide,” 2.

¹¹ Nichols, “The Battle Against Vote Fraud,” 3-4.

them tainted drinks to sicken them.¹² These accounts called to mind Vice-president Spiro Agnew's charges that Democrats had "intimidated and abused" GOP poll-watchers in 1968, and that a Democratic precinct captain in Chicago had offered Republican poll-watchers "protection" and then, to frighten them, showed them the pistol he had in his belt.¹³ The *Chicago Tribune* also reported that several Republican poll-watchers were physically abused at their precincts in 1968.¹⁴

Republicans in other cities could also be confrontational. Manyon M. Millican, executive director of the Alabama Republican Party in the late 1960s, offered training seminars for poll-watchers. He reminded them to use cameras and "radio control" cars. He also stressed that it was important for poll-watchers to stand their ground. "*The only sure way to get an honest and accurate count,*" he explained "*is to have a human body who is tough and even mean, at the polls counting the ballots.*" To make his point clear he recounted an incident in Louisville, Kentucky, where Republicans worked hard to elect a Republican mayor. During the election the Republicans "were having problems with a Democrat running over our watchers. They dispatched a 6'6," 275 lb. football player to the polling place; he walked in, cracked the guy on the kisser, and flattened him to the floor, turned around and walked out, and no more problems occurred at that polling place! Use force if needed," Millican advised, "but secure the ballot. No amount of protection and expense is too great to protect our ballot in the election of any Republican candidate. Use any method, that is practical, honest and sound."¹⁵

Millican's approval of violence at the polling place underscores a widespread perception that elections are won or lost through "ballot security" measures in the precincts. Lawyers organized in flying squads or committees continued to play an important role at the local level after 1964, but the volunteer poll-watchers remained the strength and the weakness for the GOP into the 1980s. When they were well trained and posted in sufficient numbers, they met the expectations of Republican leaders; but often, as in 1964, they were inadequately trained and in short supply. In 1966, one southern Republican complained that "our little organization is composed of amateurs and we need all of the information that we can get concerning ballot security."¹⁶ The situation had improved by 1984, but there were still problems for GOP ballot security organizers. According to the national ballot security director for the 1980 Reagan-Bush campaign, J. Michael Farrell, the Republican efforts in 1976 and 1980 were hampered by voter registration lists that had not been purged; insufficient numbers of poll-watchers and election judges, especially in targeted precincts; and unprepared ballot security coordinators. These problems led Farrell to recommend that the party purge voter

¹² *Ibid.*, 4-6.

¹³ Fred P. Graham, "Politics: Agnew charges voting abuses in Chicago," *The New York Times*, 5 Nov. 1968, 28.

¹⁴ "Many incidents mar voting on west side," *Chicago Tribune*, 6 Nov. 1968, 1-3.

¹⁵ Manyon M. Millican, "Election Day Activities: or getting out our vote and counting it!" 5, 11. Guide to the Alabama Republican Party Records, RG 545, "Ballot Security - 1966-70," Attorney's Papers Series 2, Box 4 - Accession 81-226, Auburn University.

¹⁶ Letter from Roy Childers, Chairman of Wilcox County Republican Executive Committee in Alabama to Sam C. Pointer, Jr., State Vice Chairman and Legal Counsel for Alabama Republican Executive Committee, 15 Sept. 1966. Guide to the Alabama Republican Party Records, RG 545, "Ballot Security - 1966-70," Attorney's Papers Series 2, Box 4 - Accession 81-226, Auburn University.

registration lists; hire poll-watchers, election officials, and guards for targeted precincts across the country; and implement a paid regional coordinator system in 1984.¹⁷

As Democrats saw it, the Jesse Jackson presidential campaigns of 1984 and 1988, the increase in black registration as a result, and the Democrats' re-taking control of the Senate in 1986 gave considerable momentum to the Republicans' ballot security efforts in the 1980s and later. Democratic activist Donna Brazile, a Jackson worker and Albert Gore's campaign manager in 2000, said "There were all sorts of groups out there doing voter registration. Some time after the '86 election, massive purging started taking place. It was a wicked practice that took place all over the country, especially in the deep South. Democrats retook the Senate in 1986, and [Republican] groups went on a rampage on the premise they were cleaning up the rolls. The campaign then was targeted toward African-Americans." As in the past, Republicans justified the purges in the name of preventing the unregistered from voting. But Democrats charged vote suppression. "The purges may have picked up in the late '80s, but they have been used consistently, oftentimes right before a major election," according to Ellen Spears, associate director of one of the historically most active organizations on behalf of southern black voting rights, the Southern Regional Council in Atlanta. "I think it's very safe to say this is a major post-Voting Rights Act method of continuing the old South practices of limiting the impact of the black vote."¹⁸

The Republican National Lawyers Association

The Republicans' perceived problems arising from too heavy a reliance on volunteers began to be addressed with a different strategy in the mid-1980s. From Operation Eagle Eye onward, the major Republican ballot security programs had borne the imprimatur of the party high command, overseen by the RNC and implemented at the grassroots by local organizations and commercial political operatives. In the mid-1980s, the situation began to change. GOP ballot-security skulduggery in the city of Newark and environs had led to a consent decree in 1982 presided over by a federal judge in New Jersey, according to which the RNC promised to forego minority vote suppression.¹⁹ In 1985, several months before the RNC was hauled back before the same judge as a result of illegal purging efforts in a 1986 Louisiana senatorial campaign and agreed to submit all future ballot security programs it oversaw to the court for its inspection, a new organization was created—the Republican National Lawyers Association (RNLA).

¹⁷ "1984 Ballot Security," Memorandum from J. Michael Farrell to J. Kenneth Kling, Special Projects Director to the 1984 Reagan-Bush Campaign Committee, July 1984, 1-8, 10. Guide to the Alabama Republican Party Records, RG 545, National Convention 1984 Dallas Series, Box 14 – Accession 86-078, Auburn University. Farrell was not the only Republican leader to lament the weaknesses of volunteer poll-watchers. Leaders of the Alabama Republican Party repeatedly stated that inadequately trained poll-watchers caused confusion and created problems for the Election Board. See the questionnaires to assess electoral practices sent out by the Alabama Secretary of State Don Siegelman on 1 July 1980 to county leaders. Guide to the Alabama Republican Party Records, RG 545, "Ballot Security 1980," Miscellaneous Files Series, Box 6 – Accession 88-046, Auburn University.

¹⁸ Anthony York, "Eliminating fraud – or Democrats?" Salon.com, 8 Dec. 2000. <http://archive.salon.com/politics/feature/2000/12/08/integrity/index.html>.

¹⁹ See Chapter VI, Case 1.

A group of lawyers who had worked on the Reagan-Bush campaign in 1984 were behind its founding, and it was designed “to be a sort of Rotary Club for GOP stalwarts,” according to a contemporary article in *Legal Times* magazine. The RNC helped the association get off the ground with a \$5,000 loan, although today the RNC claims no official connection with it. By 1987 the RNLA had active chapters in several states and the District of Columbia, and planned to hold its first annual convention early the following year. A lure for attendees, the planners hoped, would be continuing legal education credits and a possible appearance by Attorney General Edwin Meese III and President Reagan.²⁰

The RNLA turned out to be much more than a Rotary Club for GOP lawyers, however; it became the predominant Republican organization coordinating ballot security. By its own account, in early 2004 it had grown to “a 1,900-member organization of lawyers and law students in all 50 states.”²¹ Its officers were experienced lawyers who knew their way around Washington as a result of having served in Republican administrations at the national and state levels and in major K Street firms. Michael Thielen, its current executive director, who earlier worked for the RNC, describes the organization as follows:

Since 1985 the RNLA has nurtured and advanced lawyer involvement in public affairs generally and the Republican Party in particular. It is accurately described as a combination of a professional bar association, politically involved law firm and educational institute. . . .

With members now in government, party general counsel positions, law firm management and on law school faculties, the RNLA has for many years been the principal national organization through which lawyers serve the Republican Party and its candidates.²²

“The Age of the Lawyers”

Its prestige in Republican party circles undoubtedly got a boost from its involvement in the Florida ballot recount battles of November-December 2000, when, according to one of its members, Eric Buermann, the RNLA was “extremely helpful . . . by sending lawyers to Florida to work on the recount, providing expertise as needed, and coordinating volunteer lawyer response.” It was this helpfulness which apparently led Buermann, the state’s Republican Party general counsel, to coordinate a collaboration between the RNLA and Florida legal response teams in 2002, so that, in the words of an RNLA newsletter that year, “there will be a permanent structure in place to keep the lawyers active and organized during off-election years.”²³

Actually, the collaboration was even broader, involving the National Republican Campaign Committee and the RNC as well.²⁴ The Democrats, on the other hand, also

²⁰ James Lyons, “CJ: Credits, Too,” *Legal Times*, 5 Oct. 1987, 11; Howard Kurtz, “Local TV News and the Elections: Ads Infinitum, but Few Stories,” *The Washington Post*, 2 Nov. 2002 (Final ed.), A7.

²¹ “Richard E. Wiley Named Republican Lawyer of the Year,” press release, Republican National Lawyers Association, 30 Jan. 2004.

²² Michael Thielen, “Invitation to Contribute or Sponsor an Event,” RNLA Website, 2003. <http://www.rnla.org/Sponsor.asp>.

²³ “RNLA Joins With Republican Party of Florida To Form Florida Chapter,” RNLA Newsletter, 2002. <http://rnla.org/Newsletter/ViewArticle.asp?ArticleID=8>.

²⁴ Alicemary Leach, “Congressman Shaw Supports Florida Chapter,” RNLA Newsletter. <http://rnla.org/Newsletter/ViewArticle.asp?ArticleID=50>.

were developing a large network of lawyers that year—10,000, by one estimate—to counter vote suppression efforts. The nationwide deployment of thousands of lawyers in both parties led one journalist to predict “a new era in US politics after the Florida debacle two years ago—the age of the lawyers.”²⁵

Executive Director Thielen gives this account of the organization’s involvement in the 2000 recount: “After election day, RNLA members were dispatched by party organizations and campaigns to multiple locations within several states. When it became clear that the final result in Florida would determine the outcome of the presidential election, members were concentrated there.” Thielen adds, “had it not been for the preeminent litigators retained by the campaign entities and the volunteer attorneys who spent weeks defending the intent of voters before canvassing boards, the will of the nation’s voters would surely have been thwarted.”²⁶ Underlining the organization’s enhanced status among Republicans, White House counsel Albert Gonzales told the group, “You know, I must confess I groaned when I was first asked whether I would be willing to address another group of lawyers. However, when I found out this group included many lawyers that helped secure the election for George W. Bush, I quickly reconsidered.”²⁷

The RNLA’s pride in its Florida efforts is expressed by trophies it presents to honorees at special receptions, consisting of lucite blocks that, as described on the organization’s Web site, “contain a commemorative message in honor of the Florida recount team, and contain actual ‘Chads’ from Florida dispersed throughout the Lucite. They [sic] were only a few hundred created and are not for sale but rather only presented to distinguished members and guests of the RNLA.” Not surprisingly, an RNLA lawyer, Hayden Dempsey, formerly a lawyer for Governor Jeb Bush, is heading Lawyers for Bush, the president’s legal defense team in Florida in 2004.²⁸

Ballot Security Seminars for GOP Lawyers

The organization in 2002 began to offer on a regular basis schools around the nation on election law and ballot security. The first National Summer Election School was held in San Antonio in 2002. A newsletter that year promised its members that the event “will teach you the basics of election law from nationally-preeminent attorneys in this field. You will learn the how-tos of recognizing and preventing vote fraud in registration, absentee balloting, election administration, election day operations and post-election counting procedures. You also will learn how to conduct election recounts and contests. Finally, you will learn how to organize and staff an election day integrity task force in a manner that protects the rights of all our citizens to vote.”

The same article implicitly disavows the kind of dirty tricks aimed at minority precincts that have gotten Republican ballot security programs in trouble over the years.

²⁵ Julian Borger, “Parties deploy armies of lawyers at polling stations,” *The Guardian*, 6 Nov. 2002, 12.

²⁶ Michael Thielen, “Invitation to Contribute or Sponsor an Event,” RNLA Website, 2003. <http://www.rnla.org/Sponsor.asp>.

²⁷ Michael Thielen, “2002 Report of the Executive Director,” RNLA Newsletter. <http://www.rnla.org/Newsletter/ViewArticles.asp?ArticleID=52>.

²⁸ Photo gallery, RNLA Web site, <http://www.rnla.org/PhotoGallery.asp>; Dara Kam, “GOP recruiting lawyers for election fallout,” *Palm Beach Post*, 10 Aug. 2004, http://www.palmbeachpost.com/politics/content/news/epaper/2004/08/10/a4a_gopvote_0810.html.

“Misguided persons who seek to use the upgrading of voting integrity to prevent disadvantaged or other groups of persons from casting their ballots are not welcome in the Republican Party, and certainly not in the RNLA. That said, there are some exciting opportunities for you to learn about how to prevent election fraud.”²⁹

What is unclear about their election-fraud prevention efforts, however, is the criterion for targeting the precincts to which the RNLA sends its operatives. Jonathan Snare, an experienced Texas litigator, said in 2002 that the organization sends its members “to targeted districts where voter fraud is a concern or has historically been a problem.”³⁰ This seems to imply that a history of prior vote fraud is not required. What appears to be at least as important a criterion is how close a race is. When this is the primary criterion, however, the spectacle of Republican lawyers descending on polls where there is no hint of fraud can be ridiculous, and potentially intimidating.

One such instance occurred in Harrisburg, Pennsylvania in 2002, when a team of about a dozen RNLA lawyers suddenly arrived to act as poll-watchers in what one observer called a “highly unusual move.” The contest for the U.S. House of Representatives was between two incumbent congressmen, a Democrat and a Republican, who had ended up opposing each other because redistricting had placed them in the same district. One RNLA lawyer defended her team’s appearance by saying, “We’re all targeting districts where it’s close because that’s where you’re more likely to have people who, in their enthusiasm for their candidate, make mistakes.” But various local citizens were offended. One, a former Federal Elections Commission chairman, said, “That sort of heightened scrutiny is unusual. If you’re sending a whole group of attorneys to watch polls, there’s presumably some particularized concern about those polls.” The Republican candidate himself professed puzzlement at the “attorneys-as-poll-watchers” in his district. “I guess there are enough attorneys in the world to be able to do that,” he said. “I always felt that a lawyer standing by at campaign headquarters was sufficient to respond to anything that seemed unseemly.”³¹ More controversial still was the involvement of an RNLA lawyer in a tight South Dakota senatorial race that same year. He bombarded media with questionable evidence of vote fraud among Indians using as a conduit his roommate, a TV reporter whose employer was initially unaware of the partisan affiliation of her source.³²

With the rise to prominence of the RNLA, the Republican Party’s nationally directed ballot security programs appear to have been transformed. While Operation Eagle Eye was directed from the command posts of the RNC by professionals, the people on the ground—poll-watchers and challengers—were often amateurs, which is to say Election Day volunteers who may have had only cursory training. The RNLA, born in the Reagan era, has gradually assumed the role of the party’s overarching anti-fraud enforcement agency. In the process, the organization has professionalized ballot security

²⁹ Craig Burkhardt, “Upgrading Election Integrity—It’s Your Job,” RNLA Website, 2002. <http://www.rnla.org/Newsletter/ViewArticle.aspx?ArticleID=32>.

³⁰ Jonathan Snare, “The Importance of Ballot Integrity,” RNLA Newsletter. <http://www.rnla.org/Newsletter/ViewArticle.aspx?ArticleID=48>.

³¹ Lara Jakes Jordan, “GOP attorneys to monitor polls in tight race between battling incumbents,” Associated Press, 31 Oct. 2002, http://web.lexis-nexis.com/universe/document?_m=3744f10867d859d6a6c71a2dab33a6e1&_docnum=2&wchp=dGLbVzz-zSkVb&_md5=74f95853a4dde8e1f8c3c8ec1182e19e.

³² See Chapter VI, Case 13.

(its spokespersons seem to prefer the term “ballot integrity”) with a cadre of highly trained, aggressive, and mobile lawyers who can go anywhere in the nation on short notice. Indeed, they don’t even need to be mobile, in many cases. As one of the organization’s newsletters put it: “Ironically, when the Democratic National Committee bragged of sending in a thousand lawyers each to Missouri, Florida, and Texas for election day operations, the [RNLA] Field Operations Committee already had chapters organized in those states and did not need to send out of state lawyers to assist with the elections.”³³

Professionalizing ballot security programs in this sense, however, does not necessarily ensure that GOP minority vote suppression efforts will disappear. One possibility is that they will simply become more sophisticated.

³³ Michael Thielen, “2002 Report of the Executive Director,” RNLA Newsletter. <http://www.mla.org/Newsletter/ViewArticles.asp?ArticleID=52>.

CHAPTER VI

CASE STUDIES OF BALLOT SECURITY EXCESSES: 1981-2002

How often do GOP ballot security programs result in minority vote-suppression efforts? Unfortunately, there is no systematic, detailed study of this phenomenon. Moreover, there is no central repository of information on the subject, although there must undoubtedly be records of many allegations of such efforts on file with the U.S. Department of Justice—records generally not available to the public. Therefore the question of how often ballot security programs involve vote suppression cannot be answered. However, it is possible to gather information on various known cases and present it in a systematic way.

To obtain the information presented here, the authors scanned a wide array of sources, including newspaper and magazine accounts, the very few law review articles on the subject, and political archives in various libraries. No articles on the subject were found in scholarly journals or monographs. After these initial efforts, a list of over sixty cases that seemed to merit investigation was compiled. From these, once initial research was conducted, a final list of fourteen cases was compiled which were especially instructive regarding the modus operandi of ballot security programs gone bad, spanning the time period from the early 1980s to 2003. One of them, focusing on Louisville in the latter year, was presented in the introductory chapter of this Report. The remaining cases are presented in this chapter in chronological order.

Because there is no way to identify all instances of ballot security excesses, those described below cannot be characterized as either typical or atypical. Nonetheless, the excesses documented are clearly part of a pattern going back at least to the 1950s and continuing today, and as such, they merit the concern of anyone who wishes to see unlimited and fair access to the polls of every qualified voter, whatever their race, ethnicity, or socioeconomic status.

Of the cases presented, a disproportionate number involve Texas. This is perhaps partly a function of the selection bias of the authors of this Report, whose author has observed ballot security programs in the state for years. However, it is also probably due to the fact that Texas, a former Confederate state, has both a large African-American and Latino population. The GOP, having embarked on its race-based southern strategy a generation ago, has especially focused its attentions on these heavily Democratic populations in the Lone Star State.

CASE 1: The New Jersey Gubernatorial Election and the “National Ballot Security Task Force,” 1981

New Jersey has long had a reputation for political corruption within both parties. As one commentator writing in the 1980s noted, “It is hard to know whether it runs in cycles or whether it is simply exposed every once in a while.”¹ U.S. attorneys in the early 1970s, at the insistence of liberal Republican Senator Clifford Case, investigated

¹Michael Barone and Grant Ujifusa, *The Almanac of American Politics 1982* (Washington, D.C.: Barone & Company, 1981), 673.

organized crime figures and public officials leading to the conviction of Democratic bosses in Jersey City, the mayor of Newark, a Republican candidate for U.S. Senate, and top officials in the administrations of both a Republican and Democratic former governor.²

In 1981 the RNC and various state Republican committees created a joint \$1 million venture they called "Commitment '81."³ Its purpose was to help elect state and local candidates in six states in which it set up operations: Virginia, Indiana, Hawaii, California, Nevada, and New Jersey.⁴ Its actions in the New Jersey gubernatorial campaign were coordinated by the RNC and the New Jersey Republican State Committee and were ostensibly designed to prevent vote fraud.

The New Jersey ballot security program was headed by a political operative hired by the Republicans, John Kelly, and had two phases: a mass mailing intended to establish a mechanism for challenging the eligibility of potential voters, and efforts to prevent voter fraud on Election Day. Both phases of this program were challenged by Democrats during and after the election. Following an investigation by the Essex County prosecutor, the DNC filed a \$10 million suit in federal court against the Republican organizations and various individuals responsible for the ballot security program, alleging harassment and intimidation of black and Hispanic voters. (The gubernatorial campaign of Thomas Kean, however, was not alleged to have been involved.) In preparation for the suit, the Democrats had gathered affidavits from more than eighty voters claiming they had been harassed by the task force. The outcome had important, if limited, legal ramifications not only in New Jersey but across the nation.⁵

The governor's race for an open seat featured former New Jersey Assembly speaker Kean, a Republican, and Democratic Congressman James Florio, who lost by a margin of less than 1,700 votes in an election with over 2.3 million votes cast.⁶ The chairman of the RNC, Richard Richards, credited Kean's victory to the ballot security program. Without the ballot security program, he asserted, the Democrats "would have stolen" the election. "If Kelly had not been up there," he said, "Florio would be Governor."⁷

Post Cards, Warning Signs, Guns, and Two-way Radios

The RNC spent between \$75,000 and \$80,000 on the New Jersey Ballot Security Program, mostly on the mailings.⁸ New Jersey law in 1981 allowed election supervisors to send out sample ballots to registered voters in the year of an election. If a sample

² Ibid.

³ "Ballot Security Signs Ruled Illegal in New Jersey," *The New York Times*, 4 Nov. 1981, B6; Robert Joffe, "Democrats Accuse G.O.P. of Intimidating Minorities in New Jersey Voting," *The Washington Post*, 7 Nov. 1981, A8.

⁴ Richard J. Meislin, "Jersey Vote Controversy Moves Further in Courts," *The New York Times*, 8 Nov. 1981, 34.

⁵ Jane Perlez, "Democrats Will Sue G.O.P. Over Voting Patrol in Jersey," *The New York Times*, 14 Dec. 1981, B5; "GOP Agrees Not To Allow 'Intimidation' Tactics," Associated Press, 4 Nov. 1982.

⁶ David W. Dunlap, "Poll Team Chief in Jersey Leaves his G.O.P. Post," *The New York Times*, 31 Dec. 1981, B2.

⁷ Selwyn Raab, "G.O.P. Relieves Security Official in Jersey Voting," 12 Nov. 1991, B1.

⁸ Adam Clymer, "G.O.P. to Expand to other States 'Ballot Security' it Used in Jersey," *The New York Times*, 9 Nov. 1981, B6.

ballot was returned by the postal service, the supervisor could re-send the sample ballot, this time marked "Please Forward" and requesting notification of any address change. If sample ballots in the second wave were not returned, these voters' names could be placed on a "challenge list" and taken to election officials at the polls.⁹ In contrast, the New Jersey ballot security team, on its own, sent out postcards using outdated voter registration lists, and sent them only to precincts with a majority of black and Hispanic voters. The 45,000 returned mailings were converted immediately into challenge lists without sending a second mailing. However, two weeks before the election was to begin the New Jersey Commissioners of Registration refused to accept the lists when they discovered they had been compiled using outdated voter information. The RNC nonetheless announced they would continue their efforts to ensure ballot security in the state's election, without the lists.¹⁰

This was primarily done by placing poll-watchers on Election Day (November 3) at voting sites where, according to the chairman of the Republican Committee in Mercer County, "in the past there have been suspicions of voter fraud."¹¹ Some of the poll-watchers were lawyers; several others were off-duty police officers who carried guns and two-way radios. All of them wore armbands that read, "National Ballot Security Task Force."¹² They erected signs stating:

WARNING
THIS AREA IS BEING PATROLLED BY THE
NATIONAL BALLOT
SECURITY TASK FORCE

IT IS A CRIME TO FALSIFY A BALLOT OR TO
VIOLATE ELECTION LAWS

- 1. IF YOU ARE REGISTERED YOU CANNOT VOTE**
2. YOU MUST VOTE IN YOUR OWN NAME.
3. YOU MAY ONLY VOTE ONE TIME

\$1,000 Reward for information
leading to arrest and conviction
of person violating New Jersey
election law. Call 800-402-4301.

HONEST VOTE 1981¹³

⁹ Rachel E. Berry, "Democratic National Committee v. Edward J. Rollins: Politics as Usual or Unusual Politics?" in *Race and Ancestry Law Digest* 44 (Spring, 1996): 3.

¹⁰ *Ibid.*

¹¹ Selwyn Raab, "Imperial Admits G.O.P. 'Security' Role," *The New York Times*, 18 Nov. 1981, B2.

¹² Adam Clymer, "U.S. Inquiry Asked Over Voting Rights in Jersey's Election," *The New York Times*, 8 Nov. 1981, 1; Richard J. Meislin, "Jersey Controversy Widens over G.O.P. Patrols at Polls," *The New York Times*, 7 Nov. 1981, 25; Richard J. Meislin, "Jersey Vote Controversy Moves Further in Courts," *The New York Times*, 8 Nov. 1981, 34; Jane Perlez, "Coalition in Jersey Seeks Evidence of Voter Fears," *The New York Times*, 10 Nov. 1981, B1; Jane Perlez, "Democrats Will Sue G.O.P. over Voting Patrol in Jersey," *The New York Times*, 14 Dec. 1981, B1; Selwyn Raab, "Jersey Inquiry is Planned on Vote Security Force," *The New York Times*, 14 Nov. 1981, 26; Joffe, "Democrats Accuse G.O.P. of Intimidating Minorities in NJ Voting," A8.

¹³ Richard J. Meislin, "Jersey Controversy Widens over G.O.P. Patrols at Polls," A1.

On the morning of Election Day Angelo J. Genova, a lawyer for the Democratic State Committee, charged that the Republican Party was waging a systematic campaign designed to prevent minorities from voting and sought a court order that the signs be removed. At midday Judge Daniel A. O'Donnell of the State Superior Court in Trenton ordered all the signs taken down, saying they were inherently "political" and didn't specify who had paid for them.¹⁴ The signs were removed beginning at 4 p.m. on the same day.¹⁵

One voter, Amy Hammond of Trenton, called the toll-free number repeatedly to ascertain who was in charge of the posters. She was told several times that "we don't divulge our clients. We are an organization that works for an honest vote on Election Day. We've done it in other states. We did it in Indiana, we did Hawaii, we did California, we've worked in Nevada." When Hammond responded that she saw "a guy walking around with a gun" at the polls, she was told that the man "might have been a plainclothes officer assigned there by the county sheriff or something."¹⁶ A later call to directory assistance revealed that the phone number was registered under the RNC.¹⁷

Apart from the established facts that the task force put up signs and that some wore armbands and had guns and radios, there were conflicting reports about the actions of the poll-watchers on Election Day. Democratic city councilman Anthony Carrino, from the North Ward of Newark, reported that the task force operated only in about half the precincts in the North Ward, primarily in minority districts. The task force, he maintained, was "like the Gestapo," and would arrive at polls in groups and demand to examine voter registration books.¹⁸ Kenneth J. Guido, Jr., a lawyer for the DNC, claimed one voter "was physically pulled out of a polling place" by a member of the task force.¹⁹ There were allegations that the task force interrogated voters at the polls, refused to allow certain voters into the polls, removed signs advertising Democratic candidates, and even prevented poll workers from assisting voters. One voter said she did not vote because of the presence and actions of the task force.²⁰ The president of the NAACP in Trenton claimed, "I saw Gestapo armbands in my polling place, and I won't tolerate seeing them here in the future."²¹

On November 7 Charles T. Manatt, DNC chairman, called on the Department of Justice to investigate the New Jersey ballot security program, claiming that it may have violated Section 11(b) of the Voting Rights Act, which makes it illegal to "intimidate, threaten, or coerce, or attempt to intimidate, threaten or coerce any person for voting or attempting to vote."²² Manatt stated that "according to the reports we get," the National

¹⁴ "Ballot Security Signs Ruled Illegal in New Jersey," *The New York Times*, 4 Nov. 1981, B6.

¹⁵ Robert Joffe, "Democrats Accuse G.O.P. of Intimidating Minorities in NJ Voting," A8.

¹⁶ Meislin, "Jersey Vote Controversy Moves Further in Courts," A34.

¹⁷ Joffe, "Democrats Accuse G.O.P. of Intimidating Minorities in NJ Voting," A8.

¹⁸ Meislin, "Jersey Controversy Widens over G.O.P. Patrols at Polls," 25.

¹⁹ Perlez, "Democrats will sue G.O.P. Over Voting Patrol in Jersey," B1.

²⁰ Berry, "Democratic National Committee v. Edward J. Rollins," 4. Berry cites this information from Plaintiff's Amended Complaint for Declaratory and Injunctive Relief at 11, DNC v. RNC (D.N.J. 1981) (Civ. No. 81-3876).

²¹ Joseph F. Sullivan, "Kean Claims Jersey Victory; 20 County Tallies Certified," *The New York Times*, 11 Nov. 1981, A1.

²² Adam Clymer, "U.S. Inquiry Asked Over Voting Rights in Jersey's Election," *The New York Times*, 8 Nov. 1981, A1.

Ballot Security Task Force operated “all in black precincts” and that “they got overzealous with some of these storm troopers they had parading around the polls.”²³ Manatt claimed that “a cloud now hangs over the New Jersey elections” and demanded to know who paid for the ballot security program, how it was organized, and whether there was a conspiracy to intimidate voters.²⁴ Republican leaders made no attempt to deny that they had funded and organized the program, and argued that it was not an effort to prevent minorities from voting: Manatt’s call for an investigation, they said, was merely the “sour grapes tactics of a man desperate to steal an election.”²⁵

Statewide Investigation

On November 13, New Jersey Attorney General James Zazzali ordered a statewide investigation into the actions of the national task force, and one was begun, headed by Essex County prosecutor George Schneider, a Democrat.²⁶ Schneider’s immediate plan was to interrogate John Kelly, the leader of the New Jersey Ballot Security Task Force, but he was nowhere to be found. Some said he had gone to Oklahoma, some said New York, and one aide to Kean said that Kelly “took off like a big bird right after the election.”²⁷ Word surfaced that Kelly had lied on his résumé, and he was suspended by the Republican Party with pay. He had claimed that he had graduated from Notre Dame and then Fordham law school, held a position in the Fraternal Order of Police, worked for the Federal Drug Enforcement Agency, and held a position in the Reagan campaign of 1980. All of these claims turned out either to be false or misleading. He was forced to resign by late December.²⁸

Another red flag raised during Schneider’s investigation was the dubious behavior of Anthony Imperiale, a Republican assemblyman from Newark who also operated a private security agency. When Newark city councilman Anthony Carrino claimed that reports had been made to him that Imperiale was involved in the ballot security measures, Imperiale branded them “a prefabricated lie.” He said: “I didn’t drop off anyone wearing blue armbands. In no way was my security agency involved. I don’t put up signs and didn’t know anything about them until I saw them.”²⁹ Imperiale added, “If the Democrats are making charges that I knew about this, then tough crap on them. It’s the Democrats who have a reputation of stealing votes.”³⁰ However, when Kelly finally returned to New Jersey for questioning, he named Imperiale, along with the Republican chairmen of Camden, Mercer, and Atlantic counties, as being the point men for “street operations” of

²³ Ibid.

²⁴ Richard J. Meislin, “Official Tallies Show Kean Leading in Jersey,” *The New York Times*, 10 Nov. 1981, A1.

²⁵ Adam Clymer, “U.S. Inquiry Asked Over Voting Rights in Jersey’s Election,” 1.

²⁶ Raab, “Jersey Inquiry is Planned on Vote Security Force,” 26.

²⁷ Meislin, “Jersey Vote Controversy Moves Further in Courts,” 34.

²⁸ Dunlap, “Poll Team Chief in Jersey Leaves his G.O.P. Post,” B2; Selwyn Raab, “Queries Arise on Background of Ballot Task Force Official,” *The New York Times*, 11 Nov. 1981, B1; Selwyn Raab, “G.O.P. Relieves Security Official in Jersey Voting,” *The New York Times*, 12 Nov. 1981, B1; Matthew C. Quinn, “John Kelly: The Key to Jersey Controversy,” *United Press International*, 14 Nov. 1981, AM Cycle.

²⁹ Meislin, “Jersey Controversy Widens Over G.O.P. Patrols at Polls,” 25.

³⁰ Selwyn Raab, “Imperiale Called a Chief In G.O.P. Poll ‘Security,’” *The New York Times*, 17 Nov. 1981, B1.

the program. One of them confirmed that he had assigned fourteen task force members, who were off-duty police officers and sheriffs, to guard polls in his county. He was quoted as saying, "There was no intimidation whatsoever," and that task force officials were only assigned to areas where "in the past there have been suspicions of voter fraud."³¹

"Who Did It Intimidate?"

The next day, when Imperiale was questioned, he admitted to assigning about thirty-five people to guard certain Newark voting sites with instructions to report any irregularities to him. But he added, "Who did it intimidate? No one but fraudulent voters in my opinion. This is sour grapes from Democrats. They don't know how to take defeat."³² Several years later, Imperiale was chosen to represent New Jersey at the Republican National Convention, and an editorial in the *The New York Times* noted that he had "once publicly referred to Martin Luther King as 'Martin Luther Coon' [and] began his demagogic political career as a preacher of armed white self-defense following the 1967 Newark riots."³³

Despite the suspicious behavior of Kelly and Imperiale, Schneider's six-week investigation found no evidence that anyone in the four counties concerned had been prevented from voting in the election. While there had been technical violations committed by the RNC, Schneider said, he decided not to bring criminal charges, believing that the widespread publicity regarding the task force "will serve as an effective deterrent to future abusers." Schneider nonetheless asserted that the ballot security program was "a covert operation that was at the very least intentionally misleading and resulted in technical violations of our election laws." He added that the RNC "must be considered misfeasant in allowing Kelly and his underlings to operate with little, if any, control." He concluded, "I believe the facts support the conclusion that there existed a lack of sensitivity on the part of the Ballot Security program to the rights and feelings of the inner-city voter and a lack of straightforwardness in the manner in which the program's message was expressed to all voters in New Jersey."³⁴

The same week that Schneider dropped his investigation the DNC announced a lawsuit asking for \$10 million in damages against the RNC. Schneider's findings, along with those of a newly formed group which called itself "Right to Vote '81," led the DNC to take legal action. The group was founded on November 7 by Democratic Congressman Peter W. Rodino, Mayor Kenneth A. Gibson of Newark (the city's first African-American mayor), and the Rev. S. Howard Woodson, Jr., president of the New Jersey Civil Service Commission. Woodson said of the Ballot Security Task Force that "the entire operation can be termed 'Big Brother is watching'" and he called for "the eradication of this tactic ever again in the state and the nation."³⁵ "Right to Vote '81" organized volunteers from church groups, labor unions, the Democratic Party, and the

³¹ Ibid. The Republican chairmen were John Hansbury (Mercer County), Joseph Forte (Camden County), and William H. Ross (Atlantic County).

³² Selwyn Raab, "Imperiale Admits G.O.P. 'Security' Role," *The New York Times*, 18 Nov. 1981, B2.

³³ "Indelicate Delegate," *The New York Times*, 18 June 1984, A18.

³⁴ Selwyn Raab, "Inquiry on Ballot Patrols is Dropped," *The New York Times*, 19 Dec. 1981, 30.

³⁵ Meislin, "Jersey Controversy Widens Over G.O.P. Patrols at Polls," 25.

NAACP; sent out forms to twenty-six black churches in New Jersey asking for witnesses; and came up with eighty affidavits by mid-December.³⁶

These were combined with photographs as evidence in the lawsuit, which charged that the Republican party harassed and intimidated black and Hispanic voters and violated their Fourteenth and Fifteenth Amendment rights as well as Section 11(b) of the Voting Rights Act. It charged that off-duty sheriffs and policemen were hired to patrol minority precincts and were “prominently displaying revolvers, two-way radios and armbands with the words National Ballot Security Task Force” on them. This task force “obstructed and interfered with the operations of the polling places in black and Hispanic precincts.”³⁷ According to Eugene Eisenberg, executive director of the DNC, “the abuses were so grotesque and reprehensible that we had a legal, moral and political responsibility, looking toward 1982, to put a stop to it—even if only one person was harassed.” He added that the program was particularly egregious because “this was not an idiosyncratic event but a larger strategy to reduce the normal Democratic vote by going after people on the basis of race.”³⁸ Plaintiffs were the DNC and various other organizations and individuals. Defendants were the RNC, the New Jersey RSC, and various individuals, including Kelly, the task force director.

Republican leaders vigorously and publicly defended the program as a legal, necessary procedure to prevent vote fraud. “We are delighted to be a partner with the Republican Party in New Jersey in their ballot security program to ensure an honest election,” claimed RNC chairman Richards. “Anyone opposed to ballot security obviously must be supportive of election fraud. We would have been cheated out of that race if we hadn’t been alert.”³⁹ Ronald Kaufman, regional director of the RNC for New Jersey, New York, and New England who had designed the ballot security program and who had hired Kelly, stood by the New Jersey operation. “Ballot security has been a problem nationally for some time,” he claimed, and his New Jersey program was not intended to keep minorities from voting, it was aimed solely at preventing vote fraud.⁴⁰ Furthermore, he thought it was a success, and planned to use the New Jersey program as a model for future campaigns.

Kaufman dismissed charges made against the program, claiming that no one in the RNC had instructed anyone to wear guns, that the armbands were to distinguish the security team from loiterers, and that the choice of precincts was based on voter records and history of vote fraud rather than racial composition.⁴¹ William Greener III, director of communications for the RNC, wholly endorsed the program and vowed that his organization would continue “legal and proper” ballot security measures to prevent vote fraud.⁴² When he learned of the \$10 million lawsuit brought by the DNC, his response was, “We haven’t done anything wrong. We have nothing to fear.”⁴³

³⁶ Perlez, “Coalition in Jersey Seeks Evidence of Voter Fears,” B1; Perlez, “Democrats Will Sue G.O.P. Over Voting Patrol in Jersey,” B1.

³⁷ Perlez, “Democrats Will Sue G.O.P. Over Voting Patrol in Jersey,” B1.

³⁸ *Ibid.*

³⁹ Robert Joffe, “Democrats Accuse G.O.P. of Intimidating Minorities in N.J. Voting,” A8; Richard J. Meislin, “Jersey Controversy Widens over G.O.P. Patrols at Polls,” 25.

⁴⁰ Clymer, “G.O.P. to Expand to Other States ‘Ballot Security’ it Used in Jersey,” B6.

⁴¹ *Ibid.*

⁴² Selwyn Raab, “Inquiry on Ballot Patrols is Dropped,” 30.

⁴³ Perlez, “Democrats Will Sue G.O.P. Over Voting Patrol in Jersey,” B1.

1982 Consent Decree

The controversy disappeared from the media for about a year, after which the two parties, neither admitting guilt, reached a consent agreement not to engage in voter intimidation. On November 1, 1982, Judge Dickinson R. Debevoise of the U.S. District Court for the District of New Jersey issued a consent order, signed by all parties to the lawsuit. The most substantial part of the agreement, which would be invoked by the court four years later in a case originating in Louisiana, read as follows:

2. The RNC and RSC (hereinafter collectively referred to as the "party committees") agree that they will in the future, in all states and territories of the United States:
 - a) comply with all applicable state and federal laws protecting the rights of duly qualified citizens to vote for the candidate(s) of their choice;
 - b) in the event that they produce or place any signs which are part of the ballot security activities, cause said signs to disclose that they are authorized or sponsored by the party committees and any other committees participating with the party committees;
 - c) refrain from giving any directions to or permitting their agents or employees to remove or deface any lawfully printed and placed campaign materials or signs;
 - d) refrain from giving any directions to or permitting their employees to campaign within restricted polling areas or to interrogate prospective voters as to their qualifications to vote prior to their entry into a polling place;
 - e) refrain from undertaking any ballot security activities in polling places or election districts where the racial or ethnic composition of such districts is a factor in the decision to conduct, or the actual conduct of, such activities there and where a purpose or significant effect of such activities is to deter qualified voters from voting; and the conduct of such activities disproportionately in or directed toward districts that have a substantial proportion of racial or ethnic populations shall be considered relevant evidence of the existence of such a factor and purpose;
 - f) refrain from attiring or equipping agents, employees or other persons or permitting their agents or employees to be attired or equipped in a manner which creates the appearance that the individuals are performing official or governmental functions, including, but not limited to, refraining from wearing public or private law enforcement or security guard uniforms, using armbands, or carrying or displaying guns or badges except as required by law or regulation, in connection with any ballot security activities; and
 - g) refrain from having private personnel deputized as law enforcement personnel in connection with ballot security activities.⁴⁴

The substance of the agreement, in short, made a distinction between legitimate ballot security measures and those which target minority precincts per se and intimidate voters in them; and it prohibited the RNC and the New Jersey Republican Party from engaging in the latter anywhere in the United States.

CASE 2: Judges and Warning Signs on Dallas' South Side, 1982

Political scientists writing in 1964, the year that Goldwater's try for the presidency galvanized the emerging GOP in Texas, observed that Texas Republicans "as indicated by their conduct and pronouncements . . . have virtually written off that one-

⁴⁴ Consent Order, Democratic National Committee, et al. vs Republican National Committee, et al., Civ. No. 81-3876 (D.N.J. Nov. 1, 1982) (Debevoise, U.S.D.J.).

fourth of the electorate composed of Negroes and Latin Americans.”⁴⁵ While that was still true in the 1980s for blacks, it was somewhat less so for Latinos. Slowly the Republicans had begun to reach out to conservative Latinos, and officeholders started appointing some to their administration. The rapid growth of the Latino population through immigration and natural increase helped get the Republicans’ attention. Still, they were keenly aware that most voters in both minority populations were heavily Democratic, and “ballot security” was a major Republican concern.

The 1980 elections had been particularly dramatic in Texas. Ronald Reagan carried the state, which had voted for Jimmy Carter four years before. The Republicans felt their star was rising. Two years earlier, in 1978, they had won two landmark contests. William Clements, Jr., a rich oil man, had become the first Republican governor since Reconstruction, and John Tower, a hard-right conservative and Texas’ first Republican senator since 1870, had been elected to a second term. Tower had been a strong supporter of Goldwater in 1964 and was outspoken in his defense of Goldwater’s refusal to back the Civil Rights Act that year.⁴⁶ Clements’ 1978 victory was an upset, though a narrow one. Turnout was key. Both he and Tower got high voter turnout in the wealthy, urban areas of the state. The working-class and minority voters of the cities, as well as of rural East Texas, largely stayed away from the polls.⁴⁷ These events augured well for Republicanism in Texas, and the party hoped to increase their number of elected officials in Texas while carrying the state for Ronald Reagan, which they did.

In 1982, the same year the consent decree in New Jersey was agreed to by the RNC, Clements was running for a second term, and both Democrats and Republicans had been working hard to get out the vote. Adumbrating events in Florida in 2000, Clements’ secretary of state, David Dean, chief state elections officer, had developed a scheme during the summer of 1982 to purge state voter roles of ineligible felons. A heated controversy followed. The director of the Texas Civil Liberties Union said it “smacks of a politically motivated attempt to intimidate anyone who has ever been arrested into foregoing the right to vote.” A federal injunction forced him to drop the effort when it was revealed that the list of “felons” he proposed to send to county voting officials was highly inaccurate.⁴⁸

A few months later, events in Dallas focused the spotlight again on Democratic allegations of Republican efforts at minority vote suppression and Republican allegations of voter fraud. On Election Day afternoon Democratic poll-watchers noticed that a number of heavily black precincts were running short of ballots. Democratic congressman Martin Frost’s tally after the election revealed that thirty-three precincts had actually run out of ballots during the day, that more ballots were sometimes slow in coming from the county elections office, and that in some precincts they never came at all. People waited up to 4 1/2 hours in the rain as a result of the shortages. Democrats

⁴⁵ James R. Soukup, Clifton McCleskey, and Harry Holloway, *Party and Factional Division in Texas* (Austin: University of Texas Press, 1964), 64.

⁴⁶ “Random Glances at the New Republicans,” *Texas Observer* 56 (21 Aug. 1964), 3-4.

⁴⁷ Michael Barone and Grant Ujifusa, *The Almanac of American Politics 1982* (Washington, D.C.: Barone & Company, 1981), 1049.

⁴⁸ “Dean’s List an Attempt to Intimidate,” *Texas Observer* 74 (15 Oct. 1982), 3. David Richards, *Once Upon a Time in Texas: A Liberal in the Lone Star State* (Austin: University of Texas Press, 2002), 201-3.

attributed the problem to the county election administrator and asked for an investigation by the Justice Department and the county district attorney.⁴⁹

What attracted even more publicity, however, was the appearance of large black and red signs in black precincts. The signs contained a message that began,

**DO NOT REMOVE THIS SIGN
BY ORDER OF THE SHERIFF OF DALLAS COUNTY
You Can Be Imprisoned**

after which were listed six voting fraud offenses. The signs were put up by a state appeals court judge, Patrick Guillot, and a group of at least four other Republican state judges, one of whom later became a federal district judge and another, a Texas Supreme Court judge. Guillot, in a letter soliciting help from his fellow judges, wrote that “Governor Clements’ ballot security chairman requested that all his judicial appointments help out in the effort to keep voting fraud to a minimum. . . . I talked with [secretary of state] David Dean and Sheriff [Don] Byrd Friday and cleared this with them. Remember, when you discourage fraud, you gain votes, too.” The latter three words were underlined.⁵⁰

When questioned later, Dean said that “he had told Guillot that these signs could not be posted without the approval” of the county elections administrator, Conny Drake. Drake, however, denied having received the request for approval. Sheriff Byrd, who had directed some of his deputies to post signs in South Dallas, where many blacks were concentrated, said he understood that Dean had given approval for their posting—which Dean later denied under oath. Indeed, Dean said he had warned against the project.⁵¹ The Department of Justice later found fault with the signs, and Assistant U.S. Attorney General William Bradford Reynolds, a conservative Republican, said he was “concerned that no nonracial justification has been offered for placing most of the signs at minority precincts.”⁵²

One of the sign-posters, state district judge Jack Hampton, asserted he had gotten each election judge’s permission before posting a sign at the precinct—a claim denied by a spokesman for one of the County Commissioners in whose district the postings had occurred. Hampton told a newspaper reporter who had asked him if he believed the signs were intimidating to minority voters, “We have more black defendants in this courthouse than white defendants. If they steal more, I guess they could be intimidated more.”⁵³

Four years later, in 1986, one of the sign posters, Judge Sidney Fitzwater, was nominated to the federal bench under the sponsorship of Texas Senator Phil Gramm. He had first been appointed to his state judgeship by Governor Clements and was running for election to the same post in 1982 when he put up the signs. At his Senate confirmation

⁴⁹ Kay Gunderson, “Plots, Suits, and Mystical Incantations in Dallas County,” *Texas Observer* 74 (10 Dec. 1982): 3-4. The entire contents of the sign are contained in a copy of the sign supplied by George Korbel, Texas Rural Legal Aid, San Antonio, Texas, and in the possession of the senior author.

⁵⁰ Gunderson, “Plots, Suits, and Mystical Incantations in Dallas County,” 4.

⁵¹ *Ibid.*; Richards, *Once Upon a Time in Texas*, 203.

⁵² Howard Kurtz, “Two Judicial Choices Assailed; Liberals Say Both Have Tried to Impede Minority Voting,” *The Washington Post*, 5 Feb. 1986, A4; Judy Wiessler, “Judicial nominee defends activities of 1982 election,” *Houston Chronicle*, 6 Feb. 1986, 1-3.

⁵³ Gunderson, “Plots, Suits, and Mystical Incantations in Dallas County,” 3-4.

hearing, he admitted to participating in the Republican ballot security program, but said that “he did not study the signs and drew no conclusion from the fact that he was asked to post them only in black areas of south Dallas.” Indeed, he said that he would not have posted them if he had known they were targeted solely at minority precincts. He also commented that another judge had told him to post the signs, and that it was a part of an officially sanctioned ballot security program.⁵⁴ After apologizing for his actions and taking sharp criticism from various Democrats and from Willie Velasquez, director of the Southwest Voter Education Project in Texas, Fitzwater was confirmed, becoming, at age thirty-two, the youngest judge on the federal bench.⁵⁵

CASE 3: Poll-watcher Controversy in Houston, 1984

The 1984 presidential campaign was contentious in Texas. After Ronald Reagan had narrowly won the South in 1980 (he carried Texas by 55 percent), and Republican governor Clements lost to Democrat Mark White two years later, Democrats and Republicans began to mount massive registration drives. “Voter registration is up in the brand-new, burgeoning suburbs in west and northwest Harris County [surrounding Houston],” wrote political reporter Nene Foxhall. “But registration is also up in those inner-city, predominantly minority neighborhoods, a treasure trove for Democrats, where voters waited in a downpour two years ago to vote a straight ticket.”⁵⁶

Partisan attacks and counterattacks got under way early in the campaign. A member of the Reagan administration in Washington accused Governor White, as well as the governors of Ohio and New York, of breaking federal law by “coercing” state employees to register Democratic voters in welfare offices and state employment agencies, where registrants were more likely to be Democrats. White strongly denied breaking the law and claimed the charges by the Reagan official were part of a “coordinated attack to reduce voter turnout.” He also “voiced concern about aggressive GOP efforts to monitor election procedures . . . including offering \$5,000 rewards to ‘bounty hunters’ who provide information leading to the arrest of state officials for vote fraud.”⁵⁷ And, a few days later, the governor attacked Republican efforts in El Paso to place ads on Spanish-language TV stations warning listeners that “election security officials” had identified illegal voter registration cards, and that illegal voters could face a fine or imprisonment. The station refused the ad. Republican Phil Gramm, campaigning for a Senate seat, said, “I hope the governor has as much commitment to fight vote fraud as I have to fight voter intimidation.”⁵⁸

In 1980 Republicans had offered a \$1,000 reward “for information leading to . . . prosecution for voting fraud.” No one claimed it.⁵⁹ In 1984, the \$1,000 offer still held, and the GOP announced it had budgeted \$250,000 for ballot security in Harris County. What such a huge budget would be used for was not mentioned in newspaper reports, but

⁵⁴ Howard Kurtz, “Two Judicial Choices Assailed,” A4; Judy Wiessler, “Judicial nominee defends activities of 1982 election,” 1-3.

⁵⁵ Judy Wiessler, “Texas GOP readies precinct stackouts,” *Houston Chronicle*, 8 Oct. 1986, 1-4; Judy Wiessler, “Judicial nominee defends activities of 1982 election,” *Houston Chronicle*, 6 Feb. 1986, 1-3.

⁵⁶ “Voter registration up all over” *Houston Chronicle*, 24 Oct. 1984, 1-1.

⁵⁷ “Ferraro blamed in voter registration row,” *Houston Chronicle*, 25 Oct. 1984, 1-20.

⁵⁸ Anne Marie Kilday, “White says minorities intimidated,” *Houston Chronicle*, 3 Nov. 1984, 1-31.

⁵⁹ Chandler Davidson, *Race and Class in Texas Politics* (Princeton: Princeton University Press, 1990), 236.

the party announced its intention of placing poll-watchers in “heavily Democratic precincts,” which minority leaders took to mean minority precincts. Democratic strategists saw this, too, as an attempt to intimidate voters.⁶⁰ The GOP county chairman dismissed their charges as “hogwash.”⁶¹ Black state senator Craig Washington, representing Houston inner-city neighborhoods, threatened to send out one thousand “big, black and burly” ex-felons to watch the white poll-watchers in black precincts.⁶²

Tensions between the parties were heightened the Saturday before the election, when two Democratic Party offices in Harris County were broken into and vandalized in early-morning raids. “Communist pig” was written on one wall. Texas Democratic Party chairman Bob Slagle attributed them, in part, to the GOP’s ballot security program. “When you create an atmosphere of hatred and racism then you get the kind of terrorist action that happened . . . this weekend,” he charged.⁶³

On Election Day, Senator Washington’s ex-felons failed to show up.⁶⁴ One Republican poll-watcher was ejected from his assigned polling place for repeatedly leaving the premises to make a phone call to Republican headquarters.⁶⁵ A black election judge told reporters that the Republican poll-watchers at her precinct were “just sitting there minding their own business.”⁶⁶ At another polling place, however, the black minister serving as election judge said poll-watchers challenged more than twenty-five voters. “They said that some of them were voting more than once. . . . They said that most blacks look alike so it was hard to tell.”⁶⁷

The black electorate in Harris County turned out to vote in large numbers, apparently unfazed by the ballot security program. Long lines all day were noted at some of their precincts, which went heavily Democratic. But their support for Democrats was not sufficient to prevent the Reagan-Bush ticket from carrying Texas almost two-to-one, in a year that witnessed the election of state legislator and rising GOP star Tom DeLay to Congress.⁶⁸

After the election, Harris County GOP Chairman Russ Mather mentioned what he called several voting inconsistencies in predominantly black Precinct 24—an extremely impoverished neighborhood—where many voters shared the same address or listed the Salvation Army or an empty lot as their residence. The county Republican ballot security chairman added that party officials “thought it highly unusual that so many people would actually live in such crowded conditions.”⁶⁹

⁶⁰ Nene Foxhall, “Race in Texas will likely be closer than polls indicate,” *Houston Chronicle*, 4 Nov. 1984, 1-44.

⁶¹ Mark Sanders, “Democratic chief says Republicans attacked offices,” *Houston Post*, 6 Nov. 1984, 12A.

⁶² William Pack, “Ex-felons will watch polls Tuesday,” *Houston Post*, 5 Nov. 1984, 11A.

⁶³ Mark Sanders, “Democratic chief says Republicans attacked offices,” 12A.

⁶⁴ John Whitmire and Mike Yuen, “Voter turnout heavy, but ‘peaceful, quiet,’” *Houston Post*, 7 Nov. 1984, 6C; Mark Sanders, “Democratic chief says Republicans attacked offices,” *Houston Post*, 6 Nov. 1984, 12A; “Vandalism of Democratic facility in north Harris County is probed,” *Houston Chronicle*, 4 Nov. 1984, 1-34.

⁶⁵ “Poll watcher charged with trespassing,” *Houston Chronicle*, 8 Nov. 1984, 1-28.

⁶⁶ Whitmire and Yuen, “Voter turnout heavy, but ‘peaceful, quiet,’” 6C.

⁶⁷ *Ibid.*

⁶⁸ Nene Foxhall, “Sweeping victory in Texas is sweet revenge for GOP,” *Houston Chronicle*, 7 Nov. 1984, 2-3.

⁶⁹ “Vote irregularity reports probed,” *Houston Chronicle*, 8 Nov. 1984, 1-28.

CASE 4: Postcards in Louisiana, 1986

In the mid-term elections of 1986, several state Republican parties pressed aggressively forward with ballot security programs, particularly in states with close races for Senate and House seats in November.⁷⁰ The year 1986 was noteworthy in Louisiana. Russell Long announced his forthcoming retirement from the U.S. Senate. He was the last member of a political dynasty that began in 1928 with the election of his father Huey Long as governor. Republicans felt their time had come to choose a senator. GOP Congressman Henson Moore began his campaign for Long's seat with a huge war chest. He ran an ad saying, "The party's over. It's morning in Louisiana," a slogan that not only invoked President Reagan's "morning in America" theme but was intended to link his Democratic opponent, Congressman John Breaux, to the corruption of the governor, Edwin Edwards. In the nonpartisan primary, Henson bested Breaux 44-37.⁷¹ Louisiana in 1980 had the third largest percentage of African Americans among the fifty states. They were one of the main groups the Breaux campaign appealed to.⁷²

As part of its 1986 ballot security program, the RNC had hired a private contractor to conduct operations nationwide. One such operation focused on Louisiana. Run by Ballot Security Group out of Chicago, it followed a pattern Republicans had used at least since the 1950s, as this Report's account of Arizona politics has shown. Non-forwardable letters were sent to 350,000 registered voters across the state. About 30,000 were returned.⁷³ Most of the returned letters had been addressed to blacks. "They were very selective," the chairman of the State Central Democratic Committee said. The head of Ballot Security Group denied his company was targeting blacks, although he acknowledged the returned envelopes primarily came from their addresses. "That's to be expected," he said, "because more of them are renters and they move more often."⁷⁴ However, the fact later emerged that the letters had been targeted at districts voting over 75 percent for Democratic Presidential candidate Walter F. Mondale in 1984, a pattern that seldom occurred outside heavily black districts.⁷⁵ As the attempted purge began to attract attention, assertions that candidate Moore's money had helped subsidize it were initially denied but later turned out to be true.⁷⁶

Democrats went to court to obtain a restraining order and succeeded. Had the Republicans not been prevented from continuing their program, their next step would have been to send challenged voters a registered letter notifying them of the action. If there was no reply, a notice would be placed in the parish (i.e., county) official journal,

⁷⁰ Judy Wiessler, "Texas GOP readies precinct stackouts," *Houston Chronicle*, 8 Oct. 1986, 1-4.

⁷¹ Michael Barone and Grant Ujifusa, *The Almanac of American Politics 1988* (Washington, D.C.: National Journal, 1987), 482-84, 487.

⁷² *Ibid.*, 482.

⁷³ Jack Wardlaw and Ed Anderson, "GOP attempts to strike thousands of La. Voters," *New Orleans Times-Picayune/The State's Item*, 13 Sept. 1986, B5.

⁷⁴ *Ibid.*

⁷⁵ Rachel E. Berry, "Democratic Natl. Comm. v. Edward J. Rollins: Politics As Usual or Unusual Politics?," *Race & Ethnic Ancestry Law Digest 2* (1996): 4. Another source says the letters were targeted at precincts that gave Reagan less than 20 percent of their vote in 1984. See Edward Walsh, "Black voters key to Dem win in at least 4 close Senate races," *Houston Chronicle*, 7 Nov. 1986, 1-9.

⁷⁶ Barone and Ujifusa, *The Almanac of American Politics 1988*, 484.

and if there was still no response, the voter's name would be stricken—purged—from the registration list.⁷⁷

“It Could Keep the Black Vote Down Considerably”

Voters in affected areas brought suit. In the discovery phase, a particularly damning memo came to light, which spelled out clearly the motive behind this ballot-security program and suggested as well the motive behind many other programs which had used this purging tactic. The memo was from Kris Wolfe, the RNC midwest political director, to Lanny Griffith, the RNC southern political director. “I know this race is really important to you,” Wolfe wrote. “I would guess that this program will eliminate at least 60-80,000 folks from the rolls. . . . If it's a close race . . . which I'm assuming it is, this could keep the black vote down considerably.”⁷⁸

After considering the evidence, the trial judge called the Louisiana ballot security program “an insidious scheme by the Republican Party to remove blacks from the voting rolls. . . . The only reasonable conclusion is that they initiated this purge with the specific intent of disfranchising these blacks of their right to vote.” He prohibited use of the tactics in the future.⁷⁹

Based on the facts ascertained in the case, the DNC returned to the federal court in New Jersey that had presided over the 1982 consent decree stemming from the GOP's 1981 vote suppression scheme in Newark and surrounding areas. Judge Debevoise presided over another agreement in late 1986 according to which the RNC would not engage in direct-mail campaigns for the purpose of using undelivered letters to challenge the validity of voter registrations. (The following year, both parties agreed to yet another stipulation in the same court, requiring the RNC to submit all ballot security programs to the court for approval.)⁸⁰

In November, Breaux won by a margin of 53-47, gaining the votes of Blacks, Cajuns, and about half the remaining whites as well, which easily overcame Moore's strong support in affluent white neighborhoods. Breaux would not have won without black votes, a fact he promised to remember.⁸¹ Various commentators attributed Moore's defeat in part to the ballot security scheme. *The Almanac of American Politics* described it as a “thinly disguised attempt to intimidate voters, but [it] succeeded only in infuriating blacks and increasing their turnout while—no one would have believed this two decades ago—making no favorable impression on whites.” Even Clarence Thomas, chairman of the Equal Employment Opportunity Commission at the time and soon to become a Supreme Court justice, blasted the Louisiana program. He portrayed it as having helped the GOP “snatch defeat from the jaws of victory,” by stimulating black

⁷⁷ Wardlaw and Anderson, “GOP attempts to strike thousands of La. Voters,” B-5.

⁷⁸ Thomas B. Edsall, “Ballot Security' Effects Calculated; GOP Aide Said Louisiana Effort 'Could Keep the Black Vote Down',” *The Washington Post*, 24 Oct. 1986, A1.

⁷⁹ Laughlin McDonald, “The New Poll Tax,” *The American Prospect*, 30 Dec. 2002, 27-28.

⁸⁰ Sherry Swirsky, “Minority Voter Intimidation: The Problem That Won't Go away,” *Temple Political and Civil Rights Law Review* 11 (Spring 2002): 362.

⁸¹ Barone and Ujifusa, *The Almanac of American Politics 1988*, 487; Linda Williams, “1986 Elections: Major Implications for Black Politics,” *FOCUS* (magazine of the Joint Center for Political Studies), Nov.-Dec. 1986, 6.

turnout in the Braux race. “Republicans,” he said, “have shown an arrogance that blacks need not be consulted, nor need be approached on campaign issues.”⁸²

CASE 5: Toxic Atmosphere in Houston, 1986

As in neighboring Louisiana that year, Republicans in Texas geared up for an aggressive, highly publicized statewide ballot security program in 1986. Former governor Bill Clements, whom Mark White had unseated in 1982 thanks in part to an extraordinarily high minority turnout, was now hoping to defeat White, and the GOP was eager for revenge. As the campaign heated up, the ballot security programs in Louisiana and some other states were attracting national attention. Paul Kirk, DNC chairman, pointed out that a Louisiana court had recently issued an injunction against the massive “do not forward” mail-out to black voters in the Pelican State, and he said Democrats were trying to stop “what in fact has been not ballot integrity, but black intimidation.” (No such mailing was used in Texas, according to Republican Party officials.) He also noted that the DNC had filed a lawsuit in New Jersey federal court to enforce the 1982 agreement in which the RNC agreed not to target precincts on racial grounds.⁸³

Jane Matheson, executive director of the Texas Republican Party, announced that her party would send volunteers in each county to ensure that signatures on requests for absentee ballots matched those filed on voter registration cards, and to further make sure that absentee ballot applications contained all the required information. Poll-watchers would be sent to many areas, according to Ann Ashy, who headed the state Republican ballot security program. She explained that targeted precincts would be decided “partly” on their being in areas with a history of illegal vote fraud—probably including “all of South Texas,” which she defined as “everything south of San Antonio”—a huge area heavily populated by Latinos. Statewide, Republicans planned to station 2,600 poll-watchers in up to 1,500 polling places.⁸⁴

The national controversy over ballot security programs continued as Election Day approached. In late October a ballot security program in Michigan targeting black and Hispanic precincts came under scrutiny by Judge Debevoise in New Jersey, who would soon hold that programs that year in Louisiana, as well as in Indiana and other states GOP officials refused to identify, violated the terms of the 1982 consent decree. However, the Michigan plan was not run by the RNC but by the National Republican Congressional Committee (NRCC), which had invested \$24,000 in a plan to pay its workers to challenge voters in Pontiac. Debevoise said the Michigan plan was a “matter which raises disturbing questions.” The NRCC, faced with the possibility of a lawsuit, tried to put an end to the program but the man running the ballot security program, a prominent Republican and county prosecutor, called the Democrats’ complaints “a lot of crap,” and argued that, as a local organization, it was not obligated to abide by an

⁸² Barone and Ujifusa, *The Almanac of American Politics 1988*, 484; Nene Foxhall, “GOP’s language, ballot security issues hurting party’s image among minorities,” *Houston Chronicle*, 1-38. See also Walsh, “Black voters key to Dem win in at least 4 close Senate races,” who cites Eddie Williams, president of the Joint Center for Political Studies, an African-American policy institute, as saying the GOP “shot themselves in the foot,” particularly in the South, with their so-called ‘ballot security’ program . . .”

⁸³ Judy Wiessler, “GOP readies precinct stakeouts,” *Houston Chronicle*, 8 Oct. 1986, 1-4.

⁸⁴ *Ibid.*

agreement entered into by the RNC. He promised to place challengers at the polls. Debevoise agreed to hear Democrats' charges that the Michigan program violated the terms of the 1982 agreement, but later rejected them, when lawyers for the RNC convinced him that the program it had funded in that state had been stopped.⁸⁵

As these events were unfolding on the national scene, Houston's Republicans said they were going to put as many as 200 poll-watchers in 50 to 75 predominantly minority precincts in the inner city. County Republican chairman Russ Mather said "about 25 of the 290 minority election judges 'would do anything they could to influence the election'." GOP officials denied that the targeted precincts had anything to do with race. "If you plot these on a map, they are all in the inner city, and that's where the Democratic vote is going to be 90 to 95 percent straight ticket," Mather said. "That's where the abuses are going to happen. They are not going to happen in [the predominantly white areas of] west Harris County, in Clear Lake City or Kingwood."

The local head of GOP ballot security, Preston Goodwin, added that the precincts chosen for poll watching were ones in which alleged violations had occurred in the past. His group was sending letters to the Democratic precinct judges to alert them to the presence of Republican poll-watchers who, the letters said, "are not being assigned to harass or intimidate you, or the voters, or to disrupt the elections process. They are being assigned to observe the conduct of the election, including the assistance of voters . . ." Goodwin asserted that his volunteers would be looking for poll officials allowing people to vote without proper identification or, under the guise of assisting voters, suggesting how they should vote.⁸⁶

With the county chairman's announcement, the political atmosphere became toxic. Black precinct judges, angered by the Republicans' allegations of dishonesty, met with Democratic leaders and then "came out swinging," according to one team of reporters. Houston congressman Mickey Leland called Mather "a racist bastard." He explained: "It's blatantly racist to suggest the problem only exists in black precincts." Ann Covert, executive director of the county GOP, responded that Leland "should be embarrassed by his bad mouth. It's not racist at all." She said voting irregularities habitually occurred in about twenty to twenty-five precincts. The congressman wanted to know how the GOP could determine where the majority of problems occurred when they traditionally focused on black ones. He distinguished between merely sending poll-watchers and Mather's public announcement that they were being deployed to minority precincts. It was the latter action, he said, that was intended to discourage inner-city voters from showing up at the polls. Soon Democratic officials, including Governor White, were likening the poll-watcher program to the Ku Klux Klan.⁸⁷

Adding to the tension as the election neared was a decision by the GOP to equip their poll-watchers with badges that said "Texas Ballot Security Program." The state GOP chairman George Strake defended them as "perfectly legal. They are representing

⁸⁵ "GOP defying order on voter challenges," *Houston Chronicle*, 24 Oct. 1986, 1-4; "State, Not Patterson, to Watch Pontiac Polls," *Detroit Free Press*, 25 Oct. 1986, 3A; Thomas B. Eidsall, "'Ballot Security' Effects Calculated; GOP Aide Said Louisiana Effort 'Could Keep the Black Vote Down'," *The Washington Post*, 24 Oct. 1986, A1.

⁸⁶ David Ellison, "GOP to place poll watchers at 100 Democratic precincts," *Houston Post*, 23 Oct. 1986, 4A; Jim Simmon, "Poll watchers on their guard," *Houston Post*, 4 Nov. 1986, 8A.

⁸⁷ Allan C. Kimball and Guy Cantwell, "Democrats plan poll-watcher watchers," *Houston Post*, 26 Oct. 1986, 1A; Simmon, "Poll Watchers on their guard," 8A.

the Texas Republican Party under the Texas Election Code. . . . Nobody is trying to act like a state official,” he said. The afternoon before the election, Attorney General Jim Mattox, a Democrat running for re-election, ruled that the badges could not be worn.⁸⁸

The elections took place apparently without incident on November 4. The results, however, were not as happy for Texas Democrats as they were in Louisiana that year. Clements defeated White statewide, even though White carried Harris County and South Texas.⁸⁹

CASE 6: Problems in Hidalgo County, 1988

Ronald Reagan’s second term as president was coming to an end, and Texas Republicans were eager to replace their icon with his vice-president, George H. W. Bush. The presidential race was especially significant to Texans because Bush, while not a native, had Texas roots, and because Democratic presidential hopeful Michael Dukakis had chosen as his running mate Senator Lloyd Bentsen, who *was* a native—not simply of Texas but of Hidalgo County in South Texas, a heavily Latino part of the state.

Republican Bill Clements had re-taken the Texas governorship from Mark White in 1986 and appointed Jack Rains as secretary of state. Rains was eager to establish an innovative state-run ballot security program. As it turned out, its focus would be on South Texas. Stories of bosses, or *jefes*, engaging in ballot-box stuffing and bringing Mexican nationals across the Rio Grande to vote during the first half of the Twentieth Century were a part of Texas political lore, and vote fraud still occasionally occurred. Latinos, on the other hand, were keenly aware of a long history of Anglo discrimination in the Rio Grande Valley against Mexican-American citizens. Major ethnic upheavals in South Texas during the sixties and seventies were the result of this Anglo domination and Latino rebellion against it. Both Republicans and Democrats worked hard to register Texas voters in 1988, and both parties—for different reasons—were interested in Latinos, who, as the election approached, made up about 13 percent of registered voters and tended to vote Democratic.⁹⁰

Ironically, the first voting controversy in Texas that year involved a discovery, early in January, of fraud by Republican campaign consultants. Various of the party’s presidential candidates had hired local consultants to collect the 5,000 signatures of registered voters necessary to get their name on the March primary ballot. The consultants, in turn, had hired youthful workers paid hourly or by each signature collected. Consultants and workers were caught forging voters’ names. The campaigns of Senator Robert Dole, former Delaware Governor Pierre (Pete) DuPont, and former Secretary of State Alexander Haig were implicated. The names of registered Democrats, including many African-Americans living in North Houston, were written on the petitions. None of those contacted by reporters said they had signed. Some of the

⁸⁸ *Ibid.*

⁸⁹ Nene Foxhall, “GOP’s language, ballot security issues hurting party’s image among minorities,” *Houston Chronicle*, 23 Nov. 1986, 1-38.

⁹⁰ Peter Applebome, “Battle for Hispanic Voters in Texas Intensifies,” *The New York Times*, 30 Oct. 1988, 1-31; Sam Attlesey, “The Hispanic Factor: Leaders say Dukakis dropped the ball in Texas areas where turnout could be key,” *Dallas Morning News*, 17 Oct. 1988, 1A; Juan R. Palomo, “Candidates running hard,” *Houston Post*, 6 Nov. 1988, A1; Clay Robison, “Candidates strain towards finish line,” *Houston Chronicle*, 6 Nov. 1988, 1A; Clay Robison, “Texas Dems aren’t tossing in the towel,” *Houston Chronicle*, 6 Nov. 1988, 1A.

purported signers were dead. Dole's Texas co-chairman attributed the fraud to the Bush campaign, which denied it.⁹¹

State GOP chairman George Strake first tried to investigate the matter to determine which signatures were fake. However, once the FBI got involved and the scandal began to dominate the local news, people were unwilling to discuss the matter with party officials. "The process has simply become impossible," Strake finally admitted, and declared all the major national GOP candidates eligible to appear on the ballot. "While many observers said they believed it the only reasoned approach to take," one reporter observed, "the line does not play well for the party that has made ballot security a crusade."⁹²

The crusade, however, was undeterred. A few days after Strake allowed all major candidates a place on the ballot, Rains announced a ballot security program whereby his office would station election inspectors at various places in the March 8 "Super Tuesday" primary, and then train and deploy an even larger number in November, mostly in South Texas and East Texas (the latter with a heavy black population). "I think the Valley (South Texas) has a disproportionate amount of complaints, and then East Texas does," he said. Both areas were Democratic strongholds. He assured reporters, however, that it would be a nonpartisan effort. State Democratic chairman Bob Slagle responded that he hoped the ballot security program would be focused more on Houston, given the Republicans' petition fraud scandal, and he threatened a lawsuit to prevent voter intimidation by secretary of state Rains.⁹³

In late February, Rains wrote several state agency heads requesting a list of their employees to work as election inspectors in the party primaries. Rains said the "eyes of the nation" would be on Texas, and he wanted to ensure a clean election. Attorney general Jim Mattox and state treasurer Ann Richards, both Democrats, balked. Richards said she was puzzled, because the parties, not the state, usually monitor elections. Mattox refused to allow the use of his employees, pointing to potential legal problems, and urging extreme caution, given the possibility of voter intimidation. Rains nonetheless sent fifty-eight inspectors to polling places on primary election day.⁹⁴

Democrats charged that Rains was politicizing his office. The secretary of state is the governor's top appointee, and the office is an important one, administering election law and keeping records on corporations and campaign expenses and contributions. There was speculation that, like some of his predecessors in the post, Rains was aiming for higher office. In addition to his unprecedented use of public employees as election monitors, he was criticized for sending partisan op-eds to newspapers at state expense, and putting up billboards with his name on them advertising his "Voter '88" registration drive. Even some Republicans thought his behavior inappropriate.⁹⁵

In the summer, the Houston petition forgery case went to trial. The jury found that Rocky Mountain, vice-president of Southern Political Consulting and a former

⁹¹ Nene Foxhall, "GOP petitions' problems won't go away quietly," *Houston Chronicle*, 24 Jan. 1988, 1-33.

⁹² *Ibid.*

⁹³ Wayne Slater, "State to Focus Anti-vote Fraud Efforts on E. Texas, Rio Grande Valley," *Dallas Morning News*, 11 Feb. 1988, 19A; "58 election inspectors keep an eye on polling places across Texas," *Houston Chronicle*, 9 Mar. 1988, 1-10.

⁹⁴ R.G. Ratcliffe, "Rains' plan for election inspectors raises ire," *Houston Chronicle*, 2 Mar. 1988, 1-11.

⁹⁵ Clay Robison, "Jack Rains: the man who would like to be governor?" *Houston Chronicle*, 17 Apr. 1988, 1-34.

employee of U.S. Representative Tom DeLay, had been unable the previous December to gain the necessary petition signatures simply by going door-to-door in a Houston neighborhood. Mountain then resorted to what he called “Plan B.” He took his young workers back to the company’s offices, provided them with beer, and oversaw a “forging party.” Mountain and the company were convicted on thirty-eight misdemeanor counts each. He could have been fined \$2,000 for each count and given a year in jail but instead was assessed \$7,600 total, given probation, and required to perform a year’s public service. The company paid a \$38,000 fine.⁹⁶

As the months went by, Dukakis’ campaign faltered, thanks partly to the “Willie Horton” ad that was a central feature of the Bush campaign, and Bentsen’s position on the ballot was not providing the anticipated boost in Texas. But Democrats worked hard in the waning days of the campaign to get a high voter turnout among South Texas Hispanics.

Election Inspectors “Are Officers of the State”

Events in October created a noisy controversy that attracted national attention. Rains sent instructions to election officials around the state to implement his ballot security program, giving unprecedented authority to the election inspectors overseen by his office. As spelled out in a subsequent op-ed Rains sent to state newspapers, “election inspectors are not poll-watchers or other monitors who work for a particular party, candidate or cause . . . [but] are officers of the state . . . [whose] activities will be coordinated with U.S. attorneys, the FBI and the Texas Department of Public Safety.” Poll-watchers, under the new rules, would be able to make telephone calls while on the job, require election officers to verify voter registration in some cases, and warn that law enforcement officials would be on the alert to respond to Election Day problems. These were departures from standard poll-watchers’ duties. Attorney general Jim Mattox and other Democrats attacked Rains for engaging in tactics to discourage minority voters. The Mexican American Legal and Educational Fund (MALDEF), a civil rights organization, filed suit, claiming that Rains had overstepped his authority and was illegally using his office to intimidate voters in South Texas. MALDEF attorney Judith Sanders-Castro argued that the new procedures should have been cleared with the Justice Department under the Voting Rights Act—a claim Rains’s office denied. She said Rains had broadened the inspectors’ powers to enable them to be “a mini-police” force appearing at polling places on November 8.⁹⁷

Adding to the controversy was a remarkable press release from Randy Erben, assistant secretary of state, on October 25. Erben announced “a major case of alleged vote fraud was uncovered Tuesday morning in Hidalgo County,” Bentsen’s home county where his father still lived. (Hidalgo County had the eighth largest percentage of Latinos of any county in the U.S.—85.2 percent—and the seven counties with higher proportions were also in South Texas.) At issue were absentee ballots printed in such a way that

⁹⁶ Fred Bonavita, “Political consultant fined \$7,600 gets probation for petition forgery,” *Houston Post*, 1 Mar. 1988, 15A.

⁹⁷ Jack M. Rains, “It’s time to stamp out voting fraud in Texas,” *Houston Post*, 30 Oct. 1988, E3; “Suit Accuses secretary of state of using office to intimidate Hispanics,” *Houston Post*, 29 Oct. 1988, A19; Associated Press, “MALDEF suit hits controversial election orders,” *Houston Chronicle*, 29 Oct. 1988, A15.

voters choosing any but the Democratic presidential candidates could have had their ballot invalidated. Erben said he had “asked the Texas Rangers, the F.B.I. and . . . the U.S. Attorney for the Southern District of Texas, to investigate the situation. It appears we have a deliberate conspiracy to deprive voters of their civil rights,” he said. He announced that Rains had ordered the Hidalgo County Clerk, William “Billy” Leo to impound all the unused ballots and those that had been returned by mail. “This type of fraud is a throwback to the old days, when political bosses manipulated the democratic process to favor their own candidate or party,” Erben continued. “We’re checking ballots in all other 253 counties to make sure this fraud is not spreading across the state like wildfire.”

Leo, a Democrat, claimed the flawed ballot resulted from a typographical error which he had not noticed, and agreed to correct the error and send all those who had voted a new ballot. He complained that the secretary of state never contacted him before Erben issued his broadside alleging fraud, and Leo later unsuccessfully sued Erben for libel. A state representative from Hidalgo County would file a bill in 1989 to remove authority for supervising elections from the secretary of state, and establish a six-member bipartisan election commission. It failed.⁹⁸

“Remember: Election Officials Are Watching”

While the battle of absentee ballots was raging, Latinos along the Rio Grande began to hear radio spots in Spanish, paid for by the Hidalgo County Republican Party. The ads warned, in part:

Voting officials will be watching closely. It is illegal to vote in this election if you are not a U.S. citizen. If you have a green card, you cannot vote. If you do vote, you can be subject to up to 10 years in prison, fined up to \$5,000 and lose your opportunity to become a U.S. citizen. If you accept money to vote, you can get up to five years in jail.
Remember, election officials are watching.

The ads caused Texas Congressman Jack Brooks to ask U.S. Attorney General Richard Thornburgh to send federal observers to South Texas, and he agreed to do so. Brooks told Thornburgh that the “election officials are watching” statement was equivalent to a “Big Brother” threat. Congressman Bill Richardson in neighboring New Mexico said the ads were among continuing racist scare tactics used by the Bush campaign and should be removed from the air. He said he was “fed up” with the GOP refusing to admit to “these intimidation and racist tactics aimed at Hispanic and black voters,” referring to the controversial Willie Horton ads the Bush campaign was running. Dukakis would voice his criticism of the ads a few days later, when he appeared at a giant rally outside the Hidalgo County courthouse.⁹⁹

⁹⁸ News release, Office of the Secretary of State, 25 Oct. 1988 (copy in senior author’s possession); Rickey Dailey, “Hidalgo County Ballots Impounded,” *Valley Morning Star* (Harlingen), 26 Oct. 1988, A1; Scott Rothschild, “Secretary of State’s Office Accused of Scaring Hidalgo County Voters,” *Dallas Morning News*, 2 Dec. 1988, 20A; “Political Intelligence,” *The Texas Observer* 81 (24 Feb. 1989): 16. For Latino county percentages, see data from the 1990 Census of the Population at http://fisher.lib.virginia.edu/collections/stats/cedb/documents/rankings:rank1_08.html.

⁹⁹ G. Robert Hillman, “U.S. To Monitor Voting In S. Texas,” *Dallas Morning News*, 5 Nov. 1988, 11A; Clay Robison and R.G. Ratchliffe, “Candidates strain toward the finish line; ‘We’re surging,’ still-hopeful

In the face of lawsuits challenging his controversial instructions to poll-watchers and inspectors, Rains backed off a week before the election. The Texas Supreme Court presided over a settlement, in which he agreed to rescind the memoranda containing instructions to poll-watchers, and to tell poll inspectors not to contact law enforcement officials regarding polling place disputes but rather the secretary of state's office.

On Election Day, thirty-two federal observers were in place in Hidalgo County, along with two Justice Department attorneys. They reported seeing no voter harassment. Nor did county clerk Leo. Tom Wingate, Republican county chairman, said, "We've had irregularities, but nothing we haven't been able to stop." He mentioned isolated instances of illegal behavior, such as electioneering too close to the polls and marked ballots carried into booths. Bush easily won Texas, defeating Dukakis 56 to 43 percent. Exit polls showed that 82 percent of the Hispanic vote in Texas went to Dukakis and Bentsen, compared to 75 percent for Mondale and Ferraro four years previously. However, turnout in heavily Latino Hidalgo County was 4 points below that in 1984.¹⁰⁰

CASE 7: Uniformed Poll Guards in Orange County, 1988

At twenty polling places on Election Day morning in November 1988, voters in heavily Latino precincts in Orange County, California were confronted with an unusual spectacle: signs in English and Spanish warning non-citizens not to vote, and, more unexpected still, "guards" in blue uniforms with badges who were taking down voters' license plate numbers, asking them about their citizenship, and in at least one voting station, collecting and submitting voters' ballots to poll workers. Some of the guards sat alongside election officials. Both the guards' handling of ballots and questioning of voters were illegal.¹⁰¹

By lunchtime the guards were removed from the polls on order of the chief deputy California secretary of state.¹⁰² But their presence created a firestorm of protest and set in

Dukakis says," *Houston Chronicle*, 6 Nov. 1988, A1; Kevin Merida, "Dukakis Says Bush Should Apologize For S. Texas Ads," *Dallas Morning News*, 6 Nov. 1988, 22A.

¹⁰⁰ Associated Press, "No Harassment found at Hidalgo County polls," *Houston Chronicle*, 9 Nov. 1988, B11; Mark Carreau, "Hispanics in Texas solidly supported Dukakis-Bentsen presidential ticket," *Houston Chronicle*, 9 Nov. 1988, B9; "Political Intelligence," *The Texas Observer* 81 (24 Feb. 1989): 16; David Prince, "Voter Turnout, Registration and Reform in Texas: A County Level Study 1976-1996," paper presented at the Annual Meeting of the Southwestern Political Science Association, San Antonio, March 31-April 3, 1999, Appendix B; Michael Barone and Grant Ujifusa, *The Almanac of American Politics 1990* (Washington, D.C.: National Journal, 1989), 1159.

¹⁰¹ (The guards were never prosecuted because, it was determined, no criminal intent was evident.) Lanie Jones and Steven R. Churm, "Elections '88: State assails GOP's posting of poll guards," *Los Angeles Times*, Orange County ed., 9 Nov. 1988, 2-1; Barbara A. Serrano and Jean O. Pasco, "Woman gave her ballot to poll guard, more calls for Fuentes' resignation," *Orange County Register*, 11 Nov. 1988, B1; "GOP 'observers' ordered from polls," *San Francisco Chronicle*, 9 Nov. 1988, A8; Steven R. Churm, "Candidate says poll guard wanted ID," *Los Angeles Times*, Orange County ed., 24 Nov. 1988, 2-3. (A post-election investigation revealed discrepancies in accounts of when the guards were all gone. See Claudia Luther, "Poll Guard Dispute Heats Up Again: 'I Got Scared . . . Just Came Home'," *Los Angeles Times*, Orange County ed., 14 Dec. 1988, 2-1; Larry Peterson, "No misdemeanors will be charged in poll-guard case; DA's Office says some felony counts are still possible," *The Orange County Register*, 7 Nov. 1989, B1.

¹⁰² Robert B. Gunnison, "Orange County issue, probe of GOP-hired guards at polls," *San Francisco Chronicle*, 11 Nov. 1988, A14.

motion a year-long federal investigation, a civil lawsuit, and new legislation making the hiring of uniformed guards at polling places in California on Election Day a felony punishable by a \$10,000 fine. The events that day were similar in some important respects to previous ballot security programs gone bad, as well as to ones which would come later.

Orange County was (and remains) a nationally recognized base of conservative Republican politics, having become famous for its strong support for Goldwater's presidential bid in 1964 and Ronald Reagan's for governor two years later.¹⁰³ However, within the county the 72nd Assembly district had a sizable component of Latino voters and when the Republican assemblyman died a day after the June 7 GOP primary, Democrat Christian "Rick" Thierbach took on Republican Curt Pringle for the job, and it appeared he had a good shot at winning. Democrats mounted a major get-out-the-vote drive in Latino precincts. That and the expected closeness of the race, among other things, apparently influenced the Republicans to take ballot security measures. The final count revealed that Pringle had won by 867 votes out of 66,831 cast. The two men's campaigns were among the most costly of any California assembly races that year.¹⁰⁴

After the news broke of the guards at polling places, some Republicans tried to justify it by describing rumors they had received in the weeks before the election. One of Pringle's consultants had gotten a tip to watch for "voting irregularities" on Election Day, he explained to reporters. Tom Fuentes, Orange County Republican chairman and himself Hispanic, also told of receiving reports of "door-to-door walkers seeking the registration of non-citizens." (Donald Tanney, Orange County registrar, told of meeting with two members of the GOP county central committee at their request. After listening to their belief that "vanloads of illegal citizens" would be brought in to vote, and to their inquiring if they could challenge their citizenship, Tanney said, "I strongly cautioned them about any form of interference." But he said "there was never any mention of uniformed observers. I never even thought they would go that far." In any case, someone with the county GOP had asked a political consultant to hire guards from a company called Saddleback Security, and it was their employees who showed up at the polls early the next morning.)¹⁰⁵

Democratic leaders immediately expressed outrage. Paul Garza, executive director of the Democratic Party of Orange County, called it a violation of Hispanic voters' civil rights and compared it to the situation in Texas, where Republicans in the

¹⁰³ Bill Saracino, "Well Done, Tom," *CalNews.com*, 29 April 2004, <http://www.calnews.com/archives/saracino04.htm>.

¹⁰⁴ Susan Paterno and Marilyn Kalfus, "Poll guard fallout: will Hispanics bolt GOP?" *Orange County Register*, 14 Nov. 1988, A1; Lanie Jones and Steven R. Churm, "Elections '88: State assails GOP's posting of poll guards"; Claudia Luther, "Pringle, Other Candidates Hold Leads in Final Tally," *Los Angeles Times*, Orange County ed., 17 Nov. 1988, 2-1; Claudia Luther and Steven Churm, "Suit Planned to Void 72nd District Results," 1-1; Larry Peterson, "Poll-guard suit haunts county GOP: Hispanic gains undermined, Santa Ana councilman fears," *The Orange County Register*, 19 Nov. 1989, B1.

¹⁰⁵ Lanie Jones and Steven R. Churm, "Elections '88: State assails GOP's posting of poll guards," 2-1; Associated Press, "GOP 'Observers' Ordered From Polls," *San Francisco Chronicle*, 9 Nov. 1988, A8; Barbara A. Serrano and Jean O. Pasco, "Woman gave her ballot to poll guard, more calls for Fuentes' resignation," B1; Claudia Luther and Steven R. Churm, "GOP Was Warned Against Use of Poll Guards, Registrar Says," *Los Angeles Times*, 11 Nov. 1988, 1-3; Claudia Luther and Steven R. Churm, "Suit Planned to Void 72nd District Results," 1-1; Mark Landsbaum and Steven R. Churm, "FBI Probes GOP's Posting of Guards at Santa Ana Precincts," *Los Angeles Times*, 10 Nov. 1988, 1-3.

days leading up to November 8 had been running TV and radio ads warning undocumented Latinos not to vote: “We’ve heard about this being done along the Rio Grande in Texas,” Garza said, “but it’s unconscionable that it is being done in Orange County.”

“Un-American, Unconstitutional, Despicable”

But Democrats were not alone in denouncing the guards. Santa Ana Councilman John Acosta, a long-time Republican, called positioning the guards “totally, totally un-American. It smacks of Nazism.” Orange County Supervisor Gaddi Vasquez, described by reporters as one of the GOP’s most prominent Latinos in California, said the episode “showed a tremendous lapse in judgment.” Raoul Silva, a member of the California Republican Party Central Committee, said, “It’s un-American, it’s unconstitutional, and it’s despicable.” State GOP chairman Bob Naylor labeled it a “terrible, terribly symbolic insult.” Indeed, very few Republican officials, Anglo or Latino, were quoted as approving it once it became public, although Greg Haskins, a high-ranking county GOP official said, “I can’t imagine anybody who had the right to vote being intimidated by these people.”

Nonetheless, some Republicans, to put the best face on it, seemed eager to make a distinction between the “symbolic insult” Naylor spoke of and the alleged effect of vote suppression. And others seemed to believe that, given the narrow victory by Republican Pringle, the guards’ presence made the difference. Carl Rodriguez, Pringle’s chief consultant, speculated that without the guards Pringle might not have won—implying that they scared off would-be illegal voters. However, Republicans at the time admitted they had no evidence of illegal voting¹⁰⁶

Some Democrats and civil rights advocates also believed that the guards’ presence “made the difference”—not by providing ballot security from the votes of non-citizens but by intimidating some registered voters who came to vote and decided not to. Richard Martinez, executive director of the Southwest Voter Registration and Education Project, announced that a poll was being conducted of Latino voters, and he suggested that posting guards “has a chilling effect on voters, particularly first-time voters who are gingerly taking their first steps in our political process.” And stories began to filter in about voters’ experiences with guards at the polling places. Voter Jerry Castillo said a guard glared at him as he walked up to his polling place. “I felt really intimidated,” he said, “like someone was looking over my shoulder.”¹⁰⁷

Rumaldo Madrid, 62 years old, was a Korean War veteran and strong Reagan supporter who, although a registered Democrat, said he had intended to vote for Pringle. He encountered a man in a business suit as he approached his polling place at St. Joseph’s Church. The man asked him if he was a U.S. citizen and registered to vote.

¹⁰⁶ That evidence would only turn up much later, when a paid Thierbach worker was prosecuted for allegations he registered some non-citizens. See Larry Peterson, “Poll-guard suit haunts county GOP,” B1.) Lamie Jones and Steven R. Churm, “Elections ‘88: State assails GOP’s posting of poll guards,” 2-1; and Susan Paterno and Marilyn Kalfus, “Poll-guard fallout: Will Hispanics bolt GOP?” A1; Mark Landsbaum and Steven R. Churm, “The California Elections: FBI probes GOP’s Posting of Guards at Santa Ana Precincts,” 1-3; Claudia Luther and Steven R. Churm, “GOP Was Warned Against Use of Poll Guards, Registrar Says,” 1-3.

¹⁰⁷ Claudia Luther and Steven R. Churm, “GOP Was Warned Against Use of Poll Guards, Registrar Says,” 1-3; Robert B. Gunnison, “Orange County issue, probe of GOP-hired guards at polls,” A14.

When he said yes, a uniformed poll guard “came up like he was a football player, walking real fast,” in Madrid’s words, and asked him for proof of his citizenship. The guard, he said, told the other man, “Anybody can say they’re an American citizen. Anybody.” Madrid said the guard “was talking like he was letting me know he had some authority.” When Madrid asked the two men who they were, they refused to answer, he said. He decided not to vote. (After Madrid became a plaintiff with others in a lawsuit against the Republican party, however, he was dropped because he could not identify the guard who approached him as one of the men hired by the Republicans.)¹⁰⁸

“He Kind of Scared Me”

Jane Fantuzzi, 74, a Latina, had frequently been a poll worker. When she approached the polling place at the senior citizens’ center to vote on election morning, she saw signs warning non-citizens not to vote. She returned home, and after thinking about it, decided to go back. When she did, a uniformed guard barred her from entering the building and told her to wait outside. “He kind of scared me,” she said. “I was tempted not to vote because I was scared, and I knew there was something going on wrong.” She had never seen guards at a polling place before, and she had been voting since she was twenty-one, she said. Fantuzzi did as she was told, waiting for more than half an hour, reciting the Rosary. Then she got up her courage, went inside, and voted. An election official later explained the event by saying that the voter congestion inside the building was so heavy that he asked the guard to help him direct people to chairs in an outdoor area. He said the guard was well-behaved and helpful. If that was true, the experiences of Madrid and Fantuzzi nonetheless illustrate the impact even relatively non-threatening ballot security personnel may sometimes have on older voters.¹⁰⁹

The Orange County poll guards controversy continued to make news for more than two years. Perhaps the most significant result was passage of a new state law, sponsored by Democratic state senator Milton Marks, ultimately backed by all the Republicans in the Assembly, and signed by Republican governor George Deukmejian in September 1989, making it a felony to post uniformed guards within 100 feet of polling places, punishable by a \$10,000 fine. While there had been some Republican resistance earlier, it ceased when Marks made public an internal memo the RNC sent out during a poll-watching program in 1988 urging its workers not to wear “public or private law enforcement or security guard uniforms, using armbands or carrying or displaying guns or badges,” and denouncing “any methods or tactics which in any way could be viewed as chilling an individual’s intent to exercise his or her right to vote.”¹¹⁰

An attempt by Democrats to recall Pringle because of the guards incident failed. Latino civil rights groups and five voters who had encountered the guards, including Jane Fantuzzi, filed a lawsuit against Orange County Republican leaders, the company

¹⁰⁸ Gregg Zoroya, “Lawsuit over polling-place guards widens: Santa Ana resident says he was dissuaded from voting,” *Orange County Register*, 13 Dec. 1988, B1; Claudia Luther, “Poll Guard Dispute Heats Up Again: Claim of Early Exit Challenged,” *Los Angeles Times*, Orange County edition, 14 Dec. 1988, 2-1.

¹⁰⁹ Claudia Luther, “Poll Guard Dispute Heats Up Again: ‘I Got Scared . . . Just Came Home,’” *Los Angeles Times*, Orange County edition, 14 Dec. 1988, 2-1.

¹¹⁰ Ralph Frammolino, “Bill to Ban Guards at Polls Goes to Governor,” *Los Angeles Times*, Orange County ed., 25 Aug. 1989, 2-1; Ralph Frammolino, “Governor Signs Ban on Armed Guards at Polls,” *Los Angeles Times*, Orange County ed., 9 Sept. 1989, 2-1.

supplying the guards, and the county registrar of voters. It was eventually settled before trial for \$480,000, after the civil rights groups were dropped from the suit. It was reportedly the largest sum ever paid in a voting-rights case at that time. Of the settlement money, the plaintiffs decided to keep \$17,000 each and donate the \$150,000 remaining after lawyers' fees to nonprofit nonpartisan groups working for voter education and registration in Latino areas of Pringle's district.¹¹¹

Perhaps the effects of that donation, combined with continued anger among Democrats and Latinos at the poll-guard incident and the slow pace of the county and federal investigations into continuing voting-rights violations connected with it, explained the defeat of Curt Pringle in his 1990 re-election bid. The following summer, the investigations came to an end, concluding that there was insufficient evidence "that the intent of the people who sent out the guards was to intimidate voters."¹¹²

CASE 8: Racial Politics in North Carolina, 1990

The 1990 North Carolina race for U.S. Senator pitted three-term incumbent Jesse Helms against African American Harvey Gantt, an architect and former mayor of Charlotte. (Gantt, the first black mayor of the city, hoped to become the first, as well, elected to the Senate from the South since Reconstruction.) Gantt had another "first" on his record: he was the first African-American to enter Clemson University in his native South Carolina, from which he graduated with honors. Helms was one of the most obdurate southern hold-outs against a racially inclusive "new South." According to *The Almanac of American Politics*, "more than any other major politician, Helms [seemed] hostile to civil rights measures." He was "a pessimist, with an almost apocalyptic vision, ready to see the downside of almost every development." He had opposed the extension of the non-permanent features of the Voting Rights Act in 1982 and voted against the bill to make the Rev. King's birthday a national holiday.¹¹³

During the campaign, Helms waged a vituperative television, radio and direct-mail war against his opponent. His ads and mailers cast the issues of the election, as Helms saw them—abortion, national defense, crime, homosexuality, and "traditional values"—in dire terms. "The radical homosexuals will escalate their vile, repulsive attacks," read one mailer. "All these radicals need is a few days of television smears, when we cannot answer them, and this election could be over!"¹¹⁴ Many had expected Helms to win easily. But as Election Day drew near polls indicated that the race was close, and some even showed Gantt with as much as an eight-point advantage.¹¹⁵

¹¹¹ Donna Wares, "Polling-guard lawsuit is allowed to proceed: Judge labels allegations 'an outrage'," *The Orange County Register*, 7 Feb. 1989, B1; Catherine Gewertz, "Voters Get \$400,000 in O.C. Poll-Guard Suit," *Los Angeles Times*, Orange County ed., 28 Dec. 1989, A-1.

¹¹² Jean O. Pasco and James V. Grimaldi, "Democrats laud Umberg victory: Anger over use of guards gave him the edge," *The Orange County Register*, 8 Nov., 1990, A8; Dave Leshner, "Charges Won't Be Filed in O.C. Poll Guard Case," *Los Angeles Times*, Orange County ed., 25 May 1991, A-1.

¹¹³ William Douglas, "Campaign '96, The Race for Congress, North Carolina: Same Race, Different Tack; Helms, Gantt Seek the Middle," *Newsday*, 24 Oct. 1996, A49; Michael Barone and Grant Ujifusa, *The Almanac of American Politics 1992* (Washington, D.C.: National Journal, 1991), 914.

¹¹⁴ Peter Applebome, "Pit Bull Politician," *The New York Times*, 28 Oct. 1990, SM35.

¹¹⁵ Robin Toner, "An Underdog Forces Helms Into a Surprisingly Tight Race," *The New York Times*, 31 Oct. 1990, A1; Michael Kelly, "Helms May Be Losing His Conservative Grip; Black Opponent Closing

Newspaper reports in the months and weeks leading up to Election Day tended to focus on Helms's belligerent campaign tactics, his Manichean worldview, and his divisive style in general. But as it became clear that the contest was a close one, the Helms campaign began to inject the subject of race more directly into ads and mailers. A week before Election Day on November 7, a television ad appeared, showing a white hand crumpling a piece of paper while an announcer stated, "You needed that job and you were the best qualified. But they had to give it to a minority because of a racial quota. Is that really fair? Harvey Gantt says it is."¹¹⁶ Another TV advertisement that began running the same day attacked Gantt as the recipient of racial preferences: "How did Harvey Gantt become a millionaire?" the announcer asked. "He used his position as mayor and his minority status to get himself and his friends a free TV station license from the government. Only weeks later, they sold out—to a white-owned corporation for \$3.5 million." The claim, which Helms would use again in another ad six years later in his successful re-match against Gantt, was partly false. While Gantt and his friends had indeed made a quick profit, the Federal Communications Commission said explicitly that race was not a factor in their decision.¹¹⁷

Post Card Misinformation to Black People

The last week of the campaign saw Helms inflate his racial rhetoric to extraordinary levels, and his ads became the subject of comment on national talk shows. "This is the ultimate," Merle Black, a scholar of southern politics at Emory University, asserted. "I've never seen [the racial issue] played to this extent by him, and he's been the master of it ever since George Wallace got out of the business."¹¹⁸

On the same day the racially explosive ads appeared, the North Carolina Republican Party announced a ballot security program for the upcoming election. Over the next few days, the party sent out two waves of postcards, totaling 150,000, in what they called "heavily Democratic" areas that warned, "When you enter the voting enclosure, you will be asked to state your name, residence and period of residence in that precinct. . . . It is a federal crime, punishable by up to five years in jail, to knowingly give false information about your name, residence or period of residence to an election official."¹¹⁹ In addition, the mailers falsely claimed that voter eligibility was contingent upon having lived in the same voting precinct for thirty days prior to the election. Recipients of the cards overwhelmingly were black voters.¹²⁰

Gap," *The Commercial Appeal* (Memphis), 4 Nov. 1990, A1; Peter Applebome, "Helms Kindled Anger in Campaign, And May Have Set Tone for Others," *The New York Times*, 8 Nov. 1990, B1.

¹¹⁶ Thomas B. Edsall, "Helms Makes Race an Issue: Carolina GOP Also Pushes 'Ballot Security'," *The Washington Post*, 1 Nov. 1990, A1.

¹¹⁷ *Ibid.*; Douglas, "Campaign '96, The Race for Congress, North Carolina: Same Race, Different Tack," A-49.

¹¹⁸ Peter Applebome, "Racial Politics in South's Contests: Hot Wind of Hate or a Last Gasp?," *The New York Times*, 5 Nov. 1990, A1.

¹¹⁹ Edsall, "Helms Makes Race an Issue," A1; B. Drummond Ayres, Jr., "Judge Assails G.O.P. Mailing in Carolina," *The New York Times*, 6 Nov. 1990, B9; Thomas B. Edsall, "Bush Takes No Stand on Ballot Plan: Program Targeted N.C. Black Voters," *The Washington Post*, 9 Nov. 1990, A13.

¹²⁰ "The 1990 Campaign: Democrats Accuse G.O.P. of Voter Intimidation in Two States," *The New York Times*, 2 Nov. 1990, A19; Laughlin McDonald, "The New Poll Tax," 28.

The chairman of the North Carolina Democratic Party charged that the Republican program was “clearly not an attempt to educate but rather to intimidate voters.”¹²¹ The next day DNC chairman Ronald Brown called on the Justice Department to investigate possible rights violations, and he wrote a letter to all fifty Republican state chairmen warning them that it was illegal to conduct “ballot intimidation and ballot security activities.”¹²² Speaking a few days later on the CBS news program, “Face The Nation,” Brown said, “What the Republican Party has done is absolutely disgusting. It’s a repeat of what they’ve been doing for the last decade, and that is to try to intimidate the poorest and most vulnerable of voters.”¹²³

In response to a suit by the DNC, Federal Judge Dickinson Debevoise in Newark, N.J., who had presided over the consent decree reached in 1982 between the DNC and the RNC over ballot security practices, scheduled a hearing for Monday, November 5, the day before the election; its purpose was to determine whether the RNC had violated his earlier court order. After reviewing the evidence, the judge concluded that even though Republicans had failed to inform their staff and their state campaigns of the 1982 decree, and although the North Carolina program amounted to “tactics . . . of the kind which were forbidden by the consent decree and settlement agreement,” the prohibition applied only to the RNC and did “not purport to govern the activities of the North Carolina” Republican Party. The case thus fell outside his jurisdiction.¹²⁴

Although Democrats did not have enough time to pursue legal relief in North Carolina before the election, U.S. assistant attorney general for civil rights John Dunne secured a pledge from the chairman of the North Carolina GOP, Jack Hawke, that information gleaned from the postcards, e.g., that the voter’s address was incorrect, would not be used to challenge voters at the polls. Dunne also announced that an investigation was under way into whether the cards, which “falsely misled” voters, violated their civil rights.¹²⁵ Dunne sent a team of lawyers to North Carolina to observe the voting, and set up a telephone hotline to report complaints of intimidation.¹²⁶

Election Day produced no reports of voter intimidation, and Helms defeated Gantt by six percentage points in a racially polarized contest: 60 percent of whites backed Helms, in contrast to 6 percent of blacks.¹²⁷ Post-election analysts attributed Helms’s victory in part to his last-minute barrage of negative campaigning centered on racial themes, which may have influenced undecided white voters.¹²⁸

¹²¹ Thomas B. Edsall, “Helms Makes Race an Issue,” A1.

¹²² “The 1990 Campaign: Democrats Accuse G.O.P. of Voter Intimidation in Two States,” A19.

¹²³ Peter Applebome, “Racial Politics in South’s Contests: Hot Wind of Hate or a Last Gasp?,” A1.

¹²⁴ Peter Applebome, “Racial Politics in South’s Contests,” A1; Associated Press, “National GOP Is Cleared; Not A Part Of N.C. Voter Intimidation,” *The Record* (Newark), 6 Nov. 1990, A3; “Justice Dept Probing GOP Mailers for Bias; Voter Intimidation Charged in North Carolina,” *The San Francisco Chronicle*, 6 Nov. 1990, A13; B. Drummond Ayres, “Judge Assails G.O.P. Mailing in Carolina,” B9; Thomas B. Edsall, “Bush Takes No Stand on Ballot Plan; Program Targeted N.C. Black Voters,” *The Washington Post*, 9 Nov. 1990, A13.

¹²⁵ Michael Isikoff, “Justice Dept. Investigates GOP Mailings to Voters,” *The Washington Post*, 6 Nov. 1990, A6.

¹²⁶ *Ibid.*

¹²⁷ Peter Applebome, “Helms May Have Kindled Anger in Campaign,” B1; Kenneth J. Cooper, “Helms Defeats Gantt; Poll Hours Disputed,” *The Washington Post*, 7 Nov. 1990, A27.

¹²⁸ *Ibid.*; “Race in North Carolina,” *The New York Times*, 8 Nov. 1990, A34.

The state GOP's last-minute implementation of its ballot security program was obviously intended to reduce the number of black voters in the state. In the two rounds of postcard mailings containing both threatening and false information, the first (81,000 cards) was sent to precincts in which 94 percent of the voters were black, and the second (44,000 cards) was sent exclusively to black voters.¹²⁹ The Gantt campaign reported instances in which biracial couples received mailings addressed only to the black member of the family.¹³⁰

Another Consent Decree

Republican leaders reacted to reporters' questions with professions of ignorance. Charles Black, chief spokesman for the RNC who had also served as a media adviser to the Helms campaign, was asked right before the election whether he had an obligation in his official capacity "to examine the legality and legitimacy" of the ballot-security program. "I don't want to judge it either way. . . . It's just not my role," he said. "I can't do everything. It's not my job, I'm a volunteer trying to fill in for [RNC chairman] Lee Atwater," who was quite ill. President Bush, who, thanks in part to Atwater's inspired use of the Willie Horton ad in Bush's campaign two years earlier, occupied the White House, declined to judge the North Carolina ballot security program. He responded to reporters' questions in a manner similar to that of Black. All he knew about it, he averred, was what he had read in the newspapers: "I read a lot of charges and countercharges, and I've heard some people say it's bad and I've heard others say it's not. . . . It depends on how it is done," he explained. "And I just don't know enough about what you're trying to get me into to get into that."¹³¹

After the election, the Justice Department filed suit against the North Carolina Republican Party and the Helms for Senate campaign for violation of the Voting Rights Act by intimidating and interfering with black voters in trying to discourage them from voting. On February 26, 1992, the defendants signed a consent decree that required them to refrain from any future ballot security programs directed at blacks and stipulated that they must secure approval from a federal court before implementing any future ballot security programs. A Helms campaign spokesman denied that the senator had anything to do with the postcards; Helms signed the consent decree, the spokesman explained, to avoid paying lawyers to contest the charges.¹³² Helms remained in the U.S. Senate until 2003.

CASE 9: The Old South Lives on in Charleston, South Carolina, 1980-1990

South Carolina is a state with a long history of racial discrimination in voting, as in every other aspect of public life. The 1895 state constitution mandated a poll tax, a literacy test, disfranchisement for certain crimes, and burdensome residency requirements. The long-term effects of these barriers were obvious when the Voting

¹²⁹ Laughlin McDonald, "The New Poll Tax; Republican-sponsored ballot security programs are being used to keep minorities from voting," *The American Prospect*, 30 Dec. 2002, 26.

¹³⁰ Michael Isikoff, "Justice Dept. Investigates GOP Mailing to Voters," A6.

¹³¹ Thomas B. Edsall, "Bush Takes No Stand on Ballot Plan, Program Targeted N.C. Black Voters," A13.

¹³² C. Maltesian, "N.C. Republicans Settle Complaint," *Congressional Weekly Report*, 29 Feb. 1992, 487.

Rights Act was passed. Shortly before, in November 1964, 75.7 percent of South Carolina's voting-age whites were registered to vote, as compared to 37.3 percent of voting-age blacks. The gap narrowed significantly once the Act was in effect. Nonetheless, in 2000, white turnout in Charleston County (measured as a proportion of the white voting-age population) still exceeded that of blacks by 13.5 percent.¹³³

As in many parts of the South, there has been a continuing effort by some Republicans in Charleston County to maintain the racial turnout gap, and to harass and intimidate African Americans at the polls. A recent trial involved cases brought by the U.S. Department of Justice and private plaintiffs, who successfully challenged at-large county council elections. Testimony at one point focused on a so-called Republican Ballot Security Group that harassed voters at the polls, sometimes in conjunction with white election officials.¹³⁴ The judge hearing the case, Michael Patrick Duffy, cited testimony from a white attorney, F. Truett Nettles, a Democrat with more than twenty years' experience as a poll-watcher or chairman of the Charleston County Election Commission. Judge Duffy wrote:

[From 1980 until 1992] Nettles served as a poll watcher assigned on most occasions to predominantly African-American polling sites . . . [with a team of lawyers] to help prevent and, when necessary, remedy instances of harassment and intimidation of African-American voters by white poll officials. . . . Nettles testified that, from 1980 through 2000 "[e]very time, every election we would have controversies in African-American precincts about voter assistance, or just the way voters are treated when they vote." Several white poll managers—including a future chairperson of the Election Commission—were routinely appointed as poll managers by the Election Commission and assigned to predominantly African-American polling places in Charleston County, where they intimidated and harassed African-American voters.¹³⁵

Poll managers are paid officials appointed by the Election Commission to conduct the elections. But Republican poll-watchers, appointed by the party and by candidates, got into the act as well: "African-American voters also endured improper interference from white poll *watchers*, as distinguished from poll managers," Judge Duffy concluded. They "directly confronted some African-American voters requesting assistance with questions such as: 'Why do you need assistance, don't you know how to read? You can vote without assistance, you don't qualify.'" Nettles claimed that as a result of these kinds of harassing questions, "some of the voters said, 'Oh, never mind,' and they just turned around and walked out the door."¹³⁶

The judge cited testimony by North Charleston Mayor Keith Summey, who also served on the Election Commission from 1978 through 1986. The mayor "testified that controversies involving white poll workers and African-American voters were routine during his time on the Election Commission. . . . And while white poll managers complained that African-American voters sought to vote improperly, Mayor Summey

¹³³ James E. Alt, "The Impact of the Voting Rights Act on Black and White Voter Registration in the South," in Chandler Davidson and Bernard Grofman (eds.), *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990* (Princeton: Princeton University Press, 1994), 374, 376; *United States of America v. Charleston County, S.C., et al.*, C.A. No. 2:01-0155-23; and Lee H. Moultrie, *et al.*, v. Charleston County Council, *et al.*, C.A. No. 2:01-562-23 (Filed 6 March 2003), 31, 37.

¹³⁴ J. Laughlin McDonald, "The New Poll Tax," *The American Prospect*, 30 Dec. 2002, 28.

¹³⁵ *United States of America et al. v. Charleston County, S.C., et al.*, 32.

¹³⁶ *Ibid.*, 33, 34 (emphasis in the original); McDonald, "The New Poll Tax," 28.

never once found merit to any such allegations."¹³⁷ During this period—in 1980, to be precise—college students, claiming they were federal poll-watchers, intimidated people at a predominantly black precinct, threatening to “lock up” voters.¹³⁸

In 1990 the Ballot Security Group, so-called, was actually linked to the official Election Commission. According to Judge Duffy: “A member of the Charleston County Election Commission and others participated in a Ballot Security Group that sought to prevent African-American voters from seeking assistance in casting their ballots. One of the other members of the Ballot Security Group was . . . [a] particularly problematic poll manager assigned by the Election Commission to work in . . . [a] predominantly black] precinct. He was removed from the . . . precinct because of his efforts to deny African-American voters their right to have election assistance from the person of their choice.”¹³⁹

According to Laughlin McDonald, a lawyer for plaintiffs in the case, “In 1986, Nettles and chairwoman of the county Democratic Party, Joyce Cantrell, got a restraining order from a local judge prohibiting election officials from interfering with the right to vote and requiring them to provide voters with assistance upon request. But in the elections that followed, the Ballot Security Group ignored the restraining order and went back to its old tricks.”¹⁴⁰

CASE 10: Mayoral Politics in New York, 1993

The 1993 New York City mayoral contest was a bitter rematch between incumbent Democrat David Dinkins, the city’s first black mayor, and Republican Rudolph Giuliani. Four years earlier, Dinkins had edged out Giuliani 50-48%. Racial issues, and fears of racial division, loomed large in the 1993 campaign—as did fear of fraud and intimidation. A *New York Times* article summed up the latter worries shortly before the election:

The Dinkins campaign expressed concern that off-duty police officers supporting Giuliani might intimidate Democratic voters, while the Giuliani campaign demanded extra police officers to make sure no fraud occurred in polling places where the Mayor’s supporters outnumber the challenger’s.¹⁴¹

Giuliani representatives earlier had sent a letter to the New York City Police Commissioner, Raymond Kelly, asking for at least 2,700 police officers to be assigned to the polls, in addition to the “thousands” of volunteer poll watchers provided by the Republican Party.¹⁴² Kelly responded by assigning 3,500 officers and creating 52 “captains” to supervise the poll watching.¹⁴³ This decision was a compromise designed to please both sides: the 3,500 poll-watchers were assigned to watch for voter fraud, and

¹³⁷ United States of America *et al.* v. Charleston County, S.C., *et al.*, 34.

¹³⁸ *Ibid.*

¹³⁹ United States of America *et al.* v. Charleston County, S.C., *et al.*, 34.

¹⁴⁰ McDonald, “The New Poll Tax,” 28.

¹⁴¹ Celia W. Dugger, “2 Sides Seek More Police to Stymie Intimidation and Fraud at Polls,” *The New York Times*, 1 Nov. 1993, B5.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

the 52 captains were assigned to ensure the poll-watchers did not intimidate voters. Mayor Dinkins warned that it was improper for poll-watchers (especially officers who supported Giuliani) to “exert their influence and intimidate people” and “to throw their weight around.”¹⁴⁴

Meanwhile, New York State Republican Party Chairman William Powers made it clear that his party’s volunteer poll-watchers would be out in force in majority-Democratic precincts: “We will be manning polls that have never seen a Republican before,” he announced.¹⁴⁵ The Giuliani campaign had been worried for months by rumors that many Democratic voters registered more than once or were illegal immigrants.¹⁴⁶

On Election Day morning, Mayor Dinkins held a news conference stating that “we appear to be seeing an outrageous campaign of voter intimidation and political dirty tricks afoot in today’s election.”¹⁴⁷ This allegation was based on three initially unsubstantiated reports by Dinkins’ poll-watchers, and Giuliani responded, “I can assure you this has nothing to do with my campaign and it is precisely what we expected of them.”¹⁴⁸ The reports were that off-duty police officers physically threatened a Dinkins volunteer and that intimidating posters had been placed in black and Latino neighborhoods.¹⁴⁹ The second report was later confirmed. Posters had been placed at several polling places, and read: “Federal authorities and immigration officials will be at all election sites. . . . Immigration officials will be at locations to arrest and deport undocumented illegal voters.”¹⁵⁰ Dinkins called on the Department of Justice to investigate, and a statement issued by the department advised voters to disregard the posters and pledged “to protect the rights of minority voters.” It also announced that “the Department of Justice and the FBI are conducting an investigation to determine who prepared and posted these notices.”¹⁵¹

The investigation coincided with charges of minority vote suppression in the New Jersey gubernatorial contest and added to the racially charged atmosphere in New York City. In addition to the threatening posters, reports emerged that ten homeless men showed up at a predominantly black and Hispanic voting site in Bedford-Stuyvesant and tried to disturb the voting process; one of the men admitted to having been paid \$60 for the purpose but did not identify the source.¹⁵² Others among the ten told a Democratic poll-watcher they had been promised \$70 and a hot meal by an organization called Together We Stand.¹⁵³ Another person not connected with the homeless men reported

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Michael Rezendes, “Giuliani Projected N.Y. Victor,” *The Boston Globe*, 3 Nov. 1993, 1.

¹⁴⁸ Todd S. Purdum, “Giuliani Ousts Dinkins By A Thin Margin,” *The New York Times*, 3 Nov. 1993, A1.

¹⁴⁹ “Dirty Pool At Polls Alleged; Dinkins, Giuliani Trade Allegations,” *The Record* (New Jersey), 3 Nov. 1993, A14.

¹⁵⁰ Thomas B. Edsall and Malcolm Gladwell, “Vote Probe Targets N.Y. City Turnout; Bid to Deter Minorities Claimed,” *The Buffalo News* (New York), 12 Nov. 1993, A1.

¹⁵¹ “Dirty Pool At Polls Alleged,” A14.

¹⁵² Edsall and Gladwell, “Vote Probe Targets N.Y. City Turnout,” A1.

¹⁵³ James C. McKinley, Jr., “G.O.P. Accused of Disrupting Minority Voting in New York,” *The New York Times*, 1 Dec. 1993, B2.

that Republican poll-watchers asked for the green cards of prospective voters in East Harlem.¹⁵⁴

Giuliani defeated Dinkins by almost the same margin Dinkins had won in their first contest: 51-48%. On November 29 Al Gordon, New York State Democratic Party chairman, claimed he had evidence of over seventy-five instances in which voter intimidation and minority vote suppression had occurred on Election Day, and promised to forward his evidence to the Justice Department in hopes of preventing future Republican ballot security programs.¹⁵⁵ His evidence, he said, revealed a pattern of harassment that seemed to him to be orchestrated not by the Giuliani campaign but by the Republican Party at the state level. “We are not calling for an overturning of the election,” he said. “We are saying that there was a pattern of thought-out harassment by the Republican Party and that they have to stop.”¹⁵⁶

He cited instances in which homeless men disturbed voters by asking for their identity and instances in which poll-watchers tried to slow down the voting process by asking for several forms of identification.¹⁵⁷ He also cited the testimony of Denise Ryan, a Dinkins poll-watcher who reported that in her precinct “four large white men came into the gymnasium and proceeded to stand in the doorway, blocking the door. . . . An elderly gentleman trying to get in couldn’t even see past them.”¹⁵⁸ Gordon concluded, “I think it was an effort to delay, harass and intimidate voters just in the minority communities.”¹⁵⁹ However, Republicans retorted that the same kind of behavior was taking place in predominantly Republican precincts. “There was voter intimidation by them—not by us,” said John Sweeny, a lawyer for the New York Republican Party.¹⁶⁰ State party chairman Powers called Gordon’s accusations “a cheap political stunt.”¹⁶¹ There were no definitive resolutions of these allegations. Charges and countercharges regarding the same issues—vote fraud and vote intimidation—would continue with a vengeance in New York City five years later.

CASE 11: Implementing Motor Voter in New Jersey, 1996

The National Voter Registration Act (NVRA) or Motor Voter became law in 1993. Its purpose was to make voter registration easier. In one or another form such a law had been advocated by Democrats and opposed by Republicans since Jimmy Carter’s presidency. Both parties generally saw it as having the potential to dramatically increase voter turnout and to disproportionately increase the number of Democratic voters. The Democrat-controlled Congress had passed a motor voter bill that was vetoed in 1992 by President Bush on the ground, among others, that it could encourage voter fraud. The

¹⁵⁴ Edsall and Gladwell, “Vote Probe Targets N.Y. City Turnout,” A1.

¹⁵⁵ “Dirty Tricks in Mayoral Election? Democrats Accuse, GOP Denies,” *The Record* (New Jersey), 1 Dec. 1993, A14.

¹⁵⁶ Seth Faison, “Mayor’s Race Poll Abuse is Charged,” *The New York Times*, 30 Nov. 1993, B3.

¹⁵⁷ *Ibid.*

¹⁵⁸ “Dirty Tricks in Mayoral Election?,” A14.

¹⁵⁹ Marc Humbert, “Authorities Probe Election Charges,” *The Times-Union* (Albany), 30 Nov. 1993, B2.

¹⁶⁰ *Ibid.*

¹⁶¹ “Dirty Tricks in Mayoral Election?,” A14.

next year Congress, still controlled by the Democrats, sent another bill to the White House, and President Clinton signed it into law shortly after taking office.¹⁶²

Motor Voter was particularly aimed at making it easier for lower-income citizens to vote, by providing registration forms at agencies supplying public assistance. Its provision of the opportunity to register when applying for a driver's license, of course, is what gave the NVRA its popular name as Motor Voter.

The state of New Jersey under Governor Christine Todd Whitman changed its election law to comply with Motor Voter in 1995. In the summer of 1996, during the campaigns for the first federal elections held under the revised law, a sharp partisan conflict arose that recalled earlier "ballot security" controversies in the state going back at least to 1981.

The controversy began when the county superintendent of elections in Passaic County, Alice Zona, failed to send sample ballots for the November elections to 20,000 registered voters in the heavily Democratic cities of Paterson and Passaic. When criticized by Democrats, Zona defended this action by saying she had earlier sent out ballots to the same addresses before the previous June's primary elections and the U.S. Postal Service had returned them because the addressee was unknown or there was no forwarding address. She said she had also purged about 5,000 names from the rolls in 1995 for the same reason—although, when questioned in 1996 about the 1995 procedure, Zona said if people whose names were purged that year had shown up at the polls they could have voted, because their names were still in the system.¹⁶³

That the process was intended to work differently in 1996 than it had in 1995 soon became clear. On September 26, the state attorney general sent an 18-page instruction book to all New Jersey election superintendents. Under the new rules, many of the people of the kind whose names had been purged from the voters list by Zona because they had moved without notifying election officials would face a rather daunting process if they showed up at the polls in November. Specifically, the new rules required that any registered voter who had moved within a county from one election district to another without having told the board of elections of their new address would have to verify that address at the municipal clerk's office on Election Day. This would mean going to the polling site, where they would learn of the new requirement, then going to city hall, executing a "transfer affidavit," and then, once their new address was verified, returning to the polling site and voting.¹⁶⁴

On October 1 the New Jersey Democratic Committee, the Passaic County Democratic Committee, and Congressman Robert Torricelli, running for the U.S. Senate, filed a lawsuit requesting a restraining order against the state, claiming the new law violated the Voting Rights Act as well as Motor Voter, one of whose purposes was to make it easier for people who move to vote. After examining voting records, lawyers for the Democrats pointed out that 21,000 voters in Passaic County and 40,000 in Essex

¹⁶² John L. Moore, *Elections A to Z* (2d ed.) (Washington, D.C.: CQ Press, 2003), 276-77.

¹⁶³ Tim O'Brien, "State Forced to Back off on Voter Run-Around," *New Jersey Law Journal*, 7 Oct. 1996,

1.

¹⁶⁴ *Ibid.*

County alone who had moved had not yet reported their new addresses.¹⁶⁵ The State Republican Party, secretary of state Lorna Hooks, and Torricelli's opponent, Republican Congressman Richard Zimmer, responded to the suit by claiming the state was simply taking precautions necessary to prevent voter fraud.

Vote Fraud Deterrence . . . Or Voter deterrence?

Democrats argued the law would disproportionately affect poor, urban, and minority voters because they were more likely to change residence and, if challenged at the polls, they might be less likely to spend the time and money traveling to city hall and then back to the polling site. "New Jersey has a long and sad history of efforts to interfere with voters at the polls," said Cardell Cooper, Mayor of East Orange. "We are taking the steps we need to take to make sure that nobody is improperly denied the right to cast a ballot on November 5."¹⁶⁶

Torricelli, on a campaign stop with the Rev. Jesse Jackson, chided the Republicans and Zimmer for defending the law: "It's unbelievable that Dick Zimmer as a candidate for the U.S. Senate would actually become directly involved in an attempt to keep people from voting. This potentially could disenfranchise a quarter-million people. Most of them are African American or Hispanic background. But indeed any citizen of the state could fall victim."¹⁶⁷ Democratic lawyer Angelo Genova acknowledged the state's need to confirm addresses, but criticized forcing voters who had moved and not reported it to go far out of their way to cast a ballot. "The notion of a confirmation process beyond what the federal law requires is where they cross the line," he asserted.¹⁶⁸

In a preliminary hearing Federal Judge Maryanne Trump Barry agreed in part with both sides and encouraged them to come to a "mutual accommodation" before she had to rule on the case.¹⁶⁹ On the one hand, Barry agreed with the state that the Democrats' charge of racial discrimination was "sheer speculation."¹⁷⁰ But she added, "I don't think it takes a great imagination to say that there will be X number of people who will say, 'What the heck, I have to get back to work!'" when they showed up to vote and learned of the hoops the state would force them to jump through. She said the rule appeared to violate Motor Voter.¹⁷¹

Two days later, both parties reached an agreement. Voters would no longer have to travel to municipal court to prove their new residency. On the other hand, poll supervisors could still challenge voters, who would then have to sign a pledge on their ballot swearing to their new address. If questions remained about the voters' residency,

¹⁶⁵ Brett Pulley, "You Don't Need a Poll Tax to Subvert Voting Rights," *New York Times*, 13 Oct. 1996, NJ2; "Democrats, N.J. Settle Lawsuit on Vote Process," *The Press of Atlantic City* (New Jersey), 5 Oct. 1996, A4; O'Brien, "State Forced to Back Off on Voter Run-Around," 1.

¹⁶⁶ Pulley, "You Don't Need a Poll Tax to Subvert Voting Rights," NJ2.

¹⁶⁷ Joe Donohue, "Vote Suppression Issue Emerges in Senate Race," *The Star-Ledger* (Newark), 7 Oct. 1996, 6.

¹⁶⁸ Jerry DeMarco, "Judge Hears Voting-Law Challenge," *The Record* (New Jersey), 3 Oct. 1996, A3.

¹⁶⁹ DeMarco, "Judge Hears Voting-Law Challenge," A3.

¹⁷⁰ O'Brien, "State Forced to Back off on Voter Run-Around," 1.

¹⁷¹ *Ibid.*

their votes could be challenged after the election.¹⁷² Democratic lawyer Genova said of the agreement, "The design and intent is to encourage voter participation at the polling place with as little . . . burden as possible."¹⁷³ Donna Kelly, representing the Whitman administration, likewise was positive about the settlement: "Our concern is the integrity of the process. This procedure will ensure us of that."¹⁷⁴ Implicit in Kelly's statement was the admission that "ballot integrity" could be achieved without the onerous requirements imposed by the original rule, which would almost certainly have diminished turnout among poorer voters lacking transportation who had moved.

Big Brother Inside the Black Box

In the week before Election Day, a controversy of a different sort arose, also harking back to earlier dirty tricks in the Garden State. Readers of *The Jersey Journal* and *The Hoboken Reporter* began to notice fliers tucked inside the newspapers, warning potential voters of the penalties for voting illegally.¹⁷⁵ Entitled "Technology for the '96 Election," the fliers claimed that, "thanks to advances in computer technology, voting machines can now be equipped with computers inside."¹⁷⁶ These computers could be linked, the fliers claimed, to government agencies that could detect everything from unpaid student loans to traffic fines. The fliers also suggested that "combining this technology with plainclothes detectives at each polling place would be a great way for governments (with limited resources) to solve a lot of these problems as they walk-in to vote, wouldn't it?"¹⁷⁷

The publication and distribution of this fanciful Orwellian scenario was seen by Democrats as an attempt to suppress the vote of minorities, particularly Latinos who had recently become citizens. New Jersey Congressman Robert Menendez noted, "It's certainly written by someone who favors suppressing the Latino and minority vote in this election. Most of the places where this flier has surfaced is in Latino areas in Jersey City and North Bergen, but it's not an isolated incident. They're all over."¹⁷⁸

At a news conference Menendez was joined by Democrats Donald Payne, also a congressman; Sharpe James, mayor of Newark; and Cardell Cooper, Mayor of East Orange. They blamed Republicans for the fliers which they portrayed as tools of minority vote suppression.¹⁷⁹ The executive director of the New Jersey Republican State Committee, Tom Wilson, responded to the charges by saying his party "has nothing to do with it, and we condemn anyone who did it."¹⁸⁰ The perpetrators remained anonymous.

¹⁷² Jerry DeMarco and David Voreacos, "State Agrees to Modify Motor-Voter Procedure," *The Record* (New Jersey), 5 Oct. 1996, A3; O'Brien, "State Forced to Back off on Voter Run-Around," 1; "Democrats, N.J. Settle Lawsuit on Vote Process," A4; Joe Donohue, "Vote Suppression Issue Emerges in Senate Race," *The Star-Ledger* (Newark, N.J.), 7 Oct. 1996, 6; Terry Pristin, "Accord on a Voting Rule," *The New York Times*, 5 Oct. 1996, A25.

¹⁷³ "Democrats, N.J. Settle Lawsuit on Vote Process," A4.

¹⁷⁴ *Ibid.*

¹⁷⁵ "Democrats Say Flier is G.O.P. Scare Tactic," *The New York Times*, 5 Nov. 1996, B4.

¹⁷⁶ Miguel Perez, "Scaring off New Voters," *The Record* (New Jersey), 6 Nov. 1996, A3.

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ Ron Marsico and David Wald, "Senate Candidates Scour States for Votes," *The Star-Ledger* (Newark), 5 Nov. 1996, 1.

¹⁸⁰ *Ibid.*

Mary Bustillo Donohue, former member of the Bergen County Board of Freeholders, wrote a letter to the editor of her local newspaper on the night of the election: "It is reprehensible that those who look down on minority citizens and have made 'character' such an important campaign issue would resort to this despicable attempt at voter suppression. The distribution of this flier was a cowardly attempt to tamper with a free election. Fortunately, as I listen to the election returns this evening, the attempt backfired."¹⁸¹ Torricelli defeated Zimmer in the Senate race.

CASE 12: Searching for Fraudulent Voters in New York, 1998

Democrat Charles Schumer challenged incumbent Republican Alphonse D'Amato for New York's U.S. Senate seat in 1998. It was expected to be a tight race, and while both machine and paper ballots would be cast, it was thought that the election outcome could very well be determined by the paper ballots. Therefore, months before the November 3 election, Democrats and Republicans reached an agreement with a state Supreme Court judge in Albany regarding the treatment of challenged paper ballots. All such ballots would be set aside and the court would then review them and determine their validity.

In fact, Schumer beat D'Amato handily. The cliff-hanger turned out to be the race in which Democrat Eliot Spitzer challenged incumbent Republican Dennis Vacco for the job of New York state attorney general. Surprisingly, it was the outcome of that race which seemed to turn on the counting of paper ballots, at least early on. Before the returns were officially certified in December, however, charges made by Vacco of widespread voter fraud primarily in New York City black and Hispanic neighborhoods led to court battles, a stand-off over certifying the winner (in city precincts) on the New York City Board of Elections, and partisan and racial rancor that sizzled for six weeks after the election. In the end, Spitzer was declared the winner by slightly more than 25,000 votes out of more than 4 million cast, in the closest statewide race since 1954.¹⁸²

As the counting of the paper ballots proceeded in the weeks following the election, it looked as though Spitzer was the winner. On November 19 the State Board of Elections said Spitzer was almost 23,000 votes ahead in the total count and only 15,000 of the 250,000 paper ballots cast remained to be counted. Spitzer declared victory but Vacco failed to concede. In fact, the day before Spitzer's announcement, Vacco had filed a complaint in the New York Supreme Court alleging widespread vote discrepancies, especially in New York City, where Spitzer had beaten Vacco by a margin of three to one.¹⁸³ And so, taking a leaf from the losing New York mayoral campaign of Rudy Giuliani in 1989, who also alleged widespread voter fraud (an allegation subsequently

¹⁸¹ Mary Bustillo Donohue, "Looking at Election Results '96, Minority Voters Targeted," *The Record* (New Jersey), 10 Nov. 1996, O3.

¹⁸² Jonathan P. Hicks, "Ballot Tactics Used by Vacco Are Assailed," *The New York Times*, 23 Nov. 1998, B1; Carolyn Thompson, "AG Vacco throws in towel; judge throws out lawsuit," Associated Press, 15 Dec. 1998, <http://web.lexis-nexis.com/universe/printdoc>.

¹⁸³ Jonathan P. Hicks, "Spitzer Declares Victory, but Republicans Question Count," *The New York Times*, 20 Nov. 1998, B1; Wayne Barrett, "Rudy's Role Reversal," *Village Voice*, 22 Dec. 1998, 25; Lara Jakes, "GOP Gets Private Eye To Check On Voters," *The Times Union* (Albany), 11 Dec. 1998, B2.

unproven), Vacco began a legal and public-relations campaign to have the election results thrown out.¹⁸⁴

Supreme Court Justice Thomas Keegan gave both candidates permission to challenge paper ballots statewide and inspect the 7,000 voting machines again in New York City. Party representatives examining the paper ballots were not allowed to see how the person voted, but they knew the makeup of the district and the results of the machine voting.

Shortly after Vacco's team began inspecting ballots, the pattern of their challenges became obvious: in two heavily black neighborhoods that went for Spitzer, for example, 434 out of 591 and 445 out of 669 paper ballots, respectively, were challenged. By contrast, the Spitzer team challenged 134 out of 10,334 and 10 out of 2,500 absentee ballots upstate, in two areas that went heavily for Vacco. "It is a pattern that brings up the ghost of disfranchisement," said Keith Wright, a Harlem assemblyman. "People have died for the right of people of color to vote. And the pattern of Dennis Vacco's challenges recalls some of the worst of American history."¹⁸⁵ Assemblyman Roberto Ramirez of the Bronx agreed, saying, "There is no question that there is a focus and concentrated effort to challenge ballots in the minority community."¹⁸⁶

Phantom Voters, Sore Loser?

The focus on minority precincts—standard operating procedure in Republican ballot security operations—was not the only basis for criticism of Vacco's approach, however. State election laws required that paper ballots not have any stray markings. But, as *The New York Times* reported, party inspectors went to unusual lengths, challenging "ballots for everything from having a check mark slightly outside the box to having a signature that dips slightly below the line." Some ballots were challenged because voters, when asked their county of residence, listed Brooklyn rather than Kings. One was challenged because when the voter was asked the reason for not being able to vote in person she wrote that she would be "in the Holy Land," but did not name a specific country. A spokesman for the state Board of Elections said "the objections are many, many more than they would normally be. This is a highly unusual situation."¹⁸⁷

On November 23, Thomas Spargo, a lawyer for Vacco, asked Judge Keegan for more time to investigate voting irregularities, alleging that as many as a thousand people listed as voting on November 3 had died before the election. He was vague on the source of this information, but the judge granted his request. The charge was met with widespread ridicule among Democrats. The administrative manager of the New York City office of the Board of Elections asserted that "All of [the Vacco campaign's] charges so far have been unfounded, I believe this will be the same." *A New York Times*

¹⁸⁴ Hicks, "Spitzer Declares Victory," B1; Barrett, "Rudy's Role Reversal," 25.

¹⁸⁵ Hicks, "Ballot Tactics Used by Vacco Are Assailed," B1.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

investigation soon turned up some of the alleged “phantom” voters and interviewed them, quoting one as saying Vacco was a sore loser.¹⁸⁸

Two weeks later, on December 7, Vacco’s claims about dead voters going nowhere, his campaign announced that he had evidence of 103,000 people on the voting rolls “for whom there was no apparent record that they had engaged in routine activity in the community or otherwise existed,” or people with other irregularities such as discrepancies in their address. Vacco’s lawyer, Spargo, said the 103,000 names had been generated by a computer search that compared the names of registered voters in New York City with a list given by a private credit reporting company. More surprising than the allegation, however, was the Vacco campaign’s proposed method by which to ascertain the validity of the registration list. Invoking what was described as an “obscure” state law requiring door-to-door visits from the police when the validity of voters’ registration was in question, a Republican election commissioner asked for such a canvass to verify voters’ eligibility—a canvass that could cover tens of thousands of New York City’s residents.

A Police Department spokeswoman said no such canvass had occurred “in memorable history.” Democratic Party Chairwoman Judith Hope said “the prospect of uniformed police officers with guns knocking on people’s doors questioning their right to vote sends a chill down my spine. I’m just dismayed this is a possibility in the country, and particularly in a state like New York.” Black and Hispanic legislators called for a Justice Department investigation into possible intimidation. Judge Keegan asked lawyers representing both campaigns to meet with the Police Department and other official bodies in order to scale down the number of voters to be canvassed. Spitzer’s campaign said it would not participate, expressing outrage over a tactic aimed at minority and poor voters.¹⁸⁹

By this time some Republicans—including newly re-elected Governor George Pataki—were beginning to back away from Vacco’s efforts to overturn the election results. One person who continued to give him strong support, however, was state Republican Party Chairman William Powers, who was perceived to be in need of reinforcing his leadership at a time when three-term senator D’Amato had been defeated and Pataki had won with a narrower victory than expected.¹⁹⁰ Powers charged that the Democratic challenge to Republican investigations was an attempt to divert the public gaze from voter fraud. “They have sought to divide New Yorkers,” he claimed, “by using tactics designed to scare and mislead people.”¹⁹¹ The Democrats, in turn, charged that scaring and misleading voters was precisely the Republicans’ aim. The Republican project, said Democratic state senator David Patterson, was to ask police to “go and harass people, as if this were Eastern Europe in the 1930s.”¹⁹²

¹⁸⁸ Jonathan P. Hicks, “Vacco’s Claim of Votes Cast by the Dead Is Disputed,” *The New York Times*, 25 Nov. 1998, B5; “Moving On; Finally, Judge’s Ruling Means Attorney General Dennis Vacco Must Give Up His Election Complaints and Make Way For Eliot Spitzer,” *The Post-Standard* (Syracuse, N.Y.), A14.

¹⁸⁹ Jonathan P. Hicks, “Vacco, Suing to Void Election, Wants Police to Check on Voters,” *The New York Times*, 8 Dec. 1998, A1; Lara Jakes, “Vacco Wins Time To Find Evidence Of Voter Fraud,” *The Times Union* (Albany, N.Y.), A1; Michael Blood, “Legislators Say Vacco Staffers Harassed Voters,” *The Record* (New Jersey), 9 Dec. 1998, A4.

¹⁹⁰ Lara Jakes, “Vacco Wins Time To Find Evidence Of Voter Fraud,” A1.

¹⁹¹ Blood, “Legislators Say Vacco Staffers Harassed Voters,” A4.

¹⁹² *Ibid.*

The day after the Vacco camp's startling new allegations, Mayor Giuliani said plans were being made for a canvass, but a much smaller one than had been requested—30,000 voters rather than 103,000. "As you might expect the Republicans are asking us to do too much," he quipped, "and the Democrats are asking us to do nothing." Pataki, in turn, expressed concerns about sending police into thousands of homes. "You want people to become a part of the political process. When you look at the low turnout in November, we want to do everything we can do to encourage people to come out and vote and participate in the democratic process" he said, taking a clearly different tack than Powers, the state party chairman.¹⁹³

Giuliani's plans for a canvass, however, came to a halt when he learned that, contrary to his understanding, Justice Keegan had not ordered one but had simply asked the parties to sort the matter out between them. The mayor then announced that in the absence of a court order, he would not deploy police officers. Nonetheless, Vacco's aides said a canvass could be started by the order of a single member of the Board of Elections—a claim Democrats disputed. The board was split 50-50 between Democrats and Republicans, and the Democrats said they would block any move to order a police canvass without a court order. At this point, Giuliani's office set up a conference call with the judge and the two campaigns for the following day; during the call, Keegan refused to issue the order.¹⁹⁴

Vacco Soldiers On

New York government was approaching a stand-still. Although Vacco had not produced any hard evidence of illegality in the November 3 election, his refusal to concede and his continual charges of massive fraud had led the New York City Board of Elections, evenly split in its membership between Democrats and Republicans, to refuse to certify Spitzer as the winner in the city. Moreover, there was speculation that the state Board of Elections, following the city board's lead, would also refuse to certify Spitzer as attorney general at their official meeting the next week—which could lead the Democrats on the same state board, which was also split 50-50 between the two parties, to refuse to certify Pataki as governor.¹⁹⁵

Just when it was thought events had reached the limits of the politically bizarre, word leaked out of the Vacco camp on December 10 that, in the absence of a police canvass of any or all of the 103,000 people suspected of fraud, the Vacco team was hiring a former New York City police detective who ran a private detective agency in Queens. He would presumably oversee a makeshift group of employees in the attorney general's office (still officially under Vacco's authority) to track down fraudulent voters.

The following Monday Justice Keegan threw out Vacco's suit alleging fraud, and Vacco conceded defeat. The state Board of Elections promptly certified Spitzer as the new attorney general. At the end of six weeks of unsubstantiated allegations of widespread voter fraud by New York State's top law enforcement official, Vacco had not presented evidence of a single illegally cast vote. He did not, however, back away from

¹⁹³ Tom Precious, "N.Y. City May Search For Illegal Voters," *The Buffalo News*, 9 Dec. 1998, A8.

¹⁹⁴ Clifford J. Levy and Jonathan P. Hicks, "Now Involving Mayor and Police, Battle for Attorney General Stalls," *The New York Times*, 9 Dec. 1998, A1; Tom Precious, "In Blow To Vacco, Giuliani Declines To Have Police Search For Illegal Voters," *The Buffalo News*, 10 Dec. 1998, A13.

¹⁹⁵ Precious, "In Blow To Vacco, Giuliani Declines To Have Police Search For Illegal Voters," A13.

his charges. "I have a lot to say about alleged fraud," he said. "But now is not the time or place."

An editorial in the Syracuse *Post-Standard* observed that Vacco's "post-election tactics have left a sour aftertaste." Another editorial, in the *Times*, mentioned the bitterness the six weeks of turmoil had caused in minority neighborhoods, and called for the replacement of state GOP chairman William Powers, whom it called the "mastermind" of the Vacco "travesty".¹⁹⁶

CASE 13: Investigating "Massive Fraud" on the Reservations of South Dakota, 2002

In the months leading up to the 2002 mid-term elections, the U.S. Senate race in South Dakota was seen as one of the most important in the nation, and it was certainly one of the most hotly contested. U.S. Rep. John Thune, a Republican, had been personally recruited by President Bush to challenge incumbent Democrat Tim Johnson. South Dakota was considered a battleground state that year, one of those deemed crucial for maintaining Democratic control of the Senate. The state's other senator, Tom Daschle, was the majority leader of the nation's narrowly divided upper house, and the Thune-Johnson contest was described in the press as a proxy fight between the president and the majority leader. Bush would make five trips to South Dakota on Thune's behalf that year—one shortly before the election, accompanied by Vice President Cheney.¹⁹⁷

Essential to the Democrats' strategy was a get-out-the-vote drive among the state's Indians, composing 9 percent of the total population and concentrated on nine deeply impoverished reservations. In striking respects, South Dakota Indians resemble blacks in the Deep South a generation or two earlier. They have lived historically segregated lives, and they have been locked out of the political system in many respects.¹⁹⁸ Indian rights activists in 2002 were asking for more polling places on reservations, some of whose inhabitants don't vote because they must travel thirty miles or more to a polling site.¹⁹⁹ Gerrymandering has made it difficult for them to elect candidates of their choice to office down to the present, as a recent federal court decision has made clear.²⁰⁰ Since 1976 two of the state's Indian counties have been covered by Section 5 of the Voting Rights Act, which requires all covered jurisdictions to submit

¹⁹⁶ "Mr. Vacco Confronts Reality" (editorial), *The New York Times*, 15 Dec. 1998, A26; Thompson, "AG Vacco throws in towel"; Carolyn Thompson, "Voter Fraud Suit Rebuffed, Vacco Concedes To Spitzer," *The Record* (Bergen County, N.J.), 15 Dec. 1998, A4; "Moving On," A14.

¹⁹⁷ Kevin Dobbs, "Margin of 528 votes prompts Republican to weigh challenge," *Argus Leader* (Sioux Falls, S.D.), 7 Nov. 2002, 1A; "Feds Probe Voter Fraud in South Dakota," *Fax News*, 16 Oct. 2002, http://www.toxnews.com/printer_friendly_story:0,3566,65437,00.html; Adam Clymer, "The 2002 Campaign: A Close Race; S. Dakota Campaign Razor Thin," *The New York Times*, 2 Nov. 2002, A13.

¹⁹⁸ For a brief but telling summary of Indian political and social exclusion, see *Bone Shirt et al. v. Hazeltine*, Civ. 01-3032-KES, 2004 DSD 18 (2004), 76-107. For a succinct account of the political situation of American Indians in general, see Jeanette Wolfley, "Native American Political Participation," in Karen McGill Arrington and William L. Taylor (eds.), *Voting Rights in America: Continuing the Quest for Full Participation* (Washington, D.C.: Leadership Conference Education Fund and Joint Center for Political and Economic Studies, 1992), 153-73.

¹⁹⁹ David Kranz, "Vote drive worker charged in forgery," *Argus Leader* (Sioux Falls, S.D.), 19 Oct. 2002, 1A.

²⁰⁰ *Bone Shirt v. Hazeltine*, (2004), 143.

intended changes in election procedure to the Justice Department for approval before the changes can take effect. A successful lawsuit brought by the American Civil Liberties Union on behalf of the Oglala and Rosebud Sioux tribes, settled shortly after the November 2002 election, charged that over the years the state government had failed to submit approximately 600 election-related laws and regulations in counties covered by Section 5 to the Justice Department for preclearance. Indeed, South Dakota had actually submitted fewer than ten.²⁰¹

The state's Indians vote heavily Democratic, although their turnout rate has historically been much lower than that of their white counterparts. Senator Johnson attributed his 1996 win partly to Indian support, and in 2000 Indians also gave their vote to Al Gore, who lost statewide.²⁰² Once elected to the Senate, Johnson was active on the Indian Affairs Committee. Democrats made a major effort in 2002 to push Indian registration to unprecedented levels, hiring about 100 independent contractors, mostly Indians, to get registration up in the Native American communities. By October, the push appeared to be paying off. Figures released by the secretary of state showed about 17,000 new registrations since the June 4 primary, about 6 percent of the number of voters who typically vote in a statewide Senate race. Roughly 25 percent of those newly registered lived in counties with Indian reservations or near them. Moreover, Democrats were narrowing the edge Republicans usually maintained on absentee ballots.²⁰³

Attorney General Barnett Announces an Investigation

On October 12, less than a month before the election, front-page stories in South Dakota newspapers revealed that a federal and state investigation into vote fraud in six counties was under way. Mark Barnett, Republican state attorney general, announced that the investigation, led by the FBI, had been going on for two weeks. The FBI was involved, Barnett explained, because the six counties either contained Indian reservations or were near to them. Barnett noted that the investigation so far was focusing on a single person, but "it could expand." The next year's legislature, he said, might want to tighten the state's election laws governing absentee voting and voter registration.²⁰⁴

After his announcement, Democratic Party spokeswoman Sarah Feinberg said party officials had been aware of the probe since October 3 after talking to a county auditor about irregularities in absentee ballots. Once party officials had reviewed the ballots they contacted the U.S. attorney. Shortly after Barnett's announcement, the Democratic Party issued a statement saying that Rebecca Red Earth-Villeda—apparently the "one person" Barnett was referring to—had worked for the Democrats as an

²⁰¹ Associated Press, "ACLU, Sioux Settle Election Lawsuit," *The Washington Post*, 9 Nov. 2002, A5.

²⁰² Dave Broyer, "Senator denies Indian reservation fraud: Voter registration becomes an issue," *The Washington Times*, 17 Oct. 2002, A4.

²⁰³ Peter Hamman, "Senator, 'heartened' by voter support, vows to tackle projects," *Argus Leader* (Sioux Falls, S.D.), 10 Nov. 2002, 1A; David Kranz, "State, FBI probing Democratic vote drive," *Argus Leader* (Sioux Falls, S.D.), 12 Oct. 2002, 1A; Boyer, "Senator denies Indian reservation fraud," A4; Adam Clymer, "The 2002 Campaign: A Close Race," A13; "Hundreds of suspicious voter registrations found in S.D.," *The Bismarck Tribune* (N.D.), 21 Oct. 2002, 2B.

²⁰⁴ "Voter Fraud Probe Under Way," *Aberdeen American News* (S.D.), 12 Oct. 2002, 1A; Kranz, "State, FBI probing Democratic vote drive," 1A

independent contractor. Two absentee ballots she submitted were found to be invalid, and her contract was terminated on October 7. The Democrats' statement said, "The South Dakota Democratic Party has a zero-tolerance approach to anything less than full compliance with South Dakota and federal election regulations. If other issues are brought to the attention of the party, we will continue to fully cooperate to ensure that no one is able to undermine the democratic process." On October 22 an indictment was handed down, naming yet another person, a contractor for the United Sioux Tribes Voter Registration and Education Project, who was charged on five counts of forging voter registration cards.²⁰⁵

Attorney General Ashcroft Is Worried About Vote Fraud

Democrats had reason to be worried that Republicans would raise a hue and cry about vote fraud as a rationale for mounting ballot security programs in the South Dakota race. In a major news conference in March 2001, U.S. Attorney General John Ashcroft had announced that regarding voting rights, not only disfranchisement but vote fraud would be a major focus of his administration. He later met with national civil rights leaders on the subject, causing them to express their fear that aggressive fraud investigations in the tradition of past GOP ballot security efforts would suppress minority votes. In October 2002, while the South Dakota investigations were under way, the Justice Department held a daylong "Voting Integrity Symposium" to train approximately 300 FBI and U.S. attorney's offices personnel in order "to prevent election offenses and to bring violators to justice." This was part of what the Justice Department called an "unprecedented" effort to guard against voter discrimination at polling places and to prosecute vote fraud. There was speculation among Democrats that Ashcroft had personal reasons for his concern with vote fraud. In 2000 he had been narrowly defeated as U.S. Senator from Missouri in an election marred by Republican charges of fraud in St. Louis Democratic strongholds.²⁰⁶

Wade Henderson, executive director of the Leadership Conference on Civil Rights, one of the largest and oldest consortiums of civil rights organizations, sent a letter signed by various members of the Conference to Ashcroft on October 25, 2002 expressing concern that "overly aggressive 'voting integrity' efforts, instead of reducing fraud, tend to intimidate lawful voters and ultimately suppress voter turnout. This is especially true when investigations and prosecutions appear to concentrate efforts on or target voters of a particular racial, ethnic, disability or other minority group." The letter also mentioned an earlier meeting with Ashcroft in which various members of the organization had expressed their concerns about Justice Department ballot security efforts, "particularly the planned use of potentially intimidating signs and publicity about these efforts." A spokesman for Ashcroft, Mark Corallo, responded: "The only people

²⁰⁵ Ibid.; Michael Barone with Richard E. Cohen, *The Almanac of American Politics 2004* (Washington, D.C.: National Journal, 2003), 1467.

²⁰⁶ For Ashcroft's 2001 remarks, see Department of Justice Web site at <http://www.usdoj.gov/80/ag/speeches/2001/0307civilrightspresconf.htm>; Jim Drinkard, "Dems blast GOP efforts on voter fraud," *USA Today*, 24 Oct. 2002, 8A; Steve Kraske, "Carnahan defeats Ashcroft in U.S. Senate race as GOP claims voter fraud," *The Kansas City Star* (Missouri), 8 Nov. 2000, <http://search.ernet.com/direct.asp?au=2W71092597036&db=nfl>.

intimidated are the people who were going to cast fraudulent ballots, and that's the point here."²⁰⁷ As earlier case studies in this chapter have revealed, this is a stock defense by Republicans in charge of ballot security programs when accused of intimidating minority voters.

'The Wall Street Journal' Weighs In

The South Dakota investigations were immediately portrayed by Republicans locally and nationally as a scandal of major proportions—so much so that attorney general Barnett took issue with some of the exaggerated claims. Four days after the story broke, John Fund, a columnist for the *Wall Street Journal*, wrote that “a massive vote-fraud scandal broke out in a U.S. Senate race in Tom Daschle’s home state . . .” After quoting various South Dakotans’ claims and speculations, Fund added, “Voter fraud isn’t unknown on reservations. . . . Let’s hope the latest scandal in South Dakota . . . prompts states to examine their own absentee-ballot laws so they will stop being treated as an engraved invitation to fraud.” (Fund did not mention that most of the absentee votes in South Dakota were usually cast by Republicans.) Senator Bill Frist, chairman of the Senate Republicans’ campaign committee, opined that the situation in South Dakota was “shameful.” The day after Fund’s column appeared, Larry Long, the state’s Republican deputy attorney general and a candidate to succeed Barnett, responded by noting that the Democratic Party had in fact reported the incident to the state Department of Criminal Investigation. And Long’s Democratic opponent asserted that he as well supported Barnett in getting to the bottom of the matter.²⁰⁸

The RNC mailed fliers to South Dakotans entitled “Tim Johnson and the Democrats are hiding the truth about voter fraud” and included reproductions of four newspaper headlines seeming to suggest that voter fraud was widespread in the state. The RNC later was forced to apologize because one of the headlines didn’t even relate to charges of vote fraud.²⁰⁹

One news source spotlighting the fraud investigation was Sioux Falls’s KSFY TV, the local ABC affiliate. An inquiry by freelance journalist and editor of *Talking Points Memo* Josh Marshall led to the discovery that the reporter who developed an inaccurate and misleading newscast regarding the fraud charges, Shelley Keohane, had gotten documents that she used for her report from her roommate, Jon Lauck, a Sioux Falls lawyer who was also chairman of the Lawyers for Thune Committee and a member of the Republican National Lawyers Association. Once these facts were revealed, Keohane was pulled off the vote fraud story.²¹⁰

²⁰⁷ Letter to the Honorable John D. Ashcroft from the Leadership Conference on Civil Rights, 25 Oct. 2002, <http://www.citizen.org/documents/VotingIntegrityLetter.pdf>; Jim Drinkard, “Dems blast GOP efforts on voter fraud,” 8A.

²⁰⁸ John Fund, “Dead Men Voting: In Daschle’s home state, fraud wanders off the reservation,” *Opinion Journal*, 16 Oct. 2002 (<http://www.opinionjournal.com/forms/printThis.html?id=110002475>); Boyer, “Senator denies Indian reservation fraud,” A4; David Kranz, “Vote worker denies allegations,” *Argus Leader* (Sioux Falls, S.D.), 18 Oct. 2002, 1A.

²⁰⁹ Reproductions of these ads are found at *Talking Points Memo*, <http://www.talkingpointsmemo.com/docs/rnc.fraud.1.html>. On the apology, see E.J. Dionne Jr., “A nasty fight over who gets to vote,” *The San Diego Union-Tribune*, 5 Nov. 2002, B9.

²¹⁰ http://www.talkingpointsmemo.com/archives/week_2002_10_13.html#001693.

Lauck was active in other ways as well. The Republican Party paid him travel money to go through files of county election officials for evidence of questionable Indian registration cards and applications, which he then distributed to the media. "Some broadcast media were provided with large stacks of material indicating fraud on reservations," according to one reporter. "One Sioux Falls television station apologized for broadcasting unverifiable information and pulled a lead reporter off the fraud story."²¹¹ Lauck also wrote an article for the conservative magazine, *National Review*, which appeared a few days before the election, ridiculing the Democratic Party's statements minimizing the extent of the fraud to date. "The FBI and the attorney general do not generally launch a large-scale investigation for one person and a couple of documents," he asserted. Lauck likened the scope of the fraud to that in South Texas in 1948 which contributed to the election of Lyndon Johnson to the Senate. "When LBJ's lawyer (and fixer) Ed Clark needed extra votes . . . he said 'it meant going into the Mexican country. . . .' Sen. Tim Johnson's . . . campaign attempted a similar strategy on Indian reservations. And he, too, will be remembered for his bounty-hunting even if he wins," wrote Lauck.²¹²

Given the steady stream of Republican claims of massive fraud, one might have expected attorney general Barnett to jump on the party bandwagon and exploit the investigation for Thune's advantage. However, neither Barnett nor the Republican secretary of state Joyce Hazeltine did so. (*Wall Street Journal* columnist John Fund would later attribute this to their fear of being labeled racists by Democrats.) From the middle of October on, Barnett took sharp issue with allegations that fraud was "widespread," stressing that while the investigation was continuing, it was focused on a few individuals. "I'm only aware of two cases where criminal law may have been violated, and you've heard about those," he said on October 20. "I just don't want the suggestion out there that there is widespread fraud when we don't have any evidence of that." Hazeltine also did not see massive fraud, and emphasized that the state's election laws were working. The laws were designed to detect problems before the election, she said, and they were successful in doing so. Barnett also emphasized that the Democrats had cooperated with the investigation and that neither they nor the Johnson campaign were implicated.²¹³

²¹¹ David Melmer, "South Dakota Democratic Senator Accuses Republicans of Voter Harassment," *Indian Country Today* (distributed by Knight Ridder Tribune Business News), 4 Nov. 2002, 1. This was apparently a reference to the TV reporter who was Lauck's roommate, mentioned above.

²¹² Jon Lauck, "Dem Ethics? South Dakota Dems don't acknowledge the importance of their voter-fraud problem," *National Review Online*, 29 Oct. 2002, <http://www.nationalreview.com/comment/comment-lauck102902.asp>.

²¹³ David Kranz, Corrine Olson and Peter Harriman, "Fraud cases cloud S.D. elections," *Argus Leader* (Sioux Falls, S.D.), 20 Oct. 2002, 1A; Scott Waltman, "Scandal Should Pose No Trouble," *Aberdeen American News* (S.D.), 3 Nov. 2002, 1A; John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy* (San Francisco: Encounter Books, 2004), 83. In his chapter on South Dakota Fund makes various allegations of vote fraud in 2002, some of which may possibly be true. He continues to cite as evidence *The National Review* article branded as "garbage" by the state's Republican attorney general in 2002. He relies for some of his important charges on anonymous sources. And his documentation is slim: in a chapter with many dozens of factual statements, only nine sources are listed in the chapter's endnotes, four of which were interviews he conducted and two of which were from the editorial pages of *The Wall Street Journal*. Given Fund's longstanding concern with vote fraud as evidenced in his columns in the *Journal* over the years, the hurried quality of his book is disappointing. The general tenor of his book's

As Election Day approached, a South Dakota poll indicated that 15 percent of those surveyed said they were more likely to vote Republican as a result of the highly publicized investigation, and only 4 percent were swayed toward the Democrats. A few days before voters went to the polls, however, Barnett announced that the investigation—which had spread from six to twenty-five counties—had not turned up any illegally cast votes, although Red Earth-Villeda, the woman who was originally the focus of the inquiry, would probably be charged. State and federal authorities at that point had turned up fifteen absentee ballot applications with allegedly forged signatures.²¹⁴

Late Votes from the Reservation

The senatorial race ended in a photo-finish. Votes were counted throughout the night of November 6. Near the end, Johnson trailed Thune by about 2,000 votes. Then the votes were tallied from Shannon County—in which most of the famous Pine Ridge reservation is located—and Johnson edged ahead of Thune by 524 votes out of over 337,000 cast statewide. Turnout on the reservation was up phenomenally from the 1998 mid-term election. That year, 19 voters had cast ballots in Precinct 3; in 2002, more than 300 did. The six main reservation counties voted 78-21 percent for Johnson. However, his victory was dampened by the fact that the Republicans triumphed in several other battleground states and regained control of the Senate. Although the winning margin was sufficiently narrow to allow Thune under state law to demand a recount, he did not do so; instead, he would challenge Daschle, again with strong support from Bush, in 2004.²¹⁵

Thune's refusal to demand a recount provoked a *Wall Street Journal* editorialist to inveigh once more against the alleged Indian voting fraud in South Dakota. Pointing to the huge increase in Indian turnout as compared to the modest increase statewide, as well as to the late voting returns on the reservation, the *Journal* suspected fraud. "By the way," the editorial added, "we're told that Mr. Thune's lawyers have affidavits from about 50 people attesting to voting irregularities, including from four Indians saying they were each paid \$10 to vote." Attorney General Barnett responded, "Nothing has changed since before the election." His investigators had identified fifteen irregular absentee ballot applications and were reviewing as many as 1,750 that Red Earth-Villeda may

approach is illustrated by his statement that "everyone supports making certain that people's right to vote is fully protected, and that any vestiges of the days of poll taxes or literacy tests are stamped out. But dubious charges of racism or intimidation at the polls make it difficult to police the integrity of elections." (94). Fund would do well to read Boneshirt v. Hazelvine (2004) for a lengthy account in a federal court case of present-day political discrimination against Indians in South Dakota, a state whose elections he describes (77) as "usually polite affairs, conducted with the kind of civility one often finds in rural states." A more cautious approach to the 2002 senatorial election from a nonpartisan source is found in Michael Barone (with Richard E. Cohen and Grant Ujifusa), *The Almanac of American Politics 2004* (Washington, D.C.: National Journal Group, 2003), 1467-68. The authors, while mentioning the controversy over vote fraud, leave open the question whether it made the difference in the 2002 election results.

²¹⁴ David Kranz, "Barnett: No illegal ballots found," *Argus Leader* (Sioux Falls, S.D.), 31 Oct. 2002, 1A.

²¹⁵ Kevin Dobbs, "Johnson's narrow win has Thune dangling," *Argus Leader* (Sioux Falls, S.D.), 7 Nov. 2002, 1A; T. R. Reid, "New Indian Voters Turned Race in S.D.; Turnout Key to Democrat Johnson," *The Washington Post*, 8 Nov. 2002, A10; Barone with Cohen, *Almanac of American Politics 2004*, 1468.

have handled. He said he would like to know where the *Journal's* information came from. "We continue to hear rumors, but we do not have the evidence."²¹⁶

Shortly before Christmas the source of the *Journal's* allegations was revealed. It turned out that on Election Day, attorneys who had attended a training session the previous summer on election fraud spread out across South Dakota to gather affidavits demonstrating voting irregularities. They collected fifty. Once Barnett's office had had a chance to examine them, it was determined that only three of the affidavits alleged criminal behavior, and two were proven to be false. The third person was still being sought. Barnett pointed out that two of the affidavits the Republican lawyers had collected were either forgery or perjury, because they contained the same wording. "They are just flat false," Barnett said.²¹⁷

David Norcross, a former general counsel for the RNC and the man directing the affidavit enterprise on Election Day, admitted the lawyers had drawn up identical affidavits and then searched for people to sign them. Before this information came to light *The National Review* published an article, relying on the affidavits. Barnett characterized the story as "shoddy, irresponsible, sensationalistic and garbage." *The National Review* responded by claiming Barnett had not investigated most of the charges in the article.²¹⁸ Rumors of fraud in South Dakota's 2002 election continued to be circulated two years later by conservatives such as nationally syndicated columnist Robert Novak, even as local Republican officials, including Barnett, the new Republican secretary of state Chris Nelson, and local election officials in key Indian counties defended the election results. "I do not agree that the election was stolen," Nelson reiterated in September 2004. "There was no evidence that any illegal ballots were put in the box anywhere," he said.²¹⁹

An O. Henry Ending

The end of the South Dakota voter fraud story could have been written by O. Henry. In December 2002 Barnett brought nineteen counts of forgery on absentee ballot applications against Red Earth-Villeda, each count a felony punishable by a maximum of five years in prison and a \$5,000 fine. Larry Long was elected attorney general in November, and Barnett became his deputy but continued prosecuting the case. The tribal council on a reservation where Barnett wanted to serve subpoenas refused to allow it, saying the alleged crime had occurred off the reservation. In April 2003 Red Earth - Villeda was indicted again, on eight counts of forgery, after the tribe allowed the attorney general to serve subpoenas. The trial was scheduled for February 9, 2004. Less than a month before the trial was to begin, the state's handwriting expert concluded the people who had testified under oath that their votes were forged had actually signed the documents. "In twenty-five years, I've never seen anything like this," Barnett said. "It

²¹⁶ "The Oglala Sioux's Senator," 14 Nov. 2002, A14; David Kranz, "No evidence fraud tainted vote results, Barnett says," *Argus Leader* (Sioux Falls, S.D.), 21 Nov. 2002, 1A.

²¹⁷ David Melmer, "Voter Fraud Charges in South Dakota Prove Fraudulent," *Indian Country Today*, 24 Dec. 2002, <http://www.indiancountry.com/?1041004948>.

²¹⁸ *Ibid.*

²¹⁹ Kevin Woster, "Voter registration charges, denials fly," *Rapid City Journal* (S.D.) 28 April, 2004, <http://www.rapidcityjournal.com/articles/2004/04/24/news/local/top/news01.txt>; David Kranz, "Election should be problem-free, secretary of state says," *Argusleader.com*, 9 Sept. 2004, http://www.argusleader.com/columnists/dkranz/09_20_04.shtml.

automatically shoots our case out of the saddle.” He added that he could not explain how the expert witness “could be so diametrically opposed to what these people swore to,” he said. Barnett described the witness, who had testified for the state in several other cases but whom he refused to identify, as “well-qualified.” Red Earth-Villeda walked free. The only conviction to result from the alleged “massive fraud scandal” of 2002 was that of Lyle Nichols of Rapid City who, in a case apparently unrelated to Red Earth-Villeda, had forged signatures on voter-registration cards while working for the United Sioux Tribes. He pleaded guilty to felony charges and spent fifty-four days in jail.²²⁰

Shortly after the 2002 elections, the Republican-dominated state legislature, invoking ballot security, passed a law requiring notarization of absentee ballot requests—a law generally perceived as making it more difficult for Indians to vote. Of those voting, only 3 of 75 Republicans opposed the bill; 1 Democrat out of 29 supported it.²²¹ One noteworthy bill introduced after the 2002 elections failed to be enacted into law. House Bill 1010 was designed to make registration easier for Indians, many of whom live many miles from the county auditor’s office. The bill would have allowed registration on the internet. During the legislative debate, Republican State Representative Ted Klautt commented: “The way I feel is if you don’t have enough drive to get up and drive to the county auditor . . . maybe you shouldn’t really be voting in the first place.” These comments were made in connection with Indian voters, as were those of another Republican representative, Stanford Adelstein:

Having made many efforts to register people . . . I realize that those people we want to vote will be given adequate opportunity. I, in my heart, feel that this bill . . . will encourage those who we don’t particularly want to have in the system. [Referring to Indian voters, he added] I’m not sure we want that sort of person in the polling place. I think the effort of registration . . . is adequate.²²²

Charges of racial discrimination against Indians continued into the presidential election year. According to an April 2004 *New York Times* editorial on vote suppression masquerading as ballot integrity:

Today, in Bennett County, S.D., Indians say they have to contend with poll workers who make fun of their names, election officials who make it hard for them to register and—most ominously—a wave of false voter fraud charges that have been made against them, which they regard as harassment. Jo Colombe, a Rosebud Sioux tribal council member, said that when she worked as a poll watcher in a recent election she was accused of fraud simply for taking a bathroom break. When she returned, she said, white poll watchers charged her with copying the names of Indians who had not yet voted, and taking them out to Indians waiting in the parking lot.²²³

²²⁰ John-John Williams IV, “Flandreau woman didn’t forge signatures for 2002 elections, expert says,” *Argus-Leader* (Sioux Falls, S.D.), 29 Jan. 2004, 1A; “Vote fraud questions” (editorial), *Argus-Leader* (Sioux Falls, S.D.), 11 Feb. 2004, 11B; Kevin Woster, “Voter registration charges, denials fly.”

²²¹ For roll-call vote on the bill, see <http://legis.state.sd.us/sessions/2003/1176.htm>. For party affiliation of legislators, see <http://legis.state.sd.us/sessions/2004/mem.htm>.

²²² *Bonchirt v. Hazeltime* (2004), 91-2. For a copy of the bill, see <http://legis.state.sd.us/sessions/2003/1010.htm>.

²²³ “Bad New Days for Voting Rights,” *The New York Times*, 18 April 2004, 12WK.

Soon thereafter, Bret Healy, a Democrat and the director of the Four Directions Committee, an organization whose purpose is to register and mobilize Indians, complained that a law passed in the previous session of the Republican-dominated legislature had led in recent elections to the disfranchisement of people in counties with large Indian populations. The new law requires voters either to show photo ID or sign an affidavit verifying their identity. Some poll workers, he claimed, did not tell prospective voters without their ID that signing an affidavit was an option and barred them from voting. The legislature would not have changed the law, Healy said, if the Indian vote had not played such an important role in 2002. "It was a law passed with ill intent," he said. Chris Nelson, the secretary of state, said the problem was minor and that steps were being taken to fix it.²²⁴

²²⁴ Dennis Gale, "Get-out-the-vote group and former PAC linked," *Aberdeen News.com*, 15 June 2004, <http://www.aberdeemnews.com/mld-aberdeemnews/news/8929812.htm?template=contentModules/printstory.jsp>.

CHAPTER VII

SUMMARY AND CONCLUSIONS

The foregoing examination of Republicans ballot security programs since the 1950s can be summarized succinctly. However legitimate the party's desire to guard against Democratic election fraud, these programs have sometimes degenerated into efforts to suppress the votes of blacks and Latinos—often the poorest and most vulnerable among them.

To political operatives this is apparently common knowledge, although Republican officials publicly deny it. In 1993 Republican Christine Todd Whitman narrowly beat the incumbent Democratic New Jersey governor, James Florio. Post-election investigations by the news media indicated that Democratic officials had had difficulty in mobilizing the usual number of recruits for get-out-the-vote efforts in black precincts. Moreover, some members of the Black Ministers Council of New Jersey reported receiving offers of cash from people identifying themselves as Republicans if the ministers would not endorse Florio to their congregations.¹ Daniel Todd, Whitman's brother, appeared on a panel two days after the election. As reported in the *San Francisco Chronicle*, "Explaining his sister's victory . . . Todd said, '[A well-run shoe leather campaign] is where a lot of our effort went and a lot of our planning—getting out the vote on one side and vote sup . . . ' breaking off before resuming, 'and keeping the vote light in other areas.'"² Whitman's campaign spokesman was quoted the same day as saying, "We cut the (Democratic) margin in Essex and Hudson (two urban counties with large black and Latino constituencies). Sometimes vote suppression is as important in this business as vote-getting."³ Whitman strongly denied her campaign had engaged in vote suppression.⁴ Eleven years later, in the summer of 2004, Michigan state representative John Pappageorge, discussing election strategy, told a meeting of the suburban Oakland County Republican Party, "If we do not suppress the Detroit vote, we're going to have a tough time in this election." Blacks make up over 80 percent of Detroit's population. When his remarks appeared in the newspapers, Pappageorge denied intending to give offense to his "colleagues in Detroit or anywhere." However, he did

¹ Rachel E. Berry, "Democratic National Committee v. Edward J. Rollins: Politics As Usual or Unusual Politics?," *Race and Ethnic Ancestry Law Digest* 2 (Spring 1996): 46.

² "Demos Stalled In New Jersey Election Probe In New Denial That Black Voting Was Suppressed," *San Francisco Chronicle*, 27 Nov. 1993, A2, as quoted in Berry, Footnote 28. The event which drew the most attention in the election's aftermath was the so-called "Rollins affair." Whitman campaign manager Edward J. Rollins claimed to reporters that he had used \$500,000 of Whitman's funds to suppress the black vote. He said he did this by promising black ministers he would donate to their favorite charities if they would not rally their churches behind Florio. As a result of a federal lawsuit brought against him, he later testified under oath that his claim was false. Berry, "Democratic National Committee v. Edward J. Rollins." 44. Whether he was telling the truth under oath was questioned by some. See Sidney Blumenthal, "Letter from Washington: Ed Rollins' Spin Cycle," *The New Yorker*, 13 Dec. 1993, 68. Rollins, in his autobiography, leaves open the question whether someone in Whitman's campaign other than him engaged in the kind of vote suppression he denied. See Ed Rollins with Tom DeFrank, *Bare Knuckles and Back Rooms: My Life in American Politics* (New York: Broadway Books, 1996), 293-94.

³ Berry, "Democratic National Committee v. Edward J. Rollins," Footnote 28.

⁴ *Ibid.*, Footnote 29.

not deny making the comments attributed to him.⁵ It seems reasonable to believe that in private venues, many Republican operatives talk frankly about minority vote suppression as a tactic, and that not a few try to effect it.

Let us now recapitulate some of the features of vote suppression efforts put forth by Republicans under the guise of ballot security programs, as they have been described in this Report:

1. An organized, often widely publicized effort to field poll watchers in what Republicans call “heavily Democratic,” but what are usually minority, precincts;
2. Stated concerns about vote fraud in these precincts, which are occasionally justified but often are not;
3. Misinformation and fear campaigns directed at these same precincts, spread by radio, posted signs in the neighborhoods, newspapers, fliers, and phone calls, which are often anonymously perpetrated;
4. Posting “official-looking” personnel at polling places, including but not limited to off-duty police—sometimes in uniform, sometimes armed;
5. Aggressive face-to-face challenging techniques at the polls that can confuse, humiliate, and intimidate—as well as slow the voting process—in these same minority precincts;
6. Challenging voters using inaccurate, unofficial lists of registrants derived from “do-not-forward” letters sent to low-income and minority neighborhoods;
7. Photographing, tape recording, or videotaping voters; and
8. Employing language and metaphors that trade on stereotypes of minority voters as venal and credulous.

Ballot-security programs employing these techniques, as the above research has shown, are not usually the work of a few renegades out of touch with the leadership structure. The history of such programs from the 1950s to the present reveals that lawyers, judges, election officials, and people high in the state or national command hierarchy of the Republican Party and its campaigns are typically the leaders of the disfranchising efforts.

Finally, ballot security programs employing such tactics are implemented in cities and states across the nation—from California to New York, South Dakota to Louisiana, New Jersey to Texas. Virtually always African Americans or Latinos are the sole or primary targets. Occasionally, Native Americans have been the focus of such programs as well. The reasons for this focus are apparently two-fold. First, there is still a racist stereotype among a good many whites that dishonesty, including tendencies to engage in vote fraud, is especially widespread in minority communities. Second, because minority precincts are far more likely to vote for Democrats than are almost all white precincts, concentrating vote suppression efforts in minority communities is efficient. For example, of ten black voters randomly discouraged or prevented from voting, nine Democratic votes are typically suppressed for every Republican vote. The same is true of Indian votes in, say, South Dakota. In Latino precincts—exclusive of special sub-populations

⁵ Associated Press, “Democrats blast GOP lawmaker’s ‘suppress the Detroit vote’ remark,” *Detroit Free Press*, 21 July 2004, http://www.freep.com/news/statewire/sw101420_20040721.htm.

like Cuban-Americans—the equivalent figures are perhaps seven Democrats prevented for every three Republicans.

Contributing to the efficiency of targeting minority precincts is the sad fact that they are typically still located in highly segregated neighborhoods; therefore, challenging techniques at the polling site that slow down voting or intimidate or misinform the general populace in these areas will primarily affect minority voters.

Impact of Ballot Security Vote-Suppression Efforts

What has been the level of success of these vote-suppression efforts over the last half century? No one knows. Because the full extent of the misinformation and harassment tactics is unknown, it is impossible to estimate how many qualified voters were actually reached, and of those, how many were prevented from voting.

Of course, the turnout in certain minority precincts targeted for vote suppression can be compared with the turnout in the same precincts in a comparable election. Using this measure, the Republican ballot security efforts in Louisville in 2003, for example, if intended to discourage voting, seem to have been counterproductive, as revealed earlier in this Report. What occurred was a “black backlash,” consisting of widespread outrage in the African-American community and several weeks of organized activity to get out the vote. The local Republican leadership, caught in the media spotlight, conveyed the impression, at worst, of dishonesty and racism and, at best, ineptitude in its efforts to explain the reason for its ballot security program. Information from the case studies reported above suggests such a backlash may have occurred in some of the other cities as well.

However, in still other cases the minority vote may have been sufficiently suppressed to change the electoral outcome. This is a strong incentive, other things being equal, for the GOP to follow the advice implicit in Governor Whitman’s campaign spokesman: “Sometimes vote suppression is as important in this business as vote-getting.”

Red States, Blue States and Concern over Ballot Fraud

Over the past half century, America’s two major parties have gradually become ideologically polarized.⁶ Moreover, the close presidential election of 2000, combined with numerous questions surrounding the electoral process and vote recount in Florida that year, have ratcheted up concerns about ballot integrity to perhaps the highest level since 1960 when, as we have seen, Kennedy narrowly edged out Nixon in an election some Republicans claimed was stolen. The most important difference between then and now is that Democrats seem to be more worried about the integrity of the voting process than Republicans as a result of the 2000 election and some of the reforms resulting from it, such as the increased use of electronic voting machines lacking paper audits.⁷ Overall, the percentage of Americans saying they do not believe their votes are counted accurately

⁶ Keith T. Poole and Howard Rosenthal, “The Polarization of American Politics,” *Journal of Politics* 46 (1984): 1061-79. See also Michael MacKuen, Robert Erikson, James Stimson, and Kathleen Knight, “Elections and the Dynamics of Ideological Representation,” in Michael B. MacKuen and George Rabinowitz (eds.), *Electoral Democracy* (Ann Arbor: University of Michigan, 2003), 200-37.

⁷ Dan Keating, “Groups Rally for Voting Receipts,” *The Washington Post*, 14 July 2004, A10.

jumped from 3 to almost 9 between 2000 and 2004. In the summer of 2004, 93.9 percent of Republicans believed their vote would be counted accurately, as compared with 74.9 percent of Democrats. The figure for blacks was 69.5.⁸

The approaching contest between President Bush and Senator John Kerry may be a cliff-hanger as well. Both parties are moving forward with massive fund-raising and get-out-the-vote drives. In addition, Republicans (including U.S. Attorney General John Ashcroft) are planning ballot security measures, and Democrats are developing plans to respond to them, as well as mounting their own security programs. In this context, given the numerous abuses ballot security measures have encouraged, do the Republicans have good reasons to continue to employ them?

How Big A Problem Is Vote Fraud?

Election fraud is an undeniable reality in the American polity. How widespread it is remains unknown, however. Indeed, the terms vote fraud and election fraud are used in a variety of ways, which adds to the problem of ascertaining its incidence. One definition, often implicit in discussions of the subject by Republican anti-vote fraud activists, limits vote fraud to exclude what Dayna Cunningham has called “racially discriminatory abuse of discretion by local officials, particularly in the South, to bar African-American and other minorities.” Drawing on the definition of fraud in *Black’s Law Dictionary*, Cunningham makes a forceful case that such abuses should be included in the definition of voting fraud. Were they so included, the narrowly conceived concerns of anti-fraud activists, which focus on fraud by minority actors and ignore fraud by officials trying to prevent qualified minority persons from voting, would be seen as one-sided and hypocritical.⁹ Extending Cunningham’s logic, vote suppression of qualified minority voters not only by officials but by partisan poll-watchers, challengers, and uniformed guards, justified as ballot security, is also fraudulent activity—perpetrated, ironically, in the name of fraud prevention.

However, discussions of vote fraud implicitly tend to rely on a narrower definition than Cunningham’s, as does this one. How widespread, then, is it? An unscientific nine-month survey of American daily newspapers for this Report revealed allegations of (and occasionally criminal convictions for) election fraud by both major parties at various levels of government across the nation. But there has been no systematic study to date of the incidence of vote fraud in the nation or in individual states. A Republican pamphlet used in the party’s 1964 nationwide ballot security program, Operation Eagle Eye, estimated that 3 million votes a year were lost or stolen in America. In 2002, political scientist Larry Sabato of the University of Virginia was quoted as putting the figure at 4 million, although he did not respond to questions about the basis of his estimate.¹⁰ On the shaky assumption that both estimates were roughly

⁸ Rad Sallee, “Voters lose some faith in election accuracy,” *Houston Chronicle*, 9 July 2004, 25A.

⁹ Dayna Cunningham, “Who Are the Electors? A Reflection on the History of Voter Registration in the United States,” *Yale Law and Policy Review* 9 (1991): 397-99. *Black’s* definition is “intentional and successful employment of any cunning, deception, or artifice used to circumvent or cheat another.” Cunningham, Footnote 166.

¹⁰ “Are You a ‘Shadow’ Voter?” (Washington, D.C.: Women’s Division, Republican National Committee, 1961). No pagination. The following quotation appears on the first page of the text: “Over three million votes are stolen or lost in every national election. Three million citizens go to the polls and cast ballots in

accurate—one made in the early sixties, the other forty years later—the *rate* of fraudulent votes cast declined from about 3 to 2 percent of the age-eligible voting population, a population that increased from 108 to 209 million between 1960 and 2000.

To repeat, there are no systematic studies of ballot fraud in the United States. Sabato and *Wall Street Journal* writer Glenn Simpson, authors of a 1996 book on political corruption, claimed that vote fraud, committed by both Democrats and Republicans (but in their opinion more often by Democrats) was increasing and was largely ignored by the press.¹¹ While their numerous anecdotes are informative and interesting, they are just that—*anecdotes*. More recently, John Fund, a columnist with the *Wall Street Journal*, has written a polemical book in which he claims that election fraud “can be found in every part of the United States, although it is probably spreading because of the ever-so-tight divisions that have polarized the country and creates so many close elections lately.”¹² No evidence is presented, however, that such fraud is increasing. A front-page *New York Times* article appeared about the time Fund’s book was published, detailing election officials’ concern about the possibility of vote fraud in the 2004 election “as both major political parties intensify their efforts to promote absentee balloting as a way to lock up votes in the presidential race.” But, again, while there is the suggestion that vote fraud may be increasing as a result of the increased popularity of absentee balloting, there is nothing in the article to support it.¹³

Political scientists Lori Minnite and David Callahan systematically surveyed aspects of the American polity to determine the incidence of voter fraud. Their conclusions, *Securing the Vote*, were published in 2003 under the auspices of the policy institute, Demos. They focused on twelve states from all regions of the country, containing about half the American electorate, from 1992 to 2002, conducting LexisNexis searches of news databases and statutory and case law. They contacted “selected state officials, including attorneys general and secretaries of state.” Among their other methods were a LexisNexis search of voter fraud throughout the U.S. since the 2000 election. Their conclusion was that “voter fraud appears to be very rare in the 12 states examined.” However, no data were presented in their report.¹⁴

In light of these conflicting views, a satisfactory answer to the question of how widespread vote fraud is cannot at present be given. However, our discussion of vote fraud was broached in order to judge whether there were legitimate reasons for the Republicans’ ballot security programs. Perhaps another approach is more fruitful. One might argue that the incidence of vote fraud nationwide or even within a state is not

good faith, only to become ‘shadow’ voters when their ballots are defaced, discarded, not counted, or nullified in other illegal ways. The number of vote frauds, moreover, seems to be on the increase.” The source given for the 3 million figure is Honest Ballot Association, New York, N.Y. The latter organization, apparently now defunct, was founded by Theodore Roosevelt. Sabato is quoted in Russell Wild, “Dirty Tricks,” *AARP* (Newsletter), Nov./Dec. 2002, 42, 45.

¹¹ Larry J. Sabato and Glenn R. Simpson, *Dirty Little Secrets: The Persistence of Corruption in American Politics* (New York: Random House, 1996), 275. See especially Chapter 10, “Vote Fraud: Back to the Future.” For their reasoning that Democrats are more likely to commit vote fraud, see 297-300.

¹² John Fund, *Stealing Elections: How Voter Fraud Threatens Democracy* (San Francisco: Encounter Books, 2004), 5.

¹³ Michael Moss, “Absentee Votes Worry Officials As Nov. 2 Nears,” *The New York Times*, 13 Sept. 2004, A1.

¹⁴ Lori Minnite and David Callahan, *Securing the Vote: An Analysis of Election Fraud* (New York: Demos, 2003), 17. <http://www.demos-usa.org/pub111.cfm>.

germane to whether a party's ballot security efforts are justified in a particular case. In a tight race in a battleground state such as Florida in the 2004 presidential election, it will not be reassuring to either Democrats or Republicans to be told that the national vote fraud rate is relatively low and declining. The most recent election for the most powerful political position in the world was finally decided by 537 votes in a single state. Both parties, then, have good reason to be concerned with "ballot security" in Florida as well as in the sixteen or so other battleground states this election year.

Republicans should be concerned to ensure, among other things, that no one who is ineligible to vote is allowed to, including non-citizens, unregistered voters, dogs, dead persons, or living persons more than once. Democrats, too, should try to ensure that their votes are not stolen, either through racial discrimination in declaring ballots to be spoiled, inaccurate registration lists, hostile or uncooperative poll workers or challengers, inaccurate felon purge lists, placement of less reliable voting machines, or the traditional intimidation and misinformation tactics associated with GOP ballot security methods documented in this Report. The need for Democrats' concern is underlined by the continuing controversies in Florida over the seriously inaccurate ex-felon purge lists of 2000 and 2004, the unwillingness of Governor Jeb Bush to make the list in the latter year available until forced by a state court to do so, and the overall lack of preparedness of Florida's top voting officials well into the summer of the presidential election year.¹⁵

From this acknowledgement that vote fraud by both parties is a valid concern in tight elections, two propositions follow. First, Republicans should be sympathetic to the legitimate importance this issue has assumed for Democrats. Second, Democrats should not be as dismissive of Republicans' fear of ballot fraud as they sometimes have been. Even if this change in partisan attitude were to occur, however, the problem of how to curtail the excesses of Republican ballot security measures is not easily resolved. The approach suggested in June 2004 by John Fund grows out of election-year excitement which he described:

The level of suspicion between the two parties is greater than ever. John Kerry says he believes Al Gore "won" the 2000 election and has assembled a team of 2,000 lawyers to "challenge any place in America where you cannot trace the vote and count the votes." Republicans have their own legal team to combat fake voter registrations, absentee-ballot fraud and residents of nursing homes being overly "assisted" to cast votes. Maria Cardona of the New Democratic Network dismisses such concerns, saying "ballot security and preventing voter fraud are just code words for voter intimidation and suppression."¹⁶

¹⁵ On the controversy over the purge list, see Associated Press, "Florida says it won't strip 2,500 ex-felons of voting rights," *Sarasota Herald Tribune*, 8 July 2004, <http://votersunite.org/article.asp?id=2060>; and Chris Davis and Matthew Doig, "Voter Purge Ignores Many Hispanic Felons," *The Ledger Online* (Lakeland, Florida), 8 July 2004, <http://www.theledger.com/apps/pbcs.dll/article?Date=20040708&Category=NEWS&ArtNo=407080418&SectionCat>. On the Bush administration's refusal to make public the purge list, see Steve Bousquet, "Felon voters list made public," *St. Petersburg Times*, 2 July 2004 1A, http://www.sptimes.com/2004/07/02/State/Felon_voters_list_mad.shtml. On the questionable behavior of the two Republican secretaries of state serving under Florida Governor Jeb Bush—Katherine Harris in 2000 and Glenda Hood in 2004, see "The Return of Katherine Harris" (editorial), *The New York Times*, 16 Sept. 2004, A.32.

¹⁶ John Fund, "This Time, Get It Right," *WSJ.com Opinion Journal*, 21 June 2004, <http://www.opinionjournal.com/forum/printThis.html?id=110005228CK>.

Fund cited approvingly the letter sent by RNC chairman Ed Gillespie to Terry McAuliffe, his Democratic counterpart, suggesting that each party identify precincts in the battleground states where trouble was expected on Election Day, and then that each party send observers, as well as bipartisan teams to cover multiple precincts.

Yet Fund's support of Gillespie's proposal is naïve. While on its face it may have some merit, such a proposal, offered in the middle of a contentious campaign without time for careful planning and the advice and help of nonpartisan outsiders, is impractical in the extreme—a judgment implied in the response to Gillespie by McAuliffe and fellow Democrat Donna Brazile, Al Gore's 2000 campaign manager.¹⁷

The mutual suspicion will undoubtedly remain through 2004, and nothing in the election season will abate it. So the question is what might, in the longer term, discourage vote fraud among both Democrats and Republicans, and also curtail vote suppression efforts that exist under the guise of Republican ballot security programs?

Solutions: Practicable . . . Or Utopian?

Law review articles by Rachel E. Berry in 1996 and by Sherry Swirsky in 2002 address vote suppression techniques under the guise of ballot security programs. Berry examines the consent decrees between the RNC and the DNC adjudicated in New Jersey, growing out of the GOP's vote suppression efforts in New Jersey in 1981 and in Louisiana in 1986. She concludes that

The battle between the RNC and the DNC over the RNC's efforts to 'suppress' black voting does not have clear winners or losers. Although the 1982 consent order proved useful as a tool for curbing RNC ballot security measures on a national level, the instrument ultimately has little utility as a method for curing the unique form of race-based campaign behavior at issue in these elections. The 1982 consent order expressed no judicial opinion of the RNC's race-based efforts to demobilize Democratic voters, and, as a result, the disputes between the RNC and the DNC in the 1980's focused less upon principles of substantive voting rights law and focused more upon the rights of the parties under the terms of the consent order. Thus, not only did the consent order not add to the body of law delimiting unfair election practices, but it allowed contract principles to permeate and control the conduct of the parties. . . . In sum, litigation brought by one party against another does not seem to be the most effective vehicle for protecting the full range of voter interests implicated by race-based political conduct.¹⁸

Berry does, however, believe that the Fifteenth Amendment has applicability to at least some ballot security excesses. She also argues that in an expansive reading of the Voting Rights Act, it, too, might be used as a weapon against racially discriminatory ballot security programs.¹⁹

Swirsky, like Berry, examines widespread GOP ballot security efforts since the early 1980s, and adds to the list of problems that of governmental investigations into alleged ballot fraud, both before and after elections. Such investigations, Swirsky writes, "even when unsuccessful, are perhaps the most insidious form of intimidation, since they not only can discourage voters from participating in a particular election, but

¹⁷ "DNC and Voting Rights Institute Call on RNC to Honor Commitment of Fairness in 2004 Electoral Process," *Democratic News* (DNC Press Office), 2 July 2004.

¹⁸ Berry, "Democratic National Committee v. Edward J. Rollins," 50-51.

¹⁹ *Ibid.*, 57, 60.

can deter them from participating in the future.” This point was brought home dramatically in the summer of 2004 when Florida Department of Law Enforcement agents, contacting black voters door-to-door whose absentee ballots were in question, revealed their side arms to the voters. When a civil rights group charged them with intimidation, a spokesman for the agents denied it, saying it was a hot day and agents needed to take off their jackets.²⁰

Swirsky’s criticism of ballot security programs in general is that even if the tactics employed by them “could be shown to have some role in reducing fraud, they are invariably over-inclusive, and are suspect because of their disparate impact on minorities.”²¹

She examines the Civil Rights Act of 1957, the Voting Rights Act of 1965, and the National Voter Registration Act of 1993 (Motor Voter), and points to shortcomings all three have in prohibiting efforts by private persons to intimidate minority voters under the guise of ballot security programs.²² Given these problems, she urges lawyers both to clarify these laws and liberalize them through litigation, making them more applicable to “ballot security” intimidation than they currently are.

Swirsky also urges a greater degree of preparedness for ballot intimidation than has existed in the past, including establishment of “a network of volunteer lawyers as a component of a campaign.” She points to Democratic party organizations as examples of such networks, and spells out the various kinds of activities they perform far in advance of elections, as well as on Election Day. Effective use of the media and comprehensive voter education also would play an important role.²³ Finally, she stresses what is sometimes overlooked in Democratic accounts of Republican ballot security programs:

[V]oter registration drives must be carefully administered to avoid registration of ineligible persons, such as non-citizens, so as to minimize the accusations of voter fraud that inevitably fuel efforts to impair the rights of minority voters. In short, there should be zero tolerance for incidents of intimidation or fraud, whether committed by whites or blacks, Republicans or Democrats.²⁴

Laughlin McDonald, director of the Voting Rights Project of the American Civil Liberties Union, by implication agrees with both Berry and Swirsky. While “existing federal laws make it a crime to intimidate or harass minority voters,” he writes, their enforcement has been lax. “There is no record of the purveyors of any ballot-security program being criminally prosecuted by federal authorities for interfering with the right to vote,” he writes. McDonald therefore urges that victims of the excesses of ballot security programs bring private damage suits, and he points to a precedent-setting decision by an Arkansas federal appeals court which affirmed damages of from \$500 to \$2,000, payable by poll officials, to seven black voters who had been “unlawfully

²⁰ Sherry Swirsky, “Minority Voter Intimidation: The Problem That Won’t Go Away,” *Temple Political and Civil Rights Law Review* 11 (Spring 2002): 367; Mike Branom, “Vote group says agents were frightening,” *South Florida Sun-Sentinel*, 17 July 2004, 7B.

²¹ Swirsky, “Minority Voter Intimidation,” 368.

²² *Ibid.*, 370-77.

²³ An example of such networks is described early in this Report in the case of Louisville, Kentucky, in 2003.

²⁴ Swirsky, “Minority Voter Intimidation,” 379-82.

challenged, harassed, denied assistance in voting or purged from the rolls in the town of Crawfordsville.”

In addition, McDonald urges Congress and the states to “adopt nondiscriminatory, evenly applied measures to ensure the integrity of the ballot.”²⁵ In the same spirit, an editorial in *The New York Times* has proposed the following steps be taken:

The Republican and Democratic Party chairmen should publicly commit not to single out minority voters for intimidation, and to get this message out to party workers at every level.

The National Association of Secretaries of State, and individual secretaries of state and state election officers, should state publicly that they will be on the lookout for minority vote suppression, and that they will deal with it strictly.

The Department of Justice, which has lately seemed more focused on voter fraud than minority voter intimidation, should explain how it intends to discharge its legal duty to protect minorities from discrimination in voting.

Prosecutors should vigorously pursue anyone involved in vote suppression; this is rarely done now. And its victims should bring civil lawsuits, to make those who engage in it pay.²⁶

A Role for the EAC?

In this context, the possibilities offered by the Help America Vote Act (HAVA), and particularly by its Election Assistance Commission (EAC), warrant consideration. Congress passed HAVA in October 2002, purportedly to prevent the kind of problems that brought Florida’s election process international notoriety two years previously. Ironically, the law has come under attack by African-American leaders, by many Democratic officials, and by some voting rights lawyers for, among other things, requiring on Election Day photo identification or various other documents (e.g., a utility bill or bank statement) for those who have not previously voted and who have registered by mail. People who show up at the voting station without such documents will be required to cast a special “provisional” ballot.²⁷

McDonald points to three problems with this requirement. First, blacks are far less likely than whites to carry such documents with them. Second, there is no convincing evidence that this requirement reduces voter fraud. Third, the requirement enables aggressive poll officials to “single out minority voters and interrogate them, asking humiliating questions such as, ‘Where’s your government check?’ and, ‘Don’t you have a bank statement?’”²⁸ It is no surprise, then, that the ID requirement of HAVA, as well as more expansive ID requirements favored by Republicans and recently passed by some state legislatures, have been opposed by many Democrats and civil rights organizations, as well as by the nonpartisan League of Women Voters.²⁹

²⁵ Laughlin McDonald, “The New Poll Tax: Republican-sponsored ballot-security measures are being used to keep minorities from voting,” *The American Prospect*, 30 Dec. 2002, 28.

²⁶ “Bad New Days for Voting Rights,” *The New York Times*, 18 April 2004, WK12.

²⁷ For a sharply framed critique of various aspects of HAVA concerning minority voters, see Anita Earls, “Election Reform and the Right to Vote,” paper prepared for the Right-to-Vote Amendment Roundtable, 21 Nov. 2003, Claim Democracy conference, Washington, D.C.

²⁸ McDonald, “The New Poll Tax,” 27.

²⁹ See, for example, the conflict in the Mississippi legislature where Republicans have pushed to raise the bar significantly higher than that required by HAVA. In 2004 they proposed that by January 2006 all voters—not just first-time voters who have registered by mail—show ID, such as a driver’s license, passport, or work identification card. Andy Kanengiser, “Negotiators unable to reach compromise on voter

On the other hand, numerous organizations and individuals (including the DNC's McAuliffe and Brazile) concerned with securing and expanding the right to vote have seen HAVA as offering many opportunities for reform. One such opportunity is implicit in one of the many legal duties of the four-member bipartisan Election Assistance Commission (EAC), namely, periodically conducting a wide range of studies, whose goal

... will be to promote methods of voting and election administration which are the most convenient, accessible and easy to use for all voters (UOCAVA, disabled, limited English); will yield the most accurate, secure, and expeditious system for voting and vote tabulation; will be nondiscriminatory; and will be efficient and cost effective. Among the studies to be conducted under this rubric will be those focusing on:

- Nationwide statistics and methods of identifying, deterring and investigating voter fraud.
- Identifying, deterring and investigating methods of voter intimidation.
- Methods of recruiting, training, and improving the performance of poll workers.
- Methods of educating voters about voter registration, voting, operating voting mechanisms, locating polling places and other aspects of participation.³⁰

The severe underfunding of the EAC in the two years following passage of HAVA does not augur well for its influence—nor does President Bush's requested budget cut for the Commission in the upcoming fiscal year.³¹ Moreover, its statutory role is largely advisory. Still, there is something to be said for the EAC's taking on the task of resolving the problems preventing honest, fair and accessible voting procedures that so exercise both parties. If the RNC and DNC are serious in wanting to work out an accommodation regarding ballot security, they would be advised to jointly approach the Commission once the elections of 2004 are over, and perhaps in conjunction with the Voting Section of the Justice Department, lawyers of both parties, nonpartisan groups such as the League of Women Voters and Election Reform Information Project, interested citizens, and knowledgeable election administrators of both parties, have the EAC devise a set of rules to which Democrats and Republicans would be bound.³²

Such a proposal may sound utopian, given the intensity of the interparty conflict over ballot fraud and ballot security programs, as well as the emotions surrounding the

ID bill," *The Clarion-Ledger* (Jackson), 6 May 2004, 1A. This strategy of raising the bar for voting requirements is specifically opposed by the League of Women Voters. Among the goals enunciated by the League in implementing HAVA is the following: "Oppose efforts by state legislatures or election officials to distort the federal law by requiring *all* voters to show ID at the polls instead of just first-time voters who register by mail." *The National Voter*, May/June 2003, 15 (emphasis in original).

³⁰ Election Assistance Commission: Duties and Responsibilities; General Responsibilities (Title II, Subtitle A, Part 1 Sections 202, 206, 207 & 209), Periodic Studies of Election Administration Issues (Title II, Subtitle C – Section 241). "UOCAVA" is the acronym of Uniformed and Overseas Citizens Absentee Act. See http://www.eac.gov/law_ext.asp for duties of the EAC.

³¹ "DNC and Voting Rights Institute Call on RNC to Honor Commitment of Fairness in 2004 Electoral Process," *Democratic News* (DNC Press Office), 2 July 2004.

³² For a description of the EAC's duties and powers, see Help America Vote Act, Public Law 107-252, 107th Congress, especially Sections 201-210, http://www.eac.gov/law_ext.asp. See also the League of Women Voters, "Helping America Vote: Safeguarding the Vote." This document, available as a PDF, addresses current issues regarding the training of poll workers, voting machine technology, and implementing accurate and complete voter registration lists. The latter, in particular, bears on the issues of both vote fraud and minority vote suppression.

presidential election of 2004 generally. Nonetheless, each side has something to gain from an accommodation. The Republicans are composed overwhelmingly of white non-Hispanics, for reasons going back to the fateful decision made by its leaders in the 1960s to embark on the southern strategy. Some Republicans are no doubt happy to see their party remain overwhelmingly white. Others are uncomfortable, on moral grounds, with that situation, and still others, perhaps on more pragmatic grounds, are worried that with the rapid growth of the Latino population, the GOP will soon become uncompetitive in several states and hence nationally. These latter groups should be deeply concerned about their party's continuing image as unfriendly to minority voters. And the negative publicity garnered by ballot security programs gone bad continues to contribute to that image.

Democrats, on the other hand, express legitimate concern about these programs' ability to disfranchise minority voters. But in opposing all ballot security efforts by Republicans, including legitimate ones, they contribute to a popular stereotype that Democrats are uninterested in preventing voting fraud. Such a stereotype, of course, enables Republicans, in the court of public opinion, to justify their ballot security efforts, including those that seem clearly designed to curtail the minority vote. There is ample reason, therefore, for both parties jointly to seek the advice and assistance of neutral third parties after the 2004 elections to solve their respective problems.



The Driver License Status of the Voting Age Population in Wisconsin

by John Pawasarat, Employment and Training Institute, University of Wisconsin-Milwaukee, June 2005.

Because one of the most important employment issues facing central city Milwaukee residents is access to a valid drivers license, the UWM Employment and Training Institute has conducted considerable research on drivers license suspension and revocation issues for Milwaukee adults and teenagers and explored the impacts of past and current state policies suspending licenses for failure to pay fines and forfeitures on residents of central city neighborhood. **This research report provides a first-time analysis of drivers license issues based on the racial/ethnicity of drivers and unlicensed adults in Wisconsin.** The importance of possessing a valid drivers license cannot be overstated in Milwaukee's labor market. Annual employer surveys conducted by the Employment and Training Institute for the Private Industry Council of Milwaukee County have found that three-fourths of Milwaukee area job openings are located in Milwaukee County suburbs and the exurban counties of Waukesha, Ozaukee, and Washington counties – usually not easily accessed by public transportation. Research on welfare recipients finding employment showed that possession of a drivers license and car was a stronger predictor of leaving public assistance than even a high school diploma.

For this report, new ETI research on interrelationships between race/ethnicity, income and geography for the drivers license issue is applied to proposals in the Wisconsin Legislature to require state drivers licenses or photo IDs as identification for voting in elections in the state. The report details the impact of the proposed voter identification legislation on the population of adults 18 and older in the State of Wisconsin compared to the population of adults with a current driver license and current address. The number of Wisconsin licensed drivers is taken from the Department of Transportation (DOT) computer database for licensed drivers current as of January 31, 2002 and analyzed by age, race/ethnicity, gender, and geography. The Census 2000 full count (Summary File 1) for Wisconsin and Milwaukee County is used as the base for comparison. Individuals who were 16 or older on April 1, 2000, the reference date of the Census, are compared to the population of drivers with a drivers license 2 years later when they reached legal voting age. Data on Wisconsin DOT photo ID utilization was only available at the state level by age and gender, and this data is incorporated in the analysis where possible.

Findings

1. Many adults do not have either a drivers license or a photo ID. An estimated 23 percent of persons aged 65 and over do not have a Wisconsin drivers license or a photo ID. **The population of elderly persons 65 and older without a drivers license or a state photo ID totals 177,399**, and of these 70 percent are women. While racial data was not available on the state population with photo IDs, 91 percent of the state's elderly without a Wisconsin drivers license are white. **An estimated 98,247 Wisconsin residents ages 35 through 64 also do not have either a drivers license or a photo ID.**
2. Minorities and poor populations are the most likely to have drivers license problems. Less than half (47 percent) of Milwaukee County African American adults and 43 percent of Hispanic adults have a valid drivers license compared to 85 percent of white adults in the Balance of State

(BOS, i.e., outside Milwaukee County). The situation for young adults ages 18-24 is even worse -- with only 26 percent of African Americans and 34 percent of Hispanics in Milwaukee County with a valid license compared to 71 percent of young white adults in the Balance of State.

3. A large number of licensed drivers have had their licenses suspended or revoked, many for failure to pay fines and forfeitures rather than traffic points violations. The drivers license file shows 39,685 individuals in Milwaukee County who have drivers licenses but also recent suspensions or revocations on their licenses. Another 49,804 Milwaukee County adults had a recent suspension/revocation but no license with the DOT. Only 65 percent of adults in Milwaukee County have a current and valid Wisconsin drivers license, compared to 83 percent of adults in the Balance of State.
4. A portion of the population with a drivers license and a recent suspension or revocation may retain their license as an ID for voting and others may secure a state photo ID. These licenses cannot be renewed, however, without clearing up the outstanding fines and fees.
5. Students without a Wisconsin drivers license or a Wisconsin photo ID would need to obtain either one to vote. Those students and young adults living away from home but retaining their permanent home address on their drivers license need to provide proof of residence to vote prior to registration under current laws. Because the drivers license is a valid ID, regardless of address, few if any in this population would have a photo ID with a current address. These individuals may have a Wisconsin or out-of-state drivers license but not one with a current address. At UWM, Marquette University, and the University of Wisconsin-Madison, a total of 12,624 students live in residence halls, but only 280 (2 percent) have drivers licenses with these dorms' addresses. All others require special handling to vote under proposed and current legislation.
6. The population that changes residence frequently is most likely to have a drivers license address that differs from their current residence. This would include lower-income residents who rent and students and young adults living away from home (who are likely to have a drivers license listing an incorrect address or their permanent home address). To illustrate this point, 16 Wisconsin ZIP codes were identified which have the highest concentration of undergraduate students (both in dorms and in apartments). These ZIP codes had 118,075 young voting age adults (ages 18-24) but 83,981 (or 71 percent) 18-24 year olds did not have a drivers license with this current ZIP code address. Over half of the adults of the 18-24 year old age group did not have a drivers license with an address in their current ZIP code for college neighborhoods in Eau Claire, LaCrosse, Madison, Milwaukee, Oshkosh, Platteville, River Falls, Stevens Point, Stout, and Whitewater. All of those without a current address on their drivers license or ID need to provide proof of residence.

I. Drivers License Status for Minorities

The number and percent of minorities who are Wisconsin residents has been increasing, particularly in Southeast Wisconsin. This population is also very young. Minorities are much less likely to have a drivers license and if they do, they are much more likely to have a recent license suspension or revocation. Having a suspension or revocation could result in a large number of licenses not having a current address and licenses not being renewed.

Statewide, the percent of Wisconsin residents with a valid drivers license is 80 percent for males and 81 percent for females. For African-Americans, only 45 percent of males and 51 percent of females have a valid drivers license. Hispanics show 54 percent of males and only 41 percent of females with a valid drivers license.

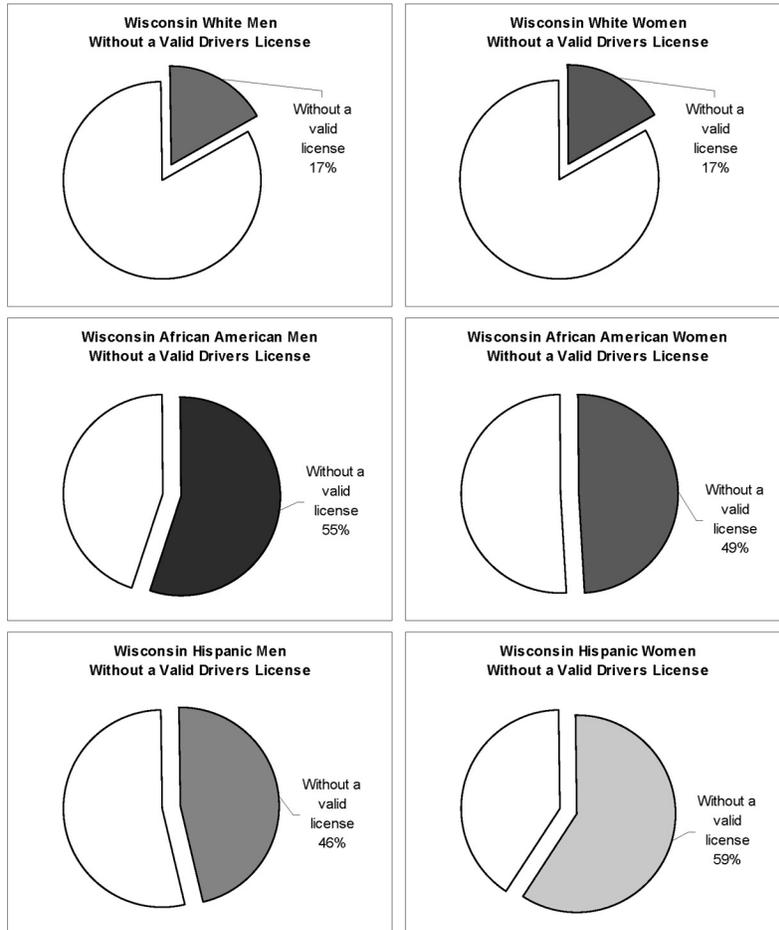
For young adults (ages 18 through 24) even fewer minorities have valid drivers licenses to use for voter identification under the proposed legislation. Statewide, only 22 percent of young African American males and 34 percent of young African American females have a valid license. For young Hispanics, 43 percent of males and only 37 percent of females have a valid license. For whites, 64 percent of males and 75 percent of females have valid licenses.

Many Wisconsin residents have a drivers license with a recent suspension or revocations, and minorities are twice as likely to be in this situation. If these individuals have retained their license, they will be able to use it as an ID for voting purposes. Statewide, an estimated 11 percent of African American adults and 8 percent of Hispanic adults have a license with a current revocation or suspension, compared to 4 percent of whites.

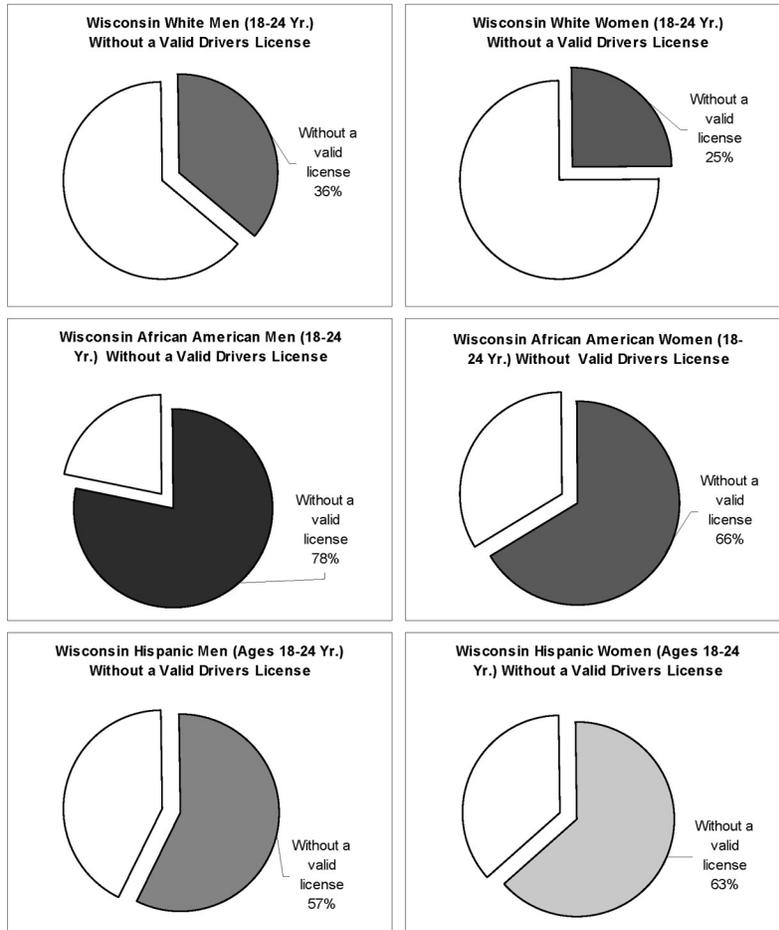
An even larger number have no license but a recent suspension or revocation. An estimated 17 percent of African American adults and 8 percent of Hispanic adults, compared to 1 percent of white adults, fall into this category.

A portion of the population without a drivers license – whether valid or not – will have a photo ID, but without an analysis by race and location, it is not possible to estimate that population.

The graphs below show the percentages of adults of voting age (ages 18 and above) in Wisconsin with valid drivers licenses, without recent suspensions or revocations.



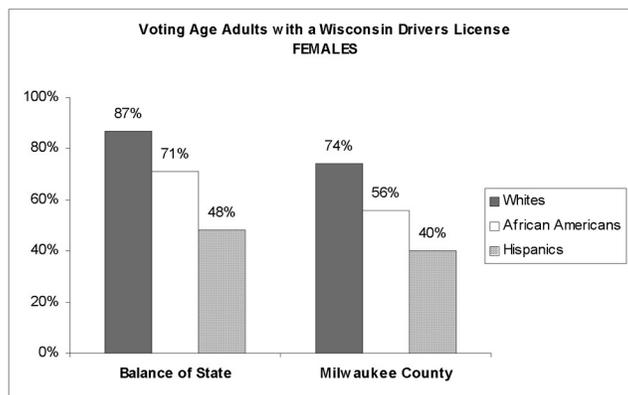
The graphs below show the percentages of **young adults (ages 18 through 24)** in Wisconsin with valid drivers licenses, without recent suspensions or revocations.

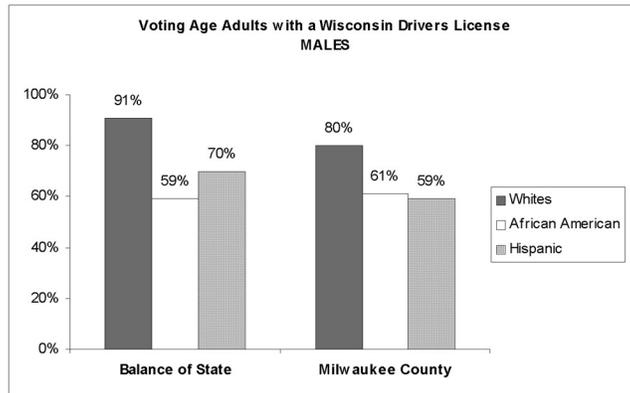


II. Drivers License Status of Milwaukee County Residents

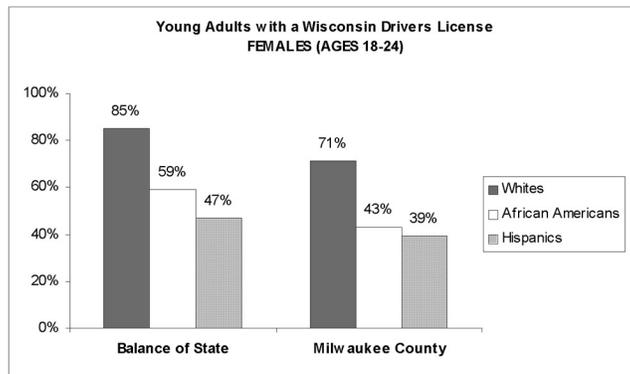
Milwaukee County residents are more than twice as likely to be without a drivers license as adults in the balance of the state. Almost a third (30 percent) of Milwaukee County voting age adults do not have a drivers license compared, to 12 percent of residents in the Balance of State. The county is home to much of the state's African American and Hispanic populations who have lower percentages with a current drivers license. Milwaukee is also home to Marquette University, UWM, and a number of other post-secondary institutions that house significant numbers of non-resident students. Dense urban neighborhoods and extensive mass transit systems may also account for more individuals without a drivers license in Milwaukee County.

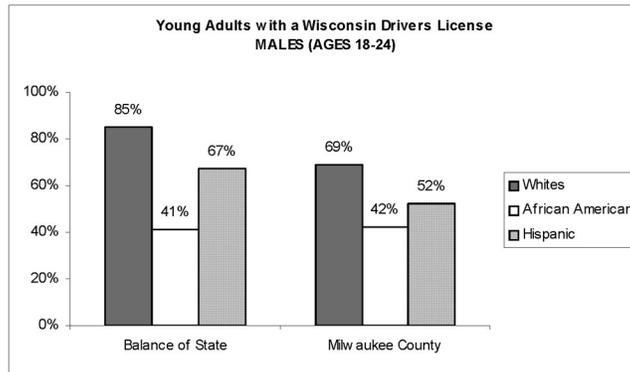
The graphs below (and the tables on pages 21-22) show the differing impacts by race/ethnicity and area of the state (i.e., Milwaukee County and the "balance of the state") that would result from using the drivers license as a voter ID. The combination of race and geography results in some populations having less than half of the percentage of eligible voters based on drivers license ID requirements. This analysis does not include photo ID utilization, as the published state photo ID data is only available by age and gender and at the state level. **In the graphs below all licensed drivers are included, including persons with suspensions and revocations.**





The percentages of young adults with drivers licenses for use as voter IDs is strikingly lower than for the voting age population as a whole. For some minority subpopulations, less than half of young voting age adults show a current drivers license. **In the graphs below all licensed drivers are included, including persons with suspensions and revocations.**





A ZIP code analysis of the percentages of adults of voter age holding drivers licenses shows wide differences within Milwaukee County as well. The tables below show the percentage of Milwaukee County adults with drivers licenses.

The first table shows adults with a valid license. In the 53217 “North Shore” communities of Bayside, Fox Point, Glendale and parts of River Hills, and Whitefish Bay, 92 percent of adult males and females had valid drivers licenses, compared to rates of 40 percent or below on the near northside of Milwaukee (ZIP codes 53205 and 53206) and around Marquette University (53233).

The second table shows adults with any Wisconsin drivers license, whether valid, suspended or revoked. Here, the percentages of males with licenses is 95 percent or above in the “North Shore” (ZIP code 53217), Hales Corners (ZIP code 53130), and Oak Creek (ZIP code 53154). Fewer than half of females in Milwaukee ZIP codes 53233, 53204, 53205, and 53206 had a license.

Voting Age Adults in Milwaukee County with Valid Drivers Licenses

ZIP Code (ZCTA)	Voting Age Males	% of males with a valid drivers license in the ZIP Code	Voting Age Females	% of females with a valid drivers license in the ZIP Code
Milwaukee 53233	7,485	21%	6,471	16%
Milwaukee 53205	2,858	38%	3,854	36%
Milwaukee 53206	8,860	40%	12,555	37%
Milwaukee 53204	15,707	47%	13,113	33%
Milwaukee 53212	9,796	47%	11,827	44%
Milwaukee 53210	8,632	49%	11,713	50%
Milwaukee 53208	10,668	53%	12,992	46%
Milwaukee 53202	11,129	55%	9,217	57%
Milwaukee 53216	9,976	57%	13,577	60%
Milwaukee 53218	11,895	61%	15,734	58%
Milw., Wauwatosa 53225	8,582	62%	10,497	63%
Milwaukee, Brown Deer, Glendale, River Hills 53209	15,447	62%	20,067	63%
Milw., West Milw. 53215	19,384	63%	20,407	52%
Milwaukee 53224	6,247	63%	7,565	63%
Milw., Shorewood, W. Bay 53211	14,669	65%	16,068	64%
W. Allis, Milw., W. Milw. 53214	14,124	65%	14,474	68%
Milw., Brown Deer 53223	10,443	66%	13,060	65%
St. Francis 53235	3,562	67%	3,878	63%
W. Allis, Milw., Greenfield 53227	9,273	74%	10,534	71%
Milwaukee, Greenfield, West Allis, West Milwaukee 53219	12,956	74%	14,995	70%
Milwaukee 53207	14,327	75%	15,028	74%
Milwaukee, Wauwatosa 53222	8,818	76%	11,357	71%
Franklin 53132	12,208	77%	11,121	90%
Wauwatosa, Milwaukee 53226	7,085	77%	8,433	77%
Milwaukee, Greenfield 53221	13,444	78%	15,615	72%
Cudahy 53110	7,007	79%	7,639	75%
Wauwatosa, Milwaukee 53213	9,298	80%	10,974	80%
Greenfield, Milwaukee 53220	9,532	81%	11,319	78%
South Milwaukee 53172	8,001	81%	8,342	83%
Greenfield, Milwaukee 53228	5,295	85%	6,292	80%
Oak Creek 53154	10,832	88%	11,564	87%
Greendale 53129	5,329	88%	6,145	89%
Hales Corners 53130	2,826	89%	3,302	84%
Bayside, Fox Pt., Glendale, River Hills, W. Bay 53217	10,707	92%	12,087	92%
Milwaukee County	336,402	66%	381,816	65%

**Voting Age Adults in Milwaukee County with Drivers Licenses
(including Valid, Suspended and Revoked Licenses)**

ZIP Code (ZCTA)	Voting Age Males	% of males with a drivers license in the ZIP Code	Voting Age Females	% of females with a drivers license in the ZIP Code
Milwaukee 53233	7,485	25%	6,471	19%
Milwaukee 53205	2,858	49%	3,854	42%
Milwaukee 53206	8,860	55%	12,555	43%
Milwaukee 53204	15,707	58%	13,113	36%
Milwaukee 53212	9,796	61%	11,827	50%
Milwaukee 53210	8,632	64%	11,713	56%
Milwaukee 53208	10,668	65%	12,992	50%
Milwaukee 53202	11,129	61%	9,217	59%
Milwaukee 53216	9,976	72%	13,577	66%
Milwaukee 53218	11,895	75%	15,734	63%
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Greendale 53129	5,329	93%	6,145	90%
Hales Corners 53130	2,826	95%	3,302	86%
Bayside, Fox Pt., Glendale, River Hills, W. Bay 53217	10,707	96%	12,087	93%
Milwaukee County	336,402	75%	381,816	68%

III. License Suspensions and Revocations

Wisconsin law permits units of government to suspend a drivers license for failure to pay outstanding fines. In the case of juveniles who fail to pay fines for truancy, curfew violations, underage drinking, jaywalking, etc., a suspension order is placed which prevents the youth from obtaining a license until these fines are paid. The suspensions solely for failure to pay bills make up almost half of the total suspensions in the state. Previous studies of the impact of these suspensions have shown the adverse impact on residents of central city neighborhoods in Milwaukee. Milwaukee County residents are twice as likely to have a suspension in a year than are residents in the balance of the state. Most of this disparity occurs because Milwaukee has the largest concentration of poor young minorities, who show the highest levels of suspensions for failure to pay fines.¹ Review of drivers license files showed 89,489 Milwaukee County residents and 237,434 adults in the Balance of State with recent license suspensions or revocations. Other residents lost their licenses in the past and have not paid the fines and fees required to restore them.

IV. Drivers License Status of Elderly Residents

The population of 177,399 older persons without a Wisconsin drivers license or photo ID would be adversely effected by the voter ID legislation proposed, except for those living in nursing homes and assisted living quarters. Nearly all of those affected appear to be white (91 percent) and most are female (70 percent). The population of those 65 and over totaled 780,947 as of 2002 (based on Census data), while those with a Wisconsin drivers license totaled 560,686 and those with a photo ID and no license totaled 42,862, leaving 177,399 without an ID. Only a small portion (5 percent) of the older population is in a nursing home (38,199 persons statewide as of 2000) and some of these nursing home residents may still have an unexpired Wisconsin drivers license.

V. License Status of College Students in Residence Halls

Students enrolled at post secondary institutions and not currently living at home may face problems when attempting to vote while at school. Most college students do not change their drivers license address when attending school. Student ID's typically do not include addresses, and students in dorms are most often under 21 years of age with no reason to obtain a photo ID from the DOT to prove they are of legal drinking age. Statewide, students living in dormitories in the 2000 Census totaled 51,249.

As shown below, very few University of Wisconsin-Milwaukee, University of Wisconsin-Madison, and Marquette University students 18-24 years of age have a drivers license that lists their dorm as their current address. Fewer than 3 percent of students have a drivers license with their current

¹ See John Pawasarat, **Removing Transportation Barriers to Employment: The Impact of Driver's License Suspension Policies on Milwaukee County Teens** (University of Wisconsin-Milwaukee Employment and Training Institute, 2000) online at www.uwm.edu/Dept/ETI/barriers/tccnsdot.htm; John Pawasarat and Frank Stetzer, **Removing Transportation Barriers to Employment: Assessing Driver's License and Vehicle Ownership Patterns of Low-Income Populations** (UWM Employment and Training Institute, 1998) online at www.uwm.edu/Dept/ETI/dot.htm; and **Neighborhood Indicators Central City Milwaukee: 1992-Present** online at www.uwm.edu/Dept/ETI/reports/indy.page.htm.

residence hall address, while 97 percent could require special handling at the polls under proposed legislation and at the time they register to vote under current legislation.

**University Students in Residence Halls Compared to Licensed Drivers at the Address:
UWM, Marquette University, and UW-Madison**

Residence Hall	Address	With Drivers License at address	Residents Capacity
University of Wisconsin-Milwaukee:			
Sandburg Residence Halls	3400 N. Maryland Ave.	51	2,700
Marquette University (Milwaukee)			
Cobeen Hall	729 N. 11 th Street	8	350
Carpenter Hall	716 N. 11 th Street	3	300
Mashuda Hall	1530 W. Wisconsin Ave.	10	400
McCormick Hall	1530 W. Wisconsin Ave.	9	725
O'Donnell Hall	725 N. 18 th Street	6	300
Schroeder Hall	715 N. 13 th Street	7	650
South Hall	525 N. 17 th Street	1	87
Straz Hall	915 W. Wisconsin Ave.	12	376
(Sub-total, Marquette University)		(56)	(3,188)
University of Wisconsin-Madison			
Adams Hall	1520 Tripp Circle	12	276
Barnard Hall	970 University Ave.	8	138
Bradley Hall	1900 Willow Drive	10	246
Chadbourne Hall	420 N. Park Street	23	687
Cole Hall	625 Elm Drive	8	244
Elizabeth Waters Hall	1200 Observatory Drive	5	473
Friedrick Center	1950 Willow Drive	0	50
Kronshage Hall	1650 Kronshage Drive	11	616
Merit House	919 W. Dayton Street	0	23
Ogg Hall	716 W. Dayton Street	38	950
Sellery Hall	821 W. Johnson Street	21	1,148
Slichter Hall	625 Babcock Drive	7	198
Sullivan Hall	635 Elm Drive	5	257
Tripp Hall	1510 Tripp Circle	8	280
Witte Hall	615 W. Johnson Street	17	1,150
(Sub-total, UW-Madison)		(173)	(6,736)

There are 15 residence halls at the University of Wisconsin-Madison, having a capacity of 6,736 beds. However, the number of licensed drivers with the residence hall addresses totaled 173, or less than 3 percent of the residents. At the Sandburg Residence Halls at UWM, out of 2,700 dorm residents, less than 2 percent of dorm residents had a drivers license with the Sandburg address. Similarly, less than 2 percent of the students living in the Marquette University dorms (or 56 out of 3,188 residents) had a drivers license with their dorm's address. It is not possible, based on published data tables for state photo IDs, to determine how many students have obtained Wisconsin photo IDs or how many have state drivers licenses with a different home address listed.

College students not in dorms may be in a similar situation. Students and young people who move away from home to attend school usually have a drivers license but do not change their license address during college. In many cases younger adults may not change their license address until they find a permanent job except for occasional situations when a current drivers license may be required for another purpose. (For example, the City of Milwaukee overnight parking permits require a current drivers license with the address where the vehicle is parked.)

The Wisconsin DOT drivers license file and Census 2000 (SF3 file) are used to assess the degree to which students do not change their license address in “**student intense ZIP codes**” throughout the state. The U.S. Census data was used to compare the number of 18 through 21 year olds to the number enrolled in undergraduate programs in each Wisconsin ZIP code. The top 16 ZIP codes (ZCTAs, Zip Code Tabulation Areas) where the highest number of undergraduates resided accounted for a total of 96,589 undergraduates and 78,075 young people ages 18 through 21. The 18-21 year old population with a drivers license in these same 16 ZIP codes totaled 15,321, or 20 percent of those 18 through 21 years old. The population in these 16 ZIP codes without a drivers license with their current residence totaled 62,754. When the population of 22 to 24 year olds are included, the number without a drivers license address at the current address totals 83,981. In some ZIP codes 98 to 99 percent of the students do not have a license with their current school address.

18, 19 and 20 Year Olds in the 2000 Census and With a Drivers License for the ZIP Code for the Top 16 Student-Intensive ZIP Codes in Wisconsin

ZIP Code (ZCTA)	Census 2000 population 18-20 yr.	With drivers license at this ZIP Code	Without a drivers license at this ZIP Code	% without a drivers license at this ZIP Code
Madison 53703	5,527	308	5,219	94%
Madison 53706	4,872	56	4,816	99%
LaCrosse 54601	5,880	1,124	4,756	81%
MU-Milwaukee 53233	4,379	109	4,270	98%
Whitewater 53190	4,042	456	3,586	89%
Eau Claire 54701	4,711	1,152	3,559	76%
Oshkosh 54901	4,222	913	3,309	78%
Stevens Point 54481	4,010	1,089	2,921	73%
Stout 54751	3,287	632	2,655	81%
UW-Milwaukee 53211	3,435	1,138	2,297	67%
Platteville 53818	2,286	363	1,923	84%
River Falls 54022	2,493	578	1,915	77%
Madison 53705	2,660	750	1,910	72%
Madison 53715	1,781	135	1,646	92%
Milwaukee 53202	1,307	122	1,185	91%
Eau Claire 54703	2,371	1,345	1,026	43%
Total 16 ZIP Codes	57,263	10,270	46,993	82%

The problem of young adults without drivers licenses at their current address is not limited to the

younger college student population. An analysis of the population of 21-24 year olds in the “student intense ZIP codes” also showed a large number of adults aged 21-24 without a drivers license for the ZIP code. Almost 37,000 young adults, 61 percent of those living in these college area ZIP codes, did not have a drivers license for that ZIP code.

**21-24 Year Olds in the 2000 Census and With a Drivers License for the ZIP Code
for the Top 16 Student-Intensive ZIP Codes in Wisconsin**

ZIP Code (ZCTA)	Census 2000 population 21-24 yr.	<u>With</u> drivers license at this ZIP Code	<u>Without</u> a drivers license at this ZIP Code	<u>% without</u> a drivers license at this ZIP Code
Madison 53703	9,247	2,464	6,783	73%
LaCrosse 54601	5,725	2,938	2,787	49%
Oshkosh 54901	4,669	1,886	2,783	60%
MU-Milwaukee 53233	3,315	563	2,752	83%
UW-Milwaukee 53211	5,037	2,331	2,706	54%
Stevens Point 54481	4,456	1,988	2,468	55%
Whitewater 53190	3,369	928	2,441	72%
Madison 53715	3,197	795	2,402	75%
Eau Claire 54703	4,431	2,220	2,211	50%
Stout 54751	3,365	1,201	2,164	64%
Milwaukee 53202	2,941	1,158	1,783	61%
Platteville 53818	2,105	645	1,460	69%
River Falls 54022	2,442	990	1,452	59%
Madison 53705	3,010	1,681	1,329	44%
Eau Claire 54701	3,198	1,946	1,252	39%
Madison 53706	305	90	215	70%
Total 16 ZIP Codes	60,812	23,824	36,988	61%

VI. The Number of Unlicensed Adults Is Expected to Grow

According to population estimates prepared by the Wisconsin Department of Administration, the population of adults aged 18 or older as counted in the 2000 Census is continuing to grow in the state, in part because as older residents die or move away from Wisconsin, they are being replaced by a much larger population of young adults. For example, the population of 65-year olds in the 2000 Census totaled 36,876, while the population of 17-year olds in Wisconsin totaled 81,360.

The Wisconsin Department of Administration estimates the population of Wisconsin residents 18 or over as of January 1, 2004 to be 4,119,320, or a 124,401 increase over the 2000 Census count. Assuming the same annual growth of the 18 and over population, the January 1, 2005 estimate will be close to 4,152,521, or 157,602 higher than 2000 population count.

VII. Households Without a Vehicle Unlikely to Have Current Licensed Drivers

Census 2000 special tabulation files for the PUMS (Public Use Microdata Sample) offer detailed data on households in Wisconsin. Of particular interest are those households that do not have any vehicles. Statewide, a total of 371,501 persons, aged 18 and over, were reported in households with 0 vehicles (cars or trucks). These persons were heavily concentrated in the City of Milwaukee, where 87,300 adults were in households without vehicles. While many adults in other households may be unlicensed, it is likely that households where there is no car or truck owned by any household member would have much higher numbers of persons without current drivers licenses. As shown in the table below, while the City of Milwaukee has 11 percent of the state's adult population, it has 23 percent of the adults living in households without a vehicle.

**Wisconsin Voting Age Adults Without a Vehicle in Their Household
Census 2000 PUMS Files**

<u>Location</u>	Total Voting Age Adult Population:		Adults With NO Vehicle in the Household:	
	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>
State of Wisconsin	3,990,736	100%	371,501	100%
City of Milwaukee	425,372	11%	87,300	23%
Milwaukee County Suburbs	288,667	7%	23,831	6%

As seen in the tables below, the number of adults without a vehicle in their household varies greatly by subpopulation. Older adults, for example, without vehicles in their household reflect statewide distributions of this age cohort and show less intense concentration in the City of Milwaukee compared to outstate. The numbers of older adults without vehicles in the household are similar for the City of Milwaukee as for the Milwaukee County suburbs.

Wisconsin Older Adults (Ages 55 and Above) Without a Vehicle in Their Household
Census 2000 PUMS Files

<u>Location</u>	<u>Total Adult Population (Ages 55+):</u>		<u>Older Population With NO Vehicle in the Household:</u>	
	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>
State of Wisconsin	1,111,676	100%	149,158	100%
City of Milwaukee	98,902	9%	24,351	16%
Milwaukee County Suburbs	84,872	8%	14,441	10%

Non-white residents show very different patterns of potential impact of drivers license policies on voting. Fully, 60 percent of African American adults in Wisconsin without a car or truck in their household live in the City of Milwaukee.

Wisconsin African American Voting Age Adults Without a Vehicle in Their Household:
Census 2000 PUMS Files

<u>Location</u>	<u>Adult African American Population (Ages 18+):</u>		<u>Adult Afr. Americans With NO Vehicle in the Household:</u>	
	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>
State of Wisconsin	327,073	100%	80,034	100%
City of Milwaukee	170,209	52%	47,858	60%
Milwaukee County Suburbs	15,264	5%	3,104	4%

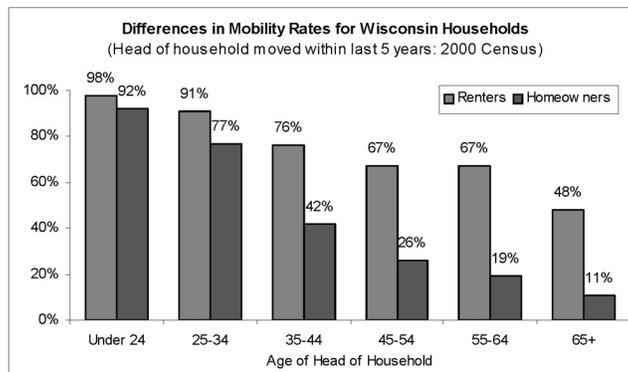
Wisconsin White Voting Age Adults Without a Vehicle in Their Household:
Census 2000 PUMS Files

<u>Location</u>	<u>Adult White Population (ages 18+):</u>		<u>Adult White Pop. With NO Vehicle in the Household:</u>	
	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>
State of Wisconsin	3,663,663	100%	291,467	100%
City of Milwaukee	255,163	10%	39,442	14%
Milwaukee County Suburbs	253,403	7%	20,727	7%

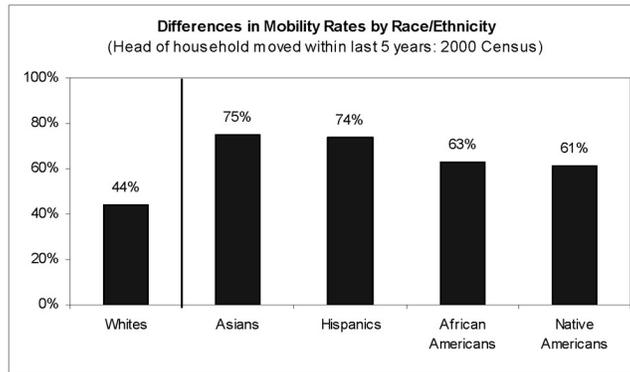
VIII. Subpopulations Without a Current License or Photo ID Address

Many people move to another residence at various times and for various reasons. As a result, some subpopulations will be less likely to have a Wisconsin drivers license or photo ID with a current address. The Wisconsin drivers license is usually valid for eight years, but many citizens move frequently and may not update their license address each time they move. According to the 2000 U.S. Census, 46 percent of Wisconsin households had moved into their current residence since 1995 or after. This moving population involved 962,425 households. Any of these residents who had not updated their drivers license to their current address would require special processing by the local election board or at the polls. Those most effected by proposals to use the drivers license to verify voters' current addresses would include the following:

1. **Renters.** Seventy-six percent of Wisconsin households who are renters changed their residence between January 1995 and March 2000, and many may have moved multiple times. (By comparison, 22 percent of households owning their own home had moved between January 1995 and March 2000.) Almost forty percent of the renting households moved one or more times in the 2-1/4 year period from January 1999-March 2000.



2. **College students.** As detailed above, college students do not usually contact the Department of Transportation each time they move during their college years and instead maintain their permanent home address on their drivers license.
3. **Minorities.** Mobility rates differ substantially by racial/ethnic groups in Wisconsin. According to the 2000 Census, whites are least likely to move with 44 percent of white households having moved in 1995 or after. By comparison, the mobility rates for Native Americans, African Americans, Hispanics, and Asians ranged from 61 to 75 percent.



Wisconsin Household Heads Who Moved from Jan. 1995 to Mar. 2000 by Race/Ethnicity: 2000 Census

<u>Race/Ethnicity of Householder</u>	<u>% of Household Heads Who Moved from 1/1995 to 3/2000</u>
Whites	44%
Native Americans	61%
African Americans	63%
Hispanics	74%
Asians	75%

4. **Younger adults.** Mobility rates for Wisconsin adults differ by the age of the householder. Statewide, 97 percent of head of households ages 18-24 had moved in 1995 or after. Older adults showed much lower mobility rates.

Wisconsin Households Heads Who Moved from Jan. 1995 to March 2000: 2000 Census

<u>Age of Householder</u>	<u>% of Household Heads Who Moved from 1/1995 to 3/2000</u>
Under 25 yr.	97%
25-34 years	84%
35-44 years	52%
45-54 years	34%
55-64 years	32%
65 and older	21%

IX. Subpopulations Considered in the Drivers License Analysis

Drawing on its prior research work using institutional databases and its work studying the use of the Wisconsin drivers license for collection of fines and civil forfeitures, the Employment and Training Institute assessed the extent to which the population of licensed drivers compares to the state's estimated eligible voting population. The research identifies subpopulations that are underrepresented in the drivers license file and who may need separate attention at the polling place. Examination of DOT records and U.S. Census counts of the state population show significant **subpopulations without a current license**.

1. **Persons who use mass transit.** In cities, persons who use mass transit and do not own a vehicle may not have or need a drivers license. The City of Milwaukee will have the largest population of unlicensed residents using mass transit.
2. **Lower income residents.** Some lower income households may find the costs of purchasing, maintaining and insuring a vehicle to be prohibitive. Without a car, they have little reason to obtain a drivers license.
3. **Teenagers who don't own their own car and who have not obtained a license.** While many teenagers obtain a drivers license soon after they turn 16, some do not. In some households the teenager may not have access to a car or may have access to alternative transportation from relatives and friends. In Wisconsin drivers license applicants under age 18 are required to show evidence of completion of a driver education course before receiving their probationary license – a requirement that presents an economic impediment in lower-income households, as free drivers education may not be available.
4. **Senior citizens.** Many older adults give up driving for health or economic reasons. While only 5 percent of Wisconsin seniors aged 65 and older are in nursing homes, many others do not drive.
5. **Women.** Females are disproportionately underrepresented in the drivers license file. Rates of licensing are lower for Hispanic women and for older white women.
6. **Bad drivers.** Persons who have lost their drivers license due to suspensions and revocations include those who lost their licenses for repeat speeding offenses, drunk driving (“DWI,” or “driving while intoxicated”), or drug convictions.
7. **Drivers with unpaid fines.** The vast majority of suspended licenses in Wisconsin are for failure to pay municipal and circuit court fines and civil forfeitures (sometimes called “driving while poor”). The suspension of drivers licenses for failure to pay fines falls disproportionately upon citizens of color in the state, who are both disproportionately poor and also are more likely to be subject to racial profiling. In some cases, college students also will be overrepresented in this population. For example, a student fails to pay parking tickets. The agency (municipality, university, etc.) issuing the ticket pays DOT to put a trap on the student's vehicle license. The fine costs escalate and if the student continues driving with an expired plate may result in a traffic citation.

8. **Non-drivers with suspended licenses.** In Wisconsin it is possible to receive a suspended drivers license even if an individual has never had a vehicle-related ticket or problem. Teenagers cited for being out of their homes after curfew, jaywalking, or underage drinking may have a suspension placed on their "drivers license" even though they've never actually had a drivers license.
9. **Persons with medical or vision problems.** Individuals may stop driving or never obtain a drivers license for medical reasons if they or their physician believe that they are unable to drive safely. Others may be deemed ineligible to obtain or renew a license based on their failure to pass the vision test.

This report offers a first-time analysis of the drivers license population by age, gender, race and geography. Future research analyzing driver's license suspension issues by type of offense or collection problem and the race/ethnicity and residence of the driver should provide additional useful information for voting and other policy issues.

Acknowledgments

Research on drivers license suspension and revocation issues is supported by grants from the Greater Milwaukee Foundation and the Helen Bader Foundation. Review comments were provided by the state Department of Transportation staff. Send comments to: John Pawasarat, Director, Employment and Training Institute, University of Wisconsin-Milwaukee, 161 W. Wisconsin Avenue, Suite 6000, Milwaukee, WI 53203. For other drivers license reports, see the Employment and Training Institute website at www.eti.uwm.edu.

CENSUS COUNT AND DRIVERS LICENSE STATUS OF VOTING AGE ADULTS (AGES 18 AND ABOVE) IN WISCONSIN

MILWAUKEE COUNTY

BALANCE OF STATE

U.S. CENSUS, ages 18 and older as of 2002		U.S. CENSUS, ages 18 and older as of 2002		
	TOTAL	WHITE	BLACK	HISPANIC
MALES	337,802	230,688	64,091	28,678
FEMALES	381,237	257,722	84,298	24,632
TOTAL	719,039	488,410	148,389	53,310

U.S. CENSUS, ages 18 and older as of 2002		U.S. CENSUS, ages 18 and older as of 2002		
	TOTAL	WHITE	BLACK	HISPANIC
MALES	1,692,811	1,579,255	29,091	41,103
FEMALES	1,744,759	1,647,897	21,064	30,836
TOTAL	3,437,570	3,227,152	50,155	71,939

18 YEARS AND OLDER

18 YEARS AND OLDER

VALID WISCONSIN DRIVER LICENSE

VALID WISCONSIN DRIVER LICENSE

VALID WISCONSIN DRIVER LICENSE		VALID WISCONSIN DRIVER LICENSE		
	TOTAL	WHITE	BLACK	HISPANIC
MALES	222,740	171,809	28,568	13,731
FEMALES	244,245	186,636	40,612	8,950
TOTAL	466,985	358,445	69,180	22,681

VALID WISCONSIN DRIVER LICENSE		VALID WISCONSIN DRIVER LICENSE		
	TOTAL	WHITE	BLACK	HISPANIC
MALES	1,399,635	1,336,496	13,365	23,930
FEMALES	1,469,271	1,403,222	13,182	13,768
TOTAL	2,868,906	2,739,718	26,547	37,698

18 YEARS AND OLDER

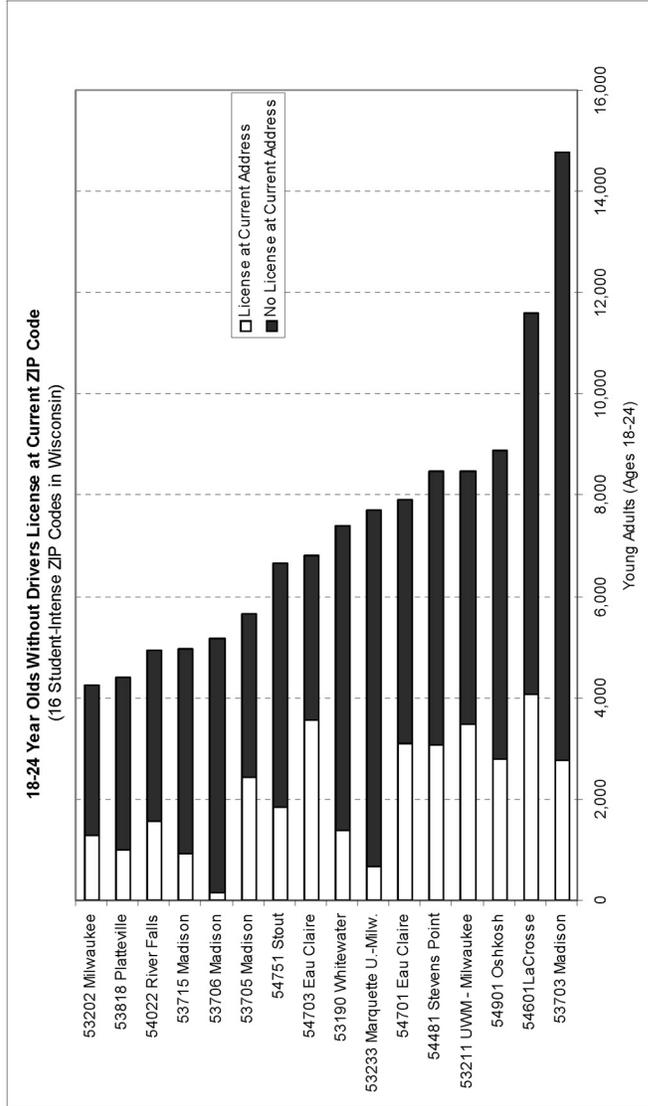
18 YEAR AND OLDER

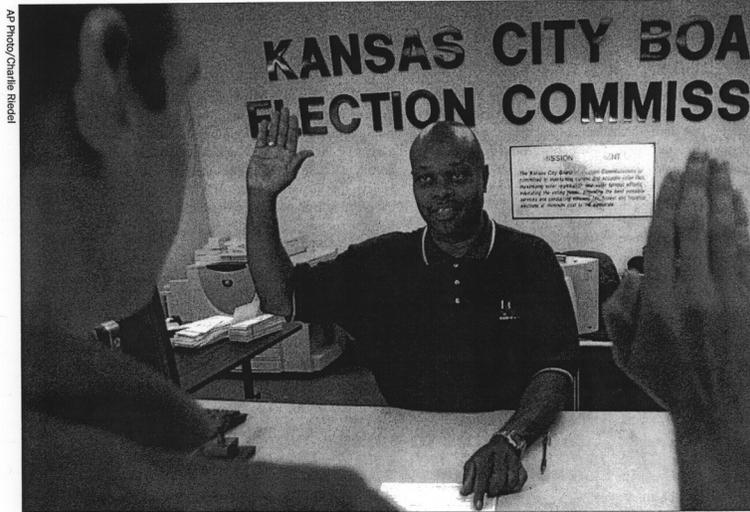
PERCENT WITH A VALID WISCONSIN DRIVER LICENSE

PERCENT WITH A VALID WISCONSIN DRIVER LICENSE

PERCENT WITH A VALID WISCONSIN DRIVER LICENSE		PERCENT WITH A VALID WISCONSIN DRIVER LICENSE		
	TOTAL	WHITE	BLACK	HISPANIC
MALES	66%	74%	45%	48%
FEMALES	64%	72%	48%	36%
TOTAL	65%	73%	47%	43%

PERCENT WITH A VALID WISCONSIN DRIVER LICENSE		PERCENT WITH A VALID WISCONSIN DRIVER LICENSE		
	TOTAL	WHITE	BLACK	HISPANIC
MALES	83%	85%	46%	58%
FEMALES	84%	85%	63%	45%
TOTAL	83%	85%	53%	52%





Turning Back the Clock on Voting Rights

BY STEVEN ROSENFELD

Jim Crow has returned to American elections, only in the 21st century he is apt to be a lawyer carrying a folder filled with briefing papers, proposed legislation and talking points about “voter fraud” and protecting the sanctity of the vote.

The specter of men in white robes marauding at night or barrel-chested deputy sheriffs menacingly patrolling precincts largely has been relegated to history books. But the legacy of sordid tactics that keep segments of society from casting ballots in selected states and cities has flourished under George W. Bush’s administration and Republican-run state legislatures.

Since the 2004 presidential election, activist lawyers with

ties to the Republican Party and its presidential campaigns, political appointees to the Justice Department’s Civil Rights Division, Republican legislators in a half-dozen states and Congress, and even the Supreme Court – in a largely unnoticed ruling last year – are aggressively regulating aspects of the voting process that enfranchise new voters. Collectively, these efforts are undoing Civil Rights Era’s gains that have brought voting rights to minorities and poor people. In recent history, these populations tend to support Democrats.

The newest barriers include state laws that target various phases of the voting process. Registration by individuals has been made more rigorous. Mass registration drives face new deadlines and increased potential fines. Citizens

must present new identification to register and to vote, and in some states newly registered voters face increased prospects that partisan challengers will question their credentials before voting. Civil rights groups have noted that all of these new laws and procedures disproportionately fall on people of color, poor people, senior citizens and the disabled.

The Department of Justice, which for decades fought to ensure all eligible citizens could vote, has encouraged states to take these steps in the opposite direction. Political appointees who advocate for stringent requirements before

ballots are cast and votes are counted now drive much of the Voting Section's actions. As a result, the Justice Department has been pushing states to purge voter lists, and to adopt newly restrictive voter ID and provisional ballot laws – actions all that are known to cause delays if not confusion at the polls. Meanwhile, the Justice

Department's Voting Section has not enforced other federal laws, such as the requirement that state welfare offices offer public aid recipients a chance to register to vote. Similarly, the Bush Justice Department has filed few cases on behalf of minority voters.

The Department's political appointees have also pressured federal prosecutors to pursue "voter fraud" cases against the Bush administration's perceived opponents, such as groups like ACORN (Association of Community Organizations for Reform Now), which conducts mass registration drives among populations that tend to vote Democratic. Two former federal prosecutors have said they believe that they lost their U.S. attorney posts for failing to pursue those cases.

The proponents of this renewed impetus to police voters are almost all from a powerful and well-connected wing of the Republican Party that believes steps are needed to protect elections from what they call "voter fraud," or allegations that Democrats – or their allies – are fabricating voter registrations en masse, and voting more than once to

win. It is "an article of religious faith that voter fraud is causing us to lose elections," Royal Massey, the former political director of the Republican Party of Texas said in a May 17, 2007 *Houston Chronicle* report. The report continued, "He [Massey] doesn't agree with that, but does believe that requiring photo IDs could cause enough of a drop off in legitimate Democratic voting to add 3% to the Republican vote."

Voter fraud and voter suppression – which shape the electorate for partisan advantage – have a long history in American politics, but today's registration abuses and

The Department's political appointees have also pressured federal prosecutors to pursue "voter fraud" cases against the Bush administration's perceived opponents.

instances of people voting more than once are rare. Federal officials convicted only 24 people of illegal voting between 2002 and 2005, and most evidence suggests state-level voter fraud is just as infrequent. Moreover, modern voter fraud, when it occurs has involved partisans from both parties, although it is rarely on a scale that overruns elections. In contrast, new voter

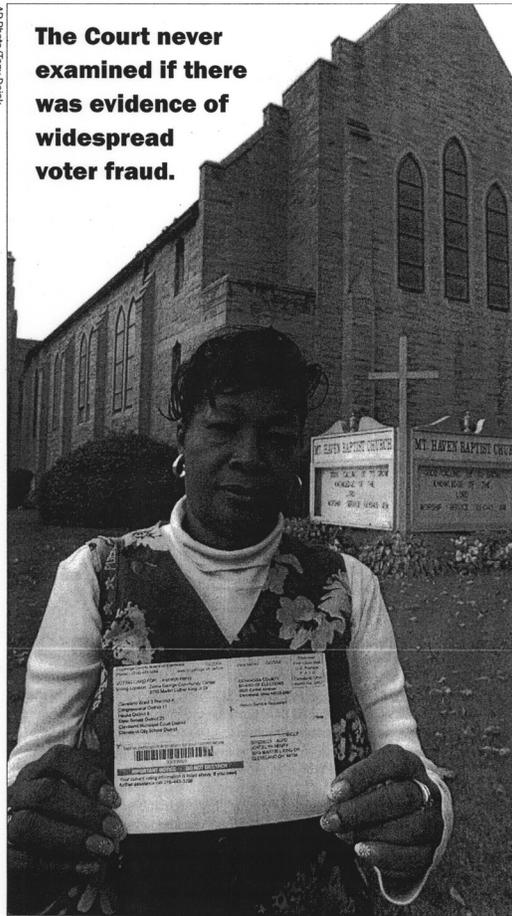
registration restrictions, such as requiring voters show a government-issued photo ID, are of a scale that can affect election outcomes. The Brennan Center for Justice at New York University Law School has found that 25% of adult African-Americans, 15% of adults earning below \$35,000 annually, and 18% of seniors over 65 do not have government-issued photo ID.

While various studies – such as a 2006 Election Assistance Commission report by Tova Wang and Job Serebriov, and a 2007 study by Lorraine Minnite of Barnard College – have found modern claims of a voter fraud "crisis" to be unfounded, that has not stopped states from adopting remedies that impose burdens across their electorate and on voter registration organizations.

"Across the country, voter identification laws have become a partisan mess," Loyola University Law Professor Richard Hasen said in an Oct. 24, 2006 *Slate.com* column, speaking of one such remedy. "Republican-dominated legislatures have been enacting voter identification laws in the name of preventing fraud, and Democrats have

AP Photo/Donna C. Williams

The Court never examined if there was evidence of widespread voter fraud.



opposed such laws in the name of protecting potentially disenfranchised voters.” Hasen was commenting to a little-noticed 2006 Supreme Court ruling that upheld Arizona’s new voter ID law, *Purcell v. Gonzalez*. The court unanimously affirmed the state’s 2004 law, stating, “Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.”

Hasen said the ruling “seems reasonable enough” at first glance, but actually was deeply troubling. The Court never examined if there was evidence of widespread voter fraud, Hasen said, and never examined “how onerous are such [voter ID] laws.” Instead, it adopted the Republican rhetoric on the issue “without any proof whatsoever.” Hasen then quoted Harvard University History Professor Alexander Keyssar on the court’s rationale. “FEEL disenfranchised?” Keyssar wrote. “Is that the same as ‘being disenfranchised?’ So if I might ‘feel’ disenfranchised, I have a right to make it harder for you to vote? What on Earth is going on here?”

“What On Earth Is Going On Here?”

“These things have become partisan,” Rep. Juanita Millender-McDonald, D-CA, replied at a March 2005 congressional field hearing, when asked why she and others

in Congress had come to Ohio to investigate aspects of the 2004 presidential election.

"Images are so critical, especially when the stakes are high and stakes are high in presidential elections," the now-deceased congresswoman continued, referring to the lingering memory of thousands of African-Americans waiting for hours outside in a cold rain to vote that past November in Ohio's inner cities. Many elected Democrats and voting rights attorneys saw the delays as intentional voter suppression resulting from a partisan election administration. It stirred memories of the segregated South.

"This is why we have turned our attention to Ohio," said Millender-McDonald, the highest-ranking Democrat on the Committee on House Administration.

The panel, which oversees the federal election process, ostensibly came to Columbus to hear how the Help America Vote Act (HAVA) worked in 2004's biggest battleground state.

Democrats wanted to question Ohio's Secretary of State, J. Kenneth Blackwell, a Republican who went to Florida to work for Bush during the 2000 recount and was co-chair of Ohio's Bush-Cheney '04 Campaign. Blackwell spurned previous invitations to testify in Washington. Meanwhile, Republicans wanted to talk about combating voter fraud and taking other steps to curb the excesses they saw in the 2004 election, such as the big registration drives that came to their state. These competing visions were an early glimpse of the politics that would play out in state capitals and at the Justice Department during the Bush administration's second term.

Democrats, of course, were focused on determining what happened in 2004. Cleveland Democratic Congresswoman Stephanie Tubbs Jones, who six weeks earlier stood up with California Democratic Sen. Barbara Boxer to contest Ohio's 2004 Electoral College votes, was present. Though not on the Administration Committee, the ex-municipal judge had many testy exchanges with Blackwell over his administration of the election. One

concerned how Blackwell spent millions for advertisements that did not tell Ohioans where else they could vote if delayed at their polls – a small but telling example of election administration with partisan implications.

Ms. Tubbs Jones: In this ad you said, "Vote your precinct," but you never told them that if they couldn't vote in precinct, they could go to the Board of Elections and vote. Did you, sir?

Secretary Blackwell: I sure didn't.

Ms. Tubbs Jones: Excuse me?

Secretary Blackwell: Can't you hear? I said I sure didn't.

But as Democrats like Tubbs Jones were looking back at 2004, Republicans were looking ahead at shaping the electorate to their advantage. The hearing was notable because it signaled the start of a renewed Republican campaign to highlight "voter fraud" as an issue needing legislative redress as a new federal election cycle began.

The assertions and responses that unfolded that day would be heard in many states in 2005 and 2006 as GOP-majority legislatures 'deal' with the issue.

Ohio Republican Rep. Kevin DeWine talked about pending legislation to "modernize Ohio's election laws." He spoke of a proposed voter ID law – which would pass – and suggested the Legislature's concern was not whether the law would pass but how tough it would be. Ohio also added strict new rules for mass voter registration drives early in 2005 and later passed a bill facilitating Election Day challenges to individual voters. Ohio Republican Senator Jeff Jacobson said these laws were needed to stop "fraudulent registrations" because national groups "are paid to come in and end up registering Mickey Mouse. The millions of dollars that poured in, in an attempt to influence Ohio, is not normal."

What Jacobson said was true, though lacking in context.

The hearing ended soon after Robbins spoke, but it would not be until a few years later – with the Justice Department’s firing of seven U.S. attorneys in late 2006 – that the full extent of GOP efforts to combat voter fraud would become known.

Groups like ACORN and Americans Coming Together had registered millions of new voters in battleground states before the 2004 election. Some of ACORN’s staff – temporary workers – had filed a handful of registration forms with fabricated names. ACORN discovered the error, alerted the authorities and prosecutions ensued. While those mistakes were cited by politicians like Jacobson as evidence of a national voter fraud crisis, others urged the House panel to look at the facts and keep the issue in perspective.

Norman Robbins, a Case Western University neuroscience professor and co-coordinator of the Greater Cleveland Voter Coalition, came to Columbus to talk about how many of Ohio’s 30,000 provisional ballots that had been disqualified in 2004 should have been counted. The ballots were created by HAVA for people whose names are not on voter rolls. But after Republicans repeatedly brought up voter fraud – in a state that had registered tens of thousands of new voters – Robbins urged the panel to look at all the issues.

“We desperately need research on all of the issues raised today,” he said. “For instance, what are the real causes and effects of the long lines? How many voters were actually disenfranchised? How long did they take to vote? That would be one set of questions. Does showing an ID increase the reliability of the vote or does it disenfranchise people? Those are answerable questions. How many people truly have been convicted of election fraud? What do we really know about this in terms of cases and conditions?”

To answer to that question, the Committee Chairman, Bob Ney, R-Ohio – who since has been convicted and jailed on bribery charges – turned to a long-time Republican operative, Mark “Thor” Hearne, who earlier had introduced himself as an “advocate of voter rights

and an attorney experienced in election law.”

Hearne, a lawyer based in St. Louis, certainly was experienced. In 2000, he worked for the Bush campaign in Florida during the presidential recount. He was the Republican National Lawyers Association Vice President of Election Education, which helps the party train partisan poll monitors. In 2004, he became counsel to Bush-Cheney 2004 Inc., where a May 31, 2007 *National Journal* report by Murray Wass said, “Hearne worked with White House presidential advisor Karl Rove and the Republican National Committee to identify potential voting fraud in battleground states... and oversaw more than 65 different lawsuits that concerned the outcome of the election.” After 2004, “with encouragement from Rove and the White House, Hearne founded the American Center for Voting Rights (ACVR), which represented itself as a nonpartisan watchdog group looking for voting fraud.” Wass reported.

Hearne’s appearance in Columbus was ACVR’s public debut. The group would urge federal and state officials to prosecute voter fraud, adopt tougher voter ID laws and purge voter rolls. It would file legal briefs in voter ID cases urging tighter regulations. Hearne presented the panel with a report suggesting fraudulent registrations were threatening U.S. elections. The report, which Ney entered into the Congressional Record, listed problems in Ohio cities with sizeable African-American populations – the state’s Democratic strongholds. Nationally, ACVR would use the same approach to identify other voter fraud “hot spots” in coming months.

“The report that we submitted is exactly what Mr. Robbins suggested,” Hearne said, responding to Rep. Ney and Robbins’ request for an unbiased assessment of voter fraud. “It is facts. It is not anecdotes. It is [an] absolute factual document. It has first-hand news accounts. It has

different court cases. It has affidavits of different people. It is all first-hand accounts of what happened during this presidential election.”

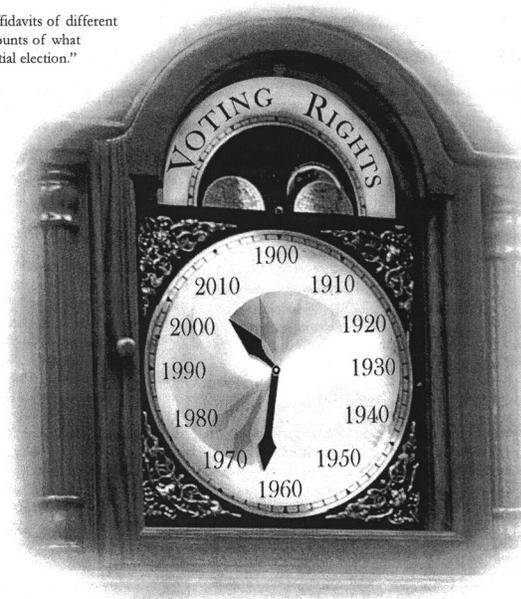
But Robbins wasn't buying the remarks by Hearne and the other Republicans.

“Election fraud keeps coming up here,” he said, during his final remarks. “Two [of my] legal associates went to their databases and found that in all the elections of 2000 and 2002, there was not a single relevant [voter fraud] conviction in Ohio that went to appeals. Not a single one. In the election of 2004, I understand that data just obtained today there are only two cases under investigation in Cuyahoga County [Cleveland]. In ten years there were all of five cases that went to the appeals court level in Ohio, so do not tell us that election fraud is rampant unless you have the facts to prove it.”

A National Pattern

The hearing ended soon after Robbins spoke, but it would not be until a few years later – with the Justice Department's firing of seven U.S. attorneys in late 2006 – that the full extent of GOP efforts to combat voter fraud would become known. Though the facts were slim, Republicans across the country acted as if a voter fraud crisis was rampant.

It is important to notice what “each side” was bringing to the attention of the House committee charged with election oversight. Those who felt the 2004 election had disenfranchised Democratic voters wanted to right those wrongs. Ohio Republicans, who felt their state received a



political black eye, talked about voter fraud but opened the 2005 legislative session with an omnibus bill regulating the very aspects of the voting process where their adversaries were most adept: voter registration among minorities and the poor.

“It was done to address real needs,” said William Todd, president of the Ohio chapter of the Republican National Lawyers Association, recalling the voter fraud reforms he had lobbied for. “Ohio was not alone in not having an updated election code. People hadn't looked at some of those laws in 50 years.” Like Hearne, in 2004 Todd had filed legal briefs challenging groups like ACORN. That suit was withdrawn rather than respond to discovery in federal court, although it was cited in ACVR's reports.

The debate before the House Administration Committee

The line between rules ensuring an accurate voter registration process and intentionally suppressing voters is very thin.

and legislative response that ensued in Ohio was repeated across the country. In short, the GOP's political response to 2004 was to embark on an aggressive program of regulating participation in elections.

Republican-controlled legislatures in Georgia, Indiana, Missouri, Pennsylvania and Wisconsin passed new voter ID requirements after 2004, although gubernatorial vetoes or court orders nullified laws in all those states besides Indiana. Civil rights attorneys are concerned the court could codify tougher voter ID laws.

Meanwhile, two states with Republican-majority legislatures – Florida and Ohio – made voter registration drives harder by raising penalties for errors on registration forms and also shortening the timeline for the organizers to submit those forms – which prevents those groups from checking the registrations for accuracy and completeness. While litigation and court rulings reversed those laws before 2006 election, the laws prompted the League of Women Voters to halt registration drives in Florida for the first time in its 75-year history. In Florida's case, the League stopped before that year's primary election. In Ohio, ACORN was registering about 5,000 new voters a week in five cities. Those efforts were suspended for six weeks during the litigation, meaning an estimated 30,000 people were not given an opportunity to register.

Since 2004, five other states have imposed new restrictions on voter registration drives – Colorado, Georgia, Maryland, New Mexico and Missouri, according to research by Project Vote, which has worked with the Brennan Center for Justice to challenge these laws. To date, these laws remain on the books in two states, Missouri and New Mexico. These new registration drive

rules were not all adopted by partisans seeking political gain. In Maryland, local election officials resented the paperwork created by the registration drives. However, the line between rules ensuring an accurate voter registration process and intentionally suppressing voters is very thin.

"It's no secret who these restrictions affect," wrote Michael Slater, Project Vote's deputy director, in the October 2007 issue of *The National Voter*, a publication of the League of Women Voters. "In 2004, 15% of all African-American and Latino voters were registered to vote as a result of an organized drive, and African-American or Latino voter was 65% more likely to have been registered to vote by an organized drive than a White voter. In the final analysis, spurious allegations of voter fraud give rise to yet more roadblocks on the path to full participation in political life for historically disadvantaged Americans."

The state-level responses to voter fraud did not occur in a vacuum. Since the creation of the Civil Rights Division in the Justice Department a half-century ago, the federal government has had great power and influence over how states implement voting rights. But in early 2005, the same mindset shared by GOP legislators in Ohio and other states, and by vote fraud activists like Hearne could also be found among the Bush administration's senior appointees overseeing voting rights at the Justice Department.

Just four days before the 2004 election, the Department's civil rights chief, Assistant Attorney General Alex Acosta, wrote to a federal judge in Cincinnati who was deciding whether to allow the Ohio Republican Party challenge the credentials of 23,000 mostly African-American voters. McClatchy Newspaper's Greg Gordon reported on June 24, 2007. Acosta supported the voter challenges, saying an order to block them could undermine enforcing state and federal voting laws. The challenges, Acosta wrote, "help strike a balance between ballot access and ballot integrity." The voter challenges were allowed to go forward, although the final judicial ruling came too late for Ohio's Republican Party to deploy thousands of party members to local precincts to challenge the voter's credentials.

Other signs of the Department's shift from its historic mission of enfranchising voters to a new "selective enforcement" mindset could also be seen by early 2005 when a coalition of voting rights groups failed to convince

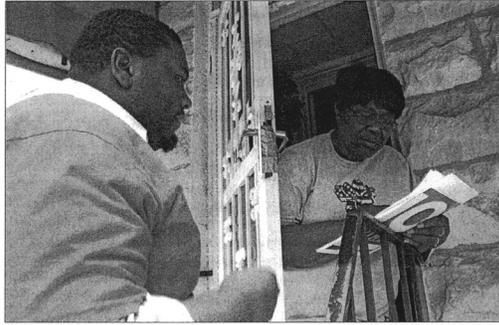
the Voting Section to enforce a law that would greatly increase voter registration by poor people – who tend to support Democrats.

That winter, staff members from Demos, a center-left New York City think tank, and Project Vote were finishing a study of a provision in the National Voter Registration Act of 1993, or “Motor Voter” bill, which also required states offer welfare recipients the opportunity to register to vote. “In January 2005, we had a 10-year report, which documented the 5% decline [in registrations] from 1995 through 2004,” said Scott Novakowski of Demos, adding that many politically significant states – Arizona, Connecticut, Florida, Massachusetts, Missouri, Montana, New Jersey, Pennsylvania and Tennessee – were ignoring the registration requirement. “John Conyers [now the House Judiciary Committee chairman] and 29 other representatives asked Attorney General Alberto Gonzales to look into this, and there was no response.”

The political stakes in registering low-income voters are enormous. The Election Assistance Commission’s biennial voter registration report for 2005-2006 found that

The political stakes in registering low-income voters are enormous.

16.6 million new registration applications were received by state motor vehicles agencies while only 527,752 applications came from public assistance offices – a 50% drop from 2003-2004. Demos and its partners knew millions of low-income Americans were not being asked to register. According to the Health Resources and Services Administration’s FY 2008 budget, federally subsidized “health centers” will serve an estimated 16.3 million patients, a population where “91% are at or below



200% of the federal poverty level, 64% are from racial/ethnic minority groups and 40% are uninsured.” This is roughly the same population who seek state welfare aid. More recent studies have found that the U.S. electorate would expand by 7.5 million voters if minorities were registered at the same rates as Whites.

In early 2005, the voting rights groups met with the department’s top Voting Section staff in Washington – including Hans Von Spakovsky, counsel to the assistant attorney general overseeing the Voting Section, and Voting Section Chief Joseph Rich to discuss enforcing the public assistance requirement. The meeting was polite, participants said, but little came of it.

Rich was a Civil Rights Division career attorney for 37 years and chief of the Voting Section for six years until he resigned in April 2005, citing politicization of voting rights enforcement. He recalled the meeting about the NVRA’s voter registration requirements. Von Spakovsky – who had become his de facto boss – decided to ignore that part of the law, Rich said. Instead, the Section’s top lawyer was interested in one line in the statute that allowed the Justice Department to pressure states to purge voter rolls, Rich said. “Four months before I left, in 2005, Von Spakovsky held a meeting where he said he wanted to start an initiative for states we want to purge... Their priority was to purge, not to register voters. That was January. I left in April.”

“To me, it was a very clear view of the Republican

That the administration's appointees overseeing voting rights would politicize the Voting Section should have surprised no one – given the backgrounds of the officials in charge.

agenda," Rich said. "The Republican agenda is to make it harder to vote: purge voters and don't register voters."

The Bush Administration Voting Section

Rich and many other career attorneys at the Voting Section resigned because pressure from Bush administration political appointees had altered agency's historic civil rights mission. Created after passage of the landmark Voting Rights Act, the Section for decades was seen as the nation's defender of minority voting rights. For years, it gave the benefit of the doubt to new voters and politically weak populations, such as low-income and minority communities. But that philosophy disappeared under the Bush Administration – most notably under Von Spakovsky as counsel to the Assistant Attorney General for Civil Rights and Former Acting Civil Rights Chief Bradley Schlozman, according to Rich and other attorneys who left the Department. The Voting Section is part of the Department's Civil Rights Division.

Between 2005 and 2007, 55% of the attorneys in the Voting Section left, according to a report by NYU's Brennan Center and the Lawyers' Committee for Civil Rights Under Law, citing a "partisan hiring process," "altered performance evaluations" and "political retaliation on the job." Those departures meant the institutional memory and legacy of Civil Rights era government litigators was disappearing. That change is perhaps best illustrated by two Voting Section lawsuits filed against Missouri election officials. In 2002, the Justice Department alleged St. Louis had improperly purged 50,000 voters from registration lists. In 2005, the Department's alleged the state, including St. Louis, wasn't sufficiently purging voter rolls.

The shift in enforcement philosophy did not go unnoticed. In July 2006, the Boston Globe's Charlie Savage reported that the Civil Rights Division had turned away from hiring lawyers with civil rights movement backgrounds. Of the 19 attorneys hired since 2003, Savage reported that 11 said they were members of the conservative Federalist Society, Republican National Lawyers Association, or had volunteered for Bush-Cheney campaigns. Moreover, the Voting Section had virtually stopped filing suits on behalf of minority voters, Wade Henderson, president of the Leadership Conference on Civil Rights, told the House Judiciary Committee on March 22, 2007. "The Voting Section did not file any cases on behalf of African-American voters during a five-year period between 2001 and 2006," he said, "and no cases have been brought on behalf of Native American voters for the entire administration."

Voting Rights Timeline

Timeline

September 2003 In opinion on Maryland state law, the Justice Department interprets the Help America Vote Act (HAVA) to require a match between a voter registration application and the applicant's driver's license or Social Security number. A federal judge later strikes down this strict standard as a violation of the Voting Rights Act.

December 2003 Justice Department approves Republican House Majority Leader Tom DeLay's mid-term redistricting plan for Texas. A federal judge later rules that portions of the plan illegally dilutes minority votes.

2003

Jan. Feb. Mar. April May June July Aug. Sept. Oct. Nov. Dec.

Henderson wasn't entirely correct. While the Justice Department had all-but stopped filing lawsuits on behalf of Native Americans and African-Americans, which tend to support Democrats, the Voting Section had more than doubled its lawsuits to enforce providing bilingual ballots and election materials in Latino and Asian communities. These constituencies are seen as likely Republican swing votes, particularly after the GOP made electoral gains among Latinos in 2004.

That the administration's appointees overseeing voting rights would politicize the Voting Section should have surprised no one – given the backgrounds of the officials in charge. Early in Bush's first term, conservative publications like the *National Journal* were clamoring for wholesale changes in the Civil Rights Division. "There may be no part of the federal government where liberalism is more deeply entrenched," the *Journal's* John Miller wrote on May 6, 2002. Von Spakovsky, like ACVR's Hearne, had worked for Bush in Florida during the 2000 recount and was among a handful of GOP appointees who were established "vote fraud" activists. These men also were experienced political players, known in Republican circles.

Before joining the Justice Department, Von Spakovsky, a lawyer, was Republican Party chairman in Fulton County

Georgia, Vice-Chair of the Fulton County Board of Registration and Elections, a Federalist Society member and an advisor to the Voting Integrity Project, a little-known conservative group that called for more aggressive regulation of the voting process. The Project collaborated with the firm that purged Florida's voter rolls before the 2000 election, incorrectly removing thousands of Floridian voters, *The New Yorker's* Jeffrey Toobin reported in September 2004.

"Keeping ineligible voters off registration lists is the first step in limiting fraud," Von Spakovsky wrote in a 1997 Georgia Public Policy Foundation article, where he described various scenarios where he believed Democratic partisans were "sending imposters to vote, to request absentee ballots, or to otherwise generate fraudulent votes." In July 2001, Von Spakovsky began his testimony on "election reform" before the Senate Rules by stating, "One of the biggest threats to voter rights and election integrity today is the condition of our voter registration rolls. Many jurisdictions now have more registered names than on their voter rolls than they have voting age population within their borders. This is an invitation to fraud and chaos since the many invalid and multiple registrations that exist can serve as a source pool for fraud."

October 2004 Justice Department refuses to pursue states for failing to offer voter registration at public assistance agencies as required by federal law. Justice Department files friend of the court brief in Ohio arguing that individuals have no standing to bring claims under HAWA. Justice Department sends unsolicited letter to U.S. District Court in Ohio supporting a challenge to more than 30,000 voter registrations.

January 2005 Justice Department begins investigating states to determine whether they are purging voters with sufficient vigor.

April 2005 Justice Department's Voting Section Chief and Deputy Chief resign over the increasing politicization of voting rights enforcement by the Bush Administration.

June 2005 Florida enacts House Bill 1589, which imposes high fines on voter registration drives for any errors. A federal court later enjoins the law. Justice Department's exonerates election officials in Columbus Ohio, of wrongdoing in allocating voting machines for the 2004 election.

Ohio enacts House Bill 3, which requires stricter ID for voters and imposes onerous requirements on voter registration drives.

Justice Department approves Georgia's photo voter ID law, HB 244, under the Voting Rights Act. A federal judge later strikes it down, likening it to an unconstitutional poll tax.

August 2005 Justice Department approves Georgia's photo voter ID law, HB 244, under the Voting Rights Act. A federal judge later strikes it down, likening it to an unconstitutional poll tax.

November 2005 Justice Department sues Missouri for failing to purge voters. A federal judge later dismisses the suit, saying the Department failed to show any fraud had occurred.

Timeline continues on next page



Shortly thereafter, Von Spakovsky was hired as an attorney in the Department's Voting Section. By 2005, he was promoted to counsel to the Assistant Attorney General for Civil Rights, where Rich and others said he aggressively sought to reshape the enforcement agenda as the chief counsel overseeing voting rights. Von Spakovsky left the Justice Department in late 2005 when he was

appointed to the Federal Election Commission. His confirmation to a six-year term is stalled before the Senate, where he has been criticized as too partisan.

According to a Brennan Center and Lawyers' Committee for Civil Rights Under Law report, there were four "connected pieces of the strategy" to politicize the enforcement of voting right by the Department from 2004 through 2007, when many of the leading proponents of these policies left the agency, resigned or were reassigned. These strands were: "fomenting fear of voter fraud," "dismantling the infrastructure of Justice," "restricting registration and voting," and "politically motivated prosecutions."

The two groups – comprised of eminent attorneys, including some who left the Voting Section – created a timeline from 2004 to 2007 of the major decisions, rulings, lawsuits and other interventions showing how the

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<p>February 2006 Pennsylvania Democratic Gov. Ed Rendell vetoes bill requiring voters to show photo ID. The Justice Department later amends a minority language suit against Philadelphia to require citywide voter purges.</p> <p>June 2006 Missouri enacts photo ID bill. The state Supreme Court on Oct. 16 affirms a lower court ruling overturning the law.</p> <p>Justice Department sues the State of Indiana for failing to sufficiently purge its voter rolls. The Department later sues Maine, New Jersey and the City of Philadelphia on the same grounds. In April 2007, it sent letters to 10 additional states seeking purges</p> <p>October 2006 U.S. Supreme Court vacates a Ninth Circuit Court of Appeals order enjoining Arizona from enforcing the ID requirements established by the state's Proposition 200.</p> <p>November 2006 U.S. Attorney for the Western District of Missouri, Bradley Schlozman brings voter fraud charges against four former voter registration workers days before the 2006 general election.</p> <p>December 2006 Justice Department fires 7 U.S. Attorneys. The Washington Post later reports that nearly half of the fired U.S. Attorneys had been the subject of Republican complaints that they had been lax about pursuing voter fraud allegations.</p>	<p>October 2004 Justice Department refuses to pursue states for failing to offer voter registration at public assistance agencies as required by federal law. Justice Department files friend of the court brief in Ohio arguing that individuals have no standing to bring claims under HAVA. Justice Department sends unsolicited letter to U.S. District Court in Ohio supporting a challenge to more than 30,000 voter registrations.</p>
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2006
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department instituted what was formerly the work of the Republican Party's campaign operatives and political allies.

According to the Brennan Center and Lawyers' Committee, in late 2003 and 2004 the Section:

- Sent Maryland a letter before the presidential election, saying the state could reject voter registrations that did not match information on other state databases. (That "no-vote, no-match" standard has been criticized as being too strict, due to typos and data-entry errors. A consent decree reached between the Justice Department and California in 2005 had the same provision, causing the state to reject about a quarter of all registration forms between January 1, 2006 and March 15, 2006, according to California's secretary of state. California and Maryland later loosened the matching standard.)
- Precleared congressional redistricting in Texas in mid-decade, instead of waiting for the once-a-decade Census report as has been the practice. (The Department must approve election law changes in states and counties under jurisdiction of the Voting Rights Act. The Texas redistricting case was seen as leading to the election of four Republican House candidates in 2004. In 2006, the Supreme Court issued a decision upholding parts of that redistricting plan.)
- Argued that individual citizens have no right to private action – or the ability to sue to seek redress – under HAVA. (That right has been a key component of Voting Rights Act of 1965, leading citizens to file numerous suits such as one in 2006 by African-American voters in Columbus, Ohio, whose precincts did not receive the same per capita number of voting machines as nearby white suburbs).

According to the Brennan Center and Lawyers' Committee, in 2005, the Voting Section:

- Precleared a new Georgia photo ID law, even though

the section's career attorneys recommended rejecting the Georgia law. (Courts later nullified that ID law, comparing it to imposing a "poll tax" due to costs associated with obtaining the required government photo ID. The state has since modified the law, relaxing the ID standard.)

- Issued an opinion saying provisional ballots could not be given to people who lacked ID. (The ballots were created by HAVA to ensure people who are not on voter rolls could vote, though registrations of those voters must be verified before counting the ballots.)

The Section also said it was okay to cast but not count provisional ballots.

- Tried to pressure the Election Assistance Commission to change its decision on Arizona's voter ID law, which requires residents provide proof of U.S. citizenship when registering to vote. (Arizona wanted the EAC to add the citizenship requirement to a national voter registration form. The EAC did not grant Arizona's request, despite e-mails from Von

Spakofsky supporting the state's request. The controversy caused the Commission's Republican-appointed chair to lose political support for his reappointment. As of fall 2007, Arizona is again seeking to add proof of citizenship to the national voter registration form.)

- Filed the first of a half-dozen lawsuits forcing states to purge voter rolls. (Only Missouri fought the purge suit, which it later won though the Justice Department is appealing that ruling. U.S. District Court Judge Nanette K. Laughrey's decision said, "It is... telling that the United States has not shown that any Missouri resident was denied his or her right to vote as a result of the deficiencies alleged by the United States. Nor has the United States shown that any voter fraud has occurred.") New Jersey, Indiana, and Maine were also sued by the Department and reached consent decrees – settlements – that included voter purges.

These actions were part of a growing crescendo of

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In late September, the U.S. House of Representatives passed a voter ID bill, H.R. 4484, although the Senate did not act on the measure. In 2005, while Voting Section counsel, Von Spakofsky published an article under a pseudonym endorsing tougher voter ID laws – which opponents of his FEC appointment said was a conflict of interest.

Later that fall, just days before the 2006 election, Bradley Schlozman – who had moved from overseeing the Department's Civil Rights Division, which includes the Voting Section, to become the U.S. Attorney for the Western District of Missouri, announced his office would be prosecuting four ACORN workers for voter registration fraud – even though ACORN had alerted authorities of the falsified names and was cooperating with the FBI. Schlozman's announcement prompted front-page coverage in Missouri, where Republicans faced a tough U.S. Senate race. It also violated internal Justice

The Supreme Court will decide whether Indiana's voter ID law, seen as one of the country's toughest, places an unfair burden on low-income people and minority voters.

Department procedures to insulate prosecutors from perceptions of political meddling, according to former Voting Section attorneys.

Republicans, for their part, also had problems with submitting fraudulent voter registrations. In late October 2006, just before Election Day, 11 volunteers working for the Republican Party of Orange County, California, were charged with registration fraud after they submitted registration forms where Democratic voters were misidentified up as members of the Republican Party.

And in Nevada, a firm that the Republican National Committee hired to register voters, Voters Outreach of America, was found to be throwing out registrations for Democrats while turning in forms for Republicans.

But election law experts say these voter fraud cases, whether in Kansas City, Orange County or Las Vegas would not have altered election results. In contrast, they say some of new state laws passed since 2004 that have already impeded thousands of new voters from registering are of an entirely different magnitude. "The numbers are enormous," said the Brennan Center's Wendy Wieser, speaking of the voter registration drive restrictions that were in effect in Florida and Ohio in 2006. "But they weren't as effective as they were intended to be. They were thrown out. They were effective when they were in place."

Turning Toward 2008

As the country approaches its next presidential election, it is an open question how the GOP's ballot security strategies will affect voting in 2008's battleground states.

As in any election, there are a handful of unknowns that could have a major impact. The Supreme Court will decide whether Indiana's voter ID law, seen as one of the country's toughest, places an unfair burden on low-income people and minority voters. Meanwhile, in states where immigration is a hot-button issue, Arizona's efforts to add its proof of citizenship requirement to the national voter registration form, will be closely watched. Under that state's Proposition 200, which passed in 2004, residents must show proof of citizenship before registering to vote or receiving public assistance. Maricopa County, where Phoenix is located, is now rejecting 30% of all new registrations due to inadequate proof of citizenship, according to Jeff Blum of USAction, a progressive group with affiliates in 24 states. Since Proposition 200 was implemented in 2005, more than 32,000 voter registrations have been rejected.

Similarly, efforts by states to comply with HAVA by creating statewide voter lists pose an entirely new set of election administration issues. Since 2000, most states have been struggling to transition to a new generation of electronic voting systems. These paperless systems have been criticized for being unreliable, potentially inaccurate and accessible to backers who might manipulate vote.

totals. While some states have moved to restrict the use of these machines, the creation of statewide voter databases – a part of these systems – has not been as widely scrutinized. In some states, like Florida, officials have instituted strict name-matching requirements to verify the accuracy of the voter registrations. Whether typos or other data entry errors will mistakenly remove legal voters – as was the case in California in 2005 – remains to be seen, although a recent Florida suit by a voting rights coalition that has rolled back similar provisions in Washington, Pennsylvania and Maryland suggests that will be the case.

Another large unknown concerns voter purges. In April 2007, the Justice Department sent letters to the top election administrators in 10 states to pressure those states to purge their voter rolls. The letters said the 10 states – including some that may be key in 2008 – means the Justice Department has either sued or is pressuring 16 states to purge their voter rolls since 2005. Former Voting Section attorneys and others said the statistics cited by the Justice Department in its April 2007 purge letter are flawed and do not confirm that those states have more voter registrations than eligible voters, as the department alleges. That is because they are based in part on U.S. Census population project estimates and include voter registrations that already are in the process of being deleted.

"That data does not say what they purport it says," said David Becker, People for the American Way Foundation's senior voting rights counsel and a former Voting Section senior trial attorney, after reviewing the data cited in the Justice Department's letter. "This stuff disenfranchises voters... There are eligible voters who will be removed. There is no evidence that rolls need to be cleaned up to this degree. This will make things more chaotic on Election Day. People will be given provisional ballots that won't get counted."

The 10 states receiving purge letters are Iowa, Massachusetts, Mississippi, Nebraska, North Carolina, Rhode Island, South Dakota, Texas, Utah and Vermont. Since 2005, the Justice Department has also sued six other states or cities – Indiana, Maine, New Jersey, Philadelphia and Pulaski County, Arkansas – where purging voter rolls

was part of the resulting settlement. Only Missouri fought a Voting Section suit, winning in federal court, although that decision has been appealed.

Many of the states targeted by the Voting Section have outdated voter rolls, especially in rural counties, where the registrations of people who have moved, died or been convicted of felonies need to be removed. That is the standard practice of local election officials and required under federal election laws. However, in 2005 Thor

A new and legal way to accomplish a longstanding GOP electoral tactic: thinning the ranks of likely Democrats in states where there may be close races.

Hearne and the American Center for Voting Rights labeled some of the states that received Justice Department purge letters in 2007 as voter fraud "hot spots." Those locales include St. Louis, Philadelphia and South Dakota's Indian reservations. During the Bush administration's second term, all have been targets of Voting Section actions.

Looking toward the 2008 election, it appears the purges – as well as the new voter ID laws, restrictions on registration drives and stricter rules for counting provisional ballots – could be a new and legal way to accomplish a longstanding GOP electoral tactic: thinning the ranks of likely Democrats in states where there may be close races.

In numerous elections dating back to the 1960s, the Republican Party has tried to challenge new voter registrations to accomplish this goal, although since 1981 federal courts have blocked some of those efforts as illegal electioneering. In 2004, state Republican Parties tried to challenge 100,000 voters in Ohio, Florida, Nevada, Pennsylvania and Wisconsin, according to the Campaign Legal Center, a nonpartisan, nonprofit, public-interest Washington law firm. Courts and local officials blocked most of those efforts as racially discriminatory.

"Until the mid-1960s, the political entity most closely

Will this history of voter suppression tactics repeat itself during the 2008 presidential election?

associated with efforts to disenfranchise people of color was the southern wing of the Democratic Party," said Rice University Sociology Professor Chandler Davidson and three graduate students in a joint paper, "Republican Ballot Security Programs: Vote Protection or Minority Voter Suppression – Or Both?"

However, the passage of civil rights laws in the early 1960s prompted some Republicans to appeal to southern Democrats who supported the Jim Crow system. Part of that political sea change was the Republican Party adopted some of the voter suppression tactics used by southern Democrats, Davidson and his colleagues write. Indeed, the debate and remedies framed by the GOP's contemporary "voter fraud" activists comes from this same political lineage, they write.

"There are several noteworthy characteristics of these programs. They focus on minority precincts almost exclusively. There is often only the flimsiest evidence that voter fraud is likely to be perpetrated in such precincts. In addition to encouraging the presence of sometimes intimidating Republican poll watchers or challengers who may slow down voting lines and embarrass potential voters by asking them humiliating questions, these programs have sometimes posted people in official-looking uniforms with badges and side arms who question voters about their citizenship or their registration. In addition, warning signs may be posted near the polls, or radio ads may be targeted to minority listeners containing dire threats of prison terms for people who are not

properly registered – messages that seem designed to put minority voters on the defensive."

Will this history of voter suppression tactics repeat itself during the 2008 presidential election? Modern Democrats are not saints on voter suppression – just recall how John Kerry's supporters disqualified signatories to Ralph Nader's presidential petitions in 2004. However, the Democratic Party has no comparable party apparatus focusing on suppressing Republican voters.

Indeed, it appears Republicans are already following Davidson's inventory by seeking to newly regulate the voting process before most Americans are even focused on 2008's presidential primaries. The tactics that can be implemented well before the voting begins – stricter voter ID laws, voter purges, registration drive curbs, tougher provisional ballot laws and easing rules for voter challenges – are already underway in many states. And at the Justice Department, a new policy has been adopted concerning the announcement of criminal prosecutions and elections. If Brad Schlozman were still U.S. Attorney in Missouri, he would not be violating any policy if he announced "voter fraud" indictments days before the 2008 election. That standard was purged in 2007.

Steven Rosenfeld is a senior fellow at *AlterNet.org* and co-author of *What Happened in Ohio: A Documentary Record of Theft and Fraud in the 2004 Election (The New Press, 2006)*.



CRIMINAL DIVISION
PUBLIC INTEGRITY SECTION
UNITED STATES DEPARTMENT OF JUSTICE

ELECTION FRAUD PROSECUTIONS & CONVICTIONS
BALLOT ACCESS & VOTING INTEGRITY INITIATIVE
OCTOBER 2002 – SEPTEMBER 2005

DISTRICT OF ALASKA (2000, 2002, 2004-Voting by Ineligibles), *United States v. Rogelio Mejorada-Lopez*, Case No. 05-CR-074: Involves a Mexican citizen, Rogelio Mejorada-Lopez, who completed several voter registration applications to register to vote in Alaska and who thereafter voted in the 2000, 2002, and 2004 general elections. On August, 15, 2005, the defendant was charged by Information with three counts of voting by a non-citizen in violation of 18 U.S.C. § 611.

United States Attorney: Timothy A. Burgess (907) 271-5071
District Election Officer: Deborah A. Smith
Assistant United States Attorney: Retta Randall

STATUS: 1 person charged by information.

DISTRICT OF COLORADO (2004-Voting by Noncitizen), *United States v. Shah*, Case No. 04-CR-00458: On November 1, 2004, Ajmal Shah was indicted on charges of providing false information concerning U.S. citizenship in order to register to vote in violation of 18 U.S.C. §§ 911 and 1015(f). On March 1, 2005, the defendant was convicted on both counts.

United States Attorney: William J. Leone (303) 454-0100
District Election Officer: Tom O'Rourke

STATUS: 1 person indicted; 1 person convicted.

NORTHERN DISTRICT OF FLORIDA (2002-Registration Fraud), *United States v. Chaudhary, a/k/a Usman Ali*, Case No. 04-CR-00059: On November 9, 2004, an indictment was returned against Chaudhary charging misuse of a social security number in violation of 42 U.S.C. § 408 and making a false claim of U.S. citizenship on a 2002 driver's license application in violation of 18 U.S.C. § 911. A superseding indictment was returned on January 4, 2005, charging the defendant with falsely claiming U.S. citizenship on a driver's license application and on the accompanying voter registration application. On May 18, 2005, the defendant was convicted by a jury of the false citizenship claim on his voter registration application.

United States Attorney: Gregory Robert Miller (850) 942-8430
District Election Officer: Len Register
Supervisory Assistant United States Attorney: Karen Rhew

STATUS: 1 person indicted; 1 person convicted.

NORTHERN DISTRICT OF FLORIDA (2000-Voting by Non-citizen), *United States v. Mohsin Ali*, Case No. 4:05-CR-47: On September 26, 2005, a misdemeanor information was filed against Mohsin Ali charging him with voting by a non-citizen in violation of 18 U.S.C. § 611.

United States Attorney: Gregory Robert Miller (850) 942-8430
District Election Officer: Len Register
Supervisory Assistant United States Attorney: Karen Rhew
Assistant United States Attorney: Winifred NeSmith

STATUS: 1 person charged by information.

SOUTHERN DISTRICT OF FLORIDA (Voting by Noncitizen), *United States v. Velasquez*, Case No. 03-CR-20233: On March 20, 2003, Rafael Velasquez, a former candidate for the Florida legislature, was indicted on charges of misrepresenting U.S. citizenship in 1998 in connection with voting and for making false statements in 2001 to the Immigration and Naturalization Service, in violation of 18 U.S.C. §§ 911, 1015(f) and 1001. On September 9, 2003, the defendant was convicted by a jury on two counts of making false statements on his naturalization application to the INS concerning his voting history.

United States Attorney: R. Alexander Acosta (305) 961-9100
District Election Officer: Karen Rochlin

STATUS: 1 person indicted; 1 person convicted.

SOUTHERN DISTRICT OF FLORIDA (Voting by Noncitizen), *United States v. McKenzie*, Case No. 04-CR-60160; *United States v. Francois*, No. 04-CR-20488; *United States v. Exavier*, No. 04-CR-60161; *United States v. Lloyd Palmer*, No. 04-CR-60159; *United States v. Velrine Palmer*, No. 04-CR-60162; *United States v. Shivdayal*, No. 04-CR-60164; *United States v. Rickman*, No. 04-CR-20491; *United States v. Knight*, No. 04-CR-20490; *United States v. Sweeting*, No. 04-CR-20489; *United States v. Lubin*, No. 04-CR-60163; *United States v. Bennett*, No. 04-CR-14048; *United States v. O'Neil*, No. 04-CR-60165; *United States v. Torres-Perez*, No. 04-CR-14046; *United States v. Phillip*, No. 04-CR-80103; *United States v. Bain Knight*, No. 04-CR-14047: On July 15, 2004, fifteen noncitizens were charged with voting in various elections beginning in 1998 in Broward, Miami-Dade, St. Lucie, Martin, or

Palm Beach County in violation of 18 U.S.C. § 611, and four of these defendants were also charged with making false citizenship claims in violation of 18 U.S.C. §§ 911 or 1015(f). Ten defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government

United States Attorney: R. Alexander Acosta (305) 961-9100
District Election Officer: Karen Rochlin

STATUS: 15 persons indicted; 10 persons convicted; 1 person acquitted; 4 cases dismissed.

SOUTHERN DISTRICT OF ILLINOIS (2002-Ballot Forgery), *United States v. Brooks*, Case No. 03-CR-30201: East St. Louis election official Leander Brooks was indicted on October 24, 2003, on charges of submitting fraudulent ballots in the 2002 general election in St. Clair County in violation of 42 U.S.C. §§ 1973i(c), 1973i(e), 1973gg-10(2)(B), and 18 U.S.C. §§ 241 and 371. The defendant pled guilty to all charges on February 12, 2004.

United States Attorney: Ronald J. Tenpas (618) 628-3700
District Election Officer: Hal Goldsmith

STATUS: 1 person indicted; 1 person convicted.

SOUTHERN DISTRICT OF ILLINOIS (2004-Vote Buying), *United States v. Scott*, Case No. 05-CR-30040; *United States v. Nichols*, No. 05-CR-30041; *United States v. Terrance Stith*, No. 05-CR-30042; *United States v. Sandra Stith*, No. 05-CR-30043; *United States v. Powell, et al.*, No. 05-CR-30044: On March 22, 2005, four Democratic precinct committeemen in East St. Louis, St. Clair County, were charged by information with vote buying in the 2004 general election in violation of 42 U.S.C. § 1973i(c). All four pled guilty the same day. Also on March 22, a grand jury indicted four additional Democratic precinct committeemen and one precinct worker on conspiracy and vote buying charges in violation of 18 U.S.C. § 371 and 42 U.S.C. § 1973i(c). A jury convicted all five defendants on June 29, 2005.

United States Attorney: Ronald J. Tenpas (618) 628-3700
District Election Officer: Hal Goldsmith

STATUS: 5 persons indicted; 4 persons charged by information; 9 persons convicted.

DISTRICT OF KANSAS (2002 & 2000-Double Voting), *United States v. McIntosh*, Case No. 04-CR-20142: A felony information was filed on October 28, 2004, against McIntosh for voting in both Wyandotte County, Kansas, and Jackson County, Missouri, in the general elections of 2002 and 2000 in violation of 42 U.S.C. § 1973i(e). A superseding misdemeanor information was filed on December 15, 2004, charging McIntosh with causing the deprivation of

constitutional rights in violation of 18 U.S.C. § 242, to which the defendant pled guilty on December 20, 2004.

United States Attorney: Eric F. Melgren (316) 269-6481
 District Election Officer: Leon Patton

STATUS: 1 person charged by information; 1 person convicted.

EASTERN DISTRICT OF KENTUCKY (1998-Vote Buying), *United States v. Conley*, Case No. 03-CR-00013; *United States v. Stone*, No. 03-CR-0014; *United States v. Madden*, No. 03-CR-00015; *United States v. Stone, et al.*, No. 03-CR-00016; *United States v. Calhoun*, No. 03-CR-00017; *United States v. Johnson*, No. 03-CR-00018; *United States v. Newsome, et al.*, No. 03-CR-0019: Six persons were indicted on March 28, 2003, and four more persons were indicted on April 24, 2003, on charges of buying votes in connection with the 1998 primary in Knott County in violation of 42 U.S.C. § 1973i(c). Five of the ten defendants pled guilty, two were convicted at trial, and three were acquitted. One defendant has appealed his conviction.

United States Attorney: Gregory F. Van Tatenhove (859) 233-2661
 Criminal Chief/District Election Officer: James A. Zerhusen
 Public Integrity Section Trial Attorney: Richard C. Pilger

STATUS: 10 persons indicted; 7 persons convicted; 3 persons acquitted.

EASTERN DISTRICT OF KENTUCKY (2002-Vote Buying), *United States v. Hays, et al.*, Case No. 03-CR-00011: On March 7, 2003, ten defendants were indicted on charges of conspiracy and vote buying for a local judge, John Doug Hays, in Pike County in the November 2002 general election in violation of 42 U.S.C. § 1973i(c) and 18 U.S.C. § 371. Five defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government.

United States Attorney: Gregory F. Van Tatenhove (859) 233-2661
 District Election Officer: James A. Zerhusen
 Assistant United States Attorney: Ken Taylor

STATUS: 10 persons indicted; 5 persons convicted; 1 person acquitted; 4 cases dismissed.

EASTERN DISTRICT OF KENTUCKY (2000-Vote Buying & Mail Fraud), *United States v. Turner, et al.*, Case No. 05-CR-00002: A grand jury indicted three defendants on May 5, 2005, for vote buying and mail fraud in connection with the 2000 elections in Knott, Letcher, Floyd, and Breathitt Counties in violation of 42 U.S.C. § 1973i(c) and 18 U.S.C. § 1341.

United States Attorney: Gregory F. Van Tatenhove (859) 233-2661
 Criminal Chief/District Election Officer: James A. Zerhusen
 Assistant United States Attorney: Ken Taylor

STATUS: 3 persons indicted.

MIDDLE DISTRICT OF LOUISIANA (2002-Perjury, Registration Fraud), *United States v. Braud*, Case No. 03-CR-00019: On March 6, 2003, Tyrell Mathews Braud was indicted on three counts of making false declarations to a grand jury in connection with his 2002 fabrication of eleven voter registration applications, in violation of 18 U.S.C. § 1623. Braud pled guilty to all counts on May 2, 2003.

United States Attorney: David R. Dugas (225) 389-0443
 District Election Officer: James Stanley Lemelle

STATUS: 1 person indicted; 1 person convicted.

WESTERN DISTRICT OF LOUISIANA (2002-Registration Fraud), *United States v. Thibodeaux*, Case No. 03-CR-60055: St. Martinsville City Councilwoman Pamela C. Thibodeaux was indicted on December 10, 2003, for conspiring to submit false voter registration information, in violation of 18 U.S.C. § 371 and 42 U.S.C. § 1973i(c). The defendant pled guilty to both charges on April 12, 2005.

United States Attorney: Donald W. Washington (337) 262-6618
 District Election Officer: William Flanagan

STATUS: 1 person indicted; 1 person convicted.

WESTERN DISTRICT OF MISSOURI (2004, 2002, & 2000-Double Voting), *United States v. Scherzer*, Case No. 04-CR-00401; *United States v. Goodrich*, No. 04-CR-00402; *United States v. Jones*, No. 05-CR-00257; *United States v. Martin*, No. 05-CR-00258: On December 13, 2004, two misdemeanor informations were filed charging Lorraine Goodrich and James Scherzer, Kansas residents who voted in the 2002 and 2000 federal elections in both Johnson County, Kansas and Kansas City, Missouri, with causing the deprivation of the constitutional right to vote for federal candidates by casting spurious ballots in violation of 18 U.S.C. §§ 242 and 2. Goodrich pled guilty on January 7, 2005, and Scherzer pled guilty on March 28, 2005. On July 19, 2005, similar misdemeanor informations were filed charging section 242 violations in the 2004 general election by Tammy J. Martin, who voted in both Independence and Kansas City, Missouri, and Brandon E. Jones, who voted in both Raytown and Kansas City, Missouri. On September 8, 2005, Brandon E. Jones pled guilty to voting in both Raytown and Kansas City, Missouri, on November 4, 2004.

United States Attorney: Todd P. Graves (816) 426-3122
 District Election Officer: Dan Stewart

STATUS: 4 persons charged by information; 3 persons convicted.

DISTRICT OF NEW HAMPSHIRE (2002-Civil Rights), *United States v. Raymond*, Case No. 04-CR-00141; *United States v. McGee*, No. 04-CF-00146; *United States v. Tobin*, No. 04-CR-00216; *United States v. Hansen*, No. 05-CR-00054: On June 21, 2004, two informations were filed charging Allen Raymond, former president of a Virginia-based political consulting firm called GOP Marketplace, and Charles McGee, former Executive Director of the New Hampshire State Republican Committee, with conspiracy to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. § 371 and 47 U.S.C. § 223. The charges stem from a scheme to block the phone lines used by two Manchester organizations to arrange drives to the polls during the 2002 general election. Raymond pled guilty on June 20, 2004, and McGee pled guilty on July 28, 2004.

On December 1, 2004, James Tobin, former New England Regional Director of the Republican National Committee, was indicted on charges of conspiring to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. § 371 and 47 U.S.C. § 223. On

April 7, 2005, an information was filed charging Shaun Hansen, the principal of an Idaho telemarketing firm called MILO Enterprises which placed the harassing calls, with conspiracy and aiding and abetting telephone harassment in violation of 18 U.S.C. §§ 371 and 2 and

47 U.S.C. § 223. On May 9, 2005, the information against Hansen was dismissed upon motion of the government, and on May 18, 2005, a superseding indictment was returned against Tobin charging conspiracy to impede the constitutional right to vote for federal candidates in violation of 18 U.S.C. § 241 and conspiracy to make harassing telephone calls in violation of 47 U.S.C. § 223. Trial is set to begin December 6, 2005.

Computer Crimes and Intellectual Property Section (CCIPS), Criminal Division
 Chief: Martha Stansell-Gamm (202) 514-1026 (CCIPS)
 Trial Attorneys: Andrew Levchuk (CCIPS)
 Nicholas Marsh (Public Integrity Section)

STATUS: 1 person indicted; 2 persons charged by information; 2 persons convicted.

WESTERN DISTRICT OF NORTH CAROLINA (2002 & 2000-Voting by Noncitizen), *United States v. Workman*, Case No. 03-CR-00038: On April 7, 2003, a ten-count indictment was returned charging Joshua Workman, a Canadian citizen, with voting and related offenses in the 2002 and 2000 primary and general elections in Avery County in violation of 18 U.S.C.

§§ 611, 911, 1001, and 1015(f). On June 30, 2003, the defendant pled guilty to charges of providing false information to election officials and to a federal agency.

United States Attorney: Gretchen C.F. Shappert (704) 344-6222
District Election Officer: Richard Edwards

STATUS: 1 person indicted; 1 person convicted.

WESTERN DISTRICT OF NORTH CAROLINA (2002-Vote Buying), *United States v. Shatley, et al.*, Case No. 03-CR-00035: On July 30, 2003, a grand jury returned a nine-count indictment charging Wayne Shatley, Anita Moore, Valerie Moore, Carlos "Sunshine" Hood and Ross "Toogie" Banner with conspiracy and vote buying in the Caldwell County 2002 general election in violation of 42 U.S.C. § 1973i(c) and 18 U.S.C. § 371. Anita Moore pled guilty on March 12, 2004. Valerie Moore pled guilty on April 28, 2004, and cooperated in the investigation. Wayne Shatley, Carlos "Sunshine" Hood, and Ross "Toogie" Banner were convicted by a jury of all counts on May 14, 2004.

United States Attorney: Gretchen C.F. Shappert (704) 344-6222
District Election Officer: Richard Edwards

STATUS: 5 persons indicted; 5 persons convicted.

WESTERN DISTRICT OF PENNSYLVANIA (Voter Intimidation), *United States v. Stewart, Case No. 05-CR-00127; United States v. Schiralli, No. 05-CR-00126:* On May 3, 2005, two sheriff's deputies in Allegheny County, Richard A. Stewart, Jr., and Frank Schiralli, were indicted on charges of making false declarations to the grand jury in violation of 18 U.S.C. § 1623.

United States Attorney: Mary Beth Buchanan (412) 644-3500
First Assistant United States Attorney: Robert Cessar
District Election Officer: A. Elliott McLean
Assistant United States Attorney: Stephen S. Stallings

STATUS: 2 persons indicted.

SOUTHERN DISTRICT OF WEST VIRGINIA (2004, 2002, & 2000-Vote Buying), *United States v. Mendez, Case No. 04-CR-00101; United States v. Porter, No. 04-CR-00145; United States v. Hrutkay, No. 04-CR-00149; United States v. Stapleton, No. 04-CR-00173; Thomas E. Esposito, No. 05-CR-00002:* A felony information was filed on May 7, 2004, charging Logan County Sheriff Johnny Mendez with conspiracy to defraud the United States in violation of

18 U.S.C. § 371. Mendez pled guilty on July 19, 2004. On July 30, 2004, a felony information was filed charging former Logan County Police Chief Alvin Ray Porter, Jr., with making expenditures to influence voting in violation of 18 U.S.C. § 597. Porter pled guilty on December 7, 2004. On August 10, 2004, Logan County attorney Mark Oliver Hrutkay was charged by information with mail fraud in violation of 18 U.S.C. §1341. Hrutkay pled guilty on January 7, 2005.

On September 9, 2004, Ernest Stapleton, Commander of the local VFW, was charged by information with mail fraud. Stapleton pled guilty on October 29, 2004. Finally, on January 10, 2005, an information was filed charging Thomas E. Esposito, a former Mayor of the City of Logan, with concealing the commission of a felony in violation of 18 U.S.C. § 4.

Acting United States Attorney: Charles T. Miller (304) 345-2200
 District Election Officer: Larry Ellis
 Assistant United States Attorney: Booth Goodwin

STATUS: 5 persons charged by information; 4 persons convicted.

SOUTHERN DISTRICT OF WEST VIRGINIA (1990-2004 Vote Buying), *United States v. Adkins, et al.*, Case No. 04-CR-00162: On August 25, 2004, Jackie Adkins was indicted for vote buying in Lincoln County in 2002 in violation of 42 U.S.C. § 1973i(c). A superseding indictment was returned on November 16, 2004, which added Wandell "Rocky" Adkins to the indictment and charged both defendants with conspiracy to buy votes in violation of 18 U.S.C. § 371 and additional substantive vote buys. A second superseding indictment was returned on May 5, 2005, which added three additional defendants, Gregory Brent Stowers, Clifford Odell "Groundhog" Vance, and Toney "Zeke" Dingess, to the conspiracy and vote buying indictment.

Acting United States Attorney: Charles T. Miller (304) 345-2200
 District Election Officer: Larry Ellis
 Assistant United States Attorney: Karen George

STATUS: 5 persons indicted.

EASTERN DISTRICT OF WISCONSIN (2004-Registration Fraud), *United States v. Davis*, Case No. 05-MJ-00454; *United States v. Byas*, No. 05-MJ-00455; *United States v. Ocasio*, No. 05-CR-00161; *United States v. Prude*, No. 05-CR-00162; *United States v. Sanders*, No. 05-CR-00163; *United States v. Alicea*, No. 05-CR-00168; *United States v. Brooks*, No. 05-CR-00170; *United States v. Hamilton*, No. 05-CR-00171; *United States v. Little*, No. 05-CR-00172; *United States v. Swift*, No. 05-CR-00177; *United States v. Anderson*, No. 05-CR-00207; *United States v. Cox*, No. 05-CR-00209; *United States v. Edwards*, No. 05-CR-00211; *United States v. Gooden*, No. 05-CR-00212: On June 23, 2005, criminal complaints were issued against Brian L. Davis and Theresa J. Byas charging them with double voting in violation of 42 U.S.C.

§ 1973i(e). Five days later indictments were returned against convicted felons Milo R. Ocasio and Kimberly Prude, charging them with falsely certifying that they were eligible to vote in violation of 42 U.S.C. § 1973gg-10(2)(B), and against Enrique C. Sanders, charging him with multiple voting in violation of 42 U.S.C. § 1973i(e). On July 12, 2005, five more indictments were returned charging Cynthia C. Alicea with multiple voting in violation of 42 U.S.C. § 1973i(e) and convicted felons Deshawn B. Brooks, Alexander T. Hamilton, Derek G. Little, and Eric L. Swift with falsely certifying that they were eligible to vote in violation of 42 U.S.C. § 1973gg-10(2)(B).

On August 16, Indictments were filed against Brian L. Davis and Theresa J. Byas charging them with double voting in violation of 42 U.S.C. § 1973i(e). In addition, on the same day four more Indictments were returned charging convicted felons Ethel M. Anderson, Jiyto L. Cox, Correan F. Edwards, and Joseph J. Gooden with falsely certifying that they were eligible to vote in violation of 42 U.S.C. § 1973gg-10(2)(B).

On September 16, 2005, Milo R. Ocasio pled guilty and on September 21, 2005, Kimberly Prude was found guilty by a jury. On September 22, 2005, the court declared a mistrial in the case of the *United States v. Sanders*. On September 23, 2005, USA Biskupic filed a motion and order seeking leave to communicate with jurors to assist in determining whether to retry the defendant and permission was granted.

United States Attorney: Steven M. Biskupic (414)297-1700
District Election Officer: Richard Frohling

STATUS: 14 persons indicted; 2 persons convicted.

**ELECTION FRAUD PROSECUTIONS
SINCE OCTOBER 2002**

ELECTION FRAUD OFFENSES	
	Total Number
PERSONS CHARGED (BY INDICTMENT, INFORMATION, OR COMPLAINT)	95
CONVICTIONS	55
DISMISSALS BY THE GOVERNMENT	8
ACQUITTALS	5

THE CENTURY FOUNDATION
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Voter ID and Fraud: Prove It

Tova Andrea Wang, The Century Foundation, 7/28/2005

The Century Foundation's Working Group on State Implementation of Election Reform just released a report called *Balancing Access and Integrity* that makes a number of innovative recommendations for the states to follow in order to comply effectively and fairly with the Help American Vote Act of 2004 in upcoming federal elections. While states are likely to be receptive to many of the suggestions the group makes, in one area the working group is definitely swimming against the tide: the report flatly states that there is no reason for states to go beyond HAVA's narrow provisions regarding the **presentation of identification in order to vote.**

Since the passage of that act many states have, in the name of fighting "fraud," plunged forward to enact stricter and stricter identification requirements for voting. Some 20 states now require all voters to present identification in order to cast a ballot—sometimes even mandating that it be a government issued photo identification. Yet the scholars of elections and election law involved in this group unanimously state that there is simply very scant evidence that such measures do anything to combat fraud. While the potential disenfranchising impacts of such requirements also need further study, the report points out that there is some anecdotal evidence that identification requirements serve to disenfranchise major segments of the voting population.

Since the publication of the report, some real data has started to materialize that supports these arguments.

For example, after practically every lawyer in the state scoured the land for fraudulent votes in Washington State because of the election litigation surrounding the gubernatorial race, only **six cases of alleged double voting** were found.

Similarly, in Ohio—perhaps the only other state to be subjected to the same level of scrutiny as Washington—a **statewide survey** found that of the 9,078,728 votes cast in Ohio's 2002 and 2004 general elections, a total of four were deemed as ineligible or "fraudulent" and found by the board of elections and county prosecutors to be legally actionable.

As we further cite in the report, Georgia Secretary of State Kathy Cox wrote in a **letter to Governor Sonny Purdue** opposing the state's new identification bill:

One of the primary justifications given by the Legislature for the passage of the photo identification provisions of House Bill 244—the elimination of voter ID fraud at the polls—is an unfounded justification. I cannot recall one documented case of voter fraud during my tenure as Secretary of State or Assistant Secretary of State that specifically related to the impersonation of a registered voter at voting polls. Our state currently has several practices and procedures in existence to ensure that such cases of voter fraud would have been detected if they in fact occurred, and at the very least, we would have complaints of voters who were unable to vote because someone had previously represented himself or herself as such person on that respective Election Day.

The data is also mounting that identification requirements have disproportionately disenfranchising impacts on certain communities. These include those less likely to have the requisite identification and those with less ability to obtain it—the poor, minorities, the elderly, the young, the elderly and urban

residents. A June 2005 study by the University of Wisconsin found the following:

- An estimated 23 percent of persons aged 65 and over do not have a Wisconsin drivers license or a photo ID.
- An estimated 98,247 Wisconsin residents ages 35 through 64 also do not have either a drivers license or a photo ID.
- Less than half (47 percent) of Milwaukee County African American adults and 43 percent of Hispanic adults have a valid drivers license compared to 85 percent of white adults outside Milwaukee.
- For young adults ages 18-24 only 26 percent of African Americans and 34 percent of Hispanics in Milwaukee County have a valid license compared to 71 percent of young white adults in the balance of the state

Previous studies have produced results in accordance with these findings. A study by the The National Commission on Federal Election Reform—the Carter-Ford Commission—found in 2001 that 6 to 10 percent of the existing American electorate lacks any form of state ID. A 1994 Justice Department study found that blacks in Louisiana were four to five times less likely than whites to have photo IDs.

Given all this piling on of negative evidence, both in terms of the efficacy of ID requirements in fulfilling the goal their advocate's claim and their impact on voting rights, it is somewhat mind boggling that so many state officials, as well as other groups working on this issue, are still vigorously pushing for greater expansion of what seems to be a rather useless yet dangerous tool. Shouldn't the burden of proof now shift to the advocates of more voter ID to demonstrate the value of their cause?

Tona Andrea Wong is a senior program officer and Democracy Fellow at The Century Foundation.

The Century Foundation conducts public policy research and analyses of economic, social, and foreign policy issues, including inequality, retirement security, election reform, media studies, homeland security, and international affairs. The foundation produces books, reports, and other publications, convenes task forces, and working groups and operates eight informational Web sites. With offices in New York City and Washington, D.C., The Century Foundation is nonprofit and nonpartisan and was founded in 1919 by Edward A. Filene.

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August 18, 2005

Mr. John Tanner
 Chief, Voting Section
 Civil Rights Division
 U.S. Department of Justice
 950 Pennsylvania Avenue, N.W.
 Washington, D.C. 20530

Re: Georgia's Elimination of Affidavit Identification Option under Section 5 (#2005-2029)

Dear Mr. Tanner:

We are law professors who specialize in voting rights. In the absence of additional information, we write to urge you to object to Georgia House Bill 244 pursuant to Section 5 of the Voting Rights Act.

Georgia law currently permits registered voters to cast a ballot after presenting various forms of identification, including a birth certificate, social security card, certified naturalization documentation, a current utility bill, bank statement, government check, or any government document bearing the name and address of the voter. Voters who do not bring one of seventeen forms of identification to the polls may, under current law, confirm their identity by executing a sworn affidavit stating that they are qualified to vote.

House Bill 244 would alter Georgia's voting procedures by reducing the permissible forms of identification from seventeen to six (all government issued photo identification) and eliminating the affidavit identification option (the "affidavit ID option"). The bill was signed into law by Governor Perdue on April 22, 2005 and has been submitted to you for preclearance.

Under Section 5 of the Voting Rights Act, 42 U.S.C. Section 1973c, a covered jurisdiction may not implement a change in its election laws or practices unless **the jurisdiction carries the burden** of demonstrating that the change will be free of any racially discriminatory purpose or effect. Georgia v. United States, 411 U.S. 526, 538 (1973). The objective of Section 5 "has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."¹ **Georgia has not carried its burden** to show that H.B. 244 does not have a retrogressive impact.

¹ Beer v. United States, 425 U.S. 130, 141 (1973) (emphasis added); see also Reno v. Bossier Parish Sch. Bd., 520 U.S. 471, 478 (1997) ("Retrogression, by definition, requires a comparison of a jurisdiction's new voting plan with its existing plan. . . . It also necessarily implies that the jurisdiction's existing plan is the benchmark against which the 'effect' of voting changes is measured."); Heldar v. Hall, 512 U.S. 874, 883 (1994) (plurality opinion) (under Section 5, "the proposed voting practice is measured against the existing voting practice"); State of Texas v. United States, 866 F. Supp. 20, 27 (D.D.C. 1994) (not-retrogression requirement "mandates that preclearance be denied under the 'effects' prong of Section 5 if a new system places minority voters in a weaker position than the existing system").

⁴ Letter dated July 7, 2005, from Seth A. Cohen, Esq., to John Tanner, Chief, Voting Section, at 3.

I. Eliminating the affidavit ID option and disenfranchisement of minority voters in Georgia.

Existing law allows voters without photo identification to sign a sworn affidavit of identity as an alternative to presenting identification. Georgia has not shown that House Bill 244's elimination of this affidavit "safety net" is not retrogressive.

Georgia has failed to produce critical information relevant to the retrogressive impact of the new law. Each county in Georgia retains affidavits submitted by voters for two years. The affidavits executed by voters to establish their identity can be matched with Georgia's statewide computerized voter registration list, which includes racial identification for at least 97.3% of voters. An alternative approach would require that Georgia provide the number of affidavits submitted by precinct and county, and would cross reference this data against U.S. Census county and precinct-level demographic data on race. Examination of this data would provide important insights about the extent to which racial minorities previously made use of the sworn statement provision because they failed to bring a photo identification or other documentary identification with them on Election Day. Such data is essential to determining the retrogressive impact of eliminating the affidavit ID option.

In other states, data shows that an elimination of an affidavit ID option would have a retrogressive impact. South Dakota, for example, allows voters who do not to bring photo identification to the polls to sign an affidavit to establish their identity. According to a July 15, 2004 *Aberdeen News* article written by Chet Brokaw, during a June 2004 statewide election voters in South Dakota counties with large concentrations of American Indians were 2 to 8 times more likely to sign affidavits than voters in other parts of the state. The article indicates:

Voter turnout was up in both reservation and non-reservation areas, and the use of affidavits was particularly high in reservation counties, [Republican Secretary of State Chris] Nelson said. While affidavits were signed by about 2 percent of the voters statewide, affidavits were used by 16 percent of the voters in Shannon County, 9 percent in Todd County, about 7 percent in Corson and Dewey counties, and 5.3 percent in Ziebach County.

American Indians make up only 8.3% of South Dakota's population, but a much higher percentage of the population in Shannon County (94.2% American Indian), Todd County (85.6%), Corson County (60.8%), Dewey County (74.2%), and Ziebach County (72.3%).

While Georgia could easily compile similar information that shows the racial identity of those who use affidavits in the state, it has failed to do so. Granted, affidavit data might be less than perfect due to under-trained or overworked poll workers in particular precincts who either barred voters lacking documentary ID from voting without telling them about the affidavit ID option, or let such voters cast ballots without providing affidavits to avoid the hassle of extra paperwork. Nevertheless, the affidavits provide essential information and should be examined by the Department of Justice. Georgia's failure to provide available data on the actual use by minority citizens of affidavits prevents it from meeting its burden of establishing a lack of retrogressive effect under Section 5.

II. Eliminating the affidavit ID option is especially problematic in light of the state's reduction of permissible forms of identification from seventeen down to six.

By reducing the permissible forms of identification from seventeen down to six, Georgia has enhanced the likelihood that eliminating the affidavit ID option will be retrogressive. Under prior law, a voter could show a variety of documents to establish identity, including a birth certificate, social security card, certified naturalization documentation, a current utility bill, bank statement, government check, or any government document bearing the name and address of the voter. Existing evidence suggests that in the absence of these acceptable forms of identification, an elimination of the affidavit ID option would be retrogressive, and Georgia has failed to provide adequate evidence to the contrary.

For example, existing data suggests that minorities have less access to the government agencies that can provide one of the six forms of identification required under H.B. 244. In Georgia's 159 counties there are only 56 Department of Driver Services ("DDS") locations where driver's licenses or other government-issued photo identification are available to the general public (on July 1, 2005, the Department of Motor Vehicle Safety became the Department of Driver Services). The state recently eliminated the two locations that previously served Atlanta, the state's largest population center where, according to the 2000 Census, over 65% of the population, or more than a quarter-million people, are African-American or Hispanic.⁵

Moreover, in ten Georgia counties with the highest percentage of African-American residents, only one (Dougherty) has a DDS office.

County	Percent Black Population	DDS Office
Hancock	77.8	0
Talbot	61.6	0
Stewart	61.5	0
Terrell	60.7	0
Calhoun	60.6	0
Clay	60.5	0
Dougherty	60.1	1
Randolph	59.5	0
Warren	59.5	0
Macon	59.5	0

Moreover, to obtain a photo identification card, voters must obtain documentation such as a birth certificate or passport, requiring payment of fees ranging from \$10.00 to \$85.00.⁷ The poverty rate is 26% for African Americans in Georgia and 30% for Hispanics, compared to only 11% for whites.⁶ Georgia has provided no evidence that establishes that these fees—which one

⁵ *Id.* at 4.

⁶ Kaiser Family Foundation, Georgia: Poverty Rate by Race/Ethnicity, 2002-2003 (available at <http://www.statehealthfacts.kff.org/cgi-bin/>)

could construe as de facto poll taxes in the absence of an affidavit ID option—will not fall most heavily on persons of color.

Further, census data demonstrate that in the United States African Americans and Latinos are more than three times more likely than whites to register to vote at a public assistance agency. Whites are more likely than either African Americans or Latinos to have registered to vote when seeking a driver's license.⁷ In Georgia, 77.3% of citizens who are served by the Temporary Assistance for Needy Families program are black, compared to 20.1% who are white.⁸ Public assistance offices in Georgia, unlike DDS offices, do not provide photo IDs to clients as a regular part of their services to the public. Accordingly, a form of voter registration far more likely to be used by minorities than by whites will no longer provide the voter with full eligibility to vote in Georgia. Unlike voters who register at DDS, voters who register at public assistance offices must visit another government office to become fully eligible, with no option of proving their identity by affidavit if they do not make the additional visit. Georgia has failed to meet its burden under Section 5 by demonstrating that the disproportionate use of public assistance voter registration by minorities as reflected in national data is not the case in Georgia.⁹

The findings of independent studies of photo identification requirements elsewhere also suggest that H.B. 244's elimination of the affidavit ID option would substantially burden minority voters. The Report of the National Commission on Federal Election Reform, chaired by former Presidents Gerald Ford and Jimmy Carter, identified two problems with voter identification provisions: the burden the requirements place on voters; and the risk of selective and discriminatory enforcement. The report found that rural poor and urban voters are disproportionately represented among the 6 to 10 percent of registered voters who do not possess official state identification. Additionally, the Task Force report found that identification requirements create the opportunity for selective enforcement that can take either innocuous or invidious forms when poll workers request photo identification only from voters unknown to them.¹⁰

Studies conducted in other states confirm the evidence and conclusions above. The University of Wisconsin-Milwaukee Employment and Training Institute published a report in June 2005 highlighting the disparate rates of driver's license possession between white and minority citizens in that state.¹¹ The study found that the rate of driver's license possession

healthfacts.cgi?action=profile&area=Georgia&category=Demographics+and+the+Economy&subcategory=People+in+Poverty&topic=Poverty+Rate+by+Race%2Fethnicity).

⁷ U.S. Census Bureau, Voting and Registration in the Election of November 2000, Detailed Tables for Current Population Report, P20-542, Table 14, "Method of Registration Among Those Who Registered After January 1, 1995, By Selected Characteristics: November 2000 (available at <http://www.census.gov/population/www/socdemo/voting/p20-542.html>).

⁸ Georgia Department of Human Resources, Fact Sheet, "TANF in Georgia," November 2003 (available at http://dhcs.dhr.georgia.gov/DHR-DFCS/DHR-DFCS_CommonFiles/4922055TANF_in_Georgia.pdf).

⁹ Georgia's new structure also runs counter to the purpose of the National Voter Registration Act, which was designed to remove bureaucratic hurdles to voter participation.

¹⁰ JOHN MARK HANSEN, TASK FORCE ON THE FEDERAL ELECTION SYSTEM: VERIFICATION OF IDENTITY (Jul. 2001) (available at http://millercenter.virginia.edu/programs/natl_commissions/commission_final_report/task_force_report/hansen_chap6_verification.pdf).

¹¹ JOHN PAWASARAT, THE DRIVER LICENSE STATUS OF THE VOTING AGE POPULATION IN WISCONSIN (June 2005) (available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>).

among African-Americans was half that for whites. This disparity increased among younger drivers, where white adults 18-24 were three times as likely as their black peers to possess a driver's license. Only 22% of black males in that age group had a driver's license.

The Department of Justice is familiar with these facts and has denied pre-clearance to similar photo identification schemes. In 1994, Louisiana passed legislation that would require only first-time voters, who registered by mail, to produce photo identification before they could vote.¹² The Department objected, pointing out that African-Americans are "four to five times less likely than white person in the state to possess a driver's license . . ."¹³ The Attorney General concluded that such a disparity "will eliminate certain of the gains to minority voters . . . and 'would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.'"¹⁴ Louisiana now allows voters to establish their identity through signed affidavit.

Georgia's African-American population is five times less likely than whites to have access to a motor vehicle. However, Georgia's H.B. 244—unlike the Louisiana statute that applied only to first-time voters who registered by mail—requires a driver's license or other photo identification to be presented *every time any* voter attempts to cast a ballot.¹⁵

In August 2005, the state of Georgia provided the Justice Department with data regarding racial identity of those with government-issued identification cards such as driver's licenses, organized by county. Of the Georgians with state-sponsored ID whose racial identity is known, the racial breakdown is as follows: 67% white, 27.5% black, 2% Hispanic, 1.3% Asian American. At first glance, this appears to roughly track the demographics of the state's broader population. The racial categorization data is inconclusive, however, because Georgia does not know the race of 42% of those to whom a driver's license or identification card was issued.

Indeed, closer examination of the county data suggests that African Americans in Georgia may be less likely to possess a driver's license or other form of government identification. The data provided by Georgia allows a comparison of the total number of driver's licenses and identification cards per county. United States Census data identifies the 10 Georgia counties with the highest percentage of African-Americans as those listed above on page 3 of this letter, and the 10 counties with the highest percentage of whites as Towns, Fannin, Union, Dade, Dawson, Catoosa, Pickens, Walker, Brantley, and White. The African-American counties

¹² 1994 La. ALS 10 § 115(F).

¹³ Letter from Deval L. Patrick, United States Assistant Attorney General, to Sheri Morris, Louisiana Assistant Attorney General (Nov. 21, 2004).

¹⁴ *Id.* (quoting *Beer v. United States*, 425 U.S. 130, 141 (1976)).

¹⁵ Georgia has also failed to produce adequate data that grapples with the practical consequences of its law. Without the affidavit ID option, for example, a Georgia voter whose wallet or purse is stolen on or just before election day may also suffer the theft of her right to vote. National data show that blacks are almost three times more likely than whites to be victims of purse snatching and pocket picking. See U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Criminal Victimization in the United States, 2003*, Table 5 "Personal Crimes 2003: Number of victimizations and victimization rates for persons age 12 and over, by type of crime and race of victims" (available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cvus0301.pdf>).

have only 87.7% of the IDs per 1000 voting-age residents as the overwhelmingly white counties.¹⁶

Jurisdiction	Racial Population	# of IDs per 1000 Voting-Age Residents
10 Georgia counties where greatest percentage of population is black	59.5%-77.8% black	913
State of Georgia	28.7% black 65.1% white	986
10 Georgia counties where greatest percentage of population is white	93.4%-97.1% white	1041

This data does not indicate that 91.3% of voting-age African Americans have state-issued identification. While the predominantly white counties are only 2.9% to 6.6% minority, the predominantly black counties range from 21.5% to 39.2% white. It is possible that by omitting the whites in these predominantly black counties the disparities would be even starker.

This county analysis, however, is valuable in that it demonstrates the need for Georgia to provide better data about whether H.B. 244 is retrogressive. Indeed, the ultimate question is *not* whether state records show that minorities are just as likely as whites to have applied for a driver's license or other government-issued ID. *The most important question is what minorities bring to the polls on Election Day to establish their identity.* On that score, Georgia has failed to satisfy its burden by providing the most relevant information—racial data on those who have utilized the affidavit ID option. Under the earlier law, voters used affidavits not simply because they were never issued a valid photo identification, but also because they may have misplaced or forgotten that information when coming to their polling place. Thus, the affidavit data provides critical insight into whether or not H.B. 244 will have a retrogressive impact.

III. Eliminating the affidavit ID option is particularly severe in light of loosened restrictions to cast an absentee ballot.

Georgia has failed to show that its elimination of the affidavit ID option will not be retrogressive, especially in light of its liberalization of absentee ballot use. Georgia law currently limits absentee voting to persons who are required to be absent from their precinct of residence throughout election day, are 75 years of age or older, disabled, or meet other narrow requirements.¹⁸ House Bill 244 would allow any voter to cast an absentee ballot by mail without

¹⁶ U.S. Census, County Population Estimates by Age, Sex, Race, and Hispanic origin, July 1, 2004 (available at <http://www.census.gov/popest/datasets.html>).

¹⁸ Ga. Code 21-2-380.

an excuse within a 45-day period. Absentee voters are exempt from any photo identification requirement.

The Georgia Legislature loosened absentee voting requirements even though it had far more evidence of past fraud arising from absentee ballots than from casting ballots at the polls. In 2001, Georgia's Secretary of State established an Election Fraud Task Force to investigate problems with Georgia's election administration. The Task Force was "especially concerned about absentee ballot abuse"¹⁹ In terms of voting at the polls, however, Georgia's Secretary of State has written that she is not aware of a single instance of such fraud occurring during her tenure as both Assistant Secretary of State, and Secretary of State. The Secretary also points out that such fraud would be discovered when the actual voter voted either before or after the impersonator. The record of the first vote would prevent a second vote, a fact likely to be protested by the legitimate voter.

According to Hans A. von Spakovsky, the former vice chairman of Fulton County's elections board and current Counsel to the Assistant Attorney General of the Civil Rights Division, "absentee ballots represent the easiest way to steal an election."²⁰

Proponents of H.B. 244 most frequently cited a case of *absentee ballot fraud* in Dodge County in 1996 as justification for restricting permissible identification for voters at the polls. But H.B. 244 expands the pool of absentee voters while exempting them from identification requirements imposed on those who vote at the polls.

A national study has found that whites are about twice as likely as blacks to vote by absentee ballot.²¹ House Bill 244 makes voting by absentee ballot easier, and makes voting at the polls more difficult. To the extent that Georgia fails to show that its absentee voters are not disproportionately white and that significant numbers of minority voters have not used affidavits at the polls, the state fails to meet its burden of showing that H.B. 244 is not retrogressive. One can create colorful hypotheticals in which most minority voters who fail to bring government-issued ID to the polls suddenly muster the foresight to apply for a no-excuse absentee ballot and submit the absentee ballot weeks before the election. But speculation and conjecture do not substitute for evidence establishing lack of retrogressive impact that Section 5 requires Georgia provide to meet its legal burden.

¹⁹ Editorial, *Focusing on Fraud: Numbers and anecdotes show the need for a task force targeting flaws in Georgia's election process*, Atlanta Journal-Constitution, Aug. 17, 2001, at 20A.

²⁰ Memorandum from Hans A. von Spakovsky, Attorney and Government Affairs Consultant, on No Fault Absentee Balloting, p. 1 (Mar. 29, 2001) (available at http://www.hst.caltch.edu/~voting/von_spakovsky-1.pdf).

²¹ JOHN MARK HANSEN, TASK FORCE ON THE FEDERAL ELECTION SYSTEM: EARLY VOTING, UNRESTRICTED ABSENTEE VOTING, AND VOTING BY MAIL (Jul. 2001) (available at http://millercenter.virginia.edu/programs/natl_commissions/commission_final_report/task_force_report/hansen_chap5_early.pdf).

IV. A Note on Partisan Application of Section 5

Recently, various commentators have called into question the stellar nonpartisan credentials of the Justice Department. We continue to have faith that the Department of Justice can administer Section 5 in a nonpartisan way.

Given that Georgia's racial minorities vote predominantly Democratic, this bill obviously raises partisan concerns. But questions of whether H.B. 244 advantages one political party or an individual's personal policy preference for or against the affidavit ID option are irrelevant to a Section 5 analysis. The burden is on the state of Georgia to show that the elimination of the affidavit ID option does not worsen the political position of minorities. The state of Georgia has not provided the most important information needed to determine this objective fact—the racial identity of those who have used affidavits in past elections.

This matter is therefore an excellent opportunity for the Voting Section to reaffirm its commitment to protecting minority voters while demonstrating its ability to administer Section 5 in a nonpartisan fashion.

V. Questions for Letter for Additional Information

Georgia cannot carry its burden without providing additional data culled from affidavits. Specifically, the Department of Justice should ask the following questions regarding Georgia's 2004 Primary and General Elections, as well as the March 2004 Presidential Preference Primary:

- a) How many affidavits affirming identity were submitted by minority voters?
- b) How many affidavits affirming identity were submitted in each county in Georgia? How many were submitted in each precinct?
- c) How many affidavits affirming identity were submitted by voters in predominantly minority precincts? What was average percentage of voters who submitted affidavits in predominantly minority precincts? What percentage of all voters statewide submitted affidavits?
- d) How many absentee ballots were cast? How many were cast by minority voters? How many absentee ballots were cast in each county in Georgia, and how many from voters who live in each precinct?

Conclusion

Section 5 requires a particularly searching examination of Georgia's elimination of the affidavit ID option because it affects access to the franchise itself. The preclearance requirements of Section 5 were designed in direct response to the history of exclusionary tactics that denied black citizens the opportunity to register and cast a ballot. South Carolina v. Katzenbach, 383 U.S. 301, 308-317 (1966). Accordingly, new hurdles that prevent qualified and eligible voters from casting a ballot on Election Day require the most stringent scrutiny under Section 5.

Based on the evidence submitted, Georgia has failed to carry its burden pursuant to Section 5. Without additional information regarding those who have used affidavits in past elections, H.B. 244 should be denied preclearance under Section 5 of the Voting Rights Act.

Very truly yours,

Professor Adam Cox
University of Chicago Law School

Professor Heather Gerken
Harvard Law School

Professor Michael Kang
Emory Law School

Professor Spencer Overton
George Washington University Law School

Professor Daniel Tokaji
Moritz College of Law
Ohio State University

THE CENTURY FOUNDATION
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ID and Voting Rights

Tova Andrea Wang, The Century Foundation, 8/29/2005

Laws requiring all voters to present very specific forms of identification before exercising their right to vote are rapidly becoming the voting rights barrier of the 21st Century. Last Friday, the Department of Justice approved a new Georgia law requiring every voter to show a government-issued photo ID. The Department of Justice was required to review the measure and "preclear" it because that state is covered by Section 5 of the Voting Rights Act. Although many legal scholars and voting rights advocates had argued the Department should deny its implementation because it would lead to disenfranchisement of minority voters, the Department evidently did not agree. Indiana passed similar legislation this year, and several groups have sued the state on the grounds that it violates the Voting Rights Act.

Next up is Arizona. Last week, after months of resisting, the governor of Arizona signed off on a plan for implementing Proposition 200, which required identification from all voters. Arizona's new rule is that all voters must show government issued photo identification or a tribal identification to vote. Alternatively, the voter may present two current pieces of identification from a narrow list of potential documents that show the voter's name and current address, such as a utility and phone bills.

The most problematic provision is this: if the voter is not able to present a government issued photo ID or these two documents to the satisfaction of the poll worker, that voter is simply disenfranchised, asked to leave the polling place without casting a ballot. The voter may not even cast a provisional ballot. For example, if the voter brings a gas bill and a water bill, but the poll worker decides the water bill is not "dated within ninety days of the election," that person will be absolutely denied the right to vote. In addition to being a violation of the Help America Vote Act's mandate that any voter who shows up at the polls and believes he or she is registered and eligible to vote must be given a provisional ballot, this raises serious voting rights issues.

As a group of preeminent voting rights scholars have argued in Georgia, under Section 5 of the Voting Rights Act, a covered jurisdiction may not implement a change in its election laws or practices unless the jurisdiction demonstrates the change will be free of any racially discriminatory purpose or effect. The objective of Section 5 "has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."

As in Georgia, Arizona—especially given the possibility of a complete denial of the vote—has not met that burden of proof. It is up to the state to demonstrate that the ID requirement, which contemplates complete disenfranchisement of certain voters, will not have a discriminatory impact. So, for example, has the state examined whether most voters have or have easy access to the necessary documents? Have state officials investigated what groups are likely to lack the kinds of identification required? Since the law puts the burden on the state, the state must undertake these types of inquiries before it is permitted to go forward with this scheme—for there is a great deal of evidence indicating that it is indeed minorities who lack even one form let alone two forms of the types of identification contemplated.

The difficulty is that the poor and minorities are least likely to own motor vehicles and possess a driver's license—the most commonly accepted form of identification. Indeed, in 1994, the U.S. Department of Justice found that African-Americans in Louisiana were 4 to 5 times less likely to have government-sanctioned photo ID than white residents. As a result, the Department denied pre-clearance for that state's proposed photo ID requirement because it "would lead to retrogression in the position of racial

minorities with respect to their effective exercise of the electoral franchise.”

The evidence continues to mount. A June 2005 study by the University of Wisconsin found that less than half (47 percent) of Milwaukee County African American adults and 43 percent of Hispanic adults have a valid drivers license compared to 85 percent of white adults outside Milwaukee. One Arizona county reported in February that it was forced to reject nearly 75 percent of new voter registration forms for failure to provide adequate proof of citizenship.

Furthermore, for those who do not have the kinds of up-to-date non-photo ID necessary—and many minority and urban voters, for example those who live in multiple family dwellings simply will not—getting identification from the government will present costs and burdens for voters who simply want to exercise their constitutional right to vote. A certified copy of a birth certificate costs from \$10.00 to \$45.00, depending on the state; a passport costs \$85.00; and certified naturalization papers cost \$19.95. It may not be so very easy for people who work more than one job or have small children to take the time during business hours, drive to a Department of Drivers Services, and wait on line to get necessary identification. Indeed, most of the state's offices are open 8:00 a.m. to 5:00 p.m. Monday through Friday. Has the state researched the potential disparate impacts on getting non-photo ID? If not, it has not met its burden under the Act.

There has been a great deal of controversial discussion over the Voting Rights Act recently because some sections—including Section 5—are due to expire. The Act was passed in order to eliminate procedures aimed at the disenfranchisement of particular groups. That it is still necessary is being demonstrated today in Arizona and Georgia.

Tova Andrea Wang is a senior program officer and Democracy Fellow at The Century Foundation.

The Century Foundation conducts public policy research and analyses of economic, social, and foreign policy issues, including inequality, retirement security, election reform, media studies, homeland security, and international affairs. The foundation produces books, reports, and other publications, convenes task forces, and working groups and operates eight informational Web sites. With offices in New York City and Washington, D.C., The Century Foundation is nonprofit and nonpartisan and was founded in 1919 by Edward A. Filene.

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Where's the Voter Fraud?

Tova Andrea Wang, The Century Foundation, 12/4/2006

Over the past month, the silence has been deafening.

For the past few years, many on the Right have been vociferously propagating the myth that voter fraud at the polling place is a rampant problem of crisis proportions. But we haven't heard from them lately. In fact, as far as my research can discover (Nexis and Google news searches of multiple relevant terms), there has not been one confirmed report of any of these types of incidents in the 2006 election. Not one. Even the Republican National Committee's vote fraud watch operation in their list of complaints from the 2006 election could not come up with one such case.

If you've been listening to the likes of John Fund, Thor Hearne, Ken Mehlman, and John Lott, you would think non-citizens are lining up to vote at the polls, mischievous partisans are voting multiple times by impersonating other voters, and dead people are voting in polling places across the country. In order to justify their argument that we need all voters to present government issued photo identification at the polls, they claim that this type of fraud is the biggest problem our electoral system confronts. They have been building and building this argument, hammering and hammering away at it to the point that it has now become the prevailing belief of the American public.

I won't go into the recitation of all of the previous research that has been done on what a nonexistent problem polling place fraud is and the fraudulent disenfranchisement narrow voter identification requirements cause among perfectly eligible voters—disproportionately minorities, the poor, the elderly, and voters with disabilities (who by the way, according to conventional wisdom, are also all disproportionately Democratic voters). However, confronted with this continuously growing mountain of evidence undermining their case, it has been interesting to observe the evolution of the Right's spinning of this issue of late.

In recent months, even before this election, slowly recognizing the remarkable weakness of their substantive argument, conservatives' new tack has been to say that even if it's true that there is not much polling place fraud, the simple fact that the American people believe it is occurring is a problem itself in that it is causing them to lose confidence in the election system. Well, no wonder they have the misguided belief that this is a problem—that's the message the Right has been hammering away at them over the last few years. In any case, the argument goes that we need identification requirements not because they will in actuality do anything to enhance the integrity of the voting process, but because we need to reassure people who have the perception the process is corrupt.

Let me provide just a few examples of this. In their answer in the identification litigation in Indiana, the state outright admitted that there had never been a single, solitary case of polling place fraud in the history of the state. Nevertheless, the state argued. A state may take action to avoid the appearance of fraud as well as its actual occurrence. A Rasmussen Report poll found that 58% of Americans believed that there was a lot or some fraud in American elections, and a Gallup poll after the 2000 election showed that 67% of adults nationally had only some or very little confidence in the way votes are cast and counted in our country. Public perceptions, grounded on publicly reported evidence of fraud such as that identified above [by the people I mentioned earlier] are a further justification for fraud prevention requirements like Indiana's photo ID law.

During the argument over photo identification before the Supreme Court in Michigan, the assistant attorney general conceded there is no evidence of widespread voter fraud but rather "a concern about it."

The esteemed Carter-Baker Commission wrote http://www.brennancenter.org/stack_detail.asp?key=97&subkey=9857, "There is no evidence of extensive fraud in US elections or of multiple voting . . . but the electoral system cannot inspire confidence if no safeguards exist to deter or detect fraud or confirm the identity of voters. . . . The problem is not the magnitude of fraud . . . the perception of possible fraud contributes to low confidence in the system."

The Supreme Court may even be starting to buy into this rhetoric. In the recent *Purcell* case regarding Arizona's identification law, Justice Kennedy wrote, "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised."

Georgia has twice passed voter identification requirements, in 1997 and 2005, basing the need for such barriers to the vote on instances of vote buying and absentee ballot fraud—two methods of voting that identification would do nothing about. More myths.

Basing voting rights laws upon purposely created misunderstandings of what the issues are is not a sound way to develop public policy. Rather than creating fake problems and then passing disenfranchising laws that purport to address them, we might do a better job of educating the American electorate as to what the real problems are in our voting system, and what they are not. It is only then that we will begin to address the flaws in the election systems that disenfranchise tens of thousands of voters in every major election.

Tova Wang is a Democracy Fellow at The Century Foundation.

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April 11, 2007

Panel Said to Alter Finding on Voter Fraud

By IAN URBINA

WASHINGTON, April 10 — A federal panel responsible for conducting election research played down the findings of experts who concluded last year that there was little voter fraud around the nation, according to a review of the original report obtained by The New York Times.

Instead, the panel, the Election Assistance Commission, issued a report that said the pervasiveness of fraud was open to debate.

The revised version echoes complaints made by Republican politicians, who have long suggested that voter fraud is widespread and justifies the voter identification laws that have been passed in at least two dozen states.

Democrats say the threat is overstated and have opposed voter identification laws, which they say disenfranchise the poor, members of minority groups and the elderly, who are less likely to have photo IDs and are more likely to be Democrats.

Though the original report said that among experts "there is widespread but not unanimous agreement that there is little polling place fraud," the final version of the report released to the public concluded in its executive summary that "there is a great deal of debate on the pervasiveness of fraud."

The topic of voter fraud, usually defined as people misrepresenting themselves at the polls or improperly attempting to register voters, remains a lively division between the two parties. It has played a significant role in the current Congressional investigation into the Bush administration's firing of eight United States attorneys, several of whom, documents now indicate, were dismissed for being insufficiently aggressive in pursuing voter fraud cases.

The report also addressed intimidation, which Democrats see as a more pervasive problem.

And two weeks ago, the panel faced criticism for refusing to release another report it commissioned concerning voter identification laws. That report, which was released after intense pressure from Congress, found that voter identification laws designed to fight fraud can reduce turnout, particularly among members of minorities. In releasing that report, which was conducted by a different set of scholars, the commission declined to endorse its findings, citing methodological concerns.

A number of election law experts, based on their own research, have concluded that the accusations regarding widespread fraud are unjustified. And in this case, one of the two experts hired to do the report was Job Serebrow, a Republican elections lawyer from Arkansas, who defended his research in an e-mail message obtained by The Times that was sent last October to Margaret Sims, a commission staff member.

"Tova and I worked hard to produce a correct, accurate and truthful report," Mr. Serebrov wrote, referring to Tova Wang, a voting expert with liberal leanings from the Century Foundation and co-author of the report. "I could care less that the results are not what the more conservative members of my party wanted."

He added: "Neither one of us was willing to conform results for political expediency."

For contractual reasons, neither Ms. Wang nor Mr. Serebrov were at liberty to comment on their original report and the discrepancies with the final, edited version.

The original report on fraud cites "evidence of some continued outright intimidation and suppression" of voters by local officials, especially in some American Indian communities, while the final report says only that voter "intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation."

The original report said most experts believe that "false registration forms have not resulted in polling place fraud," but the final report cites "registration drives by nongovernmental groups as a source of fraud."

Although Democrats accused the board of caving to political pressure, Donetta L. Davidson, the chairwoman of the commission, said that when the original report was submitted, the board's legal and research staff decided there was not enough supporting data behind some of the claims. So, she said, the staff members revised the report and presented a final version in December for a vote by the commissioners.

"We were a small agency taking over a huge job," said Ms. Davidson, who was appointed to the agency by President Bush in 2005. "I think we may have tried to do more research than we were equipped to handle." She added that the commission had "always stuck to being bipartisan."

The commission, which was created by Congress in 2002 to conduct nonpartisan research on elections, consists of two Republicans and two Democrats. At the time of the report, one of the two Democrats had left for personal reasons and had not yet been replaced, but the final report was unanimously approved by the other commissioners.

Gracia Hillman, the Democratic commissioner who voted in favor of releasing the final report, said she did not believe that the editing of the report was politically motivated or overly extensive.

"As a federal agency, our responsibility is to ensure that the research we produce is fully verified," Ms. Hillman said. "Some of the points made in the draft report made by the consultants went beyond what we felt comfortable with."

The Republican Party's interest in rooting out voter fraud has been encouraged by the White House. In a speech last April, [Karl Rove](#), Mr. Bush's senior political adviser, told a group of Republican lawyers that election integrity issues were an "enormous and growing" problem.

"We're, in some parts of the country, I'm afraid to say, beginning to look like we have elections like those run in countries where the guys in charge are colonels in mirrored sunglasses," Mr. Rove said. "I mean, it's a real problem."

Several Democrats said they believed that politics were behind the commission's decision to rewrite the

report.

"This was the commission's own study and it agreed in advance to how it would be done, but the most important part of it got dropped from the final version," said Representative José E. Serrano, Democrat of New York and chairman of the House appropriations subcommittee that oversees the commission. "I don't see how you can conclude that politics were not involved."

Representative Maurice D. Hinchey, another New York Democrat, who requested the draft report from Ms. Davidson during a subcommittee hearing last month, agreed.

"By attempting to sweep this draft report under the rug, the E.A.C. is throwing out important work, wasting taxpayer dollars and creating a cloud of suspicion as to why it is acting this way," he said.

Some scholars and voting advocates said that the original report on fraud, for which the commission paid the authors more than \$100,000, was less rigorous than it should have been. But they said they did not believe that was the reason for the changes.

"Had the researchers been able to go even further than they did, they would have come to same conclusions but they would have had more analysis backing them up," said Lorraine C. Minnite, a political science professor at [Barnard College](#) who is writing a book on voter fraud. "Instead, the commission rewrote their report and changed the thrust of its conclusions."

Ray Martinez III, the Democrat who left the commission for personal reasons, quit last August. He said in an interview that he was not present for any discussion or editing of the voter fraud report.

Mr. Martinez added, however, that he had argued strenuously that all reports, in draft or final editions, should be made public. But he said he lost that argument with other commissioners.

"Methodology concerns aside, we commissioned the reports with taxpayer funds, and I argued that they should be released," he said, referring to the delay in the release of the voter ID report. "My view was that the public and the academics could determine whether it is rigorous and if it wasn't then the egg was on our face for having commissioned it in the first place."

In recent months, the commission has been criticized for failing to provide proper oversight of the technology laboratories that test electronic voting machines and software. The commission is also responsible for conducting research and advising policy makers on the implementation of the Help America Vote Act, the federal overhaul of election procedure prompted by the 2000 Florida debacle.

Eric Lipton contributed reporting.

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April 12, 2007

In 5-Year Effort, Scant Evidence of Voter Fraud

By [ERIC LIPTON](#) and [IAN URBINA](#)

Correction Appended

WASHINGTON, April 11 — Five years after the Bush administration began a crackdown on voter fraud, the Justice Department has turned up virtually no evidence of any organized effort to skew federal elections, according to court records and interviews.

Although Republican activists have repeatedly said fraud is so widespread that it has corrupted the political process and, possibly, cost the party election victories, about 120 people have been charged and 86 convicted as of last year.

Most of those charged have been Democrats, voting records show. Many of those charged by the Justice Department appear to have mistakenly filled out registration forms or misunderstood eligibility rules, a review of court records and interviews with prosecutors and defense lawyers show.

In Miami, an assistant United States attorney said many cases there involved what were apparently mistakes by immigrants, not fraud.

In Wisconsin, where prosecutors have lost almost twice as many cases as they won, charges were brought against voters who filled out more than one registration form and felons seemingly unaware that they were barred from voting.

One ex-convict was so unfamiliar with the rules that he provided his prison-issued identification card, stamped "Offender," when he registered just before voting.

A handful of convictions involved people who voted twice. More than 30 were linked to small vote-buying schemes in which candidates generally in sheriff's or judge's races paid voters for their support.

A federal panel, the Election Assistance Commission, reported last year that the pervasiveness of fraud was debatable. That conclusion played down findings of the consultants who said there was little evidence of it across the country, according to a review of the original report by The New York Times that was reported on Wednesday.

Mistakes and lapses in enforcing voting and registration rules routinely occur in elections, allowing thousands of ineligible voters to go to the polls. But the federal cases provide little evidence of widespread, organized fraud, prosecutors and election law experts said.

"There was nothing that we uncovered that suggested some sort of concerted effort to tilt the election," Richard G. Frohling, an assistant United States attorney in Milwaukee, said.

Richard L. Hasen, an expert in election law at the Loyola Law School, agreed, saying: "If they found a single case of a conspiracy to affect the outcome of a Congressional election or a statewide election, that would be significant. But what we see is isolated, small-scale activities that often have not shown any kind of criminal intent."

For some convicted people, the consequences have been significant. Kimberly Prude, 43, has been jailed in Milwaukee for more than a year after being convicted of voting while on probation, an offense that she attributes to confusion over eligibility.

In Pakistan, Usman Ali is trying to rebuild his life after being deported from Florida, his legal home of more than a decade, for improperly filling out a voter-registration card while renewing his driver's license.

In Alaska, Rogelio Mejorada-Lopez, a Mexican who legally lives in the United States, may soon face a similar fate, because he voted even though he was not eligible.

The push to prosecute voter fraud figured in the removals last year of at least two United States attorneys whom Republican politicians or party officials had criticized for failing to pursue cases.

The campaign has roiled the Justice Department in other ways, as career lawyers clashed with a political appointee over protecting voters' rights, and several specialists in election law were installed as top prosecutors.

Department officials defend their record. "The Department of Justice is not attempting to make a statement about the scale of the problem," a spokesman, Bryan Sierra, said. "But we are obligated to investigate allegations when they come to our attention and prosecute when appropriate."

Officials at the department say that the volume of complaints has not increased since 2002, but that it is pursuing them more aggressively.

Previously, charges were generally brought just against conspiracies to corrupt the election process, not against individual offenders, Craig Donsanto, head of the elections crimes branch, told a panel investigating voter fraud last year. For deterrence, Mr. Donsanto said, Attorney General Alberto R. Gonzales authorized prosecutors to pursue criminal charges against individuals.

Some of those cases have baffled federal judges.

"I find this whole prosecution mysterious," Judge Diane P. Wood of the United States Court of Appeals for the Seventh Circuit, in Chicago, said at a hearing in Ms. Prude's case. "I don't know whether the Eastern District of Wisconsin goes after every felon who accidentally votes. It is not like she voted five times. She cast one vote."

The Justice Department stand is backed by Republican Party and White House officials, including Karl Rove, the president's chief political adviser. The White House has acknowledged that he relayed Republican complaints to President Bush and the Justice Department that some prosecutors were not attacking voter fraud vigorously. In speeches, Mr. Rove often mentions fraud accusations and warns of tainted elections.

Voter fraud is a highly polarized issue, with Republicans asserting frequent abuses and Democrats

contending that the problem has been greatly exaggerated to promote voter identification laws that could inhibit the turnout by poor voters.

The New Priority

The fraud rallying cry became a clamor in the Florida recount after the 2000 presidential election. Conservative watchdog groups, already concerned that the so-called Motor Voter Law in 1993 had so eased voter registration that it threatened the integrity of the election system, said thousands of fraudulent votes had been cast.

Similar accusations of compromised elections were voiced by Republican lawmakers elsewhere.

The call to arms reverberated in the Justice Department, where John Ashcroft, a former Missouri senator, was just starting as attorney general.

Combating voter fraud, Mr. Ashcroft announced, would be high on his agenda. But in taking up the fight, he promised that he would also be vigilant in attacking discriminatory practices that made it harder for minorities to vote.

"American voters should neither be disenfranchised nor defrauded," he said at a news conference in March 2001.

Enlisted to help lead the effort was Hans A. von Spakovsky, a lawyer and Republican volunteer in the Florida recount. As a Republican election official in Atlanta, Mr. Spakovsky had pushed for stricter voter identification laws. Democrats say those laws disproportionately affect the poor because they often mandate government-issued photo IDs or driver's licenses that require fees.

At the Justice Department, Mr. Spakovsky helped oversee the voting rights unit. In 2003, when the Texas Congressional redistricting spearheaded by the House majority leader, Tom DeLay, Republican of Texas, was sent to the Justice Department for approval, the career staff members unanimously said it discriminated against African-American and Latino voters.

Mr. Spakovsky overruled the staff, said Joseph Rich, a former lawyer in the office. Mr. Spakovsky did the same thing when they recommended the rejection of a voter identification law in Georgia considered harmful to black voters. Mr. Rich said. Federal courts later struck down the Georgia law and ruled that the boundaries of one district in the Texas plan violated the Voting Rights Act.

Former lawyers in the office said Mr. Spakovsky's decisions seemed to have a partisan flavor unlike those in previous Republican and Democratic administrations. Mr. Spakovsky declined to comment.

"I understand you can never sweep politics completely away," said Mark A. Posner, who had worked in the civil and voting rights unit from 1980 until 2003. "But it was much more explicit, pronounced and consciously done in this administration."

At the same time, the department encouraged United States attorneys to bring charges in voter fraud cases, not a priority in prior administrations. The prosecutors attended training seminars, were required to meet regularly with state or local officials to identify possible cases and were expected to follow up accusations

aggressively.

The Republican National Committee and its state organizations supported the push, repeatedly calling for a crackdown. In what would become a pattern, Republican officials and lawmakers in a number of states, including Florida, New Mexico, Pennsylvania and Washington, made accusations of widespread abuse, often involving thousands of votes.

In swing states, including Ohio and Wisconsin, party leaders conducted inquiries to find people who may have voted improperly and prodded officials to act on their findings.

But the party officials and lawmakers were often disappointed. The accusations led to relatively few cases, and a significant number resulted in acquittals.

The Path to Jail

One of those officials was Rick Graber, former chairman of the Wisconsin Republican Party.

"It is a system that invites fraud," Mr. Graber told reporters in August 2005 outside the house of a Milwaukeean he said had voted twice. "It's a system that needs to be fixed."

Along with an effort to identify so-called double voters, the party had also performed a computer crosscheck of voting records from 2004 with a list of felons, turning up several hundred possible violators. The assertions of fraud were turned over to the United States attorney's office for investigation.

Ms. Prude's path to jail began after she attended a Democratic rally in Milwaukee featuring the Rev. Al Sharpton in late 2004. Along with hundreds of others, she marched to City Hall and registered to vote. Soon after, she sent in an absentee ballot.

Four years earlier, though, Ms. Prude had been convicted of trying to cash a counterfeit county government check worth \$1,254. She was placed on six years' probation.

Ms. Prude said she believed that she was permitted to vote because she was not in jail or on parole, she testified in court. Told by her probation officer that she could not vote, she said she immediately called City Hall to rescind her vote, a step she was told was not necessary.

"I made a big mistake, like I said, and I truly apologize for it," Ms. Prude said during her trial in 2005. That vote, though, resulted in a felony conviction and sent her to jail for violating probation.

Of the hundreds of people initially suspected of violations in Milwaukee, 14 — most black, poor, Democratic and first-time voters — ever faced federal charges. United States Attorney Steven M. Biskupic would say only that there was insufficient evidence to bring other cases.

No residents of the house where Mr. Graber made his assertion were charged. Even the 14 proved frustrating for the Justice Department. It won five cases in court.

The evidence that some felons knew they that could not vote consisted simply of a form outlining 20 or more rules that they were given when put on probation and signs at local government offices, testimony shows.

The Wisconsin prosecutors lost every case on double voting. Cynthia C. Alicea, 25, was accused of multiple voting in 2004 because officials found two registration cards in her name. She and others were acquitted after explaining that they had filed a second card and voted just once after a clerk said they had filled out the first card incorrectly.

In other states, some of those charged blamed confusion for their actions. Registration forms almost always require a statement affirming citizenship.

Mr. Ali, 68, who had owned a jewelry store in Tallahassee, got into trouble after a clerk at the motor vehicles office had him complete a registration form that he quickly filled out in line, unaware that it was reserved just for United States citizens.

Even though he never voted, he was deported after living legally in this country for more than 10 years because of his misdemeanor federal criminal conviction.

"We're foreigners here," Mr. Ali said in a telephone interview from Lahore, Pakistan, where he lives with his daughter and wife, both United States citizens.

In Alaska, Rogelio Mejarada-Lopez, who manages a gasoline station, had received a voter registration form in the mail. Because he had applied for citizenship, he thought it was permissible to vote, his lawyer said. Now, he may be deported to Mexico after 16 years in the United States. "What I want is for them to leave me alone," he said in an interview.

Federal prosecutors in Kansas and Missouri successfully prosecuted four people for multiple voting. Several claimed residency in each state and voted twice.

United States attorney's offices in four other states did turn up instances of fraudulent voting in mostly rural areas. They were in the hard-to-extinguish tradition of vote buying, where local politicians offered \$5 to \$100 for individuals' support.

Unease Over New Guidelines

Aside from those cases, nearly all the remaining 26 convictions from 2002 to and 2005 — the Justice Department will not release details about 2006 cases except to say they had 30 more convictions — were won against individuals acting independently, voter records and court documents show.

Previous guidelines had barred federal prosecutions of "isolated acts of individual wrongdoing" that were not part of schemes to corrupt elections. In most cases, prosecutors also had to prove an intent to commit fraud, not just an improper action.

That standard made some federal prosecutors uneasy about proceeding with charges, including David C. Iglesias, who was the United States attorney in New Mexico, and John McKay, the United States attorney in Seattle.

Although both found instances of improper registration or voting, they declined to bring charges, drawing criticism from prominent Republicans in their states. In Mr. Iglesias's case, the complaints went to Mr. Bush. Both prosecutors were among those removed in December.

In the last year, the Justice Department has installed top prosecutors who may not be so reticent. In four states, the department has named interim or permanent prosecutors who have worked on election cases at Justice Department headquarters or for the Republican Party.

Bradley J. Schlozman has finished a year as interim United States attorney in Missouri, where he filed charges against four people accused of creating fake registration forms for nonexistent people. The forms could likely never be used in voting. The four worked for a left-leaning group, Acorn, and reportedly faked registration cards to justify their wages. The cases were similar to one that Mr. Iglesias had declined to prosecute, saying he saw no intent to influence the outcome of an election.

"The decision to file those indictments was reviewed by Washington," a spokesman for Mr. Schlozman, Don Ledford, said. "They gave us the go-ahead."

Sabrina Pacifici and Barclay Walsh contributed research.

Correction: April 14, 2007

A front-page article on Thursday about the scant evidence of voter fraud that has been found since the Bush administration began a crackdown five years ago misstated a court ruling on a 2003 Texas Congressional redistricting law. While the Supreme Court ruled that the Texas Legislature violated the Voting Rights Act in redrawing a southwestern Texas district, the court upheld the other parts of the plan. It did not strike down the law.

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THIS STORY HAS BEEN FORMATTED FOR EASY PRINTING

Missouri attorney a focus in firings Senate bypassed in appointment of Schlozman

The Boston Globe

By Charlie Savage, Globe Staff | May 6, 2007

WASHINGTON -- Todd Graves brought just four misdemeanor voter fraud indictments during his five years as the US attorney for western Missouri -- even though some of his fellow Republicans in the closely divided state wanted stricter oversight of Democratic efforts to sign up new voters.

Then, in March 2006, Graves was replaced by a new US attorney -- one who had no prosecutorial experience and bypassed Senate confirmation. Bradley Schlozman moved aggressively where Graves had not, announcing felony indictments of four workers for a liberal activist group on voter registration fraud charges less than a week before the 2006 election.

Republicans, who had been pushing for restrictive new voting laws, applauded. But critics said Schlozman violated a department policy to wait until after an election to bring voter fraud indictments if the case could affect the outcome, either by becoming a campaign issue or by scaring legitimate voters into staying home.

Schlozman is emerging as a focal point of the investigation into the firing of eight US attorneys last year -- and as a symbol of broader complaints that the Bush administration has misused its stewardship of law enforcement to give Republicans an electoral edge.

No stranger to election law controversy, Schlozman previously spent three years as a political appointee in the Justice Department's Civil Rights Division, where he supervised the voting rights section.

There, he came into conflict with veteran staff over his decisions to approve a Texas redistricting plan and a Georgia photo-ID voting law, both of which benefited Republicans. He also hired many new career lawyers with strong conservative credentials, in what critics say was an attempt to reduce enforcement of laws designed to eliminate obstacles to voting by minorities.

"Schlozman was reshaping the Civil Rights Division," said Joe Rich, who was chief of the voting rights section until taking a buyout in 2005, in an interview. "Schlozman didn't know anything about voting law. . . . All he knew is he wanted to be sure that the Republicans were going to win."

Schlozman declined to be interviewed. In a statement, Justice Department spokesman Dean Boyd denied that the timing of the election-eve indictments violated department rules and said politics has played no role in Civil Rights Division hiring decisions.

"Political orientation is not a criterion solicited or considered in the hiring process," Boyd said in an e-mailed response.

But the complaints about Schlozman dovetail with other allegations of political bias at the Justice Department. Last week, the department was forced to acknowledge that a key player in the US attorney firings, Attorney General Alberto Gonzales's former White House liaison Monica Goodling, is under internal investigation for allegedly taking party affiliation into account when hiring career assistant US attorneys, contrary to federal law.

Schlozman -- a replacement US attorney with a controversial hiring record of his own -- might be asked to testify before the Senate Judiciary Committee, at the request of Missouri's new Democratic senator, Claire McCaskill.

A native of Kansas, Schlozman graduated from George Washington University law school in 1996, clerked for three years, and worked as a lawyer for two more. In November 2001 he became an aide in the office of the deputy attorney general.

At the time, the Bush administration was starting to take a greater interest in voting laws because of the photo-finish 2000 election. Control of Congress and the White House was turning on a handful of votes in battleground states -- and thus on issues such as districting maps and turnout rates among party loyalists.

Republicans claimed that ineligible voters were a major problem and pushed for laws to require photo IDs. Democrats said there was no evidence of widespread fraud and that such requirements suppress turnout among legitimate voters who are poor or disabled, and thus less likely to have driver's licenses.

The Justice Department's voting rights section referees disputes over the fairness of state election requirements. Under federal civil rights law, the section must sign off on redistricting maps and new voting laws in Southern states to ensure that changes will not reduce minority voting power.

Schlozman stepped into this fray in May 2003, when he was promoted to deputy assistant attorney general in the Civil Rights Division. He supervised several sections, including voting rights. In the fall 2005, he was promoted to acting head of the division.

Schlozman and his team soon came into conflict with veteran voting rights specialists. Career staff committees recommended rejecting a Texas redistricting map in 2003 and a Georgia photo ID voting law in 2005, saying they would dilute minority voting power. In both cases, the career veterans were overruled. But courts later said the map and the ID law were illegal.

Bob Kengle, a former deputy voting rights chief who left in 2005, said Schlozman also pushed the section to divert more resources into lawsuits forcing states to purge questionable voters from their rolls. One such lawsuit was against Missouri, where he later became US attorney. A court threw the Missouri lawsuit out this year.

Schlozman also moved to take control of hiring for the voting rights section, taking advantage of a new policy that gave political appointees more control. Under Schlozman, the profile of the career attorneys hired by the section underwent a dramatic transformation.

Half of the 14 career lawyers hired under Schlozman were members of the conservative Federalist Society or the Republican National Lawyers Association, up from none among the eight career hires in the previous two years, according to a review of resumes. The average US News & World Report ranking of the law school attended by new career lawyers plunged from 15 to 65.

Critics said candidates were being hired more for their political views than legal credentials. David Becker, a former voting rights division trial attorney, said that Schlozman's hiring of politically driven conservatives to protect minority voting rights created a "wolf guarding the henhouse situation."

Asked to respond on behalf of Schlozman, the Justice Department said it considers job applicants with a wide variety of backgrounds and insisted that politics has played no role in hiring decisions.

After the 2004 election, administration officials quietly began drawing up a list of US attorneys to replace. Considerations included their perceived loyalty to Bush and a desire by White House political adviser Karl Rove to increase voter fraud prosecutions, documents and testimony have shown. Most of the proposed firings were for US attorneys in states with closely divided elections.

Among those later fired was David Iglesias, from the battleground state of New Mexico, where many of his fellow Republicans had demanded more aggressive voter fraud probes. Iglesias has accused his critics of making the "reprehensible" suggestion that law enforcement decisions should be made on political grounds.

Missouri is another closely divided state. According to McClatchy Newspapers, Graves appeared on a January 2006 list of prosecutors who would be given a chance to resign to save face. He abruptly resigned in March 2006. Gonzales quickly installed Schlozman as Graves's replacement, bypassing Senate confirmation under new law that had been slipped into the Patriot Act.

That summer, the liberal activist group ACORN paid workers \$8 an hour to sign up new voters in poor neighborhoods around the country. Later, ACORN's Kansas City chapter discovered that several workers filled out registration forms fraudulently instead of finding real people to sign up. ACORN fired the workers and alerted law enforcement.

Schlozman moved fast, so fast that his office got one of the names on the indictments wrong. He announced the indictments of four former ACORN workers on Nov. 1, 2006, warning that "this national investigation is very much ongoing." Missouri Republicans seized on the indictments to blast Democrats in the campaign endgame.

Critics later accused Schlozman of violating the Justice Department's own rules. A 1995 Justice election crime manual says "federal prosecutors . . . should be extremely careful not to conduct overt investigations during the pre-election period" to avoid "chilling legitimate voting and campaign activities" and causing "the investigation itself to become a campaign issue."

"In investigating election fraud matters, the Justice Department must refrain from any conduct which has the possibility of affecting the election itself," the manual states, adding in underlining that "most, if not all, investigation of alleged election crime must await the end of the election to which the allegation relates."

The department said Schlozman's office got permission from headquarters for the election-eve indictments. It added that the department interprets the policy as having an unwritten exception for voter registration fraud, because investigators need not interview voters for such cases.

On Nov. 7, 2006, Missouri voters narrowly elected Democrat McCaskill over the Republican senator, James Talent. The victory proved essential to the Democrats' new one-vote Senate majority.

Last week, McCaskill told NPR that she'd like Schlozman to testify before Congress: "What this all indicates is that more questions need to be asked, and more answers under oath need to be given."

As the controversy over the US attorney firings started building, the Bush administration picked someone else to be western Missouri's US attorney. Unlike with Schlozman, the administration first sent the nominee to the Senate for confirmation.

In April, when his replacement was confirmed, Schlozman got a new job. He now works in the Justice Department office that supervises all 93 US attorneys, where he is handling sentencing matters and cybercrime. ■

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Posted May 9, 2007 by J. Gerald Hebert

The Explanation Can Be Worse Than The Offense Itself

I remember a story that attorney/humorist Jacob Stein once told about a court jester. It goes something like this. The king told the court jester that the jester needed to come up with an example of a situation where the explanation of a crime was more offensive than the crime itself. If the court jester was unable to do so that day, he would be put to death. Later that day, as the King and Queen were walking up a stair case to ascend their throne, the court jester stole up behind them and pinched the king on the buttocks. The king whined around and drew his sword, ready to strike whoever had pinched him. There was the court jester, who simply smiled and said, "Oh excuse me, your majesty, I thought it was the Queen."

A recent article by Charlie Savage of the *Boston Globe* on former Department of Justice (DOJ) official Bradley Schlozman caught my eye and brought to mind the story of the court jester. The article reported that Schlozman, as U.S. Attorney in Missouri, had indicted several Democrats just before the November 2006 elections.

Now I must confess at the outset that I read this article with little respect for the integrity of Brad Schlozman. While at DOJ in 2003, he and his assistant, Hans von Spakovsky, had served as the decisionmakers over a controversial and racially discriminatory congressional re-districting plan that had been pushed through the Texas Legislature by ex-Congressman Tom DeLay. Despite clear evidence that the plan harmed minority voters, and despite a unanimous staff recommendation by more than half a dozen career attorneys in the Voting Section that the plan should be rejected as violative of the Voting Rights Act, Schlozman and von Spakovsky approved the plan anyway. Their decision was plainly motivated by a desire to help Congressman DeLay gain more congressional seats from Texas. As DeLay candidly said in 2003, "I'm the majority leader and I want more seats."

Given Schlozman's politically motivated actions in the Texas redistricting and a number of other matters while at DOJ headquarters, I was not really surprised when I heard last fall that his office had announced indictments of Democrats just before the November 2006 elections. I knew Schlozman to be, in the terminology of Kyle Sampson the former aide to Alberto Gonzales, a "loyal Sushier" and that he would not hesitate to indict Democrats days before the election in order to sway election results in the GOP's favor. What struck me as odd about all this, however, was that it seemed at the time to be contrary to DOJ policy as I understood it.

Since I spent over 20 years as a DOJ attorney prosecuting voting rights cases, I knew the Department had an express policy of not bringing voting or election related indictments just prior to an election. As the *Globe* article correctly notes: "A 1996 Justice election crime manual says 'federal prosecutors . . . should be extremely careful not to conduct overt investigations during the pre-election period' to avoid 'chilling legitimate voting and campaign activities' and causing 'the investigation itself to become a campaign issue.'"

The manual makes abundantly clear that inasmuch as Departmental attorneys were assigned to matters involving political figures and the process of voting, we were not to take any action that could have the possibility of affecting the election. Indeed, as the *Boston Globe* article noted, the manual even went so far as to emphasize the importance of this policy by underlining the following provision: "most, if not all, investigation of alleged election crime must await the end of the election in which the allegation relates."

McClatchy Washington Bureau

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Posted on Sun, Jul. 01, 2007

Was campaigning against voter fraud a Republican ploy?

Greg Gordon | McClatchy Newspapers

last updated: July 19, 2007 02:31:31 PM

WASHINGTON — A New Mexico lawyer who pressed to oust U.S. Attorney David Iglesias was an officer of a nonprofit group that aided Republican candidates in 2006 by pushing for tougher voter identification laws.

Iglesias, who was one of nine U.S. attorneys the administration fired last year, said that Albuquerque lawyer Patrick Rogers pressured him several times to bring voter fraud prosecutions where little evidence existed. Iglesias believes that he was fired in part because he failed to pursue such cases.

He described Rogers, who declined to discuss the exchanges, as "obsessed ... convinced there was massive voter fraud going on in this state, and I needed to do something to stop it."

Iglesias said he only recently learned of Rogers' involvement as secretary of the non-profit American Center for Voting Rights Legislative Fund - an activist group that defended tighter voter identification requirements in court against charges that they were designed to hamper voting by poor minorities.

Rogers, a former general counsel to the New Mexico Republican Party and a candidate to replace Iglesias, is among a number of well-connected GOP partisans whose work with the legislative fund and a sister group played a significant role in the party's effort to retain control of Congress in the 2006 election.

That strategy, which presidential adviser Karl Rove alluded to in an April 2006 speech to the Republican National Lawyers Association, sought to scrutinize voter registration records, win passage of tougher ID laws and challenge the legitimacy of voters considered likely to vote Democratic.

McClatchy Newspapers has found that this election strategy was active on at least three fronts:

- Tax-exempt groups such as the American Center and the Lawyers Association were deployed in battleground states to press for restrictive ID laws and oversee balloting.
- The Justice Department's Civil Rights Division turned traditional voting rights enforcement upside down with legal policies that narrowed rather than protected the rights of minorities.
- The White House and the Justice Department encouraged selected U.S. attorneys to bring voter fraud prosecutions, despite studies showing that election fraud isn't a widespread problem.

Nowhere was the breadth of these actions more obvious than at the American Center for Voting Rights and its legislative fund.

Public records show that the two nonprofits were active in at least nine states. They hired high-priced lawyers to write court briefs, issued news releases declaring key cities "hot spots" for voter fraud and hired lobbyists in Missouri and Pennsylvania to win support for photo ID laws. In each of those states, the center released polls that it claimed found that minorities prefer tougher ID

laws.

Armed with \$1.5 million in combined funding, the two nonprofits attracted some powerful volunteers and a cadre of high-priced lawyers.

Of the 15 individuals affiliated with the two groups, at least seven are members of the Republican National Lawyers Association, and half a dozen have worked for either one Bush election campaign or for the Republican National Committee.

Alex Vogel, a former RNC lawyer whose consulting firm was paid \$75,000 for several months' service as the center's executive director, said the funding came from private donors, not from the Republican Party.

One target of the American Center was the liberal-leaning voter registration group called Project Vote, a GOP nemesis that registered 1.5 million voters in 2004 and 2006. The center trumpeted allegations that Project Vote's main contractor, the Association of Community Organizations for Reform Now (ACORN), submitted phony registration forms to boost Democratic voting.

In a controversial move, the interim U.S. attorney in Kansas City announced indictments against four ACORN workers five days before the 2006 election, despite the fact that Justice Department policy discourages such action close to an election. Acorn officials had notified the federal officials when they noticed the doctored forms.

"Their job was to confuse the public about voter fraud and offer bogus solutions to the problem," said Michael Slater, the deputy director of Project Vote. "And like the Tobacco Institute, they relied on deception and faulty research to advance the interests of their clients."

Mark "Thor" Hearne, a St. Louis lawyer and former national counsel for President Bush's 2004 reelection campaign, is widely considered the driving force behind the organizations. Vogel described him as "clearly the one in charge."

Hearne, who also was a vice president and director of election operations for the Republican Lawyers Association, said he couldn't discuss the organizations because they're former clients.

But in an e-mail exchange, he defended the need for photo IDs. "Requiring a government-issued photo ID in order to vote as a safeguard against vote fraud and as a measure to increase public confidence in the fairness and honesty of our elections is not some Republican voter suppression effort," Hearne said.

Hearne called photo IDs "an important voice in election reform."

Hearne and Rogers appeared at separate hearings before the House Administration Committee last year in Ohio and New Mexico. They cited reports of thousands of dead people on voter registration rolls, fraudulent registrations and other election fraud schemes.

As proof, Hearne, offered a 28-page "investigative report" on Ohio events in the 2004 election, and then publicly sent a copy to the Justice Department, citing "substantial evidence to suggest potential criminal wrongdoing."

So far, no charges have been filed.

Earlier, in August 2005, the Legislative Fund issued a string of press releases naming five cities as the nation's top "hot spots" for voter fraud. Philadelphia was tagged as No. 1, followed by Milwaukee, Seattle, St. Louis and Cleveland.

With a push from the center's lobbyists, legislatures in Missouri and Pennsylvania passed photo ID laws last year. Missouri's law was thrown out by the state Supreme Court, and Democratic Gov. Edward Rendell vetoed the Pennsylvania bill.

In an interview with the federal Election Assistance Commission last year, two Pennsylvania officials said they knew of no instances of voter identity fraud or voter registration fraud in the state.

Amid the controversy, the American Center for Voting Rights shuttered its Internet site on St. Patrick's Day, and the two nonprofits appear to have vanished.

But their influence could linger.

One of the directors of the American Center, Cameron Quinn, who lists her membership in the Republican National Lawyers Association on her resume, was appointed last year as the voting counsel for the Justice Department's Civil Rights Division.

The division is charged with policing elections and guarding against discrimination against minorities.

(Researcher Tish Wells contributed to this article.)

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WAXMAN SEEKS RNC EMAILS FROM WHITE HOUSE COUNSEL
 House Oversight and Government Reform Committee Chairman Henry Waxman (D-Calif.) wants White House Counsel Fred Fielding to turn over any e-mails his office has from White House aides on Republican National Committee accounts. (The Politico)

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 A secretive drafting process is going on behind the scenes to build a replacement measure — to be voted on in both the House and Senate — for lobbying and ethics bills that passed the Senate (S 1) and House (HR 2316) earlier this year. (CQ Politics)

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IRAQ ENVOY SAYS U.S.

New DOJ Manual Adopts Administration's Voter Fraud Focus

By Paul Kiel - July 27, 2007, 1:50 PM

Not to worry, America. The continued menace of voter fraud will remain a focus of your Justice Department.

It went overlooked amid the other problems with Alberto Gonzales' testimony before the Senate Judiciary Committee on Tuesday, but Sen. Dianne Feinstein (D-CA) questioned the attorney general about changes recently made to the Justice Department's election crimes manual. The new version (pdf), which replaced the 1995 manual, lowers the bar in terms of voter fraud prosecutions -- no longer cautioning against pursuing isolated, individual cases of fraud and softening language that had all but prohibited pursuing such cases before an election. "Two and possibly three of the fired U.S. attorneys were fired because they didn't bring those small cases that might affect an election," she observed. "Something's rotten in Denmark."

Feinstein, was referring, of course, to former U.S. attorneys David Iglesias of New Mexico and John McKay of Seattle -- both of whom investigated alleged Democratic instances of voter fraud and chose not to prosecute. Todd Graves of Kansas City, who was replaced by Bradley Schlozman, would be the possible third addition.

You can watch the clip below (a transcript is appended). Gonzales, characteristically, didn't know anything about the change.

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There are a couple things to be said about this.

First, the new manual does indeed omit crucial language from the 1995 manual, which said:

"The Justice Department generally does not favor prosecution of isolated fraudulent voting transactions. This is based in part on constitutional issues that arise when federal jurisdiction is asserted in matters having only a minimal impact on the integrity of the voting process."

But this is not a new development. The Justice Department under John Ashcroft began pursuing individual cases of fraud in 2002 on the theory that that such cases would deter more fraud. Five years later, there's no evidence that's the case -- instead, as *The New York Times* documented in the landmark piece on the subject, prosecutors have pursued cases of ex-convicts voting, people on probation voting, etc. The prior policy meant that cases were "only brought against conspiracies to corrupt the process," Craig Donsanto, the chief of the Department's Election Crimes Branch, told (pdf) the Election Assistance Commission. "For deterrence purposes," Donsanto said, "the Attorney General decided [in 2002] to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once." As the *Times* showed, such an aggressive policy has failed to uncover corruption of the election process, but has triumphed in prosecuting several individuals who seem to have been simply confused about whether they could vote or not. Despite such dubious results, the Justice Department has enshrined the policy in its new manual.

The new manual has also removed language from the 1995 version about investigating voter fraud shortly before the election. The past version was crystal clear, saying that the Department "must refrain from any conduct which has the possibility of affecting the election itself," that investigators should be "extremely careful" about it, and that "most, if not all, investigation of an alleged election crime must await the end of the election to which the allegation relates." The new version does not supplant that policy, but certainly softens it. It reads:

Election fraud cases often depend on the testimony of individual voters whose votes were co-opted in one way or another. But in most cases voters should not be interviewed, or other voter-related investigation done, until after the election is over. Such overt investigative steps may chill legitimate voting activities. They are also likely to be perceived by voters and candidates as an intrusion into the election. Indeed, the fact of a federal criminal investigation may itself become an issue in the election.

Readers will remember that this precise passage from the 1995 manual proved a giant headache for former U.S. attorney Bradley Schlozman, who brought four indictments against voter registration workers for ACORN just before the 2006 election. The indictments, of course, were widely reported. The new, less forcefully worded, manual wouldn't have caused him so much trouble.

Here's the transcript from the hearing:

FEINSTEIN: All right. Let me go to something else. You, of course, recognize these books, "The Federal Prosecution of Election Offenses." In prior hearings, we had the 1995 edition.

FEINSTEIN: Since May of this year, there is now a new edition. I'd like to read to you what has been dropped from the

earlier edition.

The first thing that's been removed is this: "The Justice Department generally does not favor prosecution of isolated fraudulent voting transactions. This is based in part on constitutional issues that arise when federal jurisdiction is asserted in matters having only a minimal impact on the integrity of the voting process." This was removed in this new edition.

The second thing: "The Justice Department must refrain from any conduct which has the possibility of affecting the election itself." This is weakened on page 92. This language is removed. "Federal prosecutors and investigators should be extremely careful to not conduct overt investigations during the pre-election period of while the election is under way." Removed.

Then a sentence that's underlined in the '95 edition, which states thus: "Most, if not all, investigations of an alleged election crime must await the end of the election to which the allegation relates." It was removed in this new edition.

Weakened was this language: "It should also be kept in mind that any investigation undertaken during the final stages of a political contest may cause the investigation itself to become a campaign issue."

Why was it necessary to remove this language in this new edition in the Federal Prosecution of Election Offenses rules?

GONZALES: Senator, I don't -- sitting here today, I don't know the answer to that question. I would like to find out, because I am certainly committed to ensuring that we're smart in the way that we do investigations and prosecutions and we do in a way that doesn't intimidate voters, that doesn't chill potential voters from coming out and voting on Election Day. So I would like the opportunity to look into this and respond back to you.

FEINSTEIN: Appreciate it. It becomes more relevant because two and possibly three of the fired U.S. attorneys were fired because they didn't bring those small cases that might affect an election.

And therefore, when one looks at this book now, sees a new book coming out in May '07 that deletes the very things that these U.S. attorneys were told to follow, something's rotten in Denmark.

GONZALES: Thank you for the opportunity for me to look into that.

FEINSTEIN: I appreciate that.

Thank you very much. My time is up.

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Aug 23, 2007 -- CLC Urges DOJ Review of New Prosecutor Guidelines

The Campaign Legal Center is urging a full review and explanation of new guidelines for Justice Department prosecutors that will open the door for partisan abuses of election law enforcement. In a letter today to Assistant Attorney General Alice S. Fisher, Legal Center Executive Director J. Gerardo Hebert stressed the need for a full explanation of the changes to the "Federal Prosecution of Election Offenses" manual that was rewritten in the wake of an ongoing scandal involving election eve voter fraud indictments in a battleground state. The revised manual removes barriers to similar prosecutions in the future and would allow political appointees a freer hand in politicizing the Justice Department.

The full letter to the Justice Department is below:

August 23, 2007

Assistant Attorney General Alice S. Fisher
Department of Justice - Criminal Division
950 Pennsylvania Ave.
Washington, DC 20530-0001

Dear Assistant Attorney General Fisher:

On behalf of the Campaign Legal Center, I am writing to request your review of a new manual for prosecutors that appears to open the door for partisan abuse of election law enforcement by political appointees at DOJ. As you may know I served for more than 20 years as a federal prosecutor of voting rights cases in the Civil Rights Division of the Department of Justice (DOJ).

One of the critical responsibilities of the DOJ is to enforce our nation's voter protection and election laws which are essential to ensuring the integrity of our democratic process and maintaining the public's faith in the credibility of the election process.

Recent reports now indicate that the DOJ has literally re-written the book on voting rights prosecutions. In the new version of the "Federal Prosecution of Election Offenses" manual released in May 2007, three substantive changes were made that would seem to clear the way for the injection of partisan politics into the DOJ's enforcement of election laws in 2008 and beyond. Serious questions have already been raised about abuses of prosecutorial discretion during the past two election cycles and led to Congressional hearings over the firing of U.S. Attorneys. The changes in the new version of the manual give the strong impression that these questionable abuses of discretionary authority have now been sanctioned by this DOJ.

I would strongly urge you, as the person responsible for oversight in this area of DOJ enforcement, to once again review these proposed changes in the manual and ensure they indeed accurately reflect DOJ policy. I also request that you provide publicly a full explanation for why these changes were made, especially considering the fact that no changes had previously been made to the manual since 1995. The Department should also make public who made the decision to revise these sections of the manual, and who authorized and approved the revised language. Finally, the Department should immediately and publicly release all documents that led to these revisions.

As Senate Rules Committee Chair Dianne Feinstein has noted, the changes proposed in the new manual raise significant problems:

1. The new prosecutor's manual allows federal prosecutors to play politics by timing their investigations or indictments on election eve.

The new manual removed language that strongly discouraged investigating voter fraud shortly before an election. The manual, for years, had instructed that DOJ prosecutors

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"must refrain from any conduct which has the possibility of affecting the election itself." (emphasis added), that investigators should be "extremely careful" regarding their pre-election actions to guard against such an effect, and that "most, if not all, investigation of an alleged election crime must await the end of the election to which the allegation relates." (emphasis added).

The rationale for such a rule is clear - federal prosecutors should not, absent the most extraordinary circumstances, conduct investigations or bring indictments against political actors timed in such a way, or apparently timed in such a way, as to influence an election. The rare exception should be when either the integrity of the election process itself or the rights of voters to participate in the political process are at stake. The newly revised version of the DOJ manual contains no such mandatory restrictions on DOJ investigators and prosecutors.

While the former DOJ policy manual made it clear that "most, if not all" election eve investigations have the possibility of affecting the election, the new policy manual says merely "most" election eve investigations would have such an effect. In making this change, the DOJ fails to acknowledge that nearly all election fraud investigations will likely affect elections and should, therefore, wait until after the election is over before being launched. As you know, federal investigations of vote fraud often involve interviews of voters and/or election officials, and thus any action taken by the Department in this regard will likely receive media attention. More importantly, the manual changes what had previously been a mandatory prohibition of pre-election investigations and indictments (absent extraordinary circumstances that go to the actual integrity of conducting the election itself) to discretionary guidelines that prosecutors may or may not choose to follow.

2. The new federal prosecutor's manual no longer cautions against pursuing isolated instances of individual voter fraud (as compared to mass cases of voter suppression).

The former prosecutors' manual contained this language: "The Justice Department generally does not favor prosecution of isolated fraudulent voting transactions. This is based in part on constitutional issues that arise when federal jurisdiction is asserted in matters having only a minimal impact on the integrity of the voting process. To be prosecuted federally, an election fraud must usually involve a systematic and organized pattern of abuse." The new manual deletes this passage.

The Department's new policy, which would allow for a focus on individual voter fraud, is a tactic that has been used to intimidate minority voters. Minority voters are often the targets of those who use law enforcement machinery for partisan gain. The new policy no longer discourages prosecution of individual cases of voter fraud and instead, without any policy in place, will allow the federal government to use its vast resources to prosecute individuals. As the former manual noted, this policy will not only have a minimal impact on the integrity of the voting process itself, but it raises serious constitutional issues. Individual cases of voter fraud are most often pursued by local law enforcement authorities, and the federal government's decision to step into this area would not only pre-empt local law enforcement authority, but raises serious federalism issues.

Without a policy in place that discourages prosecution of isolated cases of voter fraud, federal prosecutors can indict individual voters or political actors on the eve of an election and such indictments can then be used to advance partisan gains. This raises the specter of cases in 2008 when individual voters might be indicted in the days just before the election, with the indictments highlighted by a DOJ press release, and immediately followed by a press release of a political party championing the indictments. Indeed, this is precisely what happened in Kansas City in 2006 when former U.S. Attorney Brad Schlozman indicted ACORN contractors who were registering people to vote. Immediately following Mr. Schlozman's announcement of the indictment, the state Republican Party issued a press release of its own and held a press conference trumpeting the voter fraud indictments, with all of this then reported by the media. The fact that Mr. Schlozman later acknowledged that he could have waited until after the election was over to announce the indictments, and further that the alleged voter fraud activities did not affect the integrity of the election process, is strong proof that this change in DOJ policy has the potential for abuse. DOJ's long history of even-handed law enforcement will surely be undermined if there is a change in policy that creates the potential for federal law enforcement power to be used as a tool for partisan gain. And that is precisely the effect of this change.

3. The new manual significantly narrows the list of pre-election investigations to be avoided by prosecutors, leading to potential interference with future elections.

Specifically, the old rules stated that the types of pre-election investigations to be avoided applied to all "election fraud matters." The new rules only apply to cases involving vote counting. Thus, voter fraud cases involving voter registration issues - the precise type of indictment brought by Mr. Schlozman - are no longer cases to be avoided. The federal prosecution of individual cases of voter fraud involving voter registration should be pursued at the local level. The Department of Justice should not inject itself into such

matters because such prosecutions have often been used for partisan gain and have a chilling effect on voters and party activists in the minority community.

The specter of politicization of law enforcement does great damage not only to the Department of Justice, but also to our democracy. The credibility of our nation's leading law enforcement agency is further demeaned when it fails to operate with sufficient transparency and retreats into obfuscation in the face of public and congressional inquiries into serious and credible allegations of politicization. As head of the division, you have the responsibility to review the changes made to the DOJ policy manual to ensure they are commensurate with the best public policy. In its current form, the changes made to the policy manual identified above make things worse, not better. I also believe you have a duty to ensure that a full and accurate record is made publicly available, so that changes made in this important area can be reviewed and analyzed based on all relevant information.

The Legal Center urges you to begin addressing these concerns immediately by providing a full public explanation of the revisions to the manual, including both a full disclosure of all records relating to this matter. We also urge you to provide a complete and timely response to Senator Feinstein's letter which also raised serious concerns about the changes to the DOJ prosecutors' manual.

Sincerely,

J. Gerald Hebert
Executive Director and Director of Litigation
The Campaign Legal Center

cc: Chairman Patrick Leahy
Ranking Member Arlen Specter
Senator Dianne Feinstein



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A Rigged Report on U.S. Voting?

By Tova Andrea Wang Thursday, August 30, 2007, Page A21

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TODAY IN SLATE

Live-Blogging the Democratic Presidential Debate

After the 2000 Florida election debacle, Congress established a body called the Election Assistance Commission to improve voting and democracy in this country. Two years ago, the commission approached me about doing a project that would take a preliminary look at voter fraud and intimidation and make recommendations for further research on the issues.

Because my approach to election issues tends to be more closely aligned with Democrats, I was paired with a Republican co-author. To further remove any taint of partisanship, my co-author and I convened a bipartisan working group to help us. We spent a year doing research and consulting with leaders in the field to produce a draft report. What happened next seems inexplicable. After submitting the draft in July 2006, we were barred by the commission's staff from having anything more to do with it.

What was the problem? In all the time we were doing our research and drafting the report, neither the staff nor the commissioners, who were continually advised of our activities and the substance of our work, raised any concerns about the direction we were going or the research findings.

Yet, after sitting on the draft for six months, the EAC publicly released a report -- citing it as based on work by me and my co-author -- that completely stood our own work on its head.

Consider the title. Whereas the commission is mandated by law to study voter fraud and intimidation, this new report was titled simply "Election Crimes" and excluded a wide range of serious offenses that harm the system and suppress voting but are not currently crimes under the U.S. criminal code.

We said that our preliminary research found widespread agreement among administrators, academics and election experts from all points on the political spectrum that allegations of fraud through voter impersonation at polling places were greatly exaggerated. We noted that this position was supported by existing research and an analysis of several years of news articles. The commission chose instead to state that the issue was a matter of considerable debate. And while we found that problems of voter intimidation were still

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prevalent in a variety of forms, the commission excluded much of the discussion of voter intimidation.

We also raised questions about the way the [Justice Department](#) was handling complaints of fraud and intimidation. The commission excised all references to the department that might be construed as critical — or that Justice officials later took issue with. And all of the suggestions we received from political scientists and other scholars regarding methodologies for a more scientifically rigorous look at these problems were omitted.

Once these "revisions" to the report were revealed this spring, there was an uproar among voting rights advocates. I was eager to set the record straight, but the commission would not allow me to speak about the report because of a broad "confidentiality provision" in my contract. The EAC finally released me from the gag order this summer, and, under pressure from Congress, it has publicly released 40,000 pages of revealing documents and e-mail.

What was behind the strange handling of our report? It's still unclear, but it is worth noting that during the time the commission was holding our draft, claims about voter fraud and efforts to advance the cause of strict voter identification laws were at a fever pitch in Congress and the states. And it has been reported that some U.S. attorneys were being fired because they failed to pursue weakly supported voter fraud cases with sufficient zeal.

We have learned that several Republican officials, including a state official, a former political appointee at the Justice Department and current [Federal Election Commission](#) member ([Hans Von Spakovsky](#)), and a [Capitol Hill](#) staffer complained about our project, particularly about my role in it. Officials at Justice were actively involved in the report throughout the process and even exerted some degree of editorial control over the new report. And it is evident from the commission's "document dump" that its Republican general counsel assumed primary control over the rewriting of the report.

Even without a smoking gun showing political motives in the handling of the draft, the results are disappointing. This is not the way an institution created to promote democracy should function. A government entity that seeks democratic progress should be transparent. It should not be in the business of suppressing information or ideas. Such an institution must be thoroughly insulated from political interference from outside operatives or other parts of the executive branch.

We need an institution like the Election Assistance Commission to provide guidance and research information to the states, election officials, elected leaders and voters. But this agency's structure and procedures need to be seriously reexamined in light of this episode. I support a strong, well-funded EAC that can help our country find reforms to the election system that will make voting more accessible, fair and accurate. But only after it finds some reforms for itself.

The writer is Democracy Fellow at the Century Foundation.

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Texas Attorney General Greg Abbott

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Vote by Mail, Go to Jail

Texas Attorney General Greg Abbott prosecutes Democrats who help seniors vote by mail while ignoring Republican ballot-box stuffing.

STEVEN ROSENFELD | APRIL 13, 2008 | FEATURES

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Willie Ray was a 69-year-old African-American city council member from Texarkana who wanted her granddaughter, Jamillah Johnson, to learn about civil rights and voting during the 2004 presidential election. The pair helped homebound senior citizens get absentee ballots and, once they were filled out, put them in the mail.

Fort Worth's Gloria Meeks, 69, was a church-going community activist who proudly ran a phone bank and helped homebound elderly people like Parthenia McDonald, 79, vote by mail. McDonald, whose mailbox was two blocks away from her home (she recently died), called Meeks "an angel" for helping her, a friend of both women said.

And until he recently moved out of state, Walter Hinojosa, a retired school teacher and labor organizer from Austin, was another Democratic Party volunteer who helped elderly and disabled people vote by getting them absentee ballots and mailing them.

Today, Ray and Johnson have criminal records for breaking Texas election law. Their travel was restricted during a six-month probation. Meeks is in a nursing home after having a stroke, prompt in part, her friends say, by state police who investigated her—including spying on Meeks while she bathed—and then questioned her about helping McDonald and others vote. Hinojosa has left Texas.

Their crime: not including their names, addresses, and signatures on the back of ballots they mail.

for their senior neighbors, and carrying envelopes containing those ballots to the mailbox. Since 2005, Texas Attorney General [Greg Abbott](#), a Republican, has been prosecuting Democratic Party activists, almost all African-Americans and Latinos, as part of an effort to eradicate what he said was an "epidemic" of voter fraud in Texas.

The attorney general's voter fraud efforts were part of a "Special Investigations Unit" that he launched in early 2006 with a \$1.5 million grant from the governor, using federal money awarded from a fund that has spawned controversies, most notably the Tulla drug task force scandal.

"These guilty pleas demonstrate precisely why it is so important to uphold the integrity of our election process in the state," Abbott said, speaking of Ray's and Johnson's convictions in a press release. "We will visit justice upon any who ignore the fact that we have election laws in Texas and they apply to everyone." Texas Democrats such as Lisa Turner, of the [Lone Star Project](#), said Abbott's goal was not merely to prosecute little old ladies. Rather, Turner said, it was to send a message to Texas' minority communities, which lean Democratic, by sowing fear among the elder about voting by mail. The Lone Star Project is a political action committee that first exposed Abbott's prosecutions, issued reports on it, and maintains a staff to fight voter suppression in the state.

"It's the equivalent of when a gang moves into a neighborhood and spray-paints their graffiti or their marker; it's not to deface one building. It is to send a message," Turner said. "You have agents of the attorney general walking through a neighborhood, walking past three crack houses, go talk to a voter. Think about that. What does that say their priorities are? It's about holding on to the levers of power."

Abbott and the election laws he has used to bring the prosecutions have been challenged in federal court under a suit whose trial will begin May 29th in Marshall. In September 2006, Gerry Hebert, a former chief of the U.S. Department of Justice's Voting Section—which oversees the nation's voting rights laws—and now executive director of the Washington-based [Campaign Legal Center](#), filed a suit challenging the Texas attorney general, secretary of state, and a 2003 Texas law that criminalized practices often used to help the elderly vote by mail.

Despite repeated requests, Abbott's office would not comment. But Texas [Solicitor General Ted Cruz](#), who works for Abbott, issued a statement in September 2006 saying the suit "has no basis in law" and "the plaintiffs are [a] combination of political operatives and individual criminals who have already pleaded guilty to voter fraud."

Meanwhile, Abbott has continued to prosecute middle-aged and elderly political volunteers under a law his office says prevents people from impersonating voters and taking advantage of seniors by falsifying ballots. The accused are almost all African-American and Latino, and likely Democrats. In

February 2008, Abbott indicted four Duval County residents—Lydia Molina, 70; Maria Soriano, 71; Elva Lazo, 62; and Maria Trigo, 55—for allegedly delivering “mail-in ballot applications to numerous residents in Duval County, many of whom were ineligible to vote by mail,” an Abbott press release said. Under Texas law, only the disabled, people 65 or older, or people expecting to be out of state on Election Day can vote absentee. The accused checked a box in the 2006 election saying voters were disabled “when they were not,” he said.

“The voter registrar’s office then mailed the actual ballots to the residents,” the release said. “Once the ballots were completed by the residents, the defendants allegedly retrieved these and mailed them to the registrar to be counted without identifying themselves on the carrier envelope.” They face six months and a \$2,000 fine.

Despite Abbott’s declarations that nobody is above Texas law, he has prosecuted no Republicans. “What is especially troubling is that while Greg Abbott’s office has prosecuted minority seniors for simply mailing ballots, he has not prosecuted anyone on the other side of the aisle for what appears to be open-and-shut cases of real voter fraud,” Hebert told Texas House Elections Committee in January, as the panel held a hearing on a bill making the state’s voter ID laws tougher.

Hebert cited a 2005 election in Highland Park, one of the wealthiest neighborhoods in the country with hundreds of million-dollar homes and where both George W. Bush and Dick Cheney once lived. In 2005, two election judges, both Republicans, and a 10-year-old boy handed out over 100 ballot. Hebert testified, without checking any voter registration or ID cards. The ballots were filled out and turned in, he said, quoting from several Dallas district attorney memos. The memos suggested a strong basis for prosecuting the judges for not following procedures and counting “over 100 more ballots” than there were “signatures on the roster.”

In other words, here was a serious case of apparent ballot-box stuffing—voter fraud—by Republicans, albeit in a state where the GOP holds all the constitutional offices, most judgeships, and controls most county election boards. “Here we are nearly three years later, and Attorney General Abbott’s office has done virtually nothing,” Hebert told Texas legislators. “Rather than exercise his discretion to act directly on the [district attorney’s] request and immediately investigate the voting irregularities and potential voter fraud in Highland Park, Mr. Abbott’s office has instead used his office’s resources to prosecute elderly political activists whose only ‘crime’ was assisting elderly and disabled voters cast a vote by mail.”

The bigger picture, said the Lone Star Project’s Turner, was that the Texas Republican Party, assisted by the state’s Republican attorney general, was using the power of the state and public funds to create a climate for partisan gain. “I don’t believe that the attorney general or the government or the Republicans are really interested in putting old women in jail,” she said. “They see what we all see and what everybody has written about, which is Texas is trending majority-minority. And th

Republicans haven't figured out how to talk to minorities. So instead of figuring out how to talk to them on an issue basis, they have embarked on a plan to shave two or three percentage points of the electorate, and that's how they stay in power."

On the outskirts of Ft. Worth, the Democratic Party has a campaign office for its various local and statewide campaigns. In early March, Jane Hamilton, a young woman who has been working on campaigns in the Dallas-Ft. Worth area since 2000, and Dorothy Dean, 74, who has worked on campaigns for four decades, described the real-life impact of Abbott's efforts to prosecute people for helping the elderly and disabled vote. Hamilton described how the 2003 law passed by the Texas Legislature changed the way Democrats interacted with older people who wanted help with their absentee ballots.

"We would get phone calls from older ladies who wanted to vote," Hamilton said. "And they would ask, a lot of times, for people that they trusted, their neighbors, to come over to help. I would the say, 'Well, I don't know her, but how about us helping you over the phone?' And they would say, 'Well, I can't see. And I can't hear good. I need somebody to come over here and help me.'"

Before the attorney general's prosecutions, Hamilton said, she would find well-known people in the caller's community to visit elderly people's homes to help them vote—volunteers like Ray, Meeks, and Hinojosa. After Abbott started prosecuting Democratic volunteers for helping seniors, Hamilton said she could only help elderly voters over the phone, which many callers did not understand.



Campaign worker Jane Hamilton (left) and voter Dorothy Dean (right) photos by Steve Satterwhite

"It was very difficult for me," Hamilton said. "It was very hard to explain why a Mrs. Johnson couldn't help a Mrs. Brown, or if she did, then she couldn't help a Mrs. Sue. ... I think that really started as fear. They [the callers] were afraid because they also started hearing about the attorney

general's office prosecuting. You had all of these things going on, however no one really understood why. The AG's office never did a good job on the community level saying what this means, what this means for you."

Abbott may not have been telling the public what was required under the 2003 law, but he did tell the police. In early 2006, he announced "a statewide initiative to work with local law enforcement and prosecutors to combat and prevent the persistent problem of voter fraud." The project's initial phase would target "44 key counties that either have a history of voter fraud or the population of which exceeds 100,000," the release said. "Voter fraud has been epidemic in Texas for years, but hasn't been treated like one. It's time for that to change," Abbott said. Continuing, he announced the formation of a new "Special Investigations Unit [that] will help police departments, sheriff's offices, and district and county attorneys successfully identify, investigate, and prosecute various types of voter fraud offenses." The release said Gov. Rick Perry, a fellow Republican, was supporting the effort with a \$1.5 million grant.

The funding was provided under an [Edward Byrne Memorial Justice Grant](#), which is a federal program providing criminal justice money to states. It was a Byrne grant in 1999 that funded Tom Coleman, the itinerant police investigator who falsely accused many African-American residents of Tulsa of dealing cocaine. During subsequent legal battles that lasted four years, Coleman was exposed as a liar and Gov. Perry pardoned almost all of his victims. In 2004, Congress said the Byrne grants could be used for broader categories of law enforcement, giving states new leeway in deciding how the funds could be spent. Like the drug task forces that falsely accused minorities to run up arrest numbers and thus justify funding, Abbott's use of the money to pursue voter fraud among the state's minority communities seems to carry ulterior motives beyond ferreting out alleged individual crimes.

According to the Campaign Legal Center's lawsuit, in which Ray, Johnson, Meeke, McDonald, Hinojosa, and the Texas Democratic Party are plaintiffs, a PowerPoint presentation used by Abbott office to train Texas officials was rife with racial stereotypes associating voter fraud with people of color—communities that in recent history have supported Democrats.

"As an introduction to a section of the PowerPoint involving 'Poll Place Violations,' a slide depicts a photograph of African-American voters apparently standing in line to vote," the lawsuit's complaint said. "Notably, the 71-slide presentation contains no similar photographs of white or Anglo voters casting ballots.

"Another slide in the same PowerPoint presentation, in a section involving tactics for investigating purported voter fraud, is entitled 'Examine Documents for Fraud.' That slide states that investigators should look for 'Unique Stamps' and shows a prominent picture of a postage stamp known as the 'sickle cell stamp,' which depicts an African-American woman and infant," the complaint said. "The

PowerPoint presentation thus communicates the message that minority voters should be the focus of election fraud investigations and prosecutions, particularly under the new 2003 criminal prohibitions."

The lawsuit describes various investigative tactics used by Abbott's special unit, including an incident in which two state police officers were seen by Meeks "peeping at her through her bathroom window" while she was taking a bath on August 10, 2006. "She later learned that these two persons were investigators with the office of the defendant Attorney General Abbott," the suit said.

Meanwhile, the secretary of state "fails to make clear that those who assist voters may be subject to criminal prosecution," the complaint said, underscoring the point that Abbott and Texas Secretary of State Roger Williams, also a Republican, were "engaging in a deliberate campaign to suppress the minority vote and discriminate against minority voters."

"That is the whole scheme of the plan," said Dorothy Dean, the longtime Dallas-Ft. Worth campaign worker. "Get it so complicated that the Democrats will stay at home, so they will be confused ... A lot of these older people will be like, 'Oh, I guess I can't vote this year because I don't have my neighbor that can help me. She hasn't been here for two years.' That is really what is happening."

Dean said she has not been investigated by Abbott, but knows of others who have.

"There is one lady who used to be a precinct chair," she said. "I refuse to give her name because she almost had a nervous breakdown. She couldn't believe that all of her hard work as a precinct chair, and devoted to the party, that something like this would happen to her. She still to this day cannot get over it. She wants to be her precinct's chair again. But because of the law, she can't get it back."

Dean said the impact of the attorney general's campaign is much larger than the dozen people charged with voter fraud and the dozens more that have been investigated.

"You have to understand that this would be 20 to 30 percent of the voting ballots from the Democratic Party, because senior citizens cherish the right to vote," she said. "They remember the poll tax, having to pay it. And they want to vote."

Hamilton said the 2003 law and Abbott's prosecutions have prompted the Democratic Party in Dallas County to suspend a field program that once sent volunteers to voters' homes to help them fill out ballot applications so they could vote by mail.

"It is absolutely fair to say there is no field program for mail ballots," she said. "What happens now is, everything is by phone. They call up and request one. And then you call them back and say, 'Did you get it?' And they say, 'Well, I know I got something, but I wasn't sure what it was, so I threw it in the trash. Can you send me another one?' And then you send them another one, and then you call them back, and they say, 'Well, I got that one but I can't see it. What is the line I sign on?'"

"So, do you see what I am saying? You are on the phone with a process with no field component to it," Dean said. "Not anymore."

While the center's lawsuit goes to court later this spring, some of Abbott's recent prosecutions have been thrown out of court. In early March, criminal charges against two *politiqueras* accused of unlawfully assisting elderly voters were dismissed by Hidalgo County Court Judge Jaime Palacios, according to *The Monitor*, McAllen's newspaper.

"In 2006, Attorney General Greg Abbott held up the Hidalgo County voter fraud case as an example of a successful voter fraud investigation that produced results," the paper's Web site reported on March 11. "His office did not return calls for comment."

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