Ms. Perales **does not believe making election administration nonpartisan would have a big impact**. In Texas, administrators are appointed in a nonpartisan manner, but they still do not always have a nonpartisan approach. Each administrator tends to promote his or her personal view regardless of party.

Pat Rogers, attorney, New Mexico

Major issues in NM w/ regard to vote fraud

Registration fraud seems to be the major issue, and while the legislature has taken some steps, Rogers is skeptical of the effect they will have, considering the history of unequal application of election laws. He also believes there are **holes in the 3rd party registration requirement deadlines**.

Rogers **views a national law requiring ID as the best solution to registration problems**. Rather than imposing a burden he contends it will enhance public confidence in the simplest way possible.

Registration Fraud in 2004 election

It came to light that **ACORN had registered a 13 year old. The father was an APD officer and received the confirmation, but it was sent to the next door address, a vacant house. They traced this to an ACORN employee and it was established that this employee had been registering others under 18.**

Two weeks later, **in a crack cocaine bust of Cuban nationals, one of those raided said his job was registering voters for ACORN, and the police found signatures in his possession for fictitious persons.**

In a suspicious break-in at an entity that advertised itself as nonpartisan, only GOP registrations were stolen.

In another instance, **a college student was allegedly fired for registering too many Republicans.**

Rogers said he **believed these workers were paid by the registration rather than hourly.**

There have been **no prosecution or convictions related to these incidents.** In fact, there have been no prosecutions for election fraud in New Mexico in recent history. However, Rogers is skeptical that much action can be expected considering the positions of Attorney General, Governor, and Secretary of State are all held by Democrats. Nor has there been any interest from the U.S. attorney—**Rogers heard that U.S. attorneys were given instruction to hold off until after the election in 2004 because it would seem too political.**

As part of the case against the Secretary of State regarding the identification requirement, the parties also sued ACORN. At a hearing, the head of ACORN, and others aligned with the Democratic Party called as witnesses, took the 5th on the stand as to their registration practices.

Other incidents

Very recently, there have been reports of vote buying in the town of Espanola. Originally reported by the *Rio Grande Sun*, a resident of a low-income housing project is quoted as saying it has been going on for 10-12 years. The Albuquerque Journal is now reporting this as well. So far the investigation has been extremely limited.

In 1996, there were some prosecutions in Espanola, where a state district judge found registration fraud.

In 1991, the chair of Democratic Party of Bertolino County was convicted on fraud. Yet she was pardoned by Clinton on same day as Marc Rich.

Intimidation/Suppression

Rogers believes the most notable example of intimidation in the 2004 election was the discovery of a DNC Handbook from Colorado advising Democratic operatives to widely report intimidation regardless of confirmation in order to gain media attention.

In-person polling place fraud

There have **only been isolated instances of people reporting that someone had voted in their name, and Rogers doesn't believe there is any large scale conspiracy**. Yet he contends that **perspective misses the larger point of voter confidence**. Although there has been a large

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public outcry for voter ID in New Mexico, it has been deflected and avoided by Democrats.
In 2004, there were more Democratic lawyers at the polls than there are lawyers in New Mexico. Rogers believes these lawyers had a positive impact because they deterred people from committing bad acts.

Counting Procedures

The **Secretary of State has also taken the position that canvassing of the vote should be done in private**. In NM, they have a 'county canvas' where they review and certify, after which all materials—machine tapes, etc.,—are centralized with the Secretary of State who does a final canvass for final certification. Conducting this in private is a serious issue, especially considering the margin in the 2000 presidential vote in New Mexico was only 366 votes. **They wouldn't be changing machine numbers, but paper numbers are vulnerable.**
On a related note, NM has adopted state procedures that will ensure their reports are slower and very late, considering the 2000 late discovery of ballots. In a close race, potential for fraud and mischief goes up astronomically in the period between poll closing and reporting. Rogers believes these changes are going to cause national embarrassment in the future.
Rogers attributes other harmful effects to what he terms the Secretary of State's incompetence and inability to discern a nonpartisan application of the law. **In the 2004 election, no standards were issued for counting provisional ballots**. Furthermore, the Secretary of State spent over $1 million of HAVA money for 'voter education' in blatant self-promotional ads.

Recommendations

- Rogers believes it would be unfeasible to have nonpartisan election administration and favors transparency instead. To make sure people have confidence in the election, there must be transparency in the whole process. Then you don't have the 1960 vote coming down to Illinois, or the Espanola ballot or Dona Anna County (ballots found there in the 2000 election). HAVA funds should also be restricted when you have an incompetent, partisan Secretary of State.
- There should be national standards for reporting voting results so there is less opportunity for fraud in a close race. Although he is not generally an advocate of national laws, he does agree there should be more national uniformity into how votes are counted and recorded.

Rebecca Vigil-Giron, Secretary of State, New Mexico

Complaints of election fraud and intimidation are filed with the SOS office. She then decides whether to refer it to the local district attorney or the attorney general. Because the complaints are few and far between, the office does not keep a log of complaints; however, they do have all of the written complaints on file in the office.

Incidents of Fraud and Intimidation

During the **2004** election, there were a couple of complaints of polling place observers telling people outside the polling place who had just voted, and then **the people outside were following the voters to their cars and videotaping them**. This **happened in areas that are mostly second and third generation Latinos**. The Secretary sent out the sheriff in one instance of this. The perpetrators moved to a different polling place. This was the **only incident of fraud or intimidation Vigil-Giron was aware of in New Mexico.**
There have **not been many problems on Native reservations because, unlike in many other states, in New Mexico the polling place is on the reservation and is run by local Native Americans**. Vigil-Giron said that it does not make sense to have non-Natives running those polls because it is necessary to have people there who can translate. Because most of the languages are unwritten, the HAVA requirement of accessibility through an audio device will be very helpful in this regard. Vigil-Giron said she was surprised to learn while testifying at the Voting Rights Act commission hearings of the lack of sensitivity to these issues and the common failure to provide assistance in language minority areas.

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In **2004 the U.S. Attorney, a Republican, suddenly announced he was launching an investigation into voter fraud without consulting the Secretary of State's office. After all of that, there was maybe one prosecution. Even the allegations involving third party groups and voter registration are often misleading. People doing voter registration drives encourage voters to register if they are unsure if they are already registered, and the voter does not even realize that his or her name will then appear on the voter list twice**. The **bigger problem is where registrations do not get forwarded to election administrators** and the voter does not end up on the voting list on Election Day. **This is voter intimidation in itself**, Vigil-Giron believes. It is very discouraging for that voter and she wonders whether he or she will try again.

Under the bill passed in 2004, third parties are required to turn around voter registration forms very quickly between the time they get them and when they must be returned. If they fail to return them within 48 hours of getting them, they are penalized. This, Vigil-Giron believes, is unfair. She has tried to get the Legislature to look at this issue again.

Regarding allegations of vote buying in Espanola, Vigil-Giron said that the Attorney General is investigating. The problem in that area of New Mexico is that they are still using rural routes, so they have not been able to properly district. There has, as a result, been manipulation of where people vote. Now they seem to have pushed the envelope too far on this. The **investigation is not just about vote buying**, however. There have **also been allegations of voters being denied translators as well as assistance at the polls**.

Vigil-Giron believes there was **voter suppression in Ohio in 2004**. County officials knew thirty days out how many people had registered to vote, they knew how many voters there would be. **Administrators are supposed to use a formula for allocation of voting machines based on registered voters. Administrators in Ohio ignored this**. As a result, people were turned away at the polls or left because of the huge lines. This, she believes, was a **case of intentional vote suppression**.

A few years ago, Vigil-Giron heard that there may have been people voting in New Mexico and a bordering town in Colorado. She exchanged information with Colorado administrators and it turned out that there were no cases of double voting.

Recommendations

- Vigil-Giron believes that **linking voter registration databases across states may be a way to see if people who are registered twice are in fact voting twice**.
- The key to improving the process is **better trained poll workers**, who are certified, and know what to look for on Election Day. These poll workers should then work with law enforcement to ensure there are no transgressions.
- There should be **stronger teeth in the voter fraud laws**. For example, it should be more than a fourth degree felony, as is currently the case.

Sarah Ball Johnson, Executive Director of the State Board of Elections, Kentucky

Procedures for Handling Fraud

Fraud complaints are directed first to the state Board of Elections. Unlike boards in other states, Kentucky's has no investigative powers. Instead, they work closely with both the Attorney General and the U.S. Attorney. Especially since the current administration took office, they have **found the U.S. Attorney an excellent partner in pursuing fraud cases**, and have seen many prosecutions in the last six years. She **believes that there has been no increase in the incidence of fraud, but rather the increase in prosecutions is related to increased scrutiny and more resources.**

Major Types of Fraud and Intimidation

Johnson says that **vote buying and voter intimidation go hand in hand in Kentucky**. While historically fraud activity focused on election day, **in the last 20 years it has moved into absentee voting. In part, this is because new voting machines aren't easy to manipulate** in the way

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that paper ballots were open to manipulation in the past, especially in distant rural counties. For this reason, she is troubled by the proliferation of states with early voting, but notes that there is a difference between absentee ballot and early voting on machines, which is far more difficult to manipulate.

Among the cases of absentee ballot fraud they have seen, **common practice involves a group of candidates conspiring together to elect their specific slate. Nursing homes are an especially frequent target.** Elderly residents request absentee ballots, and then workers show up and 'help' them vote their ballots. **Though there have been some cases in the Eastern district of election day fraud, most have been absentee.**

Johnson argues that it is **hard to distinguish between intimidation and vote buying**. They have also **seen instances where civic groups and church groups intimidate members to vote in a specific manner,** not for reward, but **under threat of being ostracized or even telling them they will go to hell.**

While she is **aware of allegations of intimidation by the parties regarding minority precincts in Louisville, the board hasn't received calls about it and there haven't been any prosecutions.**

Challengers

Challengers are permitted at the polls in Kentucky. Each party is allowed two per location, and they must file proper paperwork. **There is a set list of defined reasons for which they can challenge a voter, such as residency, and the challengers must also fill out paperwork to conduct a challenge.**

As for allegations of challengers engaging in intimidation in minority districts, Johnson notes that challengers did indeed register in Jefferson County, and filed the proper paperwork, although they ultimately did not show up on election day.

She finds that **relatively few challengers end up being officially registered, and that the practice has grown less common in recent years.** This is due more to a change of fashion than anything. And after all, **those wishing to affect election outcomes have little need for challengers in the precinct when they can target absentee voting instead.**

In the event that intimidation is taking place, Kentucky has provisions to remove disruptive challengers, but this hasn't been used to her knowledge.

Prosecutions

Election fraud prosecutions in Kentucky have only involved vote buying. This **may be because that it is easier to investigate**, by virtue **of a cash and paper trail which investigators can follow.** It is **difficult to quantify any average numbers about the practice from this, due in part to the five year statute of limitations on vote buying charges. However, she does not believe that vote-buying is pervasive across the state, but rather confined to certain pockets.**

Vote-hauling Legislation

Vote hauling is a common form of vote buying by another name. Individuals are legally paid to drive others to the polls, and then divide that cash in order to purchase votes. Prosecutions have confirmed that vote hauling is used for this purpose. While the Secretary of State has been committed to legislation which would ban the practice, it has failed to pass in the past two sessions.

Paying Voter Registration Workers Legislation

A law forbidding people to pay workers by the voter registration card or for obtaining cards with registrations for a specific party was passed this session. Individuals working as part of a registration campaign may still be paid by hour. Kentucky's experience in the last presidential election illustrates the problems arising from paying individuals by the card. That contest included a constitutional amendment to ban gay marriage on the ballot, which naturally attracted the attention of many national groups. **One group paying people by the card resulted in the registrar being inundated with cards, including many duplicates in the same bundle, variants on names, and variants on addresses. As this practice threatens to overwhelm the voter registration process, Kentucky views it as constituting malicious fraud.**

Deceptive practices

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Other than general reports in the news, Johnson hasn't received any separate confirmation or reports of deceptive practices, i.e., false and misleading information being distributed to confuse voters.

Effect of Kentucky's Database

Johnson **believes Kentucky's widely praised voter registration database is a key reason why the state doesn't have as much fraud as it might, especially the types alleged elsewhere like double and felon voting.** While no database is going to be perfect, the connections with other state databases such as the DMV and vital statistics have been invaluable in allowing them to aggressively purge dead weight and create a cleaner list. When parties use their database list they are notably more successful. Johnson wonders how other states are able to conduct elections without a similar system.

Some factors have made especially important to their success.

- **When the database was instituted in 1973, they were able to make everyone in the state re-register and thus start with a clean database. However, it is unlikely any state could get away with this today.**
- She is also a big supporter of a **full Social Security number standard**, as practiced in Kentucky. The full Social Security, which is compared to date of birth and letters in the first and last name, automatically makes matching far more accurate. The huge benefits Kentucky has reaped make Johnson skeptical of privacy concerns arguing for an abbreviated Social Security number. Individuals are willing to submit their Social Security number for many lesser purposes, so why not voting? And in any event, they **don't require a Social Security number to register (unlike others such as Georgia). Less than a percent of voters in Kentucky are registered under unique identifiers, which the Board of Elections then works to fill in the number through cross referencing with the DMV.**

Recommendations

- Johnson believes the backbone of effective elections administration must be **standardized procedures, strong record keeping, and detailed statutes. In Kentucky, all counties use the same database and the same pre election day forms. Rather than seeing that as oppressive, county officials report that the uniformity makes their jobs easier.**
- This philosophy **extends to the provisional ballot question.** While they did not have a standard in place like HAVA's at the time of enactment, they worked quickly to put a uniform standard in place.
- They have also **modified forms and procedures based on feedback from prosecutors.** Johnson believes a **key to enforcing voting laws is working with investigators and prosecutors and ensuring that they have the information they need to mount cases.**
- She also believes **public education** is important, and that **the media could do more to provide information about what is legal and what is illegal.** Kentucky tries to fulfill this role by **information in polling places, press releases, and high profile press conferences before elections. She notes that they deliberately use language focusing on fraud *and* intimidation.**
- Johnson is somewhat **pessimistic about reducing absentee ballot fraud.** Absentee ballots do have a useful function for the military and others who cannot get to the polling place, and motivated **individuals will always find a way to abuse the system if possible. At a minimum, however, she recommends that absentee ballots should require an excuse. She believes this has helped reduce abuse in Kentucky, and is wary of no-excuse practices in other states.**

Stephen Ansolobohere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Methodology suggestions

In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. **In criminology, experts use two sources:**

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the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that asks whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. Mr. Ansolobohere recommended Jonathan Krosnick, Doug Rivers, and Paul Sniderman at Stanford; Donald Kinder and Arthur Lupia at Michigan; Edward Carmines at Indiana; and Phil Tetlock at Berkeley. In the alternative, Mr. Ansolobohere suggested that the **EAC might work with the Census Bureau to have them ask different, additional questions in their Voter Population Surveys.**

Mr. Chandler **further suggested it is important to talk to private election lawyers**, such as Randall Wood, who represented Ciro Rodriguez in his congressional election in Texas. Mr. Ansolobohere also **recommended looking at experiments conducted by the British Election Commission.**

Incidents of Fraud and Intimidation

Mr. Davidson's study for the Lawyers Committee for Civil Rights on the Voting Rights Act **documented evidence of widespread difficulty in the voting process.** However, he **did not attempt to quantify whether this was due to intentional, malevolent acts. In his 2005 report on ballot security programs, he found that there were many allegations of fraud made, but not very many prosecutions or convictions. He saw many cases that did go to trial and the prosecutors lost on the merits.**

In terms of **voter intimidation and vote suppression, Mr. Davidson said he believes the following types of activities do occur:**

- **videotaping of voters' license plates;**
- **poll workers asking intimidating questions;**
- **groups of officious-looking poll watchers at the poll sites who seem to be some sort of authority looking for wrongdoing;**
- **spreading of false information, such as phone calls, flyers, and radio ads that intentionally mislead as to voting procedures.**

Mr. **Ansolobohere believes the biggest problem is absentee ballot fraud.** However, **many of these cases involve people who do not realize what they are doing is illegal, for example, telling someone else how to vote.** Sometimes there is real illegality occurring however. For example:

- **vote selling involving absentee ballots,**
- **the filling out of absentee ballots en masse,**
- **people at nursing homes filling out the ballots of residents, and**
- **there are stories about union leaders getting members to vote a certain way by absentee ballot.**

This **problem will only get bigger as more states liberalize their absentee ballot rules.** Mr. **Chandler agreed that absentee ballot fraud was a major problem.**

Recommendations

- **Go back to "for cause" absentee ballot rules, because it is truly impossible to ever ensure the security of a mail ballot. Even in Oregon, there was a study showing fraud in their vote by mail system.**
- **False information campaigns should be combated with greater voter education. Los Angeles County's voter education program should be used as a model.**

Tracey Campbell, author, *Deliver the Vote*

While **less blatant than in previous eras, fraud certainly still occurs**, and he mentions some examples in his book. The **major trend of the past 60-70 years has been that these tactics have grown more subtle.**

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While he **hasn't conducted any scientific study of the current state of fraud, his sense as a historian is that it is seems naive, after generations of watching the same patterns and practices influence elections, to view suspect election results today as merely attributable to simple error.**

Vote-buying and absentee fraud

Campbell sees **fraud by absentee ballot and vote buying as the greatest threats to fair elections** today. He says vote fraud is like real estate: location, location, location—the closer you can keep the ballots to the courthouse the better. **Absentee ballots create a much easier target for vote brokers who can manage voting away from the polling place, or even mark a ballot directly, in exchange for, say, $50—or even more if an individual can bring their entire family.** He has **noted some small counties where absentee ballots outnumber in-person ballots.**

However, **few people engaged in this activity would call it 'purchasing' a vote. Instead, it is candidate Jones' way of 'thanking' you for a vote you would have cast in any event.** The issue is what happens if candidate Smith offers you more. Likewise, the **politicians who engage in vote fraud don't see it as a threat to the republic but rather as a game they have to play in order to get elected.**

Regional patterns

Campbell **suggests such practices are more prevalent in the South than the Northern states, and even more so compared to the West.** The **South has long been characterized as particularly dangerous in intimidation and suppression practices**—throughout history, one can find routine stories of deaths at the polls each year. While he maintains that fraud seems less likely in the Western states, he **sees the explosion of mail in and absentee ballots there as asking for trouble.**

Poll site closings as a means to suppress votes

Campbell points to a **long historical record of moving poll sites in order to suppress votes.** Polling places in the 1800s were frequently set-up on rail cars and moved further down the line to suppress black votes.

He **would include door-to-door canvassing practices here, as well as voting in homes**, which was in use in Kentucky until only a few years ago. All **of these practices have been justified as making polling places 'more accessible' while their real purpose has been to suppress votes.**

Purge lists

Purge lists are, of course, needed in theory, yet Campbell **believes the authority to mark names off the voter rolls presents extensive opportunity for abuse.** For this reason, **purging must be done in a manner that uses the best databases, and looks at only the most relevant information.** When voters discover their names aren't on the list when they go to vote, for example, because they are "dead," it has a considerable demoralizing effect. **Wrongful purging takes place both because of incompetence and as a tool to intentionally disenfranchise.**

Campbell believes **transparency is the real issue here.** An hour after the polls close, we tend to just throw up our hands and look the other way, denying voters the chance to see that discrepancies are being rectified. He believes the cost in not immediately knowing election outcomes is a small price to pay for getting results rights and showing the public a transparent process.

Deceptive practices

Today's deceptive practices have are solidly rooted in Reconstruction-era practices—i.e. phony ballots, the Texas 'elimination' ballot. The **ability to confuse voters is a powerful tool for those looking to sway elections.**

Language minorities

Campbell argues there is a **fine line between offering help to non-English speakers and using that help against them.** A **related issue, particularly in the South, is taking advantage of the illiterate.**

Current intimidation

Another tactic Campbell considers an issue today is **polling place layout: the further vote suppressers can keep people away from the**

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polls, the better. Practices such as **photographing people leaving a polling place may also tie into vote-buying, where photos are used to intimidate and validate purchased votes**. A good way **to combat such practices is by keeping electioneering as far from the polls as possible**.

Recommendations

- Specific voting administration recommendations Campbell advocates would include **reducing the use of absentee ballots and improving the protective zone around polling places**.
- Campbell would also like to see **enforcement against fraud stepped up and stiffer penalties enacted, as current penalties make the risk of committing fraud relatively low**. He compares the risk in election fraud similar to steroid use in professional sports—the potential value of the outcome is far higher than the risk of being caught or penalized for the infraction, so it is hard to prevent people from doing it. People need to believe they will pay a price for engaging in fraud or intimidation. Moreover, we need to have the will to kick people out of office if necessary.
- He is **skeptical of the feasibility of nonpartisan election administration**, as he believes it would be difficult to find people who care about politics yet won't lean one way or the other—such an attempt would be unlikely to get very far before accusations of partisanship emerged. He **considers the judiciary the only legitimate check on election fraud**.

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Litigation

Status of litigation in Indiana: On January 12 the briefing was completed. The parties are waiting for a decision from the U.S. district judge. The judge understood that one of the parties would seek a stay from the 7th Circuit Court of Appeals. The parties anticipate a decision in late March or early April. Mr. Webber did the discovery and depositions for the litigation. Mr. Webber feared the plaintiffs were going to state in their reply brief that HAVA's statewide database requirement would resolve the problems alleged by the state. However, the plaintiffs failed to do so, relying on a Motor Voter Act argument instead. **Mr. Webber believes that the voter ID at issue will make the system much more user-friendly for the poll workers**. The Legislature passed the ID legislation, and the state is defending it, on the basis of the problem of the *perception* of fraud.

Incidents of fraud and intimidation

Mr. Webber thinks that **no one can put his or her thumb on whether there has been voter fraud in Indiana**. For instance, **if someone votes in place of another, no one knows about it. There have been no prosecuted cases of polling place fraud in Indiana. There is no recorded history of documented cases, but it does happen**. In the litigation, he used articles from around the country about instances of voter fraud, but even in those examples there were ultimately no prosecutions, for example the case of Milwaukee. He also stated **in the litigation that there are all kinds of examples of dead people voting---totaling in the hundreds of thousands of votes across the country**.

One interesting **example of actual fraud in Indiana occurred when a poll worker, in a poll using punch cards, glued the chads back and then punched out other chads for his candidate**. But this would not be something that would be addressed by an ID requirement.

He also believes that the perception that the polls are loose can be addressed by the legislature. The legislature does not need to wait to see if the statewide database solves the problems and therefore affect the determination of whether an ID requirement is necessary. When he took the deposition of the Republican Co-Director, he said he thought Indiana was getting ahead of the curve. That is, there have been problems around the country, and confidence in elections is low. Therefore Indiana is now in front of getting that confidence back.

Mr. Webber stated that the **largest vote problem in Indiana is absentee ballots. Absentee ballot fraud and vote buying are the most documented cases**. It used to be the law that applications for absentee ballots could be sent anywhere. **In one case absentee votes were**

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exchanged for "a job on election day"---meaning one vote for a certain price. The election was contested and the trial judge found that although there was vote fraud, the incidents of such were less than the margin of victory and so he refused to overturn the election. Mr. Webber appealed the case for the state and argued the judge used the wrong statute. The Indiana Supreme Court agreed and reversed. **Several people were prosecuted as a result – those cases are still pending.**

Process

In Indiana, **voter complaints first come to the attorney for the county election board who can recommend that a hearing be held. If criminal activity was found, the case could be referred to the county prosecutor or in certain instances to the Indiana Attorney General's Office.** In practice, the Attorney General almost never handles such cases.

Mr. Webber has had experience training county of election boards in preserving the integrity and security of the polling place from political or party officials. Mr. Webber stated that **the Indiana voter rolls need to be culled.** He also stated that **in Southern Indiana a large problem was vote buying while in Northern Indiana a large problem was based on government workers feeling compelled to vote for the party that gave them their jobs.**

Recommendations

- Mr. Webber believes that **all election fraud and intimidation complaints should be referred to the Attorney General's Office to circumvent the problem of local political prosecutions.** The **Attorney General should take more responsibility for complaints of fraud because at the local level, politics interferes.** At the local level, everyone knows each other, making it harder prosecute.
- Indiana currently votes 6 am to 6 pm on a weekday. Government workers and retirees are the only people who are available to work the polls. Mr. Webber suggested that the biggest change should be to **move elections to weekends. This would involve more people acting as poll workers who would be much more careful about what was going on.**
- Early **voting at the clerk's office is good because the people there know what they are doing. People would be unlikely to commit fraud at the clerk's office. This should be expanded to other polling places in addition to that of the county clerk.**
- Finally, Mr. Webber believes **polling places should be open longer, run more professionally but that there needs to be fewer of them so that they are staffed by only the best, most professional people.**

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Recent trends

Native election protection operations have intensified recently for several reasons. While election protection efforts in Native areas have been ongoing, leaders realized that they were failing to develop internal infrastructure or cultivate locally any of the knowledge and expertise which would arrive and leave with external protection groups.

Moreover, in recent years partisan groups have become more aware of the power of the native vote, and have become more active in native communities. This has partly resulted in an **extreme increase in voter intimidation tactics. As native communities are easy to identify, easy to target, and generally dominated by a single party, they are especially vulnerable to such tactics.**

Initially, reports of intimidation were only passed along by word of mouth. But it became such a problem in the past 5 to 6 years that tribal leaders decided to raise the issue to the national level. Thompson points to the Cantwell election in 2000 and the Johnson election in South Dakota in 2002 as tipping points where many began to realize the Indian vote could matter in Senate and national elections.

Thompson stressed that Native Vote places a great deal of importance on being nonpartisan. While a majority of native communities vote Democratic, there are notable exceptions, including communities in Oklahoma and Alaska, and they have both parties engaging in aggressive tactics. However, she believes the most recent increase in suppression and intimidation tactics have come from Republican Party organizations.

Nature of Suppression/Intimidation of Native Voters

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Thompson **categorizes suppression into judge related and poll-watcher related incidents, both of which may be purposeful or inadvertent, as well as longstanding legal-structural constraints.**

Structural problems

One **example of inadvertent suppression built into the system** stems from the fact that many Indian communities also include significant numbers of non-Indians due to allotment. Non-Indians tend to be most active in the state and local government while Indians tend to be more involved in the tribal government. Thus, the **individuals running elections end up being non-Indian. Having Indians vote at polling places staffed by non-Indians often results in incidents of disrespect towards Native voters (Thompson emphasized the considerable racism which persists against Indians in these areas). Also, judges aren't familiar with Indian last names and are more dismissive of solving discrepancies with native voters.**

Structural problems also arise from laws which mandate that the tribal government cannot run state or local elections. **In places like South Dakota, political leaders used to make it intentionally difficult for Native Americans to participate in elections. For example, state, local and federal elections could not be held in the same location as tribal elections, leading to confusion when tribal and other elections are held in different locations.** Also, it is **common to have native communities with few suitable sites, meaning that a state election held in a secondary location can suddenly impose transportation obstacles.**

Photo ID Issues

Thompson believes both **state level and HAVA photo ID requirements have a considerable negative impact.** For a number of reasons, **many Indian voters don't have photo ID.** Poor health care and poverty on reservations means that **many children are born at home, leading to a lack of birth certificates necessary to obtain ID.** Also, **election workers and others may assume they are Hispanic, causing additional skepticism due to citizenship questions.** There is a cultural issue as well—historically, whenever Indians register with the federal government it has been associated with a taking of land or removal of children. Thus **many Indians avoid registering for anything with the government, even for tribal ID.**

Thompson also offered examples of how the **impact of ID requirements had been worsened by certain rules and the discriminatory way they have been carried out.** In the **South Dakota special election of 2003, poll workers told Native American voters that if they did not have ID with them and they lived within sixty miles of the precinct, the voter had to come back with ID.** The poll workers **did not tell the voters that they could vote by affidavit ballot and not need to return,** as required by law. This was exacerbated by the fact that the poll workers didn't know the voters —as would be the case with non-Indian poll workers and Indian voters. Many left the poll site without voting and did not return.

In **Minnesota**, the **state tried to prohibit the use of tribal ID's for voting outside of a reservation, even though Minnesota has a large urban Native population.** Thompson believes this move was very purposeful, and despite any reasonable arguments from the Secretary of State, they had to file a lawsuit to stop the rule. They were very surprised to find national party representatives in the courtroom when they went to deal with lawsuit, representatives who could only have been alerted through a discussion with the Secretary of State.

Partisan Poll-Monitoring

Thompson believes the **most purposeful suppression has been perpetrated by the party structures on an individual basis, of which South Dakota is a great example.**

Some negative instances of poll monitoring are not purposeful. Both parties send in non-Indian, non-Western lawyers, largely from the East Coast, which can lead to uncomfortable cultural clashes. These efforts display a keen lack of understanding of these communities and the best way to negotiate within in them. But **while it may be intimidating, it is not purposeful.**

Yet there are **also many instances of purposeful abuse of poll monitoring.** While there were indeed problems during the 2002 Johnson election, it was small compared to the Janklow special election. Thompson says **Republican workers shunned cultural understanding outreach, and had an extensive pamphlet of what to say at polls and were very aggressive about it. In one tactic, every time a voter**

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would come up with no ID, poll monitors would repeat "You can't vote" over and over again, causing many voters to leave. This same **tactic appeared across reservations**, and eventually they looked to the Secretary of State to intervene.

In another example, the **head of poll watchers drove from poll to poll and told voters without IDs to go home, to the point where the chief of police was going to evict him from the reservation.** In **Minnesota, on the Red Lake reservation, police actually did evict an aggressive poll watcher—the fact that the same strategies are employed several hundred miles apart points to standardized instructions.**

None of these incidents ever went to court. Thompson argues this is due to few avenues for legal recourse. In addition, it is inherently difficult to settle these things, as they are he said-she said incidents and take place amidst the confusion of Election Day. Furthermore, **poll watchers know what the outline of the law is, and they are careful to work within those parameters, leaving little room for legal action.**

Other seeming **instances of intimidation may be purely inadvertent, such as when, in 2002, the U.S. Attorney chose Election Day to give out subpoenas, and native voters stayed in their homes.** In all fairness, she believes this was a misunderstanding.

The **effect of intimidation on small communities is especially strong and is impossible to ultimately measure, as the ripple effect of rumors in insular communities can't be traced. In some communities, they try to combat this by using the Native radio to encourage people to vote and dispel myths.**

She has suggestions for people who can describe incidents at a greater level of detail if interested.

Vote Buying and Fraud

They **haven't found a great deal of evidence on vote-buying and fraud. When cash is offered to register voters, individuals may abuse this, although Thompson believes this is not necessarily unique to the Native community, but a reflection of high rates of poverty.** This **doesn't amount to a concerted effort at conspiracy, but instead represents isolated incidents of people not observing the rules.** While Thompson believes **looking into such incidents is a completely fair inquiry, she also believes it has been exploited for political purposes and to intimidate.** For example, large law enforcement contingents were sent to investigate these incidents. As Native voters tend not to draw distinctions between law enforcement and other officials, this made them unlikely to help with elections.

Remedies

- As far as voter suppression is concerned, **Native Vote has been asking the Department of Justice to look into what might be done, and to place more emphasis on law enforcement and combating intimidation.** They have been urging the Department to focus on this at least much as it is focusing on enforcement of Section 203. Native groups **have complained to DOJ repeatedly and DOJ has the entire log of handwritten incident reports they have collected.** Therefore, Thompson recommends **more DOJ enforcement of voting rights laws with respect to intimidation.** People who would seek to abuse the process need to believe a penalty will be paid for doing so. Right now, there is no recourse and DOJ does not care, so both parties do it because they can.
- Certain **states should rescind bars on nonpartisan poll watchers on Election Day; Thompson believes this is contrary to the nonpartisan, pro-Indian presence which would best facilitate voting in Native communities.**
- As discussed above, Thompson believes ID requirements are a huge impediment to native voters. At a minimum, Thompson believes all **states should be explicit about accepting tribal ID on Election Day.**
- **Liberalized absentee ballot rules would also be helpful to Native communities. As many Indian voters are disabled and elderly, live far away from their precinct, and don't have transportation,** tribes encourage members to vote by absentee ballot. Yet obstacles remain. **Some voters are denied a chance to vote if they have requested a ballot and then show up at the polls.** Thompson believes **South Dakota's practice of tossing absentee ballots if a voter shows up at the ED would serve as an effective built-in protection.** In addition, she believes there **should be greater scrutiny of GOTV groups requesting absentee ballots without permission. Precinct location is a longstanding issue, but Thompson recognizes that states have limited resources. In the**

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absence of those resources, better absentee ballot procedures are needed.

- Basic **voter registration issues and access** are also important in native communities and **need to be addressed.**
- Thompson is **mixed on what restrictions should be placed on poll watcher behavior, as she believes open elections and third party helpers are both important.** However, she would be **willing to explore some sort of stronger recourse and set of rules concerning poll watchers' behavior. Currently, the parties are aware that no recourse exists, and try to get away with what they will.** This is not unique to a single party—both try to stay within law while shaking people up. The existing VRA provision is 'fluffy'—unless you have a consent decree, you have very little power. Thompson thinks **a general voter intimidation law that is left a bit broad but that nonetheless makes people aware of some sort of kickback could be helpful.**

Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights

Regarding the August 2005 Report

ACVR has not followed up on any of the cases it cited in the 2005 report to see if the allegations had been resolved in some manner. Mr. Torchinsky stated that **there are problems with allegations of fraud in the report and prosecution---just because there was no prosecution, does not mean there was no vote fraud.** He believes that it is **very hard to come up with a measure of voter fraud short of prosecution.** Mr. Torchinsky does not have a good answer to resolve this problem.

P. 35 of the Report indicates that there were coordinated efforts by groups to coordinate fraudulent voter registrations. P. 12 of the Ohio Report references a RICO suit filed against organizations regarding fraudulent voter registrations. Mr. Torchinsky does not know what happened in that case. He stated that there was a drive to increase voter registration numbers regardless of whether there was an actual person to register. He stated that when you have an organization like ACORN involved all over the place, there is reason to believe it is national in scope. When it is the same groups in multiple states, this leads to the belief that it is a concerted effort.

Voting Problems

Mr. Torchinsky stated **there were incidents of double voting---ex. a double voter in Kansas City, MO. If the statewide voter registration database requirement of HAVA is properly implemented, he believes it will stop multiple voting in the same state.** He **supports the HAVA requirement, if implemented correctly. Since Washington State implemented its statewide database, the Secretary of State has initiated investigations into felons who voted.** In **Philadelphia the major problem is permitting polling places in private homes and bars – even the homes of party chairs.**

Mr. Torchinsky believes that **voter ID would help, especially in cities in places like Ohio and Philadelphia, PA.** The ACVR legislative fund **supports the Real ID requirements suggested by the Carter-Baker Commission. Since federal real ID requirements will be in place in 2010, any objection to a voter ID requirement should be moot.**

Mr. Torchinsky stated that there are **two major poll and absentee voting problems---(1) fraudulent votes-ex. dead people voting in St. Louis and (2) people voting who are not legally eligible-ex. felons in most places.** He also believes that **problems could arise in places that still transport paper ballots from the voting location to a counting room. However, he does not believe this is as widespread a problem now as it once was.**

Suggestions

Implement the Carter-Baker Commission recommendations because they represent a reasonable compromise between the political parties.

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Robin DeJarnette, Executive Director, American Center for Voting Rights

[NO SUMMARY FOUND]

Joseph Rich, former Director of the Voting Section, Civil Rights Division, U.S. Department of Justice

Data Collection and Monitoring

- The **(Voting) section developed a new database before the 2004 election to log complaint calls and what was done to follow up on them. They opened many investigations as a result of these complaints, including one on the long lines in Ohio** (see DOJ letter on website, as well as critical commentary on the DOJ letter's analysis). DOJ found no Section 2 violation in Ohio. John Tanner should be able to give us this data. However, the **database does not include complaints that were received by monitors and observers in the field.**
- **All attorney observers in the field are required to submit reports after Election Day to the Department. These reports would give us a very good sense of the scope and type of problems that arose on that day and whether they were resolved on the spot or required further action.**
- The **monitoring in 2004** was the biggest operation ever. Prior to 2000, only certain jurisdictions could be observed – a VRA covered jurisdiction that was certified or a jurisdiction that had been certified by a court, e.g. through a consent decree. Since that time, and especially in 2004, the Department has engaged in more informal "monitoring." In those cases, monitors assigned to certain jurisdictions, as opposed to observers, can only watch in the polling place with permission from the jurisdiction. **The Department picked locations based on whether they had been monitored in the past, there had been problems before, or there had been allegations in the past. Many problems that arose were resolved by monitors on the spot.**

Processes for Cases not Resolved at the Polling Site

- **If the monitor or observer believes that a criminal act has taken place, he refers it to the Public Integrity Section (PIN). If it is an instance of racial intimidation, it is referred to the Civil Rights Criminal Division. However, very few such cases are prosecuted because they are very hard to prove.** The **statutes covering such crimes require actual violence or the threat of violence in order to make a case. As a result, most matters are referred to PIN because they operate under statutes that make these cases easier to prove.** In general, **there are not a high number of prosecutions for intimidation and suppression.**
- **If the act is not criminal, it may be brought as a civil matter, but only if it violated the Voting Rights Act – in other words, only if there is a racial aspect to the case.** Otherwise the only recourse is to refer it to PIN.
- However, **PIN tends not to focus on intimidation and suppression cases, but rather cases such as alleged noncitizen voting, etc. Public Integrity used to only go after systematic efforts to corrupt the system. Now they focus on scattered individuals, which is a questionable resource choice. Criminal prosecutors over the past 5 years have been given more resources and more leeway because of a shift in focus and policy toward noncitizens and double voting, etc.**
- There have been **very few cases brought involving African American voters.** There have been 7 Section 2 cases brought since 2001 – only one was brought on behalf of African American voters. That case was initiated under the Clinton administration. The **others have included Latinos and discrimination against whites.**

Types of Fraud and Intimidation Occurring

- There is **no evidence that polling place fraud is a problem. There is also no evidence that the NVRA has increased the opportunity for fraud.** Moreover, regardless of NVRA's provisions, an election official can always look into a voter's registration if he or she believes that person should no longer be on the list. The Department is now suing Missouri because of its poor registration list.

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- The **biggest problem is with absentee ballots**. The photo **ID movement is a vote suppression strategy**. This type of suppression is a bigger problem than intimidation. There has been an increase in vote suppression over the last five years, but it has been indirect, often in the way that laws are interpreted and implemented. Unequal implementation of ID requirements at the polls based on race would be a VRA violation.
- The **most common type of intimidation occurring is open hostility by poll workers toward minorities. It is a judgment call whether this is a crime or not – Craig Donsanto of PIN decides if it rises to a criminal matter.**
- **Election Day challenges at the polls could be a VRA violation but such a case has never been formally pursued.** Such **cases are often resolved on the spot. Development of a pre-election challenge list targeted at minorities would be a VRA violation but this also has never been pursued. These are choices of current enforcement policy.**
- **Long lines due to unequal distribution of voting machines based on race, list purges based on race and refusal to offer a provisional ballot on the basis of race would also be VRA violations.**

Recommendations

- Congress should **pass a new law that allows the Department to bring civil actions for suppression that is NOT race based, for example, deceptive practices or wholesale challenges to voters in jurisdictions that tend to vote heavily for one party.**
- **Given the additional resources and latitude given to the enforcement of acts such as double voting and noncitizen voting, there should be an equal commitment to enforcement of acts of intimidation and suppression cases.**
- There should also be increased **resources dedicated to expanded monitoring efforts.** This might be the best use of resources **since monitors and observers act as a deterrent to fraud and intimidation.**

Joseph Sandler, Counsel to the Democratic National Committee

2004-Administrative Incompetence v. Fraud

Sandler believes the **2004 election was a combination of administrative incompetence and fraud.** Sandler stated there was a deliberate effort by the Republicans to disenfranchise voters across the country. This was accomplished by **mailing out cards to registered voters and then moving to purge from the voters list those whose cards were returned.** Sandler indicated that **in New Mexico there was a deliberate attempt by Republicans to purge people registered by third parties.** He stated that there were **intentional efforts to disenfranchise voters by election officials like Ken Blackwell in Ohio.**

The **problems with machine distribution in 2004 were not deliberate.** However, Sandler believes that **a large problem exists in the states because there are no laws that spell out a formula to allocate so many voting machines per voter.**

Sandler was asked how often **names were intentionally purged from the voter lists.** He responded that there will be a lot of names purged as **a result of the creation of the voter lists under HAVA.** However, Sandler stated **most wrongful purging results from incompetence.**

Sandler also said there was **not much intimidation at the polls because most such efforts are deterred and that the last systematic effort was in Philadelphia in 2003 where Republicans had official looking cars and people with badges and uniforms, etc.**

Sandler stated that **deliberate dissemination of misinformation was more incidental, with individuals misinforming and not a political party. Disinformation did occur in small Spanish speaking communities.**

Republicans point to **instances of voter registration fraud** but Sandler believes it **did not occur, except for once in a blue moon.** Sandler **did not believe non-citizen voting was a problem.** He also **does not believe that there is voter impersonation at the polls** and that Republicans allege this as a way of disenfranchising voters through restrictive voter identification rules.

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Fraud and Intimidation Trends

- Sandler stated that **over the years there has been a shift from organized efforts to intimidate minority voters through voter identification requirements, improper purging, failure to properly register voters, not allocating enough voting machines, failure to properly use the provisional ballot, etc., by voter officials as well as systematic efforts by Republicans to deregister voters.**
- At the federal level, **Sandler said, the voting division has become so politicized that it is basically useless now on intimidation claims. At the local level, Sandler does not believe politics prevents or hinders prosecution for vote fraud.**

Sandler's Recommendations:

- Moving the voter lists to the state level is a good idea where carefully done
- Provisional ballots rules should follow the law and not be over-used
- No voter ID
- Partisanship should be taken out of election administration, perhaps by giving that responsibility by someone other than the Secretary of State. There should at least be conflict of interest rules
- Enact laws that allow private citizens to bring suit under state law

All suggestions from the DNC Ohio Report:

1. The Democratic Party must continue its efforts to monitor election law reform in all fifty states, the District of Columbia and territories.
2. **States should be encouraged to codify into law all required election practices, including requirements for the adequate training of official poll workers.**
3. **States should adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts, to ensure adequate and nondiscriminatory access.** These **standards should be based on set ratios of numbers of machines and pollworkers per number of voters expected to turn out**, and should be made available for public comment before being adopting.
4. **States should adopt legislation to make clear and uniform the rules on voter registration.**
5. The Democratic Party should **monitor the processing of voter registrations by local election authorities on an ongoing basis to ensure the timely processing of registrations and changes**, including both newly registered voters and voters who move within a jurisdiction or the state, and the Party should **ask state Attorneys General to take action where necessary to force the timely updating of voter lists.**
6. **States should be urged to implement statewide voter lists in accordance with the Help America Vote Act ("HAVA")**, the election reform law enacted by Congress in 2002 following the Florida debacle.
7. **State and local jurisdictions should adopt clear and uniform rules on the use of, and the counting of, provisional ballots, and distribute them for public comment well in advance of each election day.**
8. The Democratic Party should **monitor the purging and updating of registered voter lists by local officials**, and the Party should **challenge, and ask state Attorneys General to challenge, unlawful purges and other improper list maintenance practices.**
9. **States should not adopt requirements that voters show identification at the polls, beyond those already required by federal** law (requiring that identification be shown only by first time voters who did not show identification when registering.)
10. **State Attorneys General and local authorities should vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.**
11. Jurisdictions should be encouraged to use precinct-tabulated optical scan systems with a computer assisted device at each precinct, in preference to touchscreen ("direct recording equipment" or "DRE") machines.

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12. Touchscreen (DRE) machines should not be used until a reliable voter verifiable audit feature can be uniformly incorporated into these systems. In the event of a recount, the paper or other auditable record should be considered the official record.
13. Remaining punchcard systems should be discontinued.
14. **States should ask state Attorneys General to challenge unfair or discriminatory distribution of equipment and resources** where necessary, and the Democratic Party should bring litigation as necessary.
15. Voting equipment vendors should be required to disclose their source code so that it can be examined by third parties. No voting machine should have wireless connections or be able to connect to the Internet.
16. Any equipment used by voters to vote or by officials to tabulate the votes should be used exclusively for that purpose. That is particularly important for tabulating/aggregating computers.
17. States should adopt "no excuse required" standards for absentee voting.

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18. States should make it easier for college students to vote in the jurisdiction in which their school is located.
19. States should develop procedures to ensure that voting is facilitated, without compromising security or privacy, for all eligible voters living overseas.
20. **States should make voter suppression a criminal offense at the state level, in all states.**
21. **States should improve the training of pollworkers.**
22. **States should expend significantly more resources in educating voters on where, when and how to vote.**
23. **Partisan officials who volunteer to work for a candidate should not oversee or administer any elections.**

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John Ravitz, Executive Director, New York City Board of Elections

Process

If there is an allegation of fraud or intimidation, the commissioners can rule to act on it. For example, in 2004 there were allegations in Queens that people had registered to vote using the addresses of warehouses and stores. The Board sent out teams of investigators to look into this. The Board then developed a challenge list that was to be used at the polls if any of the suspect voters showed up to vote.

If the allegation rises to a criminal level, the Board will refer it to the county district attorney. If a poll worker or election official is involved, the Board may conduct an internal investigation. That individual would be interviewed, and if there is validity to the claim, the Board would take action.

Incidences of Fraud and Intimidation

Mr. Ravitz says there have been **no complaints about voter intimidation since he has been at the Board.** There have been instances of over-aggressive poll workers, but nothing threatening. Voter fraud has also generally not been a problem.

In 2004, the problem was monitors from the Department of Justice intimidating voters. They were not properly trained, and were doing things like going into the booth with voters. The Board had to contact their Department supervisors to put a stop to it.

Charges regarding "ballot security teams" have generally just been political posturing.

The **problem of people entering false information on voter registration forms is a problem.** However, **sometimes a name people allege is false actually turns out to be the voter's real name.** Moreover, **these types of acts do not involve anyone actually casting a fraudulent ballot.**

With respect to the issue of voters being registered in both New York and Florida, the **Board now compares its list with that of Florida and other places to address the problem.** This **will be less of an issue with the use of statewide voter registration databases, as information becomes easier to share.** Despite the number of people who were on the voter registration lists of both jurisdictions, there was no one from those lists who voted twice.

Most of the problems at the polls have to do with poll workers not doing what they are supposed to do, not any sort of malfeasance. This indicates that **improved training is the most important measure** we can take.

There **have been instances in which poll workers ask voters for identification when they shouldn't.** However, the **poll workers seem to do it when they cannot understand the name when the voter tells it to them.** The Board has tried to train them that no matter what, the poll worker cannot ask for identification in order to get the person's name.

Absentee ballot fraud has also not been a problem in New York City. This is likely because **absentee ballots are counted last – eight days after election day. This is so that they can be checked thoroughly and verified.** This is a practice other jurisdictions might consider.

New York City has not had a problem with ex-felons voting or with ex-felons not knowing their voting rights. The City has not had any problems in recent years with deceptive practices, such as flyers providing misinformation about voting procedures.

Recommendations

Better poll worker training

John Tanner, Director, Voting Section, Civil Rights Division, U.S. Department of Justice

Mr. Tanner **would not give us any information about or data from the section's election complaint in-take phone logs; data or even general information from the Interactive Case Management (ICM) system**-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws; and would give us only a selected few samples of attorney-observer reports,

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reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. He **would not discuss in any manner any current investigations or cases the section is involved in.** He also did not believe it was his position to offer us recommendations as to how his office, elections, or the voting process might be improved.

Authority and Process

The **Voting Section, in contrast to the Public Integrity section as Craig Donsanto described it, typically looks only at systemic problems, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.**

Federal voting laws only apply to state action, so the section only sues local governments – it does not have any enforcement power over individuals. **Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot.** Doing it this way has been most effective – for example, while the section used to have the most observers in the South, systematic changes forced upon those jurisdictions have made it so now the section does not get complaints from the South.

The **section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14th and 15th Amendments.**

When the section receives a complaint, attorneys first determine whether it is a matter of individuals or systemic. When deciding what to do with the complaint, the section errs on the side of referring it criminally because they do not want civil litigation to complicate a possible criminal case.

When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

Voter Intimidation

Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The **fact that both parties are engaging in these tactics now makes it more complicated.** It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was **unaware that such allegations were made in Ohio in 2004. He said there had never been an investigation into the abusive use of challengers.**

Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

However, **Mr. Tanner said the Department was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama**, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the voting section to become involved.

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Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is **usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names.** The **section has never formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego.** Mr. Tanner reiterated that the **section is doing more than ever before.**

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. **It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud.** Very close elections make this even more of an understandable concern. **Putting control of registration lists in the hands of the states will be helpful because at this higher level of government you find a higher level of professionalism.**

It is **hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people.** However, the **enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared,** as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

The **section is not filing as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore.** Mr. Tanner said that **race based problems are rare now.**

NVRA has been effective in opening up the registration process. In terms of enforcement, Mr. Tanner said they do what they can when they have credible allegations. There **is a big gap between complaints and what can be substantiated.** Mr. Tanner stated that given the high quality of the attorneys now in the section, if they do not investigate it or bring action, that act complained of did not happen.

Recommendations

Mr. Tanner did not feel it was appropriate to make recommendations

Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin

Complaints of fraud and intimidation do not usually come to Kennedy's office. Kennedy says that complainants usually take their allegations to the media first because they are trying to make a political point.

Election Incidents of Fraud

The investigations into the **2004** election **uncovered some cases of double voting and voting by felons who did not know they were not eligible to vote, but found no concerted effort to commit fraud.** There have been **a couple of guilty pleas as a result, although not a number in the double digits.** The **task force and news reports initially referred to 100 cases of double voting and 200 cases of felon voting, but there were not nearly that many prosecutions. Further investigation since the task force investigation uncovered that in some instances there were mis-marks by poll workers, fathers and sons mistaken for the same voter, and even a husband and wife marked as the same voter.** The **double votes that are believed to have occurred were a mixture of absentee and polling place votes.** It is **unclear how many of these cases were instances of voting in two different locations.**

In discussing the case from **2000** in which **a student claimed – falsely – that he had voted several times, Kennedy said that double voting can be done. The deterrent is that it's a felony, and that one person voting twice is not an effective way to influence an election. One would need to get a lot of people involved for it to work.**

The **task force set up to investigate the 2004 election found a small number of illegal votes but given the 7,000 alleged, it was a relatively small number. There was no pattern of fraud.**

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The **one case Kennedy could recall of an organized effort to commit fraud was in the spring of 2003 or 2004. A community service agency had voters request that absentee ballots be sent to the agency instead of to the voters and some of those ballots were signed without the voters' knowledge. One person was convicted**, the leader of the enterprise.

In Milwaukee, the main contention was that there were more ballots than voters. However, it was found that the 7,000 vote disparity was tied to poll worker error. The task force found that there was no concerted effort involved. Kennedy explained that there are many ways a ballot can get into a machine without a voter getting a number. These include a poll worker forgetting to give the voter one; someone does Election Day registration and fills out a registration form but does not get a number because the transaction all takes place at one table; and in Milwaukee, 20,000 voters who registered were not put on the list in time and as a short term solution the department sent the original registration forms to the polling places to be used instead of the list to provide proof of registration. This added another element of confusion that might have led to someone not getting a voter number.

The Republican Party **used this original list and contracted with a private vendor to do a comparison with the U.S. postal list**. They **found initially that there were 5,000 bad addresses, and then later said there were 35,000 illegitimate addresses**. When the party filed a complaint, the department told them they could force the voters on their list to cast a challenge ballot. **On Election Day, the party used the list but found no one actually voting from those addresses. Kennedy suspects that the private vendor made significant errors when doing the comparison**.

In terms of noncitizen voting, Kennedy said that there is a Russian community in Milwaukee that the Republican Party singles out every year but it doesn't go very far. **Kennedy has not seen much in the way of allegations of noncitizen voting.**

However, **when applying for a drivers license, a noncitizen could register to vote**. There is **no process for checking citizenship at this point, and the statewide registration database will not address this**. Kennedy is not aware of any cases of noncitizen voting as a result, but it might have happened.

Kennedy said that the **biggest concern seemed to be suspicions raised when groups of people are brought into the polling site from group homes, usually homes for the disabled. There are allegations that these voters are being told how to vote.**

Incidents of Voter Intimidation

In **2004**, there was a lot **of hype about challenges, but in Wisconsin, a challenger must articulate a basis under oath**. This **acts as a deterrent, but at the same time it creates the potential that someone might challenge everyone and create long lines**, keeping people from voting. **In 2004, the Republican Party could use its list of suspect addresses as a legitimate basis for challenges, so there is the potential for abuse**. It is **also hard to train poll workers on that process**. In **2004**, there were **isolated cases of problems with challengers**.

In **2002, a flyer was circulated only in Milwaukee claiming that you had vote by noon**. This was taken as an intimidation tactic by the Democrats.

Reforms

Wisconsin has had difficulty with its database because 1) they have had a hard time getting a good product out of the vendor and 2) until now there was no registration record for one-quarter of the voters. Any jurisdiction with fewer than 5000 voters was not required to have a registration list.

In any case, once these performance issues are worked out, Kennedy **does believe the statewide voter registration database will be very valuable. In particular, it will mean that people who move will not be on more than one list anymore. It should also address the double voting issue by identifying who is doing it, catching people who do it, and identifying where it could occur.**

Recommendations

- **Better trained poll workers**
- **Ensure good security procedures for the tabulation process and more transparency in the vote counting process**

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- **Conduct post-election audits**

Evelyn Stratton, Justice, Supreme Court of Ohio

The 2004 Election

Justice Stratton stated that **usually in the period right before an election, filings die down due to the Ohio expedited procedures for electoral challenges. However, the 2004 election was unusual because there were motions and cases decided up to the day of the election. Justice Stratton believed that most of the allegations were knee-jerk reactions without any substance**. For example, without any factual claims, suit was brought alleging that all voter challengers posed a threat to voters. Thematically, allegations were either everyday voting problems or "conspiracies" depending on where the complaint came from. The major election cases in 2004 revolved around Secretary of State Blackwell.

Justice Stratton made a point that the Ohio Supreme Court bent over backwards in the 2004 election to be fair to both sides. There was never any discussion about a ruling helping one political party more than the other.

Justice Stratton cited **two cases that summarize and refute the 2004 complaints---819 NE 2d 1125 (Ohio 2004) and 105 Ohio St. 3d 458 (2004).**

General Election Fraud Issues

Justice Stratton has **seen very few fraud cases in Ohio**. Most challenges are for technical statutory reasons. She **remembered one instance where a man who assisted handicapped voters marked the ballot differently than the voter wanted. Criminal charges were brought against this man** and the question that the Ohio Supreme Court had to decide was whether ballots could be opened and inspected to see how votes were cast.

Justice Stratton claimed she **knew of isolated incidences of fictitious voter registration but these were not prosecuted**. She **has not seen any evidence of ballots being stuffed, dead people voting, etc.**

Suggestions for Changes in Voting Procedures

- The Ohio Supreme Court is very strict about latches---if a person sits on their rights too long, they loose the right to file suit. The **Ohio expedited procedures make election challenges run very smooth.** Justice Stratton does **not remember any suits brought on the day of the election.**
- **lower courts need to follow the rules for the expedited procedures**. Even given the anomalies with lower courts permitting late election challenges in 2004, the Ohio Supreme Court does not want to make a new rule unless this pattern repeats itself in 2008.
- **last minute challenges should not be permitted**
- **supports a non-partisan head of state elections.**

Tony Sirvello, Executive Director, International Association of Clerks, Recorders, Election Officials and Treasurers

Incidents of Election Fraud

Sirvello stated that **one problem with election crimes is that they are not high on the priority list of either district attorneys or grand juries. Therefore, complaints of election crime very rarely are prosecuted or are indicted by the grand jury.** In **1996 in Harris County, 14 people voted twice but the grand jury refused to indict. One woman voted twice, once during early voting and once on Election Day. She said she thought there were two elections. The jury believed her. Sirvello believes none of the people intentionally voted more than once. He said that he believes double voting is not as big of an issue as people make it out to be.**

011187

In **1986**, it was **found that there were 300 more ballots than voter signatures. It was clear that the elections officials stuffed the ballot boxes. The case was brought before a grand jury, but there was no indictment because all of the defendants were friends and relatives of each other and none would admit what had been done.**
Sirvello stated that there have been **isolated circumstances where a voter would show up at the poll and his name had already been signed and he had voted.**
Finally, Sirvello indicated that some **people who worked in Houston but did not live in Harris County were permitted to vote.**
Specific Absentee Ballot/Vote By Mail Issues
Sirvello said that mail **voting presents the largest problem. With mail voting there is too much opportunity to influence voters or to fraudulently request a ballot. If one applied for an absentee ballot, their name and address was made available to candidates and political consultants who would often send people to collect the ballot.** Many did not want to give up the ballot but wanted to mail it personally. The result was to discourage voting.
In Texas, a person could only apply for an absentee ballot if over 65 years of age. Parties, candidates and consultants would get the list of voters over 65 and send them a professional mail piece telling them they could vote by mail and a ballot with everything filled out except the signature. Problems ensued -- for example, voters would print their names rather than sign them, and the ballot was rejected. In other cases, the elderly would give their absentee ballot to someone else.
If a person applied for an absentee ballot but then decided not to cast it but to vote in person, that person had to bring the non-voted absentee ballot to the poll and surrender it. If they did not they would not be permitted to vote at the polling place.
Incidents of Voter Intimidation
Sirvello only reported **isolated cases of intimidation or suppression in Harris County. These mostly occurred in Presidential elections. Some people perceived intimidation when being told they were not eligible to vote under the law.** Sirvello stated that the big issue in elections now is whether there should be a paper trail for touch screen voting.
Recommendations

- **District attorneys need to put more emphasis on election crime so people will not believe that it goes unpunished.**
- There **should be either a national holiday for Election Day or a day should be given off of work without counting as a vacation day so that better poll workers are available** and there can be more public education on election administration procedures.

Harry Van Sickle, Commissioner of Elections, **and Deputy Chief Counsel to the Secretary of State Larry Boyle,** Pennsylvania

Fraud and Intimidation
Neither Van Sickle nor Boyle was aware of any fraud of any kind in the state of Pennsylvania over the last five years. They are **not aware of the commission of any deceptive practices, such as flyers that intentionally misinform as to voting procedures.** They also **have never heard of any incidents of voter intimidation.** With respect to the mayoral election of 2003, the local commission would know about that.
Since the Berks County case of **2003**, where the Department **of Justice found poll workers who treated Latino voters with hostility among other voting rights violations**, the Secretary's office has brought together Eastern Pennsylvania election administrators and voting advocates to discuss the problems. As a result, other counties have voluntarily chosen to follow the guidance of the Berks County federal court order.
Regarding the allegations of fraud that surrounded the voter identification debate, Mr. Boyle said was **not aware of any instances of fraud involving identity.** He believes this is because Pennsylvania has laws in place to prevent this. For example, **in 2002 the state legislature passed an ID law that is stricter than HAVA's – it requires all first time voters to present identification. In addition, the SURE System –**

011183

the state's statewide voter registration database – is a great anti-fraud mechanism. The system will be in place statewide in the May 2006 election.

In addition, the state took many steps before the **2004** election to make sure it would be smooth. They had **attorneys in the counties to consult on problems as well as staff at the central office to take calls regarding problems.** In addition, in 2004 the state used provisional ballots for the first time. This resolved many of the problems that used to occur on Election Day.

Mr. Boyle is **not aware of any voter registration fraud**. This is because **when someone registers to vote, the administrator does a duplicate check.** In addition, **under new laws a person registering to vote must provide their drivers license or Social Security number which are verified through the Department of Motor Vehicles and the Social Security Administration. Therefore, it would be unlikely that someone would be able to register to vote falsely.**

Process

Most problems are dealt with at the local level and do not come within the review of the Secretary of State's office. For instance, **if there is a complaint of intimidation, this is generally dealt with by the county courts which are specially designated solely to election cases on Election Day. The Secretary does not keep track of these cases.** Since the passage of NVRA and HAVA counties will increasingly call the office when problems arise.

Recommendations

Mr. Boyle suggested we **review the recommendations of the Pennsylvania Election Reform Task Force which is on the Secretary's website.** Many of those recommendations have been introduced in the legislature.

Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice

Questions

How are Prosecution Decisions Made?

Craig **Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it.** Donsanto gives possible theories for investigation. **Donsanto and Noel Hillman will decide whether to farm out the case to an AUSA. Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed.** The method of **evaluation of this evidence depends on the type of evidence and its source.** There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). **Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source.** Donsanto said he "knows it when he sees it." Donsanto will **only indict if he is confident of a conviction assuming the worst case scenario – a jury trial.**

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings easily because such defendants are likely to provide information about others involved.

The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between

Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?

Yes. Before, the department would leave it to the states. Now, **if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.**

Does it Matter if the Complaint Comes from a Member of a Racial Minority?

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No. But **if the question involves racial animus, that has also always been an aggravating factor, making it more likely the Department will take it over**

What Kinds of Complaints Would Routinely Override Principles of Federalism?

Federalism is no longer big issue. **DOJ is permitted to prosecute whenever there is a candidate for federal office.**

Are There Too Few Prosecutions?

DOJ can't prosecute everything.

What Should Be Done to Improve the System?

- The **problem is asserting federal jurisdiction in non-federal elections.** It is **preferable for the federal government to pursue these cases for the following reasons**:
  - **federal districts draw from a bigger and more diverse jury pool;**
  - **the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected;**
  - **DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them;**
  - **DOJ can use the grand jury process as a discovery technique and to test the strength of the case.**
- In ***U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to "fix" *McNally*, did not include voter fraud.**
- As a result, the department needs **a new federal law that allows federal prosecution whenever a federal instrumentality is used,** e.g. the mail, federal funding, interstate commerce. The **department has drafted such legislation, which was introduced but not passed in the early 1990s..**

Other Information

The Department **has held four symposia for DEOs and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public.** (Peg will be sending us the complete training materials used at those sessions. These are confidential and are the subject of FOIA litigation).

There are two types of attorneys in the division:

- prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and
- braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

Cases:

Donsanto provided us with three case lists: Open cases (still being investigated) as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006 and cases closed for lack of evidence as of January 13, 2006

If we want more documents related to any case, we must get those documents from the states. The department will not release them to us. **Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.***

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought when there was a pattern or scheme to corrupt the process. **Charges were not brought against individuals** – those

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cases went un-prosecuted. **This change in direction, focus, and level of aggression was by the decision of the Attorney General. The reason for the change was for deterrence purposes.**
The **department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:**

- **Felon voters in Milwaukee.**
- **Alien voters in the Southern District of Florida.** FYI – under 18 USC 611, to prosecute for "alien voting" there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.
- **Double voters in a variety of jurisdictions.**

The **department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department.** Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

Sharon Priest, former Secretary of State, Arkansas

Process:
When there is an allegation of election fraud or intimidation, the county clerk refers it to the local district attorney. Most often, the DA does not pursue the claim. There is little that state administrators can do about this because in Arkansas, county clerks are partisanly elected and completely autonomous. Indeed, county clerks have total authority to determine who is an eligible voter.
Data:
There is **very little data collected in Arkansas on fraud and intimidation cases.** Any **information there might be stays at the county level.** This again is largely because the clerks have so much control and authority, and will not release information. **Any statewide data that does exist might be gotten from Susie Storms from the State Board of Elections.**
Most Common Problems
The perception of fraud is much greater than the actual incidence of fraud.

- The **DMV** does not implement NVRA in that it does not take the necessary steps when providing the voter registration forms and does not process them properly. This **leads to both ineligible voters potentially getting on the voting rolls (e.g. noncitizens, who have come to get a drivers license, fill out a voter registration form having no intention of actually voting) and voter thinking they are registered to vote to find they are not on the list on Election Day.** Also, some people think they are automatically registered if they have applied for a drivers license.
- **Absentee ballot fraud is the most frequent form of election fraud.**
- In **Arkansas**, it is **suspected that politicians pay ministers to tell their congregations to vote for them**
- **In 2003, the State Board documented 400 complaints against the Pulaski County Clerk for engaging in what was at least borderline fraud, e.g. certain people not receiving their absentee ballots.** The **case went to a grand jury but no indictment was brought.**
- **Transportation of ballot boxes is often insecure making it very easy for insiders to tamper with the ballots or stuff the ballot boxes.** Priest has **not actually witnessed this happen, but believes it may have.**
- **Intimidation at the poll sites in court houses. Many voters are afraid of the county judges or county employees and therefore will not vote. They justifiably believe their ballots will be opened by these employees to see who they voted for, and if they voted against the county people, retribution might ensue.**

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- **Undue challenges to minority language voters at the poll sites**
- **Paid registration collectors fill out phony names, but these individuals are caught before anyone is able to cast an ineligible ballot.**

Suggested Reforms for Improvement:

- **Nonpartisan election administration**
- **Increased prosecution of election crimes through greater resources to district attorneys.** In addition, **during election time, there should be an attorney in the DA's office who is designated to handle election prosecution.**
- There should be **greater centralization of the process, especially with respect to the statewide database**. Arkansas has a "bottom up" system. This means the counties still control the list and there is insufficient information sharing. For example, **if someone lives in one county but dies in another, the county in which the voter lived – and was registered to vote – will not be notified of the death**.

011192

Deliberative Process Privilege

Margaret Sims /EAC/GOV
11/07/2006 11:29 AM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Re: VF and VI study

OK, I will get started on the interview summaries today.

DOJ (Donsanto and Tanner) raised objections to the consultants' description of their interviews, which state that DOJ officials agreed they were bringing fewer intimidation and suppression cases. An advocacy group is going after DOJ, accusing the agency of doing just that for political reasons, so this is something DOJ wants corrected.

Apart from the consultants pre-existing bias that "the feds aren't doing enough", a big part of the problem appears to have been a misunderstanding over terminology. When our consultants used the term "intimidation", they included all sorts of suppression activities. When Craig Donsanto used the tern "intimidation", he was using the definition under federal criminal vote fraud statutes, which requires the action be accompanied by threat of physical or economic harm. (He told me he has had only one such case in 30 tears.) His office is actively pursuing voter suppression activities under statutes other than federal voter intimidation laws (e.g.; the recent case in NH where a campaign operative conspired to block election day GOTV telephone lines of the opposing party). A copy of Tanner's comments on the interview summary in the status report for the Standards and Advisory Boards meetings is attached.

I had many long discussions with Tova and Job about this. I was able to get them to soften their description (see 4th bullet on page 7 of the draft report), but not entirely to my satisfaction. Also, at the Working Group meeting, it was agreed that the consultants would add a note to their definition to clarify that the working definition for purposes of the research includes activities that do not meet the federal definition of voter intimidation. The resulting note on page 5 of the draft report is too vague.

DOJ has not seen everything the consultants put in the draft final report, so they may have additional concerns. For example, the consultants' recommendations include the following:

> **Attend the Department of Justice's Ballot Access and Voting Integrity Symposium** . The consultants also believe it would be useful for any further activity in this area to include attendance at the next Ballot Access and Voting Integrity Symposium. According to the Department, DEOs are required to attend annual training conferences centered on combating election fraud and voting rights abuses. These conferences sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, feature presentations by civil rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. According to the Department, DEOs are required to attend annual training conferences centered on combating election fraud and voting rights abuses. These conferences sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, feature presentations by civil rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices.
>
> Footnote:
> By attending the symposium researchers could learn more about the following:
> How *DEOs* are trained, e.g. what they are taught to focus their resources on; How they are instructed to respond to various types of complaints; How information about previous elections and voting issues is presented; and, How the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

DOJ has stated that this is an internal meeting, involving only DOJ officials, US Attorneys and FBI. EAC researchers cannot be admitted without opening the meeting to other outsiders. DOJ does not want to do this, probably for two reasons: (1) confidential information on current enforcement cases may be

discussed; and (2) making enforcement strategies public could give unscrupulous individuals a virtual "how to" manual for circumventing such strategies when committing election crimes.

We may also have a hard time gaining access to the DOE reports and the Voting Section records of complaints, as they probably aren't considered public documents.

--- Peggy

DOJ-TannerComments-TWInteviewSummary.doc

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV
11/07/2006 09:47 AM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: VF and VI study

that would be great. I am also interested in identifying the points of contention between DOJ and the consultants.

Juliet Thompson Hodgkins
General Counsel
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(202) 566-3100

Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV
11/07/2006 09:45 AM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
Subject Re: VF and VI study

Yes (at T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Interviews\Interview Summaries). Do you want me to do the same with those as I did with the literature summaries? --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV
11/07/2006 09:33 AM

To Margaret Sims/EAC/GOV@EAC
cc
Subject VF and VI study

Did Tova and Job provide us with summaries or notes of their interviews?

Juliet Thompson Hodgkins
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Margaret Sims /EAC/GOV
11/07/2006 09:45 AM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Re: VF and VI study

History: This message has been replied to.

Yes (at T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Interviews\Interview Summaries). Do you want me to do the same with those as I did with the literature summaries? — Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV
11/07/2006 09:33 AM

To Margaret Sims/EAC/GOV@EAC
cc
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Deliberative Process Privilege

Margaret Sims/EAC/GOV
11/06/2006 06:36 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Re: VF_VI Literature Review

Julie:

Happy to help, especially as I have to assume the blame for the report turned in by the consultants. I think you were aware that I was disappointed that it was not a more professional product. As I was not clear what the Commission's position is on editing such reports after receipt of the final, and as the consultants insisted that their work not be changed, I felt a bit stymied. Let me know what else I can do.

In the meantime, I'm revisiting some drafts received on the Vote Count-Recount best practices to see if I can encourage more improvements before submission of the final. We're still waiting for the state-by-state summary of practices, originally delayed by the subcontractor's nonperformance, which could affect goes into the best practices. I think some of the emphasis I see in the drafts on post election audits and proper recordkeeping will help respond to some of the issues raised in the literature review for the voting fraud-voter intimidation study.

— Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV
11/06/2006 05:18 PM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: VF_VI Literature Review

Peggy,

I wanted to let you know that I had a chance to review your summaries today. I think that these are some excellent conclusions that we can definitely use in our report. Thank you for doing such a detailed and thorough job. If tomorrow goes quietly, hopefully I will have some time to write.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV
11/06/2006 11:07 AM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
Subject Re: VF_VI Literature Review

Julie:
I have not received the outline, but went ahead with reviewing the literature researched. Attached are my perspectives on what we learned and a listing of the literature with portions of the analysis for each. Both of these documents are on the shared drive under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Research Summaries. Hope these help. Let me know what else you need from me. --- Peggy

EAC-Learned from Lit Review 11-6-06.doc EAC Lit Review Notes 11-5-06.doc

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV
11/03/2006 06:41 PM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Job and Tova

I appreciate it. I will send you a copy of the outline that I am working from. It is somewhat subject to change as I am still trying to gel in my mind what goes first, second ....

Sent from my BlackBerry Wireless Handheld
Margaret Sims
----- Original Message -----

From: Margaret Sims
Sent: 11/03/2006 06:38 PM
To: Juliet Hodgkins
Subject: Re: Job and Tova

I can review them over the weekend and attempt to summarize what they tell us.--- Peggy
---
Sent from my BlackBerry Wireless Handheld
Juliet E. Hodgkins
----- Original Message -----

From: Juliet E. Hodgkins
Sent: 11/03/2006 06:14 PM
To: Margaret Sims
Subject: Re: Job and Tova

I think we should use the content of those articles or some summary of them as a background of what we know about VF and VI. I just didn't want to have to read all of those articles to be able to make some generalized statements about their contents.

Sent from my BlackBerry Wireless Handheld
Margaret Sims
----- Original Message -----

From: Margaret Sims
Sent: 11/03/2006 06:11 PM
To: Juliet Hodgkins

Subject: Re: Job and Tova

Julie:

All of the summaries received are in the shared drawer under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Research Summaries. There are too many of them to append to this message, or I would do it. The researchers did not propose to include these summaries in the report. Are you considering adding them?

If you want, I can cross reference each of these with the list of articles and ID any missing summaries. I could do that over the weekend. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

11/03/2006 05:42 PM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Job and Tova

I spoke to Job about the documents that I need. He will send me his summary of the articles/books that he read. However, he said that Tova also summarized some of those articles/books. I don't have a contact number/email for Tova. Could you contact her and ask her to provide us with any summary of the articles/books that she read as they are listed in Appendix 2?

Juliet Thompson Hodgkins
General Counsel
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1. **Everyone does not define voting fraud and voter intimidation the same way.**

In some cases, what may have been honest administrative mistakes or errors due to poor poll worker training are lumped together with genuine voter suppression efforts and labeled as voter intimidation or voting fraud. Examples: (1) many authors consider certain voter suppression tactics to be voter intimidation that do not rise to the definition used in criminal enforcement of election crimes; (2) some charge that a DOJ ballot integrity measure in South Dakota was voter intimidation; and (3) some mistakes made in the maintenance of voter registration lists are labeled as fraud.

2. **There seems to be no systematic *nationwide* study that reports all (or most) verified instances of voting fraud and voter intimidation or suppression efforts in a particular election or a particular period in U.S. history.**

Some sources focus on certain areas of the country, which can bias the study if these areas are more or less susceptible to fraud and suppression. Some focus on the alleged (but not necessarily verified) misdeeds of one political party or another. Still others focus on unverified allegations reported to a toll-free phone line. In some cases, it is not clear if the incidents were intentional voter suppression or genuine poll worker mistakes (e.g.; not providing provisional ballots or in appropriately asking voters for ID). Minnite's study is as close as they get to a systematic study.

3. **There are a number of obstacles to gathering compete data on voting fraud and voter intimidation/suppression nationwide in any election.**

Authors often have limited resources (time and money) to collect such information. Investigation and prosecution of voting fraud and voter intimidation or suppression occurs at different levels of government (Federal, state and local). These investigations and prosecutions are not reported to and recorded by a central authority. Some voting fraud is inherently more difficult to identify and to prove than others (e.g.; impersonation of another voter at the polls is more difficult, due to the transient nature of some jurisdictions and the fact that impersonators not identified as a fraud at the polls are hard to identify later, than voter registration, vote buying, and absentee ballot fraud). At least some voting fraud and voter intimidation appears to go unreported and uninvestigated, and some prosecutions are unsuccessful due to local politics and law enforcement affiliations and the lack of sufficient resources at the Federal, state, and local levels to support the labor intensive effort.

4. **Most sources seem to agree that voter registration and absentee balloting fraud are the most common forms of voting fraud. Absentee ballot fraud often is accompanied by vote buying or voter coercion. Also frequently alleged were instances of ineligible voters (usually felons, but sometime non-citizens, under aged individuals, or non-residents) that voted. But not all agree that these are the only common forms of fraud.**

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Some contend that voting in the name of another at the polling place is common, but that such instances are extremely hard to prove. Most instances of ineligible voters voting were linked to improper voter list maintenance or confusion on the part of local election officials as to state law on felon disenfranchisement.

5. **A number of sources have identified numerous instances of attempted voter suppression, but no instances of voter intimidation that could be prosecuted under Federal criminal laws is alleged.**

Examples of voter suppression efforts include: (1) phone calls and mailings deliberately directing targeted voters to vote on the wrong day or to go to the wrong polling place, or that provide incorrect and threatening information about the voter qualifications and legal consequences of voting; (2) targeted, inappropriate challenges to voters at the polls or shortly before election day; (3) people posing as law enforcement agents at targeted polling places. When such tactics target minority communities, they may be attacked through civil action by DOJ under Voting Rights Act provisions, but they do not qualify for criminal penalties under Federal voter intimidation law. Currently, there is no Federal election law providing criminal penalties for voter suppression efforts. When the suppression adversely affects a political party, but does not have a racial component, DOJ may be hard pressed to pursue the matter unless other Federal criminal law has been violated (e.g.; suppression of phone banks in New Hampshire).

6. **Unsupervised voter registration drives by political parties and advocacy groups are a primary source of fraudulent voter registration applications and missing (perhaps deliberately) voter registration applications.**

The practice of paying persons to man voter registration drives (particularly, but not only, when the person is paid by the head) is a frequent source of fraudulent voter registration applications. Partisan drives have resulted in applications from persons of "the wrong party" being held back or destroyed. Therefore, while the applicant believes they have registered, the election official has no record of that registration.

7. **Many authors contend that proper implementation of the National Voter Registration Act of 1993 (NVRA) and the Help America Vote Act of 2002 (HAVA) will reduce or at least not increase the potential for fraud and voter suppression, but some argue that provisions in these laws increase the likelihood of fraud or voter suppression.**

Many argue that proper implementation of the list maintenance and fail-safe voting provisions of the NVRA and HAVA's requirements for the statewide voter registration list, voter ID for certain first-time voters, and provisional voting will reduce the potential for voting fraud and voter intimidation. Others argue that the list maintenance provisions of NVRA cause "dead wood" to be left on the voter rolls, providing opportunity for fraud, or that HAVA's voter ID and list matching requirements can be used as voter suppression tactics.

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8. **Proper recordkeeping and post-election auditing is an important key to identifying and preventing voting fraud, and for subsequent prosecution of such activities; but is not being done consistently.**

9. **Poll worker recruitment and training is a key component to combating actions that are perceived as suppressing or intimidating voters.**

10. **Both sides on election reform debates are using incomplete data to bolster their arguments.**

011202

Articles

People for the American Way and the NAACP, "The Long Shadow of Jim Crow," December 6, 2004.

This report **describes the pervasive and repeated practices of voter intimidation and vote suppression that have taken place in very recent years and during contemporary American history.** It goes on to describe the **numerous instances of voter intimidation and suppression during the 2000 election, the 1990s, the 1980s and back through the civil rights movement of the 1960s, putting current efforts in historical perspective.** Describing the chronology of events in this way demonstrates the developing patterns and strategic underpinnings of the tactics used over the last forty years. **Examples** include:

- **Florida law enforcement questioned elderly African American voters** in Orlando regarding the 2003 mayoral race, which had already been resolved, shortly before the 2004 election;
- the **2004 Florida felon purge list**;
- the case of **South Dakota in 2004 in which Native Americans were improperly and illegally required to show photo identification at the polls or denied the right to vote, and similar improper demands for ID from minorities in other parts of the country**;
- the **use of challengers in minority districts in many locations**;
- the **challenge to the right of African American students to vote in Texas in 2004;**
- the presence of **men looking like law enforcement challenging African American voters at the polls in Philadelphia in 2003**;
- the **distribution of flyers in Louisiana and elsewhere in a number of elections over the last few years in minority areas telling them to vote on the wrong day**; and
- the **FBI investigation into thousands of Native American voters in South Dakota in 2002.**

Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.

Argues that "the discriminatory use of so-called 'ballot security' programs" has been a reoccurring scandal since the passage of the Voting Rights Act of 1965. These programs are deceptively presented as preventing voter fraud and thereby furthering good government. However, McDonald states "but far too often they [the ballot security programs] are actually designed to suppress minority voting -- and for nakedly partisan purposes." Blames the federal government as well as the states for use of suspect ballot security programs. McDonald cites several ballot security efforts that were really disguised **attempts at minority voter suppression**:

- **SD-DOJ "voting integrity initiative".**
- **AR - poll watchers driving away voters in predominantly black precincts by taking photos of them and demanding identification during pre-election day balloting.**
- **MI - "spotters" at heavily Democratic precincts was an effort to intimidate black voters and suppress Democratic turnout**
- **SC – one county's officials instituted a new and unauthorized policy allowing them to challenge voters who gave rural route or box numbers for their registration address (disproportionately affecting African Americans).**
- the **1981 gubernatorial election anti-fraud initiative leading to the well known consent decree prohibiting the Republicans from repeating this, a similar Republican effort in Louisiana in 1986 in Senator John Breaux's race which again resulted in prohibition by a state court judge, and a similar effort by Republicans in Senator Jesse Helms 1990 reelection.**

States that **HAVA "contains provisions that may enhance the opportunities for harassment and intimidation of minorities through ballot-security**

Deliberative Process Privilege

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programs (especially voter ID). Indicates that the crux of the problem is **lax enforcement of federal voters rights laws** ("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." The only positive case law McDonald cited was a decision by the United States Court of Appeals for the Eighth Circuit that affirmed "an award of damages ranging from $500 to $2,000, payable by individual poll officials to each of seven black voters who had been unlawfully challenged, harassed, denied assistance in voting or purged from the rolls in the town of Crawfordsville [Arkansas].")
Recommends that Congress and the states should adopt "nondiscriminatory, evenly applied measures to ensure the integrity of the ballot."

Wisconsin Legislative Audit Bureau, "An Evaluation: Voter Registration Elections Board" Report 05-12, September, 2005.

Current voter registration practices were determined to be insufficient to ensure the accuracy of voter registration lists used by poll workers or to prevent ineligible persons from registering to vote. **In six municipalities where sufficient information was available, there was 105 instances of potentially improper or fraudulent voting in the 2004 elections. These included: 98 ineligible felons who may have voted; 2 individuals who may have voted twice; 1 voter who may have been underage; and 4 absentee ballots that should not have been counted because the voters who cast them died before Election Day** (all but dead voters were forwarded to appropriate district attorneys for investigation). Statutes require that clerks send cards to everyone who registers by mail or on Election Day. However, only 42.7 % of the 150 municipalities surveyed sent cards to both groups, and 46 % did not send any address verification cards to those registering to vote on Election Day in November 2004. Statutes also require clerks to provide the local district attorney with the names of any Election Day registrants whose cards are undeliverable at the address provided. However, only 24.3 % of the clerks who sent cards also forwarded names from undeliverable cards to district attorneys. District attorneys surveyed indicated that they require more information than is typically provided to conduct effective investigations. To ensure that voter registration lists contain only the names of qualified electors, municipal clerks are required by statute to remove or inactivate the names of individuals who have not voted in four years, to update registration information for individuals who move or change their names, and to remove or inactivate the names of deceased individuals. They are also required to notify registered voters before removing their names from registration lists. These statutory requirements are not consistently followed:

- 85.3 % of municipalities removed the names of inactive voters from their voter registration lists;
- 71.4 % sometimes or always notified registered voters before removing their names; and
- 54.0 % reported removing the names of ineligible felons.
- registration lists contain duplicate records and the names of ineligible individuals (e.g.; more than 348,000 electronic voter registration records from eight municipalities were reviewed, identifying 3,116 records that appear to show individuals who are registered more than once in the same municipality).

Recommendations:

- adjust the early registration deadline to provide clerks more time to prepare registration lists;
- establish more stringent requirements for special registration deputies, including prohibiting compensation based on the number of individuals registered;
- establish uniform requirements for demonstrating proof of residence for all registrants;
- provide municipal clerks with more flexibility in the use of address verification cards;
- Authorize civil penalties for local election officials and municipalities that fail to comply with election laws; and
- implement mandatory elections training requirements for municipal clerks.

Report also recognized that the new **HAVA registration procedures would help with existing registration problems**.

011204

Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, United States Attorney's Office "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," May 10, 2005.

On January 26, 2005, the Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, and the United States Attorney's Office formed a task force to investigate alleged voting irregularities during the November 2004 elections. The task force has made the following specific determinations based on evidence examined to date:

- **evidence of more than 100 individual instances of suspected double-voting, voting in names of persons who likely did not vote, and/or voting in names believed to be fake.**
- **more than 200 felons voted when they were not eligible to do so. (In order to establish criminal cases, the government must establish willful violations in individual instances);**
- **persons who had been paid to register voters as "deputy registrars" falsely listed approximately 65 names in order to receive compensation for the registrations. (The evidence does not indicate that these particular false registrations were later used to cast votes); and,**
- **the number of votes counted from the City of Milwaukee exceeds the number of persons recorded as voting by more than 4,500. (Evidence indicates widespread record keeping errors with respect to recording the number of voters)**

The investigation concentrated on the 70,000+ same-day registrations. It found that a large **majority of the reported errors were the result of data entry errors**, such as street address numbers being transposed. However, the investigation **also found more than 100 instances where votes were cast in a manner suggesting fraud**. These include:

- persons with the same name and date of birth recorded as voting more than once;
- persons who live outside Milwaukee, but who used non-existent City addresses to register and vote in the City (141 of them were same day registrants; in several instances, the voter explicitly listed municipality names other than Milwaukee on the registration cards);
- persons who registered and voted with identities and addresses that cannot in any way be linked to a real person;
- persons listed as voting under a name and identity of a person known to be deceased;
- persons whose identities were used to vote, but who in subsequent interviews told task force investigators that they did not, in fact, vote in the City of Milwaukee.

Investigation **also found**:

- **persons who were paid money to obtain registrations allegedly falsified approximately 65 names on registration forms**, allegedly to obtain more money for each name submitted.
- **more than 200 felons who were not eligible to vote in the 2004 election, but who are recorded as having done so.**
- **same-day registrations were accepted in which the card had incomplete information that would help establish identity**. For example: 48 original cards for persons listed as voting had no name; 548 had no address; 28 did not have signatures; and another 23 cards had illegible information (part of approximately 1,300 same-day registrations for which votes were cast, but which election officials could not authenticate as proper voters within the City).
- the **post-election misfiling or loss of original green registration cards that were considered duplicates, but that in fact corresponded to additional votes. These cards were used to record votes, but approximately 100 cards of interest to investigators can no longer be located.** In addition, other original green registration cards continue to be found.

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National Commission on Federal Election Reform, "Building Confidence in U.S. Elections," Center for Democracy and Election Management, American University, September 2005.

Among the observations made that are relevant to the EAC study of fraud and intimidation are the following:

- The November 2004 elections showed that irregularities and fraud still occur.
- Failure to provide voters with such basic information as their registration status and their polling site location raises a barrier to voting as significant as inconsistent procedures on provisional ballots or voter ID requirements.
- There is no **evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election**.
- The Commission is concerned that the different approaches to identification cards might prove to be a serious impediment to voting.
- **Voter registration lists are often inflated by the inclusion of citizens who have moved out of state but remain on the lists**. Moreover, under the National Voter Registration Act, names are often added to the list, but counties and municipalities often do not delete the names of those who moved. Inflated voter lists are also caused by phony registrations and efforts to register individuals who are ineligible. At the same time, inaccurate purges of voter lists have removed citizens who are eligible and are properly registered.
- Political party and nonpartisan voter registration drives generally contribute to the electoral process by generating interest in upcoming elections and expanding participation. However, they are occasionally abused. There were **reports in 2004 that some party activists failed to deliver voter registration forms of citizens who expressed a preference for the opposing party**.
- **Vote by mail raises concerns about privacy**, as citizens voting at home may come under pressure to vote for certain candidates, **and it increases the risk of fraud.**
- **While election fraud is difficult to measure, it occurs**. The U.S. Department of Justice has launched more than 180 investigations into election fraud since October 2002. These investigations have resulted in **charges for multiple voting, providing false information on their felon status, and other offenses** against 89 individuals and in convictions of 52 individuals. The convictions related to a **variety of election fraud offenses, from vote buying to submitting false voter registration information and voting-related offenses by non-citizens. In addition to the federal investigations, state attorneys general and local prosecutors handle cases of election fraud. Other cases are never pursued because of the difficulty in obtaining sufficient evidence for prosecution or because of the low priority given to election fraud cases.**
- **Absentee ballots remain the largest source of potential voter fraud**
- **Non-citizens have registered to vote in several recent elections**
- **The growth of "third-party" (unofficial) voter registration drives in recent elections has led to a rise in reports of voter registration fraud.**
- **Many states allow the representatives of candidates or political parties to challenge a person's eligibility to register or vote or to challenge an inaccurate name on a voter roll. This practice of challenges may contribute to ballot integrity, but it can have the effect of intimidating eligible voters, preventing them from casting their ballot, or otherwise disrupting the voting process.**

Its pertinent recommendations for reform are as follows:

- **Interoperable state voter databases** are needed to facilitate updates in the registration of voters who move to another state and to eliminate duplicate registrations, which are a source of potential fraud.
- **Voters should be informed of their right to cast a provisional ballot** if their name does not appear on the voter roll, or if an election official asserts that the individual is not eligible to vote, but **States should take additional and effective steps to inform voters as to the location of their precinct**
- The Commission recommends that states use **"REAL ID" cards for voting purposes.**
- **To verify the identity of voters who cast absentee ballots, the voter's signature on the absentee ballot can be matched with a digitized**

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version of the signature that the election administrator maintains. While such signature matches are usually done, they should be done consistently in all cases, so that election officials can verify the identity of every new registrant who casts an absentee ballot.

- Each **state needs to audit its voter registration files** to determine the extent to which they are accurate (with correct and current information on individuals), complete (including all eligible voters), valid (excluding ineligible voters), and secure (with protections against unauthorized use). This can be done by matching voter files with records in other state agency databases in a regular and timely manner, contacting individuals when the matches are inconclusive, and conducting survey research to estimate the number of voters who believe they are registered but who are not in fact listed in the voter files.
- Each **state should oversee political party and nonpartisan voter registration drives** to ensure that they operate effectively, that registration forms are delivered promptly to election officials, that all completed registration forms are delivered to the election officials, and that none are "culled" and omitted according to the registrant's partisan affiliation. Measures should also be adopted to track and hold accountable those who are engaged in submitting fraudulent voter registrations. Such oversight might consist of training activists who conduct voter registration drives and tracking voter registration forms to make sure they are all accounted for. In addition, states should apply a criminal penalty to any activist who deliberately fails to deliver a completed voter registration form.
- **Investigation and prosecution of election fraud should include those acts committed by individuals, including election officials, poll workers, volunteers, challengers or other nonvoters associated with the administration of elections, and not just fraud by voters.**
- **In July of even-numbered years, the U.S. Department of Justice should issue a public report on its investigations of election fraud.** This report should specify the numbers of allegations made, matters investigated, cases prosecuted, and individuals convicted for various crimes. **Each state's attorney general and each local prosecutor should issue a similar report.**
- **The U.S. Department of Justice's Office of Public Integrity should increase its staff to investigate and prosecute election-related fraud.**
- In addition to the penalties set by the Voting Rights Act, it **should be a federal felony for any individual, group of individuals, or organization to engage in any act of violence, property destruction (of more than $500 value), or threatened act of violence that is intended to deny any individual his or her lawful right to vote or to participate in a federal election.**
- **To deter systemic efforts to deceive or intimidate voters, the Commission recommends federal legislation to prohibit any individual or group from deliberately providing the public with incorrect information about election procedures for the purpose of preventing voters from going to the polls.**
- **States should define clear procedures for challenges, which should mainly be raised and resolved before the deadline for voter registration.** After that, challengers will need to defend their late actions. **On Election Day, they should direct their concerns to poll workers, not to voters directly, and should in no way interfere with the smooth operation of the polling station.**
- **State and local jurisdictions should prohibit a person from handling absentee ballots other than the voter, an acknowledged family member, the U.S. Postal Service or other legitimate shipper, or election officials.** The practice in some states of allowing candidates or party workers to pick up and deliver absentee ballots should be eliminated.
- All states should **consider passing legislation that attempts to minimize the fraud that has resulted from "payment by the piece" to anyone in exchange for their efforts in voter registration, absentee ballot, or signature collection.**
- Nonpartisan structures of election administration are very important, and **election administrators should be neutral, professional, and impartial.**
- No matter what institutions are responsible for conducting elections, **conflict-of-interest standards should be introduced for all federal, state, and local election officials.** Election officials should be prohibited by federal and/or state laws from serving on any political campaign committee, making any public comments in support of a candidate, taking a public position on any ballot measure, soliciting campaign funds, or otherwise campaigning for or against a candidate for public office. A decision by a secretary of state to serve as co-chair of his or her party's presidential

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election committee would clearly violate these standards.

The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law "Response to the Report of the 2005 Commission on Federal Election Reform," September 19, 2005.

Recommendation on Voter Identification -

- Report premises its burdensome identification proposals on the need to ensure ballot integrity and on the existence of or potential for widespread fraud. However, the **Report admits that there is simply "no evidence" that the type of fraud that could be solved by stricter voter identification** – individual voters who misrepresent their identity at the polls – is a widespread problem.
- The photo ID proposal guards against only one type of fraud: individuals arriving at the polls to vote using false information, such as the name of another registered voter, or a recent but not current address. Since the costs of this form of fraud are extremely high (federal law provides for up to five years' imprisonment), and the benefits to any individual voter are extremely low, it is highly unlikely that this will ever occur with any frequency. **The limited types of fraud that could be prevented by a Real ID requirement are extremely rare and difficult.**
- In the most comprehensive survey of alleged election fraud to date, Professor Loraine Minnite and David Callahan have shown that the **incidence of individual voter fraud at the polls is negligible**. A few prominent examples support their findings. In Ohio, a statewide survey found four instances of ineligible persons voting or attempting to vote in 2002 and 2004, out of 9,078,728 votes cast – a rate of 0.00004%. Earlier this year, Georgia Secretary of State Cathy Cox stated that she could not recall one documented case of voter fraud relating to the impersonation of a registered voter at the polls during her ten-year tenure as Secretary of State or Assistant Secretary of State.
- The Report attempts to support its burdensome identification requirements on four specific examples of purported fraud or potential fraud. **None of the Report's cited examples of fraud stand up under closer scrutiny.** This response report goes through each instance of fraud raised by the Commission report and demonstrates that in each case the allegation in fact turned out later not to be true or the fraud cited was not of the type that would be addressed by a photo identification requirement.
- The Report fails to provide a good reason to create greater hurdles for voters who vote at the polls than for those who vote absentee. Despite the fact that **absentee ballots are more susceptible to fraud than regular ballots**, the Report exempts absentee voters from its proposed Real ID and proof of citizenship requirements.

Other points in ID requirement:

- **Report does not explain why the goals of improved election integrity will not be met through the existing provisions in the Help America Vote Act of 2002 (HAVA).**
- Report fails to consider alternative measures to advance its goals that are less restrictive to voters. To the extent that any limited fraud **by individuals at the polls does trickle into the system, it can be addressed by far less restrictive alternatives.** The first step is to recognize that only voters who appear on the registration list may vote a regular ballot. Proper cleaning of registration lists – and proper use of the lists at the poll–will therefore go a long way toward ensuring that every single ballot is cast by an eligible voter.
- In addition to the **better registration lists that full implementation will provide, better record keeping and administration at the polls will reduce the limited potential for voting by ineligible persons**. In the unlikely event that implementation of current law is not able to wipe out whatever potential for individual fraud remains, there are several effective and less burdensome alternatives to the Report's Real ID recommendation that received wholly insufficient consideration.
- Costs - If required as a precondition for voting, photo identification would operate as a de facto poll tax that could disenfranchise low-income voters. To alleviate this burden, the Report appropriately recommends that the "Real ID" card itself be issued free of charge. Nevertheless, the

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percentage of Americans without the documentary proof of citizenship necessary to obtain Real IDs is likely to remain high because the requisite documents are both expensive and burdensome to obtain. (Each of the documents an individual is required to show in order to obtain a "Real ID" card or other government-issued photo ID card costs money or presumes a minimal level of economic resources. Unless the federal and all state governments waive the cost of each of these other forms of identification, the indirect costs of photo IDs will be even greater than their direct costs. In addition, since government-issued IDs may only be obtained at specified government offices, which may be far from voters' residences and workplaces, individuals seeking such Ids will have to incur transportation costs and the costs of taking time off from work to visit those offices during often-abbreviated business hours.)

- Since voting generally depends on the voter's address, and since many states will not accept IDs that do not bear an individual's current voting address, an additional 41.5 million Americans each year will have ID that they may not be able to use to vote. .
- The burden would fall disproportionately on the elderly, the disabled, students, the poor, and people of color.
- The ID recommendations reduce the benefits of voter registration at disability and other social service agencies provided by the National Voter Registration Act of 1993. Individuals who seek to register at those offices–which generally do not issue IDs Census data demonstrate that African Americans and Latinos are more than three times more likely than whites to register to vote at a public assistance agency, and that whites are more likely than African Americans and Latinos to register when seeking a driver's license. Accordingly, the voter registration procedure far more likely to be used by minorities than by whites will no longer provide Americans with full eligibility to vote.
- The Report's proposal to use Real ID as a condition of voting is so excessive that it would prevent eligible voters from proving their identity with even a valid U.S. passport or a U.S. military photo ID card. The Report's proposal to use Real ID as a condition of voting is so excessive that it would prevent eligible voters from proving their identity with even a valid U.S. passport or a U.S. military photo ID card

Recommendation on Database Information Sharing Across States **-serious efficacy, privacy, and security concerns raised by a nationally distributed database of the magnitude it contemplates.** These problems are exacerbated by the Report's recommendation that an individual's Social Security number be used as the broadly disseminated unique voting identifier.

Recommendation on Voting Rights of Ex-Felons - This recommendation would set a standard more generous than the policies of the most regressive thirteen states in the nation but more restrictive than the remaining thirty-seven. The **trend in the states is toward extension of the franchise.**

Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.

Focuses on **vote suppression through "ballot security programs"** (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). Noteworthy **characteristics of these programs**:

- **focus on minority precincts almost exclusively**
- **is often on only the flimsiest evidence that vote fraud is likely to be perpetrated in such precincts;**
- **in addition to encouraging the presence of sometimes intimidating white 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
- **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."
- **doing mailings, collecting returned materials, and using that as a basis for creating challenger lists** and challenging voters at the polls,

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started in the 1950s and continues to today (problem with this practice is that reasons for a mailing to be returned include a wrong address, out of date or inaccurate addresses, poor mail delivery in minority areas, and matching mistakes)

Provide numerous examples from the last 50 years to demonstrate his thesis, going through the historical development of Republican ballot security programs from the 1950s through to the present (including more recent incidents, such as 1981 in New Jersey, 1982 Dallas, Louisiana 1986, Houston 1986, Hidalgo 1988 Orange County 1988, North Carolina 1990, South Carolina 1980-1990, and South Dakota 2002). Author cites and quotes internal Republican letters and memoranda, primary sources and original documents, media reports, scholarly works, as well as the words of judges' rulings in some of the cases that ended up in litigation to prove his argument. author cites and quotes internal Republican letters and memoranda, primary sources and original documents, media reports, scholarly works, as well as the words of judges' rulings in some of the cases that ended up in litigation to prove his argument.

Some of the features of vote suppression efforts put forth by Republicans under the guise of ballot security programs:

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.**

The report ends with some observations on the state of research on the incidence of fraud, which the author finds lacking. He **suggests that vote suppression of qualified minority voters by officials and partisan poll-watchers, challengers, and uniformed guards should also be considered as included in any definition of election fraud.** Recommends Democrats should not protest all programs aimed at ballot integrity, but rather work with Republicans to find solutions to problems that confront both parties and the system as a whole.

Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.

Presents results from the first nationwide study to document the implementation of American felony disenfranchisement law. Data came from two main sources: a 33-state survey of state elections officials (spring 2004) and telephone interviews with almost one hundred city, county, town, and parish officials drawn from 10 selected states.

Major Conclusions:

1. **Broad variation and misunderstanding in interpretation and enforcement of voting laws** (more than one-third [37%] of local officials interviewed in ten states either described their state's fundamental eligibility law incorrectly, or stated that they did not know a central aspect of that law. / Local registrars differ in their knowledge of basic eligibility law, often within the same state. Differences also emerge in how they are notified of criminal convictions, what process they use to suspend, cancel, or "purge" voters from the rolls, whether particular documents are required to restore a voter to eligibility, and whether they have information about the criminal background of new arrivals to the state.)
2. **Misdemeanants disenfranchised in at least five states** (the commonly-used term "felon disenfranchisement" is not entirely accurate, since at

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least five states – Colorado, Illinois, Michigan, South Carolina, and Maryland -- also formally bar some or all people convicted of misdemeanors from voting [it is likely that misdemeanants in other states who do retain the formal right to vote could have difficulty exercising that right, given ignorance of their eligibility and the lack of clear rules and procedures for absentee voting by people in jail who have not been convicted of a felony / Maryland excludes persons convicted of many misdemeanors, such as "Unlawful operation of vending machines," "Misrepresentation of tobacco leaf weight," and "Racing horse under false name.")

3. **Significant ambiguities in voting laws (disenfranchisement in Tennessee is dependent on which of five different time periods a felony conviction occurred between 1973 and the present** / in Oregon, disenfranchisement is determined not by conviction or imprisonment for a felony, but for being placed under Department of Corrections supervision / since 1997, some persons convicted of a felony and sentenced to less than 12 months' custody have been sent to county jails and hence, are eligible to vote.
4. **Disenfranchisement results in contradictory policies within states (the "crazy-quilt" pattern of disenfranchisement laws exists even within states** / Alabama and Mississippi have both the most and least restrictive laws in the country, a result which is brought about by the fact that certain felonies result in the loss of voting rights for life, while others at least theoretically permit people in prison to vote / most felonies in Alabama result in permanent disenfranchisement, but drug and DUI offenses have been determined to not involve the "moral turpitude" that triggers the loss of voting rights / in Mississippi, ten felonies result in disenfranchisement, but do not include such common offenses as burglary and drug crimes.
5. **Confusing policies lead to the exclusion of legal voters and the inclusion of illegal voters**: The complexity of state disenfranchisement policies results in frequent misidentification of voter eligibility, largely because officials differ in their knowledge and application of disqualification and restoration law and procedures.
6. **Significant variation and uncertainty in how states respond to persons with a felony conviction from other states**: No state has a systematic mechanism in place to address the immigration of persons with a felony conviction, and there is no consensus among indefinite-disenfranchisement states on whether the disqualification is properly confined to the state of conviction, or should be considered in the new state of residence. Interpretation and enforcement of this part of disenfranchisement law varies not only across state lines, but also from one county to another within states. Local officials have no way of knowing about convictions in other states, and many are unsure what they would do if a would-be voter acknowledged an old conviction. Because there is no prospect of a national voter roll, this situation will continue even after full HAVA implementation.
7. **Disenfranchisement is a time-consuming, expensive practice**: Enforcement requires elections officials to gather records from different agencies and bureaucracies, including state and federal courts, Departments of Corrections, Probation and Parole, the state Board of Elections, the state police, and other counties' elections offices.

Policy Implications

1. **Policies disenfranchising people living in the community on probation or parole, or who have completed a sentence are particularly difficult to enforce:** States which disenfranchise only persons who are currently incarcerated appear able to enforce their laws more consistently than those barring non-incarcerated citizens from voting.
2. Given large-scale misunderstanding of disenfranchisement law, **many eligible persons incorrectly believe they cannot vote, or have been misinformed by election officials**: More than one-third of election officials interviewed incorrectly described their state's law on voting eligibility. More than 85% of the officials who misidentified their state's law either did not know the eligibility standard or specified that the law was more restrictive than was actually the case.
3. **Occasional violation of disenfranchisement law by non-incarcerated voters not surprising**: Given the complexity of state laws and the number of state officials who lack an understanding of restoration and disqualification procedures, it should come as no surprise that many voters are ignorant of their voting status, a fact that is likely to have resulted in hundreds of persons with a felony conviction registering and voting illegally in recent years.

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4. Taken together, these **findings undermine the most prominent rationale for disenfranchisement: that the policy reflects a strong, clear consensus that persons with a felony conviction are unfit to vote and constitute a threat to the polity**: First, when significant numbers of the people who administer elections do not know important aspects of disenfranchisement law, it is hard to conclude that the restriction is necessary to protect social order and the "purity" of the ballot box. Second, because they are all but invisible in the sentencing process, "collateral" sanctions like disenfranchisement simply cannot accomplish the denunciatory, expressive purposes their supporters claim. We now know that disenfranchisement is not entirely "visible" even to the people running American elections. Third, deep uncertainty regarding the voting rights of people with felony convictions who move from one state to another indicates that we do not even know what purpose disenfranchisement is supposed to serve – whether it is meant to be a punishment, or simply a non-penal regulation of the franchise.

Recommendations

1. **Clarify Policies Regarding Out-of-State Convictions**: State officials should clarify their policies and incorporate into training programs the means by which a felony conviction in another state affects an applicant's voting eligibility. For example, sentence-only disenfranchisement states should clarify that newcomers with old felony convictions from indefinite disenfranchisement states are eligible to vote. And those states which bar some people from voting even after their sentences are completed must clarify whether new arrivals with old felony convictions from sentence-only disenfranchisement states are automatically eligible, and must explain what procedures, if any, should be followed for restoration.
2. **Train Election Officials**: Clarify disenfranchisement policies and procedures for all state and local election officials through development of materials and training programs in each state. At a minimum, this should include distribution of posters, brochures and FAQ sheets to local and state elections offices.
3. **Train Criminal Justice Officials**: Provide training on disqualification and restoration policies for all correctional and criminal justice officials, particularly probation and parole staff. Correctional and criminal justice officials should also be actively engaged in describing these policies to persons under criminal justice supervision.
4. **Review Voting Restrictions on Non-Incarcerated People:** Given the serious practical difficulty of enforcing laws disqualifying people who are not incarcerated from voting – problems which clearly include both excluding eligible people from voting and allowing those who should be ineligible to vote -- state policymakers should review such policies to determine if they serve a useful public purpose.

American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.

Using court records, police reports and news articles, ACVR Legislative Fund presented this Report documenting hundreds of reported incidents and allegations from around the country. The report **most often alleges voter intimidation and voter registration fraud, and to a lesser degree absentee ballot fraud and vote buying**. This report alleges a coordinated effort by members of some organizations to rig the election system through voter registration fraud, the first step in any vote fraud scheme that corrupts the election process by burying local officials in fraudulent and suspicious registration forms. paid Democrat operatives were far more involved in voter intimidation and suppression activities than were their Republican counterparts during the 2004 presidential election. Identified five cities as "hot spots" which require additional immediate attention, based on the findings of this report and the cities' documented history of fraud and intimidation: Philadelphia, PA, Milwaukee, WI, Seattle, WA, St. Louis/East St. Louis, MO/IL, and Cleveland, OH. Refutes charges of voter intimidation and suppression made against Republican supporters, discusses similar charges against Democrats, details incidents vote fraud and illegal voting and finally discusses problems with vote fraud, voter registration fraud and election irregularities around the country. Recommends:

- **Both national political parties should formally adopt a zero-tolerance fraud and intimidation policy that commits the party to pursuing and fully prosecuting individuals and allied organizations who commit vote fraud or who seek to deter any eligible voter from participating in the election through fraud or intimidation.** No amount of legislative reform can effectively deter those who commit acts of fraud if there is no punishment for the crime and these acts continue to be tolerated.

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- **States should adopt legislation requiring government-issued photo ID at the polls and for any voter seeking to vote by mail or by absentee ballot.** Government-issued photo identification should be readily available to all citizens without cost and provisions made to assure availability of government-issued identification to disabled and low-income citizens.
- **States should adopt legislation requiring that all polling places be fully accessible and accommodating to all voters regardless of race, disability or political persuasion and that polling locations are free of intimidation or harassment.**
- **States should create and maintain current and accurate statewide voter registration databases as mandated by the federal Help America Vote Act ("HAVA") and establish procedures to assure that the statewide voter roll is current and accurate and that the names of eligible voters on the roll are consistent with the voter roll used by local election authorities in conducting the election.**
- **States should adopt legislation establishing a 30-day voter registration cutoff to assure that all voter rolls are accurate and that all registrants can cast a regular ballot on Election Day and the election officials have opportunity to establish a current and accurate voter roll without duplicate or fictional names and assure that all eligible voters (including all recently registered voters) are included on the voter roll at their proper precinct.**
- **States should adopt legislation requiring voter registration applications to be delivered to the elections office within one week of being completed so that they are processed in a timely manner and to assure the individuals registered by third party organizations are properly included on the voter roll.**
- **States should adopt legislation and penalties for groups violating voter registration laws, and provide the list of violations and penalties to all registration solicitors.** Legislation should **require those organizations obtaining a voter's registration to deliver that registration to election officials in a timely manner** and should **impose appropriate penalties upon any individual or organization that obtains an eligible voter's registration and fails to deliver it to election authorities.**
- **States should adopt legislation prohibiting "bounty" payment to voter registration solicitors based on the number of registration cards they collect.**

The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001

Written after the 2000 election, thesis of report is that **structural disenfranchisement**—the effect of breakdowns in the electoral system, is the new poll tax. Structural disenfranchisement includes "bureaucratic blunders, governmental indifference, and flagrant disregard for voting rights." Blame for structural disenfranchisement is laid squarely at the feet of **states and localities that** "shirk their responsibilities or otherwise **manipulate election systems," resulting in voters "either turned away from the polls or their votes are thrown out."** Data and conclusions in the Report are taken from **eight sample case studies** of states and cities across the country and a survey of state election directors that reinforces the findings of the case studies (New York City-in six polling places Chinese translations inverted the Democrats with the Republicans; Georgia-the state computer crashed two weeks before the election, dropping thousands of voters from the rolls; Virginia-registration problems kept an untold number from voting; Chicago-in inner-city precincts with predominately minority populations, almost four out of every ten votes cast for President (in 2000) were discarded; St. Louis-thousands of qualified voters were placed on inactive lists due to an overbroad purge; Florida-a voting list purge of voters whose name and birth date closely resembled those of people convicted of felonies; and, Texas-significant Jim Crow like barriers to minority voting.) Most ballot blockers involve the structural elements of electoral administration: "ill-trained poll workers, failures to process registration cards on time or at all, inaccurate registration rolls, overbroad purges of voter rolls, unreasonably long lines, inaccurate ballot translations and a shortage of translators to assist voters who have limited English language skills."

Findings:

- election directors lack the resources to effectively do their jobs and some lack the "ability or will to force local election officials to fix serious

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problems";

- election officials are highly under funded and legislatures refuse to grant their requests for more money;
- due to a lack of funds, election officials must use old and inferior equipment and can't improve training or meet structural needs;
- election officials are generally unaware of racial disparities in voting; only three of the 50 state election administrators are non-white.

Recommendations:

- federal policies that set nationwide and uniform election policies;
- federal guarantee of access to provisional ballots;
- enforcement of voter disability laws;
- automatic restoration of voting rights to those convicted of a crime after they have completed their sentence;
- a centralized data base of voters administered by non-partisan individuals;
- federal standards limiting precinct discarded vote rates to .25 %;
- federal requirements that jurisdiction provide voter education, including how to protect their right to vote; and laws that strengthen the ability of individuals to bring actions to enforce voting rights and anti-discrimination laws.

The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.

A September 15, 2005 Report submitted to the New Jersey Attorney General included lists of purportedly illegitimate votes in New Jersey in the 2004 general election, including lists of 10,969 individuals who purportedly voted twice and lists of 4,756 voters who were purportedly dead or incarcerated in November 2004. **Analysis of the suspect lists reveals that the evidence submitted does not show what it purports to show: cause for concern that there is serious risk of widespread fraud given the state of the New Jersey voter registration rolls.** These suspect lists were compiled by attempting to match the first name, last name, and birth date of persons on county voter registration files. **Analysis reveals several serious problems with the methodology used to compile the suspect lists that compromise the lists' practical value.** For example, middle initials were ignored throughout all counties, so that "J_____ A. Smith" was presumed to be the same person as "J_____ G. Smith." Suffixes were also ignored, so that fathers and sons – like "B_____ Johnson" and "B_____ Johnson, Jr." – were said to be the same person. **A presumption that two records with the same name and date of birth must represent the same person is not consistent with basic statistical principles.**

Re Claim of Double Voting by 4,497 Individuals:

- 1,803 of these 4,397 records of ostensibly illegal votes seem to be the product of a glitch in the compilation of the registration files (far more likely that data error is to blame for the doubly logged vote - to irregularities in the data processing and compilation process for one single county);
- another 1,257 entries of the 4,397 records probably represent similar data errors;
- approximately 800 of the entries on the list likely represent different people, with different addresses and different middle initials or suffixes;
- for approximately 200 of the entries in this category, however, less information is available (lack of or differences in middle initial or middle name);
- 7 voters were apparently born in January 1, 1880 – which is most likely a system default for registrations lacking date-of-birth information;
- for 227 voters, only the month and year of birth are listed: this means only that two voters with the same name were born in the same month and year, an unsurprising coincidence in a state of several million people;
- leaves approximately 289 votes cast under the same name and birth date – like votes cast by "P_____ S. Rosen," born in the middle of the baby boom – but from two different addresses. It may appear strange, but there may be two P_____ S. Rosens, born on the same date in 1948 – and

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such coincidences are surprisingly common. . In a group of just 23 people, it is more likely than not that two will share the same birthday. For 40 people, the probability is 90%. Many, if not most, of the 289 alleged double votes of persons registered at different addresses most likely reflect two separate individuals sharing a first name, last name, middle intial, and birth date.

But there is **no doubt that there are duplicate entries on New Jersey's registration rolls**. It is well known that voter registration rolls contain "deadwood" – registration entries for individuals no longer living at a given address or deceased. There is no evidence, however, that these extra registrations are used for widespread illegal voting. Moreover, the **problem of deadwood will soon be largely resolved: both the National Voter Registration Act of 1993 and the Help America Vote Act of 2002 require states to implement several systems and procedures as of January 1, 2006, that will clean the voter rolls of duplicate or invalid entries while protecting eligible voters from unintended disfranchisement.**

Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005

Study re 2004 election in Ohio. Findings consideredrelated to EAC study:

- Statewide, **6 %of all voters reported feelings of intimidation: 16 percent of African Americans reported experiencing intimidation versus only 5 %of white voters.**
- **African American voters were 1.2 times more likely than white voters to be required to vote provisionally**. Of provisional voters in Cuyahoga County, 35% were African American, compared to 25% of non-provisional voters, matched by geography.
- Under Ohio law, the only voters who should have been asked for identification were those voting in their first Federal election who had registered by mail but did **not** provide identification in their registration application. **Although only 7% of all Ohio voters were newly registered (and only a small percentage of those voters registered by mail and failed to provide identification** in their registration application**), more than one third (37% reported being asked to provide identification.**—meaning large numbers of voters were illegally required to produce identification. **African American voters statewide were 47% more likely to be required to show identification than white voters**. Indeed, **61% of African American men reported being asked to provide identification at the polls.**
- **Scarcity of voting machines caused long lines that deterred many people from voting**: **3% of voters who went to the polls left their polling places and did not return** due to the long lines; statewide, **African American voters reported waiting an average of 52 minutes before voting while white voters reported waiting an average of 18 minutes**; overall, **20% of white Ohio voters reported waiting more than twenty minutes, while 44% of African American voters reported doing so.**

The report also includes a useful summary and description of the reports that came through Ohio Election Protection on Election Day, which included a wide variety of problems, including voter intimidation and discrimination.

Pertinent recommendations:

- **codify into law all required election practices**, including requirements for the adequate training of official poll workers
- adopt legislation to **make clear and uniform the rules on voter registration.**
- adopt uniform **and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts**, to ensure adequate and nondiscriminatory access
- improve **training of official poll workers**
- adopt **clear and uniform rules on the use of, and the counting of, provisional ballots**, and distribute them for public comment well in advance of each election day
- not adopt requirements that voters show identification at the polls, beyond those already required by federal law; **vigorously enforce**, to the full extent permitted by state law, a **voter's right to vote without showing identification.**

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- **make voter suppression a criminal offense at the state level**, in all states
- **implement statewide voter lists** in accordance with the Help America Vote Act ("HAVA")
- expend significantly **more resources in educating voters on where, when and how to vote.**
- **partisan officials who volunteer to work for a candidate should not oversee or administer any elections.**

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."

Supervision of the Justice Department's nationwide response to election crimes:
Election Crimes Branch oversees the Department's handling of all election crime allegations other than those involving civil rights violations, which are supervised by the Voting Section of the Civil Rights Division. Specifically, the Branch supervises four types of corruption cases: crimes that involve the voting process, crimes involving the financing of federal election campaigns, crimes relating to political shakedowns and other patronage abuses, and illegal lobbying with appropriated funds. Vote frauds and campaign-financing offenses are the most significant and also the most common types of election crimes. The purpose of Headquarters' oversight of election crime matters is to ensure that the Department's nationwide response to election crime is uniform, impartial, and effective. An Election Crimes Branch, headed by a Director and staffed by Section attorneys on a case-by-case basis, was created within the Section in 1980 to handle this supervisory responsibility.
Voting Fraud:
During **2002** the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. During **2003** the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virgin Islands, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. During **2004** the Branch assisted United States Attorneys' Offices in the following states in the handling of vote fraud matters that occurred in their respective districts: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Washington, and Wisconsin. This assistance included evaluating vote fraud allegations to determine whether investigation would produce a prosecutable federal criminal case, helping to structure investigations, providing legal advice concerning the formulation of charges, and assisting in establishing several task force teams of federal and state law enforcement officials to investigate vote fraud matters.
Litigation:
The Branch Director or Section attorneys also prosecute selected election crimes, either by assuming total operational responsibility for the case or by handling the case jointly with a United States Attorney's Office. The Section also may be asked to supervise the handling of a case in the event of a partial recusal of the local office. For example, in 2002 the Branch continued to supervise the prosecution of a sheriff and his election attorney for using data from the National Crime Information Center regarding voters' criminal histories to wage an election contest.

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District Election Officer Program:
The Branch also assists in implementing the Department's long-standing District Election Officer (DEO) Program. This Program is designed to ensure that each of the 93 United States Attorneys' Offices has a trained prosecutor available to oversee the handling of election crime matters within the district and to coordinate district responses with Headquarters regarding these matters. The DEO Program involves the appointment of an Assistant United States Attorney in each federal district to serve a two-year term as a District Election Officer; the training of these prosecutors in the investigation and prosecution of election crimes; and the coordination of election-related initiatives and other law enforcement activities between Headquarters and the field. In addition, the DEO Program is a crucial feature of the Department's nationwide Election Day Program, which occurs in connection with the federal general elections held in November of even-numbered years. The Election Day Program ensures that federal prosecutors and investigators are available both at the Department's Headquarters in Washington and in each district to receive and handle complaints of election irregularities from the public while the polls are open and that the public is aware of how these individuals can be contacted on election day. In 2002 the Department enhanced the DEO Program by establishing a Ballot Integrity Initiative.

Ballot Integrity Initiative:
Beginning in September of 2002, the Public Integrity Section, acting at the request of the Attorney General, assisted in the implementation of a Ballot Integrity Initiative for the 2002 general election and subsequent elections. This initiative included increasing the law enforcement priority the Department gives to election crimes; holding a special day-long training event in Washington, DC for representatives of the 93 United States Attorneys' Offices; publicizing the identities and telephone numbers of the DEOs through press releases issued shortly before the November elections; and requiring the 93 U.S. Attorneys to communicate the enhanced federal prioritization of election crime matters to state and local election and law enforcement authorities. As part of Ballot Integrity Initiative, on October 8, **2002**, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a Voting Integrity Symposium for District Election Officers representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Attorney General John Ashcroft delivered the keynote address on the importance of election crime and ballot integrity enforcement. Assistant Attorney General of the Civil Rights Division Ralph Boyd and Assistant Attorney General of the Criminal Division Michael Chertoff also spoke to attendees on the protection of voting rights and the prosecution of election cases. As part of Ballot Access and Voting Integrity Initiative, on September 23 and 24, **2003**, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a two-day Symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Assistant Attorney General of the Civil Rights Division Alexander Acosta and Assistant Attorney General of the Criminal Division Christopher A. Wray delivered the keynote addressees on the importance of protecting voting rights and the prosecution of election cases. On July 20 and 21, **2004**, the Public Integrity Section and the Voting Section of the Department's Civil Rights Division co-sponsored a two-day symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes available to prosecute such cases, and the handling of civil rights matters involving voting. Attorney General John Ashcroft delivered the keynote address on the importance of protecting voting rights and the prosecution of election fraud. In addition, Assistant Attorney General Christopher A. Wray of the Criminal Division and Assistant Attorney General R. Alexander Acosta of the Civil Rights Division addressed conference attendees on voting rights and election fraud enforcement issues respectively.
As a result of the Initiative, during **2002** the number of election crime matters opened by federal prosecutors throughout the country increased significantly, as did the Section's active involvement in election crime matters stemming from the Initiative. At the end of 2002, the Section was supervising and providing advice on approximately 43 election crime matters nationwide. In addition, as of December 31, 2002, 11 matters involving possible election crimes were pending in the Section. During 2002 the Section closed two election crime matters and continued its operational supervision of 8 voting fraud cases (conspiracy to illegally obtain criminal history records to use to challenge voters (AL) and 7 cases of vote buying involving 10 defendants (KY).

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Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at http://www.democracy.ru/english/library/international/eng_1999-11.html

Addresses the role of the United States Department of Justice in matters of election fraud, specifically: what sort of election-related conduct is potentially actionable as a federal crime; what specific statutory theories apply to frauds occurring in elections lacking federal candidates on the ballot, what federalism; procedural, and policy considerations impact on the federalization of this type of case; and how Assistant United States Attorneys should respond to this type of complaint. As a general rule, the federal crime of voter fraud embraces only organized efforts to corrupt of the election process itself: i.e., the registration of voters, the casting of ballots, and the tabulation and certification of election results. Moreover, this definition excludes all activities that occur in connection with the political campaigning process, unless those activities are themselves illegal under some other specific law or prosecutorial theory. This definition also excludes isolated acts of individual wrongdoing that are not part of an organized effort to corrupt the voting process. Mistakes and other gaffs that inevitably occur are not included as voter fraud. Prosecuting election fraud offenses in federal court is further complicated by the constitutional limits that are placed on federal power over the election process. The conduct of elections is primarily a state rather than a federal activity.

Four situations where federal prosecution is appropriate:

1. Where the objective of the conduct is to corrupt the outcome of a federal elective contest, or where the consequential effect of the corrupt conduct impacts upon the vote count for federal office;
2. Where the object of the scheme is to discriminate against racial, ethnic or language minority groups, the voting rights of which have been specifically protected by federal statues such as the Voting Rights Act, 42 U.S.C. section 1973 et seq.;
3. Where federalization is required in order to redress longstanding patters of electoral fraud, either at the request of state or local authorities, or in the face of longstanding inaction by state authorities who appear to be unwilling or unable to respond under local law; and,
4. Where there is a factual basis to believe that fraudulent registration or voting activity is sufficiently connected to other from of criminal activity that perusing the voter fraud angle will yield evidence useful in the prosecution of other categories of federal offense

Four advantages to federal prosecution:

1. Voter fraud investigations are labor intensive - local law enforcement agencies often lack the manpower and the financial resources to take these cases on;
2. Voter fraud matters are always politically sensitive and very high profile endeavors at the local level – local prosecutors (who are usually themselves elected) often shy away from prosecuting them for that reason; the successful prosecution of voter fraud cases demands that critical witnesses be examined under oath before criminal charges based on their testimony are filed.
3. Many states lack the broad grand jury process that exists in the federal system; and
4. The defendants in voter fraud cases are apt to be politicians - or agents of politicians - and it is often impossible for either the government or the defendant to obtain a fair trial in a case that is about politics and is tried to a locally-drawn jury. The federal court system provides for juries to be drawn from broader geographic base, thus often avoiding this problem.

Several prosecutorial theories used by United States Attorneys to federalize election frauds are discussed.

Four questions used by prosecutors in evaluating the credibility of election complaints:

1. does the substance of the complaint assuming it can be proven through investigation - suggest a potential crime;
2. is the complaint sufficiently fact-specific that it provides leads for investigators to pursue;
3. is there a federal statute that can be used to federalize the criminal activity at issue; and,
4. is there a special federal interest in the matter that warrants federalization rather than deferral to state law enforcement.

All federal election investigations must avoid the following: non-interference in elections unless absolutely necessary to preserve evidence; interviewing voters during active voting periods; seizing official election documentation; investigative activity inside open polls; and prosecutors must adhere to 18 U.S.C. section 592, prohibiting the stationing of armed men at places where voting activity is taking place.

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Election crimes based on race or language minority status are treated as civil rights matters under the Voting Rights Act.

People for the American Way, Election Protection 2004, Election Protection Coalition, at http://www.electionprotection2004.org/edaynews.htm

Election Protection 2004 was the nation's most far-reaching effort to protect voter rights before and on Election Day. The historic nonpartisan program included: (1) a toll-free number, 1-866-OUR-VOTE, with free, immediate and multi-lingual assistance to help voters with questions about registration and voting, and assist voters who encounter barriers to the ballot box; (2) distribution of more than five million "Voters' Bills of Rights" with state-specific information; (3) 25,000 volunteers, including 6,000 lawyers and law students, who watched for problems and assisted voters on the spot at more than 3,500 predominantly African-American and Latino precincts with a history of disenfranchisement in at least 17 states; and (4) civil rights lawyers and advocates represented voters in lawsuits, preserved access to the polls, exposed and prevented voter intimidation, worked with election officials to identify and solve problems with new voting machines, technology and ballot forms, and protected voter rights in advance and on Election Day.

Voter Intimidation and Suppression Stories (Abridged):

- An Associated Press story noted Election Protection's exposure of reported voter suppression tactics in **Colorado**: Officials with the Election Protection Coalition, a voter-rights group, also said **some voters in a predominantly black neighborhood north of Denver found papers on their doorsteps giving them the wrong address for their precinct**.
- Election Protection received a report from Boulder County, **Colorado** that a **poll worker made racist comments to Asian American voter and then told her she was not on the list and turned her away**. The voter saw others filling out provisional ballots and asked for one but was denied. Another Asian American woman behind her in line was also given trouble by the same poll worker (he questioned her nationality and also turned her away).
- Election Protection received a report from Florissant County, **Missouri** from a voter who lives in predominantly white neighborhood. While waiting in line to vote, **a Republican challenger challenged the black voters by requesting more proof of identification, residence, and signature match, while asking nothing from white voters**. Also, the same **voter reportedly asked a few questions about voting but an election officials refused to provide any meaningful answer, insisting that "it's very simple", but provided white voters with information when requested. There was one other black voter in line who was also singled out for same treatment while white voters were not.**
- The Election Protection hotline received reports from **Pinellas County, Florida** that **individuals purporting to be from the Kerry campaign are going door-to-door handing out absentee ballots, and asking voters to fill them out, and then taking the ballots from them, saying "Vote here for Kerry. Don't bother going to the polls."**
- The Election Protection Coalition received a report from a woman whose sister lives in **Milwaukee** and is on government assistance. Her **sister was reportedly told by her "case manager" that if she voted for Kerry, she would stop receiving her checks.**
- **An illiterate, older and disabled voter in Miami-Dade asked for assistance reading the ballot and reported that a poll worker yelled at him and refused to assist him and also refused to allow him to bring a friend into the booth in order to read the ballot to him.**
- The Election Protection Coalition have gathered reports **that flyers are circulating in a black community in Lexington, South Carolina claiming they those who are behind on child support payments will be arrested as the polls.**
- **Minority voters from Palm Beach County, Florida reported to the hotline that they received middle-of-the-night, live harassing phone calls warning them away from the polls.**
- A volunteer for Rock the Vote reported that **two illiterate voters in Michigan requested assistance with their ballots but were refused and reportedly mocked by poll workers.**
- The hotline received a call from a radio DJ in **Hillsborough County, Florida, who stated that he has received many calls (most of which were from African-Americans) claiming that poll workers were turning voters away and not "letting" them vote.**

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- The hotline received a call from **Pima County, Arizona, indicating that Democratic voters received calls throughout Monday evening, providing incorrect information about the precinct location.** Voters have had to be transported en masse in order to correct the problem.
- A caller from **Alabama claims that he was told at his polling place that he could vote there for everything but the President and that he would have to go elsewhere in order to vote for a presidential candidate.**
- Poll monitors in **Philadelphia reports groups of lawyers, traveling in threes, who pull voters out of line and challenge them to provide ID, but when challenged themselves, they hop into waiting cars or vans and leave.** Similar activity by Republican lawyers in Philadelphia was reported in the 2002 election.
- In **Cuyahuga, Ohio, a caller reported that all black voters are being asked to show ID, while white voters are not.** Caller report that he is black and had to show ID while his girlfriend is white and did not have to show ID.
- Two months ago, **suspicious phone calls to newly registered Democrats —telling them they weren't, in fact, registered to vote** — were traced to the Republican headquarters in the **Eastern Panhandle.** On **Monday, Democrats there said the calls have started again, even after the Berkeley County Clerk — a Republican — sent the party a cease-and-desist letter.** The Berkeley prosecutor, who also is county Democratic chairman, has called on the U.S. attorney to investigate.
- In **Tuscon, Arizona a misleading call informing voters that they should vote on November 3** has been traced back to the state GOP headquarters. The FBI is investigating.
- **A man driving around in a big van covered in American flags and a big picture of a policeman was reportedly parked in front of a polling place; he then got out and moved within the 75 ft limit,** until he was asked to leave; he then was found inside the polling place and was again asked to leave. Election Protection volunteers contacted officials and the man was eventually removed.
- The Election Protection hotline has received a report from **individuals who claim to have received recorded telephone message coming from Bill Clinton and ACT and reminding them to vote on Nov. 3rd.**
- In **Massachusetts**, the EP Hotline has received a report that **a radio station (WILD) is broadcasting that voters will be arrested on the spot if they have outstanding parking tickets.**
- In **Richland, South Carolina** Election Protection has received a report of a **poll manager turning away individuals who do not have photo ID issued to the county or a driver's license**; an EP lawyer spoke with the Poll Manager at 8:20 am and told her that people with other forms of ID should be allowed to vote by provisional ballot.
- In **Greenville,** a caller reported that a **white poll worker was asking Blacks for multiple form of I.D.** Fortunately, the voter who reported the problem did have a second I.D. but reported that some others were turned away. Election Protection attorneys have alerted election officials.
- In **Allegheny County, Pennsylvania**, an official looking **flyer advises Democratic voters to "create a peaceful voting environment" by voting on Wednesday, November 3**
- The week before the election, **flyers were circulated in Milwaukee under the heading "Milwaukee Black Voters League" with some "warnings for election time." The flyer listed false reasons for which you would be barred from voting (such as a traffic ticket) and then warned that "If you violate any of these laws you can get ten years in prison and your children will get taken away from you."**
- There is a Jefferson **County flyer which tells voters "See you at the Polesl[sic]"... on November 4.**

Craig Donsanto, "Prosecution of Electoral Fraud Under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

[NO SUMMARY FOUND] This is summary of federal role in prosecuting election crimes.

General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote,"

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Report to Congressional Requesters, September 2005.

[SUMMARY FAILS TO NOTE ELECTION OFFICIALS' RESPONSEs THAT **LITTLE VOTING FRAUD OR VOTER INTIMIDATION WAS DETECTED. DETECTED VOTING FRAUD WAS RELATED TO SUBMISSION OF FALSE/MATERIALLY INCORRECT VOTER REGISTRATION APPLICATIONS AND TO ABSENTEE BALLOT FRAUD. VOTER SUPPRESSION EFFORTS OCCUR.**] This Report focuses on the efforts of local election officials in 14 jurisdictions within 7 states to manage the registration process, maintain accurate voter registration lists, and ensure that eligible citizens in those jurisdictions had the opportunity to cast ballots during the 2004 election. the Report concentrates on election officials' characterization of their experiences with regard to (1) managing the voter registration process and any challenges related to receiving voter registration applications; checking them for completeness, accuracy, and duplication; and entering information into voter registration lists; (2) removing voters' names from voter registration lists and ensuring that the names of eligible voters were not inadvertently removed; and (3) implementing HAVA provisional voting and identification requirements and addressing any challenges encountered related to these requirements. The Report also provides information on motor vehicle agency (MVA) officials' characterization of their experiences assisting citizens who apply to register to vote at MVA offices and forwarding voter registration applications to election offices. The Report analyzed information collected from elections and motor vehicle agency offices in seven states—Arizona, California, Michigan, New York, Texas, Virginia, and Wisconsin. The 14 jurisdictions we selected were Gila and Maricopa Counties, Arizona; Los Angeles and Yolo Counties, California; City of Detroit and Delta Township, Michigan; New York City and Rensselaer County, New York; Bexar and Webb Counties, Texas; Albemarle and Arlington Counties, Virginia; and the cities of Franklin and Madison, Wisconsin.

Election officials representing all but one of the jurisdictions surveyed following the November 2004 election said they faced some challenges managing the voter registration process, including (1) receiving voter registration applications; (2) checking them for completeness, accuracy, and duplication; and (3) entering information into voter registration lists; when challenges occurred, election officials reported they took various steps to address them. All but 1 of the jurisdictions reported removing names from registration lists during 2004 for various reasons, including that voters requested that their names be removed from the voter registration list; information from the U.S. Postal Service (USPS) showing that voters had moved outside the jurisdiction; felony records received from federal, state, or local governments identifying voters as ineligible due to felony convictions; and death records received from state or local vital statistics offices. All of the jurisdictions reported that they permitted citizens to cast provisional ballots during the November 2004 election. In addition, 12 of the 14 jurisdictions to which this was applicable reported that they offered certain first-time voters who registered by mail the opportunity to cast provisional ballots. Local election officials in 12 of the 13 jurisdictions 13 we surveyed reported that they set up mechanisms to inform voters—without cost—about the outcome of their provisional votes during the November 2004 election. These mechanisms included toll-free telephone numbers, Web sites, and letters sent to the voters who cast provisional ballots. Election officials representing 8 of the 14 jurisdictions reported facing challenges implementing provisional voting for various reasons, including some poll workers not being familiar with provisional voting or, in one jurisdiction representing a large number of precincts, staff not having sufficient time to process provisional ballots.

Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.

A comprehensive survey and analysis of vote fraud in the United States. The methodology included doing nexis searches for all 50 states and surveying existing research and reports. In addition, Minnite did a more in-depth study of 12 diverse states by doing nexis searches, studying statutory and case law, and conducting interviews with election officials and attorneys general. Finally, the study includes an analysis of a few of the most high profile cases of alleged fraud in the last 10 years, including the Miami mayoral election (1997), Orange County congressional race (1996), and the general election in Missouri (2000). In these cases, **Minnite shows that many allegations of fraud do not end up being meritorious**. Minnite finds that **available evidence suggests that the incidence of election fraud is minimal and rarely affects election outcomes**. Election officials generally do a very good job of protecting against fraud. **Conditions that give rise to election fraud have steadily declined over the last century as a result of weakened political parties, strengthened election administration, and improved voting technology. There is little available evidence that election reforms such as the National Voter Registration Act, election day registration, and mail-in voting have resulted in increases in election fraud.** Election

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fraud appears also to be very rare in the 12 states examined more in-depth. Legal and news records turned up little evidence of significant fraud in these states or any indication that fraud is more than a minor problem. Interviews with state officials further confirmed this impression. Minnite found that, **overall, the absentee mail-in ballot process is the feature most vulnerable to voter fraud.** There is not a lot of evidence of absentee ballot fraud but the potential for fraud is greatest in this area because of a lack of uniformly strong security measures in place in all states to prevent fraud.

Suggested reforms to prevent what voter fraud does take place:

1. effective use of new statewide voter registration databases;
2. identification requirements for first time voters who register by mail should be modified to expand the list of acceptable identifying documents;
3. fill important election administration positions with nonpartisan professionals;
4. strengthen enforcement through adequate funding and authority for offices responsible for detecting and prosecuting fraud; and
5. establish Election Day Registration because it usually requires voter identification and authorization in person before a trained election worker, which reduces the opportunity for registration error or fraud.
6.

People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

A description and analysis of the complaints and allegations of voting irregularities gathered by the Election Protection program during the 2004 presidential election. Election Protection received more than a thousand complaints of voter suppression or intimidation. Complaints ranged from intimidating experiences at polling places to coordinated suppression tactics. For example:

- Police stationed outside a Cook County, Illinois, polling place were requesting photo ID and telling voters if they had been convicted of a felony that they could not vote.
- In Pima, Arizona, voters at multiple polls were confronted by an individual, wearing a black tee shirt with "US Constitution Enforcer" and a military-style belt that gave the appearance he was armed. He asked voters if they were citizens, accompanied by a cameraman who filmed the encounters.
- There were numerous incidents of intimidation by partisan challengers at predominately low income and minority precincts
- Voters repeatedly complained about misinformation campaigns via flyers or phone calls encouraging them to vote on a day other than November 2, 2004 or of false information regarding their right to vote. In Polk County, Florida, for example, a voter received a call telling her to vote on November 3. Similar complaints were also reported in other counties throughout Florida. In Wisconsin and elsewhere voters received flyers that said:
    - "If you already voted in any election this year, you can't vote in the Presidential Election."
    - "If anybody in your family has ever been found guilty of anything you can't vote in the Presidential Election."
    - "If you violate any of these laws, you can get 10 years in prison and your children will be taken away from you."

There were also numerous reports of poll workers refusing to give voters provisional ballots.

The following is a summary of the types of acts of suppression and intimidation included in the report and a list of the states in which they took place. All instances of irregularities that were more administrative in nature have been omitted:

1. **Improper implementation of voter identification rules, especially asking only African Americans for proof of identity**: Florida, Ohio, Pennsylvania, Illinois, Missouri, Arkansas, Georgia, Louisiana
2. **Individuals at the polls posing as some sort of law enforcement authority and intimidating and harassing voters**: Arizona, Missouri
3. **Intimidating and harassing challengers at the polls**: Ohio, Michigan, Wisconsin, Missouri, Minnesota
4. **Deceptive practices and disinformation campaigns, such as the use of flyers with intentional misinformation about voting rights or voting procedures, often directed at minority communities; the use of phone calls giving people misinformation about polling sites and**

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other procedures; and providing verbal misinformation at the polls in a way that appears to have been intentionally misleading: Florida, Pennsylvania, Illinois, Wisconsin, Missouri, North Carolina, Arkansas, Texas

5. **Refusal to provide provisional ballots to certain voters**: Ohio, Pennsylvania, Illinois, Michigan, Colorado, Missouri, Texas, Georgia, Louisiana
6. **Registration applications submitted through third parties that were not processed**: Arizona, Michigan, Nevada (registration forms **destroyed by Sproul Associates**)
7. **Improper removal from the voter registration list:** Arizona
8. **Individuals questioning voters' citizenship**: Arizona
9. **Police officers at the polls intimidating voters**: Illinois, Michigan, Wisconsin, Missouri, North Carolina

The report does not provide corroborating evidence for the allegations it describes. However, especially in the absence of a log of complaints received by the Department of Justice, this report provides a very useful overview of the types of experiences some voters more than likely endured on Election Day in 2004.

Books

John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.

Focuses almost entirely on alleged transgressions by Democrats. Fund's accusations, if credible, would indicate that fraud such as voter registration fraud, absentee ballot fraud, dead people voting, and felon voting is prevalent throughout the country. However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount and types of voter fraud and voter intimidation occurring.

Fund says that "Election fraud, whether its phony voter registrations, illegal absentee ballots, shady recounts or old-fashioned ballot-box stuffing, 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 created so many close elections lately. Fund argues that fraud **has been made easier by the passage of the National Voting Rights Act** because it allows ineligible voters to remain on the voter rolls, allowing a voter to vote in the name of someone else. He claims dead people, people who have moved, and people in jail remain on the voting list. He believes because of NVRA illegal aliens have been allowed to vote.

Absentee balloting makes it even worse: someone can register under false names and then use absentee ballots to cast multiple votes. Groups can get absentee ballots for the poor and elderly and then manipulate their choices.

Provides a number of examples of alleged voter fraud, mostly perpetrated by Democrats. For example, he claims much fraud in St. Louis in 2000, including illegal court orders allowing people to vote, **felons voting, people voting twice, dead people voting, voters were registered to vacant lots, election judges were not registered and evidence of false registrations**. Another case he pays a great deal of attention to are the alleged transgressions by Democrats in Indian Country in South Dakota 2002, including **voter registration fraud, suspicious absentee ballot requests, vote hauling, possible polling place fraud, abusive lawyers at polling sites, and possible vote buying**.

Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.

Bulk of the book comprises stories from United States electoral history outside the scope of this project; however, tales are instructive in showing how far back irregular and illegal voting practices go. Focuses almost entirely on alleged transgressions by Republican, although at times it does include complaints about Democratic tactics. Gumbel's accusations, if credible, especially in the Bush-Gore election, would indicate there were a number of problems in key states in such areas as **intimidation, vote counting, and absentee ballots**. However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount

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and types of voter fraud and voter intimidation occurring.

Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.

Traces the historical persistence of voter fraud from colonial times through the 2004 Bush-Kerry election. From the textual information, it quickly becomes obvious that voter fraud was not limited to certain types of people or to certain political parties. [SKIMPY SUMMARY-DOES NOT SAY MUCH.]

David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.

Adds almost nothing to the present study. It contains no footnotes and no references to primary source material, save what may be able to be gleaned from the bibliography. Takes a historical look at United States Presidential elections from Andrew Jackson to George Bush by providing interesting stories and other historical information. There are only three pages out of the entire book that touches on vote fraud in the first Bush election. The authors assert that the exit polls in Florida were probably correct. The problem was the pollsters had no way of knowing that thousands of votes would be invalidated. But the authors do not believe that fraud was the cause of the tabulation inaccuracy.

Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

Sets out to show that the 2004 election was won by Bush through nefarious means, and indicts the news media for not taking anomalies, irregularities, and **alleged malfeasance** in the process seriously enough. However, book is well sourced, and individual instances of alleged malfeasance discussed may be worth looking at. He accuses Republicans of committing crimes and improprieties throughout the country, including:

1. **deliberate disparities in voting machine distribution and long lines in Democratic jurisdictions;**
2. **misinterpretation of voting laws by elections officials to the detriment of Democratic voters;**
3. **dirty tricks and deceptive practices to mislead Democratic and minority voters about voting times, places and conditions;**
4. **machine irregularities in Democratic jurisdictions;**
5. **relocating polling sites in Democratic and minority areas;**
6. **suspicious mishandling of absentee ballots;**
7. **refusing to dispense voter registration forms to certain voter registration groups;**
8. **intimidation of students;**
9. **suspicious ballot spoilage rates in certain jurisdictions;**
10. **"strategic distribution of provisional ballots," and trashing of provisional ballots;**
11. **harassment of Native American voters;**
12. **a Republican backed organization engaging in voter registration efforts throughout the country that allegedly destroyed the voter registration forms of Democrats;**
13. **illegitimate challenges at the polls by Republican poll watchers;**
14. **improper demands for identification in certain areas;**
15. **Republican challenges to the voter registration status of thousands of voters before the election, and the creation of lists of voters to challenge at the polls;**
16. **wrongful purging of eligible voters from voting rolls;**
17. **partisan harassment;**
18. **the selective placement of early voting sites; and**
19. **failure to send out absentee ballots in time for people to vote.**

Details what he says was the inappropriate use of the Federal Voter Assistance Program that made voting for the military easy while throwing up obstacles

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for civilians overseas in their efforts to vote by absentee ballot, leading many of them to be disenfranchised.

Legal

Indiana Democratic Party vs. Rokita, U.S. District Court Southern District of Indiana (Indianapolis) 1:05-cv-00634, U.S. Court of Appeals, 7th Circuit 06-2218

Although the proponents of SEA 483 asserted that the **law was intended to combat voter fraud, no evidence of the existence of such fraud has ever been provided. No voter has been convicted of or even charged with the offense of misrepresenting his identity for purposes of casting a fraudulent ballot in person**, King Dep. 95-96; Mahern Aff. ¶¶ 2-3, though there **have been documented instances of absentee ballot fraud.** King Dep. 120. Indeed, no evidence of in person, on-site voting fraud was presented to the General Assembly during the legislative process leading up to the enactment of the Photo ID Law. Mahern Aff. ¶¶ 2-

The **State cannot show any compelling justification for subjecting only voters who vote in person to the new requirements of the Photo ID Law, while exempting absentee voters who vote by mail or persons who live in state-certified residential facilities.**

On the other hand, **absentee ballots are peculiarly vulnerable to coercion and vote tampering since there is no election official or independent election observer available to ensure that there is no illegal coercion by family members, employers, churches, union officials, nursing home administrators, and others.**

Law gives virtually unbridled discretion to partisan precinct workers and challengers to make subjective determinations such as (a) whether a form of photo identification produced by a voter conforms to what is required by the Law, and (b) whether the voter presenting himself or herself at the polls is in fact the voter depicted in the photo Robertson Dep. 29-34, 45; King Dep. 86, 89. This is significant because any voter who is challenged under this Law will be required to vote by provisional ballot and to make a special trip to the election board.s office in order to have his vote counted. Robertson Dep. 37; King Dep. 58.

The Photo ID Law **confers substantial discretion, not on law enforcement officials, but on partisan precinct poll workers and challengers appointed by partisan political officials, to determine both whether a voter has presented a form of identification which conforms to that required by the Law and whether the person presenting the identification is the person depicted on it. Conferring this degree of discretion upon partisan precinct officials and members of election boards to enforce the facially neutral requirements of the Law has the potential for becoming a means of suppressing a particular point of view.**

The State arguably might be justified in imposing uniform, narrowly-tailored and not overly-burdensome voter identification requirements if the State were able to show that there is an intolerably high incidence of fraud among voters misidentifying themselves at the polls for the purpose of casting a fraudulent ballot. But here, the State has utterly failed to show that this genre of fraud is rampant or even that it has ever occurred in the context of on-site, in-person voting (as opposed to absentee voting by mail) so as to justify these extra burdens, which will fall disproportionately on the poor and elderly.

And where the State **has already provided a mechanism for matching signatures, has made it a crime to misrepresent one's identity for purposes of voting, and requires the swearing out of an affidavit if the voter's identity is challenged, it already has provisions more than adequate to prevent or minimize fraud in the context of in-person voting, particularly in the absence of any evidence that the problem the Law seeks to address is anything more than the product of hypothesis, speculation and fantasy.**

In-person voter-identity fraud is notoriously difficult to detect and investigate. In his book *Stealing Elections*, John Fund observes that actual **in-person voter fraud is nearly undetectable without a voter photo-identification requirement because anybody who provides a name that is on the rolls may vote and then walk away with no record of the person's actual identity.** The problem is only exacerbated by the increasingly transient nature of society. **Documentation of in-person voter fraud often occurs only when a legitimate voter at the polls hears a fraudulent voter trying to use her name, as happened to a woman in California in 1994.** *See* Larry J. Sabato & Glenn R. Simpson, *DirtyLittle Secrets* 292 (1996).

Regardless of the lack of extensive evidence of in-person voter fraud, the Commission on

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Federal Election Reform (known as the Baker-Carter Commission) recently concluded that "there is no doubt that it occurs." State Ex. 1, p. 18.1 **Legal cases as well as newspaper and other reports confirm that in-person voter-identity fraud, including voter impersonation, double votes, dead votes, and fake addresses, plague federal and state elections. [The memorandum details several specific cases of various types of alleged voting fraud from the past several years]**

Though they are largely unable to study verifiable data concerning in-person voter fraud, scholars are well aware of the conditions that foster fraudulent voting. *See* Fund, *supra*; Sabato & Simpson, *supra*, 321. In particular, **fraud has become ever more likely as "It has become more difficult to keep the voting rolls clean of 'deadwood' voters** who have moved or died" because such an environment makes "fraudulent voting easier and therefore more tempting for those so inclined." Sabato & Simpson, *supra,* 321. "In general, experts believe that one in five names on the rolls in Indiana do not belong there." State Ex. 25.

For this case, Clark Benson, a nationally recognized expert in the collection and analysis of voter-registration and population data, conducted his own examination of **Indiana's voter registration lists and concluded that they are among the most highly inflated in the nation.**

The Crawford Plaintiffs cite the **concessions** by Indiana Election Division Co-Director King and the Intervenor-State that they are **unaware of any historical in-person incidence of voter fraud occurring at the polling place (Crawford Brief, p. 23) as conclusive evidence that in-person voter fraud does not exist in Indiana**. They also seek to support this conclusion with the testimony of two "veteran poll watchers," Plaintiff Crawford and former president of the Plaintiff NAACP, Indianapolis Chapter, Roderick E. Bohannon, who testified that they had never seen any instances of in-person voter fraud.

(*Id.*)

While common sense, the **experiences of many other states, and the findings of the Baker-Carter Commission all lead to the reasonable inferences that (a) in-person polling place fraud likely exists, but (b) is nearly impossible to detect without requiring photo identification, the State can cite to no confirmed instances of such fraud. On the other hand, the Plaintiffs have no proof that it does not occur.**

At the level of logic, moreover, it is **just reasonable to conclude that the lack of confirmed incidents of in-person voting fraud in Indiana is the result of an ineffective identification security system as it is to conclude there is no in-person voting fraud in Indiana.** So while it is undisputed that the state has no proof that in-person polling place fraud has occurred in Indiana, there does in fact remain a dispute over the existence *vel non* of in-person polling place fraud.

It is also important to understand that the **nature of in-person election fraud is such that it is nearly impossible to detect or investigate. Unless a voter stumbles across someone else trying to use her identity, *see* Sabato & Simpson, *supra,* 292, or unless the over-taxed poll worker happens to notice that the voter's signature is different from her registration signature State Ext. 37, ¶ 9, the chances of detecting such in-person voter fraud are extremely small.** Yet, **inflated voter-registration rolls provide ample opportunity for those who wish to commit in-person voter fraud.** *See* Fund, *supra,* 24, 65, 69, 138; Sabato & Simpson, *supra,* 321. And there is **concrete evidence that the names of dead people have been used to cast fraudulent ballots**. *See* Fund, *supra,* 64. Particularly in light of Indiana's highly inflated voter rolls State Ex. 27, p. 9, Plaintiffs' repeated claims that there has never been any in-person voter fraud in Indiana can hardly be plausible, even if the state is unable to prove that such fraud has in fact occurred.

Common Cause of Georgia vs. Billups, U.S. District Court, Northern District of Georgia (Rome) 4:05-cv-00201-HLM U.S. Court of Appeals, 11th Circuit 05-15784

The Secretary of State, as the Chief Election Officer in Georgia, informed the General Assembly before the passage of Act 53 in a letter (attached hereto as Exhibit A), and also informed the Governor in a letter (attached hereto as Exhibit B) before he signed the bill into law, that **there had been no documented cases of fraudulent voting by persons who obtained ballots unlawfully by misrepresenting their identities as registered voters to poll workers reported to her office during her nine years** as Secretary of State .

Although the Secretary of State had informed the members of the General Assembly and the Governor prior to the enactment of Act 53, that her office had

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received **many complaints of voter fraud involving absentee ballots and no documented complaints of fraud that involve ballots that were cast in person at the polls**, the General Assembly ignored this information and arbitrarily chose instead to require only those registered voters who vote in person to present a Photo ID as a condition of voting, but deliberately refused to impose the same requirement on absentee voters.

The Stated Purpose Of The Photo ID Requirement Fraud Is A Pretext.

According to a press release prepared by the Communications Office of the Georgia House of Representatives, the purpose of Act 53 is: to address the issue of voter fraud by placing tighter restrictions on voter identification procedures. Those casting ballots will now be required to bring a photo ID with them before they will be allowed to vote.

Al Marks, Vice Chairman for Public Affairs and Communication of the Hall County GOP told the Gainesville Times: I don't think we need it for voting, because I don't think there's a voter fraud problem. Gainesville Times, "States Voters Must Present Picture IDs" (September 15, 2005) (www .gainesvilletimes .com).

There is **no evidence that the existing provisions of Georgia law have not been effective in deterring and preventing imposters from fraudulently obtaining and casting ballots at the polls by misrepresenting their true identities** to election officials and passing themselves off as registered voters whose names appear on the official voter registration list.

The pretextural nature of the purported justification for the burden which the Photo ID requirement imposes on the right to vote is shown by the following facts:

(a) Fraudulent voting was already prohibited by existing Georgia law without unduly burdening the right of a citizen to vote.

(i) Fraudulent voting was already prohibited as a crime under O.C .G.A. §§ 21-2-561, 21-2-562, 21-2-566, 21-2-571, 21-2-572 and 21-2-600, punishable by a fine of up to $10,000 or imprisonment for up to ten years, or both.

(ii) Voter registration records are updated periodically by the Secretary of State and local election officials to eliminate people who have died, have moved, or are no longer eligible to vote in Georgia for some other reason.

(iii) Existing Georgia law also required election officials in each precinct to maintain a list of names and addresses of registered voters residing in that precinct, and to check off the names of each person from that official list as they cast their ballots.

(iv) Registered voters were also required by existing Georgia law to present at least one of the seventeen forms of documentary identification to election officials who were required, before issuing the voter a ballot, to match the name and address shown on the document to the name and address on the official roll of registered voters residing in the particular precinct. O .C .G.A.§ 21-2-417 .

(b) There is no evidence that the existing Georgia law has not been effective in deterring or preventing fraudulent in-person voting by impersonators - the only kind of fraudulent voting that might be prevented by the Photo ID requirement. To the contrary, the Secretary of State, who, as the Superintendent of Elections, is the highest election official in Georgia, informed both the General Assembly (Exhibit A) and the Governor (Exhibit B) in writing that there had been no documented cases of fraudulent in person voting by imposters reported to her during her nine years in office .

(c) If the true intention of the General Assembly had been to prevent fraudulent voting by imposters, the General Assembly would have imposed the same restrictions on the casting of absentee ballots - particularly after the Secretary of State had called to their attention the fact that there had been many documented instances of fraudulent casting of absentee ballots reported to her office.

(d) Fraudulent in-person voting is unlikely, would be easily detected if it had occurred in significant numbers, and would not be likely to have a substantial impact on the outcome of an election:

(i) Many people vote at a local neighborhood polling place where they are likely to be known to and recognized by neighbors or poll workers.

(ii) Voters were required by existing Georgia law (O .C.G.A. § 21-2-417), to provide one of the seventeen means of identification to election officials.

(iii) Election officials are required, before issuing the ballot to the voter, to check off the name of either voter from an up-to-date list of the names and addresses of every registered voter residing in the precinct. If an imposter arrived at a poll and was successful in fraudulently obtaining a ballot before

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the registered voter arrived at the poll, a registered voter, who having taken the time to go to the polls to vote, would undoubtedly complain to elections officials if he or she were refused a ballot and not allowed to vote because his or her name had already been checked off the list of registered voters as having voted. Likewise, if an imposter arrived at the polls after the registered voter had voted and attempted to pass himself off as someone he was not, the election official would instantly know of the attempted fraud, would not issue the imposter a ballot or allow him to vote, and presumably would have the imposter arrested or at least investigate the attempted fraud and report the attempt to the Secretary of State as Superintendent of Elections.

U.S. Department of Justice Section 5 Recommendation Memorandum (regarding HB 244), August 25, 2005 at http://www.votingrights.org/news/downloads/Section%205%20Recommendation%20Memorandum.pdf

Overview: Five career attorneys with the civil rights department investigated and analyzed Georgia's election reform law. Four of those attorneys recommended objecting to Section 59, the voter identification requirement. The provision required all voters to present government issued photo identification in order to vote. The objection was based on the attorneys' findings that there was little to no evidence of polling place fraud, the only kind of fraud an ID requirement would address, and that the measure would disenfranchise many voters, predominantly minority voters, in violation of Section 5 of the Voting Rights Act.

Factual Analysis: **The sponsor of the measure in the state legislature said she was motivated by the fact that she is aware of vote buying in certain districts; she read John Fund's book; and that "if there are fewer black voters because of this bill, it will only be because there is less opportunity for fraud. She said that when black voters in her black precincts are not paid to vote, they do not go to the polls."**

A member of the Fulton County Board of Registrations and Elections said that **prior to November 2004, Fulton County received 8,112 applications containing "missing or irregular" information. Only 55 of those registrants responded to BOE letters**. The member concluded that the rest must be "bogus" as a result. He also stated that **15,237 of 105,553 precinct cards came back as undeliverable, as did 3,071 cards sent to 45,907 new voters. Of these 3,071, 921 voted**.

Secretary of State Cathy Cox submitted a letter testifying to the absence of any complaints of voter fraud via impersonation during her tenure.

In the legal analysis, the attorneys state that if they determine that Georgia could have fulfilled its stated purpose of election fraud, while preventing or ameliorating the retrogression, an objection is appropriate. They conclude that the state could have avoided retrogression by retaining various forms of currently accepted voter ID for which no substantiated security concerns were raised. Another non-retrogressive alternative would have been to maintain the affidavit alternative for those without ID, since **"There is no evidence that penalty of law is an insufficient deterrent to falsely signing an affidavit of identity." The attorneys point out that the state's recitation of a case upholding voter fraud in Dodge County does not support the purpose of the Act because that case involved vote buying and selling, not impersonation or voting under a false identity.**

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Margaret Sims /EAC/GOV
11/06/2006 12:21 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Re: VF_VI Literature Review

History: This message has been replied to

Is this an outline of an EAC staff report to accompany the consultants' report, or has there been a decision not to publish the consultants' report at all? (Just curious, as I have been a little out of the loop.) --- Peg

Deliberative Process Privilege

Margaret Sims /EAC/GOV
11/06/2006 11:07 AM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Re: VF_VI Literature Review

History: This message has been replied to.

Julie:
I have not received the outline, but went ahead with reviewing the literature researched. Attached are my perspectives on what we learned and a listing of the literature with portions of the analysis for each. Both of these documents are on the shared drive under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Research Summaries. Hope these help. Let me know what else you need from me. --- Peggy

EAC-Learned from Lit Review 11-6-06.doc EAC Lit Review Notes 11-5-06.doc

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV
11/03/2006 06:41 PM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Job and Tova

I appreciate it. I will send you a copy of the outline that I am working from. It is somewhat subject to change as I am still trying to gel in my mind what goes first, second ....

Sent from my BlackBerry Wireless Handheld
Margaret Sims
----- Original Message -----

From: Margaret Sims
Sent: 11/03/2006 06:38 PM
To: Juliet Hodgkins
Subject: Re: Job and Tova

I can review them over the weekend and attempt to summarize what they tell us.--- Peggy

---

Sent from my BlackBerry Wireless Handheld
Juliet E. Hodgkins
----- Original Message -----

From: Juliet E. Hodgkins
Sent: 11/03/2006 06:14 PM
To: Margaret Sims
Subject: Re: Job and Tova

I think we should use the content of those articles or some summary of them as a background of what we know about VF and VI. I just didn't want to have to read all of those articles to be able to make some generalized statements about their contents.

Sent from my BlackBerry Wireless Handheld
Margaret Sims
----- Original Message -----

From: Margaret Sims
Sent: 11/03/2006 06:11 PM
To: Juliet Hodgkins
Subject: Re: Job and Tova

Julie:

All of the summaries received are in the shared drawer under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Research Summaries. There are too many of them to append to this message, or I would do it. The researchers did not propose to include these summaries in the report. Are you considering adding them?

If you want, I can cross reference each of these with the list of articles and ID any missing summaries. I could do that over the weekend. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV
11/03/2006 05:42 PM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Job and Tova

I spoke to Job about the documents that I need. He will send me his summary of the articles/books that he read. However, he said that Tova also summarized some of those articles/books. I don't have a contact number/email for Tova. Could you contact her and ask her to provide us with any summary of the articles/books that she read as they are listed in Appendix 2?

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Deliberative Process Privilege

Margaret Sims /EAC/GOV
10/19/2006 07:04 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Tamar Nedzar/EAC/GOV@EAC
cc twilkey@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC
bcc
Subject Voter Fraud-Voter Intimidation Draft Report

Attached is a copy of the draft voter fraud-voter intimidation report that combines all of the pieces provided to me by the consultants, except for the voluminous Nexis research and case law charts.Tom wants to get this before the Commissioners ASAP, but I need some other eyes to look it over before we do. Although I've made some formatting changes to provide some consistency in presentation, and corrected a couple of glaring errors, I remain concerned about a number of issues:

- As you know, references to DOJ actions/responses have caused some concern at DOJ. But both consultants are adamantly opposed to EAC making substantive changes to their report. Perhaps using footnotes clearly labeled as EAC footnotes would be a method of addressing this issue?

- There are some recommendations regarding DOJ that we (the consultants and I) were told would not be supported by DOJ, and other references to DOJ, none of which have been reviewed by the department. I think we ought to give Craig Donsanto and John Tanner a chance to provide feedback on each of these sections.

- I am a little concerned about the naming of names, particularly in the section that addresses working group concerns. If we publish it as is, it might end up as fodder for some very negative newspaper articles.

- The report currently uses three different voices: third person, first person singular, first person plural. I think this looks really clumsy. If we are not actually making substantive changes, perhaps we could get away with making the presentation consistent in this regard.

- Because the consultants submitted the report in pieces, they did not include proper sequeways. I don't know if we should leave it as is, or insert them where needed.

Please let me know what you think. If it would help, we can schedule a teleconference. --- Peggy

VF-VI Final Rept-draft 10-19-06.doc

Deliberative Process
Privilege

Voting Fraud and Voter Intimidation

Report to the
U.S. Election Assistance Commission
on
Preliminary Research & Recommendations

DRAFT

By

Job Serebrov and Tova Wang

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Introduction

Charge Under HAVA

Under the Help America Vote Act, Pub. L. No. 107-252, 116 Stat. 1666 (2002) ("HAVA"), the United States Election Assistance Commission is charged with developing national statistics on voter fraud and developing methods of deterring and investigating voter fraud. Also, the Commission is charged with developing methods of identifying, deterring, and investigating methods of voter intimidation.

Scope of Project

The Commission employed a bipartisan team of legal consultants, Tova Wang and Job Serebrov to develop a preliminary overview work product to determine the quantity and quality of vote fraud and voter intimidation that is present on a national scale. The consultants' work is neither comprehensive nor conclusive. This first phase of an envisioned two-phase project was constrained by both time and funding. The consultants' conclusions and recommendations for phase II will be contained in this report.

The consultants, working without the aid of a support staff, divided most of the work. However, the final work product was mutually checked and approved. They agreed upon the steps that were taken needed and the method employed. For all of the documentary sources, the consultants limited the time period under review from January 1, 2001 to January 1, 2006. The research preformed by the consultants included interviews, an extensive Nexis search, a review of existing literature, and case research.

Interviews: The consultants chose the interviewees by first coming up with a list of the categories of types of people they wanted to interview. Then the consultants separately, equally filled those categories with a certain number of people. Due to time and resource constraints, the consultants had to pare down this list substantially – for instance, they had to rule out interviewing prosecutors altogether – but still got a good range of people to talk to. The ultimate categories were academics, advocates, elections officials, lawyers and judges. Although the consultants were able to talk to most of the people they wanted to, some were unavailable and a few were not comfortable speaking to them, particularly judges. The consultants together conducted all of the interviews, either by phone or in person. Then the consultants split up drafting the summaries. All summaries were reviewed and mutually approved. Most of the interviews were extremely informative and the consultants found the interviewees to be extremely knowledgeable and insightful for the most part.

***Nexis*:** Initially, the consultants developed an enormous list of possible Nexis search terms. It soon became obvious that it would be impossible to conduct the research that way. As a result, consultant Wang performed the Nexis search by finding search term combinations that would yield virtually every article on a particular subject from the last

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five years. Consultant Serebrov approved the search terms. Then Wang created an excel spreadsheet in order to break down the articles in way in which they could be effectively analyzed for patterns. Each type of fraud is broken down in a separate chart according to where it took place, the date, the type of election it occurred in, what the allegation was, the publication it came from. Where there was a follow up article, any information that that suggested there had been some further action taken or some resolution to the allegation was also included. For four very complicated and long drawn out situations – Washington State, Wisconsin, South Dakota in 2004, and the vote buying cases in a couple of particular jurisdictions over the last several years –written summaries with news citations are provided.

Existing Literature: Part of the selections made by the consultants resulted from consultant Wang's long-term familiarity with the material while part was the result of a joint web search for articles and books on vote fraud and voter intimidation and suggestions from those interviewed by the consultants. The consultants reviewed a wide range of materials from government reports and investigations, to academic literature, to reports published by advocacy groups. The consultants believe that they covered the landscape of available sources.

Cases: In order to property identify all applicable cases, the consultants first developed an extensive word search term list. A WestLaw search was performed and the first one hundred cases under each word search term were then gathered in individual files. This resulted in a total of approximately 44,000 cases. Most of these cases were federal as opposed to state and appellate as opposed to trail. Consultant Serebrov analyzed the cases in each file to determine if they were on point. If he found that the first twenty cases were inapplicable, Serebrov would sample forty to fifty other file cases at random to determine applicability. If the entire file did not yield any cases, the file would be discarded. All discarded word search terms were recorded in a separate file. Likewise, if the file only yielded a few applicable cases, it would also be discarded. However, if a small but significant number of cases were on point, the file was later charted. The results of the case search were stark because relatively few applicable cases were found.

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Working Definition of Fraud and Intimidation

Note: The definition provided below is for the purposes of this EAC project. Most of the acts described come within the federal criminal definition of fraud, but some may not.

Election fraud is any intentional action, or intentional failure to act when there is a duty to do so, that corrupts the election process in a manner that can impact on election outcomes. This includes interfering in the process by which persons register to vote; the way in which ballots are obtained, marked, or tabulated; and the process by which election results are canvassed and certified.

Examples include the following:

- falsifying voter registration information pertinent to eligibility to cast a vote, (e.g. residence, criminal status, etc).;
- altering completed voter registration applications by entering false information;
- knowingly destroying completed voter registration applications (other than spoiled applications) before they can be submitted to the proper election authority;
- knowingly removing eligible voters from voter registration lists, in violation of HAVA, NVRA, or state election laws;
- intentional destruction by election officials of voter registration records or balloting records, in violation of records retention laws, to remove evidence of election fraud;
- vote buying;
- voting in the name of another;
- voting more than once;
- coercing a voter's choice on an absentee ballot;
- using a false name and/or signature on an absentee ballot;
- destroying or misappropriating an absentee ballot;
- felons, or in some states ex-felons, who vote when they know they are ineligible to do so;
- misleading an ex-felon about his or her right to vote;
- voting by non-citizens who know they are ineligible to do so;
- intimidating practices aimed at vote suppression or deterrence, including the abuse of challenge laws;
- deceiving voters with false information (e.g.; deliberately directing voters to the wrong polling place or providing false information on polling hours and dates);
- knowingly failing to accept voter registration applications, to provide ballots, or to accept and count voted ballots in accordance with the Uniformed and Overseas Citizens Absentee Voting Act;
- intentional miscounting of ballots by election officials;
- intentional misrepresentation of vote tallies by election officials;
- acting in any other manner with the intention of suppressing voter registration or voting, or interfering with vote counting and the certification of the vote.

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Voting fraud does not include mistakes made in the course of voter registration, balloting, or tabulating ballots and certifying results. For purposes of the EAC study, it also does not include violations of campaign finance laws.

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Summaries of Research Conducted

Interviews

Common Themes

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, "dead" voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud, although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.
- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate – including representatives from DOJ -- that for various reasons, the Department of Justice is bringing fewer voter intimidation and suppression cases now and is focusing on matters such as noncitizen voting, double voting and felon voting. While the civil rights section continues to focus on systemic patterns of malfeasance, the public integrity section is focusing now on individuals, on isolated instances of fraud.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full

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implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

Common Recommendations:

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.
    - With respect to the civil rights section, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and the section has not pursued any such cases.
    - Craig Donsanto of the public integrity section says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases the department is investigating and the number of indictments the section is pursuing are both up dramatically. Since 2002, the department has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so it can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud. Of particular note, Sarah Ball Johnson, Executive Director of Elections for Kentucky, emphasized that having had an effective statewide voter registration database for more than thirty years has helped that state avoid most of the fraud problems that have bee alleged elsewhere, such as double voting and felon voting.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment

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- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected nonpartisanly they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas is a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.
- A few recommend returning to allowing use of absentee ballots "for cause" only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the scheme contemplated in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

Nexis Research

Absentee Ballot Fraud

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

Voter Registration Fraud

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According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people
- Fake names and other information on voter registration forms
- Illegitimate addresses used on voter registration forms
- Voters being tricked into registering for a particular party under false pretenses
- Destruction of voter registration forms depending on the party the voter registered with

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported on included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota and Wisconsin.

Voter Intimidation and Suppression

This is the area which had the most articles in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places.
- Improper demands for identification
- Poll watchers harassing voters
- Poll workers being hostile to or aggressively challenging voters
- Disproportionate police presence
- Poll watchers wearing clothes with messages that seemed intended to intimidate
- Insufficient voting machines and unmanageably long lines

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Although the incidents reported on occurred everywhere, not surprisingly, many came from "battleground" states. There were several such reports out of Florida, Ohio and Pennsylvania.

"Dead Voters and Multiple Voting"

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking of voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person taking criminal advantage of that. In total, the San Francisco Chronicle found 5 such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

Vote Buying

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations in three particular jurisdictions as detailed in the vote buying summary. There were more official investigations, indictments and convictions/pleas in this area. All of these cases are concentrated in the Midwest and South.

Deceptive Practices

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In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of voter registration forms. There were no reports of prosecutions or any other legal proceeding.

Non-citizen Voting

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case charges were filed against ten individuals. In one case a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this nexis search, remained just allegations of noncitizen voting.

Felon Voting

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem has been the large number of ineligible felons that remained on the voting list.

Election Official Fraud

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

Existing Research

There are many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. There is little research that is truly systematic or scientific. The most systematic look at fraud is the report written by Lori Minnite. The most systematic look at voter intimidation is the report by Laughlin McDonald. Books

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written about this subject seem to all have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists. It is hoped that this gap will be filled in the "second phase" of this EAC project.

Moreover, reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book. Again, this is something that it is hoped will be addressed in the "second phase" of this EAC project by doing follow up research on allegations made in reports, books and newspaper articles.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.

- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of problem than is commonly described in the political debate, but some reports say it is a major problem, albeit hard to identify.

- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.

- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.

- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.

- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

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Cases

After reviewing over 40,000 cases, the majority of which came from appeals courts, I have found comparatively very few which are applicable to this study. Of those that are applicable, no apparent thematic pattern emerges. However, it seems that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility. But because so few cases provided a picture of these current problems, I suggest that case research for the second phase of this project concentrate on state trial-level decisions.

Methodology

The following is a summary of interviews conducted with a number of political scientists and experts in the field as to how one might undertake a comprehensive examination of voter fraud and intimidation. A list of the individuals interviewed and their ideas are available, and all of the individuals welcome any further questions or explanations of their recommended procedures.

- In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources: the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that ask whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. (Stephen Ansolobohere, MIT)

- Several political scientists with expertise in these types of studies recommended a methodology that includes interviews, focus groups, and a limited survey. In determining who to interview and where the focus groups should be drawn from, they recommend the following procedure:

    - Pick a number of places that have historically had many reports of fraud and/or intimidation; from that pool pick 10 that are geographically and demographically diverse, and have had a diversity of problems
    - Pick a number of places that have not had many reports of fraud and/or intimidation; from that pool pick 10 places that match the geographic and demographic make-up of the previous ten above (and, if possible, have comparable elections practices)

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- Assess the resulting overall reports and impressions resulting from these interviews and focus groups, and examine comparisons and differences among the states and what may give rise to them.

In conducting a survey of elections officials, district attorneys, district election officers, they recommend that:

- The survey sample be large in order to be able to get the necessary subsets
- The survey must include a random set of counties where there have and have not been a large number of allegations

(Allan Lichtman, American University; Thad Hall, University of Utah; Bernard Grofman, UC – Irvine)

- Another political scientist recommended employing a methodology that relies on qualitative data drawn from in-depth interviews with key critics and experts on all sides of the debate on fraud; quantitative data collected through a survey of state and local elections and law enforcement officials; and case studies. Case studies should focus on the five or ten states, regions or cities where there has been a history of election fraud to examine past and present problems. The survey should be mailed to each state's attorney general and secretary of state, each county district attorney's office and each county board of elections in the 50 states. (Lorraine Minnite, Barnard College)

- The research should be a two-step process. Using LexisNexis and other research tools, a search should be conducted of news media accounts over the past decade. Second, interviews with a systematic sample of election officials nationwide and in selected states should be conducted. (Chandler Davidson, Rice University)

- One expert in the field posits that we can never come up with a number that accurately represents either the incidence of fraud or the incidence of voter intimidation. Therefore, the better approach is to do an assessment of what is most likely to happen, what election violations are most likely to be committed – in other words, a risk analysis. This would include an analysis of what it would actually take to commit various acts, e.g. the cost/benefit of each kind of violation. From there we could rank the likely prevalence of each type of activity and examine what measures are or could be effective in combating them. (Wendy Weiser, Brennan Center of New York University)

- Replicate a study in the United States done abroad by Susan Hyde of the University of California- San Diego examining the impact of impartial poll site observers on the incidence of election fraud. Doing this retrospectively would require the following steps:

  - Find out where there were federal observers
  - Get precinct level voting information for those places

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- Analyze whether there was any difference in election outcomes in those places with and without observers, and whether any of these results seem anomalous.

Despite the tremendous differences in the political landscapes of the countries examined by Hyde in previous studies and the U.S., Hyde believes this study could be effectively replicated in this country by sending observers to a random sample of precincts. Rather than compare the incumbent's vote share, such factors such as voter complaints, voter turnout, number of provisional ballots used, composition of the electorate, as well as any anomalous voting results could be compared between sites with and without monitors.

For example, if intimidation is occurring, and if reputable monitors make intimidation less likely or voters more confident, then turnout should be higher on average in monitored precincts than in unmonitored precincts. If polling station officials are intentionally refusing to issue provisional ballots, and the polling station officials are more likely to adhere to regulations while being monitored, the average number of provisional ballots should be higher in monitored precincts than in unmonitored precincts. If monitors cause polling station officials to adhere more closely to regulations, then there should be fewer complaints (in general) about monitored than unmonitored precincts (this could also be reversed if monitors made voters more likely to complain).

Again, random assignment controls for all of the other factors that otherwise influence these variables.

One of the downsides of this approach is it does not get at some forms of fraud, e.g. absentee ballot fraud; those would have to be analyzed separately.

- Another political scientist recommends conducting an analysis of vote fraud claims and purging of registration rolls by list matching. Allegations of illegal voting often are based on matching of names and birth dates. Alleged instances of double voting are based on matching the names and birth dates of persons found on voting records. Allegations of ineligible felon (depending on state law), deceased, and of non-citizen voting are based on matching lists of names, birth dates, and sometimes addresses of such people against a voting records. Anyone with basic relational database skills can perform such matching in a matter of minutes.

However, there are a number of pitfalls for the unwary that can lead to grossly over-estimating the number of fraudulent votes, such as missing or ignored middle names and suffixes or matching on missing birth dates. Furthermore, there is a surprising statistical fact that a group of about three hundred people with the same first and last name are almost assured to share the exact same birth date, including year. In a large state, it is not uncommon for hundreds of Robert Smiths (and other common names) to have voted. Thus, allegations of vote fraud

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or purging of voter registration rolls by list matching almost assuredly will find a large proportion of false positives: people who voted legally or are registered to vote legally.

Statistics can be rigorously applied to determine how many names would be expected to be matched by chance. A simulation approach is best applied here: randomly assign a birth date to an arbitrary number of people and observe how many match within the list or across lists. The simulation is repeated many times to average out the variation due to chance. The results can then be matched back to actual voting records and purge lists, for example, in the hotly contested states of Ohio or Florida, or in states with Election Day registration where there are concerns that easy access to voting permits double voting. This analysis will rigorously identify the magnitude alleged voter fraud, and may very well find instances of alleged fraud that exceed what might have otherwise happened by chance.

This same political scientist also recommends another way to examine the problem: look at statistics on provisional voting: the number cast might provide indications of intimidation (people being challenged at the polls) and the number of those not counted would be indications of "vote fraud." One could look at those jurisdictions in the Election Day Survey with a disproportionate number of provisional ballots cast and cross reference it with demographics and number of provisional ballots discarded. (Michael McDonald, George Mason University)

- Spencer Overton, in a forthcoming law review article entitled *Voter Identification*, suggests a methodology that employs three approaches—investigations of voter fraud, random surveys of voters who purported to vote, and an examination of death rolls provide a better understanding of the frequency of fraud. He says all three approaches have strengths and weaknesses, and thus the best studies would employ all three to assess the extent of voter fraud. An excerpt follows:

  1. Investigations and Prosecutions of Voter Fraud

  Policymakers should develop databases that record all investigations, allegations, charges, trials, convictions, acquittals, and plea bargains regarding voter fraud. Existing studies are incomplete but provide some insight. For example, a statewide survey of each of Ohio's 88 county boards of elections found only four instances of ineligible persons attempting to vote out of a total of 9,078,728 votes cast in the state's 2002 and 2004 general elections. This is a fraud rate of 0.00000045 percent. The Carter-Baker Commission's Report noted that since October 2002, federal officials had charged 89 individuals with casting multiple votes, providing false information about their felon status, buying votes, submitting false voter registration information, and voting improperly as a non-citizen. Examined in the context of the 196,139,871 ballots cast between October 2002 and

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August 2005, this represents a fraud rate of 0.0000005 percent (note also that not all of the activities charged would have been prevented by a photo identification requirement).

A more comprehensive study should distinguish voter fraud that could be prevented by a photo identification requirement from other types of fraud — such as absentee voting and stuffing ballot boxes — and obtain statistics on the factors that led law enforcement to prosecute fraud. The study would demand significant resources because it would require that researchers interview and pour over the records of local district attorneys and election boards.

Hard data on investigations, allegations, charges, pleas, and prosecutions is important because it quantifies the amount of fraud officials detect. Even if prosecutors vigorously pursue voter fraud, however, the number of fraud cases charged probably does not capture the total amount of voter fraud. Information on official investigations, charges, and prosecutions should be supplemented by surveys of voters and a comparison of voting rolls to death rolls.

2. *Random Surveys of Voters*

Random surveys could give insight about the percentage of votes cast fraudulently. For example, political scientists could contact a statistically representative sampling of 1,000 people who purportedly voted at the polls in the last election, ask them if they actually voted, and confirm the percentage who are valid voters. Researchers should conduct the survey soon after an election to locate as many legitimate voters as possible with fresh memories.

Because many respondents would perceive voting as a social good, some who did not vote might claim that they did, which may underestimate the extent of fraud. A surveyor might mitigate this skew through the framing of the question ("I've got a record that you voted. Is that true?").

Further, some voters will not be located by researchers and others will refuse to talk to researchers. Photo identification proponents might construe these non-respondents as improper registrations that were used to commit voter fraud.

Instead of surveying all voters to determine the amount of fraud, researchers might reduce the margin of error by focusing on a random sampling of voters who signed affidavits in the three states that request photo identification but also allow voters to establish their identity through affidavit—Florida, Louisiana, and South Dakota. In

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South Dakota, for example, only two percent of voters signed affidavits to establish their identity. If the survey indicates that 95 percent of those who signed affidavits are legitimate voters (and the other 5 percent were shown to be either fraudulent or were non-responsive), this suggests that voter fraud accounts for, at the maximum, 0.1 percent of ballots cast.

The affidavit study, however, is limited to three states, and it is unclear whether this sample is representative of other states (the difficulty may be magnified in Louisiana in the aftermath of Hurricane Katrina's displacement of hundreds of thousands of voters). Further, the affidavit study reveals information about the amount of fraud in a photo identification state with an affidavit exception—more voter fraud may exist in a state that does not request photo identification.

3. Examining Death Rolls

A comparison of death rolls to voting rolls might also provide an estimate of fraud.

Imagine that one million people live in state A, which has no documentary identification requirement. Death records show that 20,000 people passed away in state A in 2003. A cross-referencing of this list to the voter rolls shows that 10,000 of those who died were registered voters, and these names remained on the voter rolls during the November 2004 election. Researchers would look at what percentage of the 10,000 dead-but-registered people who "voted" in the November 2004 election. A researcher should distinguish the votes cast in the name of the dead at the polls from those cast absentee (which a photo identification requirement would not prevent). This number would be extrapolated to the electorate as a whole.

This methodology also has its strengths and weaknesses. If fraudulent voters target the dead, the study might overestimate the fraud that exists among living voters (although a low incidence of fraud among deceased voters might suggest that fraud among all voters is low). The appearance of fraud also might be inflated by false positives produced by a computer match of different people with the same name. Photo identification advocates would likely assert that the rate of voter fraud could be higher among fictitious names registered, and that the death record survey would not capture that type of fraud because fictitious names registered would not show up in the death records. Nevertheless, this study, combined with the other two, would provide important insight into the magnitude of fraud likely to exist in the absence of a photo identification requirement.

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Recommendations for Further EAC Activity on Voting Fraud and Voter Intimidation

Consultants' Recommendations

Recommendation 1: Conduct More Interviews

Time and resource constraints prevented the consultants from interviewing the full range of participants in the process. As a result, we recommend that any future activity in this area include conducting further interviews.

In particular, we recommend that more election officials from all levels of government, parts of the country, and parties be interviewed. These individuals have the most direct inside information on how the system works -- and at times does not work. They are often the first people voters go to when something goes wrong and are often responsible for fixing it. They are the ones who must carry out the measures that are designed to both prevent fraud and voter intimidation and suppression. They will most likely know what, therefore, is and is not working. .

It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers ("DEOs") and local district attorneys, as well as civil and criminal defense attorneys.

The Public Integrity Section of the Criminal Division of the Department of Justice has all of the 93 U.S. Attorneys appoint Assistant U.S. Attorneys to serve as DEOs for two years. DEOs are required to

- screen and conduct preliminary investigations of complaints, in conjunction with the FBI and PIN, to determine whether they constitute potential election crimes and should become matters for investigation;
- oversee the investigation and prosecution of election fraud and other election crimes in their districts;
- coordinate their district's (investigative and prosecutorial) efforts with DOJ headquarters prosecutors;
- coordinate election matters with state and local election and law enforcement officials and make them aware of their availability to assist with election-related matters;
- issue press releases to the public announcing the names and telephone numbers of DOJ and FBI officials to contact on election day with complaints about voting or election irregularities and answer telephones on election day to receive these complaints; and
- supervise a team of Assistant U.S. Attorneys and FBI special agents who are appointed to handle election-related allegations while the polls are open on election day.[i]

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Given the great responsibilities of the DEOs, and the breadth of issues they must deal with, they undoubtedly are great resources for information and insight as to what types of fraud and intimidation/suppression are occurring in their districts.

In many situations, however, it is the local district attorneys who will investigate election fraud and suppression tactics, especially in local elections. They will be able to provide information on what has gone on in their jurisdictions, as well as which matters get pursued and why.

Finally, those who defend people accused of election related crimes would also be useful to speak to. They may have a different perspective on how well the system is working to detect, prevent, and prosecute election fraud.

Recommendation 2: Follow Up on Nexis Research

The Nexis search conducted for this phase of the research was based on a list of search terms agreed upon by both consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. However, without being able to go beyond the agreed search terms, it could not be determined whether there was any later determination regarding the allegations, investigation or charges brought. This leaves a gaping hole: it is impossible to know if the article is just reporting on "talk" or what turns out to be a serious affront to the system.

As a result, we recommend that follow up Nexis research be conducted to determine what, if any, resolutions or further activity there was in each case. This would provide a much more accurate picture of what types of activities are actually taking place.

Recommendation 3: Follow Up on Allegations Found in Literature Review

Similarly, many allegations are made in the reports and books that we analyzed and summarized. Those allegations are often not substantiated in any way and are inherently time limited by the date of the writing. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation.

Therefore, we recommend follow up to the literature review: for those reports and books that make or cite specific instances of fraud or intimidation, a research effort should be made to follow up on those references to see if and how they were resolved.

Recommendation 4: Review Complaints File With MyVote1 Project Voter Hotline

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a 1-800 voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint.

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In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.[ii] The researchers in charge of this project have done a great deal of work to parse and analyze the data collected through this process, including going through the audio messages and categorizing them by the nature of the complaint. These categories include registration, absentee ballot, poll access, ballot/screen, coercion/intimidation, identification, mechanical, provisional (ballot).

We recommend that further research include making full use of this data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints should provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation,[iii] the Section was extremely reluctant to provide the consultants with useful information. Further attempts should be made to obtain relevant data. This includes the telephone logs of complaints the Section keeps and information from the database – the Interactive Case Management (ICM) system – the Section maintains on complaints received and the corresponding action taken. We also recommend that further research include a review and analysis of the observer and monitor field reports from Election Day that must be filed with the Section.

Recommendation 6: Review Reports Filed By District Election Officers

Similarly, the consults believe it would be useful for any further research to include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. As noted above, the DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

The consultants also believe it would be useful for any further activity in this area to include attendance at the next Ballot Access and Voting Integrity Symposium. According to the Department,[iv]

> Prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices are required to attend annual training conferences on fighting election fraud and voting rights abuses... These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity

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> Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. As a result of these conferences, there is a nationwide increase in Department expertise relating to the prosecution of election crimes and the enforcement of voting rights.

By attending the symposium researchers could learn more about the following:

- How District Election Officers are trained, e.g. what they are taught to focus their resources on, how they are instructed to respond to various types of complaints
- How information about previous election and voting issues is presented
- How the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants

Recommendation 8: Employ Academic or Individual to Conduct Statistical Research

Included in this report is a summary of various methodologies political scientists and others suggested to measure voter fraud and intimidation. While we note the skepticism of the Working Group in this regard, we nonetheless recommend that in order to further the mission of providing unbiased data, further activity in this area include an academic institution and/or individual that focuses on sound, statistical methods for political science research.

Recommendation 9: Explore Improvements to Federal Law

Finally, consultant Tova Wang recommends that future researchers review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

According to Craig Donsanto, long-time Director of the Election Crimes Branch, Public Integrity Section, Criminal Division of the U.S. Department of Justice:

> As with other statutes addressing voter intimidation, in the absence of any jurisprudence to the contrary, it is the Criminal Division's position that section 1973gg-10(1) applies only to intimidation which is accomplished through the use of threats of physical or economic duress. Voter "intimidation" accomplished through less drastic means may present violations of the Voting Rights Act, 42 U.S.C. § 1973i(b), which are enforced by the Civil Rights Division through noncriminal remedies.[v]

Mr. Donsanto reiterated these points to us on several occasions, including at the working group meeting.

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As a result, researchers should examine if there is some way in which current law might be revised or new laws passed that would reach voter intimidation that does not threaten the voter physically or financially, but rather threatens the voter's right to vote as a tangible value in itself. Such an amendment or law would reach all forms of voter intimidation, no matter if it is motivated by race, party, ethnicity or any other criteria. The law would then *potentially* cover, for example, letters and postcards with language meant to deter voters from voting and both pre-election and Election Day challengers that are clearly mounting challenges solely on illegitimate bases.

In the alternative to finding a way to criminalize such behavior, researchers might examine ways to invigorate measures to deter and punish voter intimidation under the civil law. For example, there might be a private right of action created for voters or groups who have been subjected to intimidation tactics in the voting process. Such an action could be brought against individual offenders; any state or local actor where there is a pattern of repeated abuse in the jurisdiction that such officials did not take sufficient action against; and organizations that intentionally engage in intimidating practices. As a penalty upon finding liability, civil damages could be available plus perhaps attorney's fees.

Another, more modest measure would be, as has been suggested by Ana Henderson and Christopher Edley,[vi] to bring parity to fines for violations under the Voting Rights Act. Currently the penalty for fraud is $10,000 while the penalty for acts to deprive the right to vote is $5,000.

Working Group Recommendations

Recommendation 1: Employ Observers To Collect Data in the 2006 and/or 2008 Elections

At the working group meeting, there was much discussion about using observers to collect data regarding fraud and intimidation at the polls in the upcoming elections. Mr. Ginsberg recommended using representatives of both parties for the task. Mr. Bauer and others objected to this, believing that using partisans as observers would be unworkable and would not be credible to the public.

There was even greater concern about the difficulties in getting access to poll sites for the purposes of observation. Most states strictly limit who can be in the polling place. In addition, there are already so many groups doing observation and monitoring at the polls, administrators might object. There was further concern that observers would introduce a variable into the process that would impact the outcome. The very fact that observers were present would influence behavior and skew the results.

Moreover, it was pointed out, many of the problems we see now with respect to fraud and intimidation does not take place at the polling place, e.g. absentee ballot fraud and deceptive practices. Poll site monitoring would not capture this activity. Moreover, with

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increased use of early voting, poll site monitoring might have to go on for weeks to be effective, which would require tremendous resources.

Mr. Weinberg suggested using observers in the way they are utilized in international elections. Such observers come into a jurisdiction prior to the election, and use standardized forms at the polling sites to collect data.

Recommendation 2: Do a Study on Absentee Ballot Fraud

The working group agreed that since absentee ballot fraud is the main form of fraud occurring, and is a practice that is great expanding throughout the country, it would make sense to do a stand-alone study of absentee ballot fraud. Such a study would be facilitated by the fact that there already is a great deal of information on how, when, where and why such practices are carried out based on cases successfully prosecuted. Researchers could look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

Recommendation 3: Use Risk Analysis Methodology to Study Fraud[1]

Working group members were supportive of one of the methodologies recommended for studying this issue, risk analysis. As Mr. Bauer put it, based on the assumption that people act rationally, do an examination of what types of fraud people are most likely to commit, given the relative costs and benefits. In that way, researchers can rank the types of fraud that are the easiest to commit at the least cost with the greatest effect, from most to least likely to occur. This might prove a more practical way of measuring the problems than trying to actually get a number of acts of fraud and/or intimidation occurring. Mr. Greenbaum added that one would want to examine what conditions surrounding an election would be most likely to lead to an increase in fraud. Mr. Rokita objected based on his belief that the passions of partisanship lead people to not act rationally in an election.

Recommendation 4: Conduct Research Using Database Comparisons

Picking up on a suggestion made by Spencer Overton and explained in the suggested methodology section, Mr. Hearne recommended studying the issue using statistical database matching. Researchers should compare the voter roll and the list of people who actually voted to see if there are "dead" and felon voters. Because of the inconsistent quality of the databases, however, a political scientist would need to work in an appropriate margin of error when using such a methodology.

Recommendation 5: Conduct a Study of Deceptive Practices

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of

[1] See Appendix C, and section on methodology

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Challenges: Communications on this issue with the EAC have not been clear or timely. The PRG should be in place now to comment on our research design while there is still time to refine it. While we are confident in the quality of our work, the wisdom and perspective of the outstanding candidates we have proposed for membership would strengthen the analysis and reports of our work.

Projections: We have effectively brought these challenges to the attention of EAC staff and look forward to a resolution speedy enough to allow recruitment of the PRG's members before the end of the month. If we meet that goal, the work of the PRG will be about 2 weeks behind the milestones indicated in the work plan.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and a website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law will be merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

Progress: The Moritz team has provided Eagleton staff with samples of the work that they are performing. An Eagleton staff member will be reviewing the content and formats of data from all supporting research and (re-)formatting once the work has been completed. The researchers and staff at Eagleton have created a shared folder on the Institute's server for the safe storage of work and access for those staff members. All of this work is being reviewed by the project team to ensure that a broad survey is being performed.

Challenges: There are no evident challenges to this task at this time.

Projections: By the end of July 2005, much of the above referenced research will have been completed with respective materials and charts near completion. At that time, staff at Eagleton will review, combine and format all documents and materials in preparation for our final reporting to the EAC.

INTRANET

Description: A trial Intranet for the project became available during the week of June 26. The Intranet will facilitate the exchange of information and collaboration among project participants.

Progress: After meetings with staff members of Rutgers University Computer Services (RUCS) and subsequent submission of a proposal by RUCS for technical support and hosting of the Intranet and the evaluation of alternative commercial services, the project team decided at its June 28th meeting to publish the Intranet through www.intranets.com,

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one of the leading commercial services. This decision was based on lower costs and earlier publication schedules than offered under the RUCS proposal. The Intranet services were evaluated during a free trial period, which demonstrated the ease of design and navigation of the proposed service.

Challenges: There are no immediate challenges to completion of this task by the timeframe specified below.

Projections: Design, testing and publication of initial content of the Intranet service is continuing, with all participants expected to be provided access by July 8, 2005.

FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Given that the report reflects the first month of the project, several procedures for payment of subcontractors on the project were initiated. Expenses related to those members of the team are not reflected in this report because they have not yet been incurred.

Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project inception through June 30, 2005, is attached.

Karen Lynn-Dyson/EAC/GOV
05/01/2006 03:03 PM

To Thomas R. Wilkey/EAC/GOV@EAC
cc Juliet E. Thompson-Hodgkins/EAC/GOV@EAC
bcc
Subject Re: E-mail to Voter ID peer reviewers

History: This message has been replied to.

It's my understanding that Julie thinks we are " good to go" as long as we don't pay them.

Correct?

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV
05/01/2006 03:00 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV
cc
Subject Re: E-mail to Voter ID peer reviewers

Did we resolve the contact issues on this?

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 05/01/2006 02:58 PM
To: Thomas Wilkey; Juliet Thompson-Hodgkins
Subject: E-mail to Voter ID peer reviewers

Tom and Julie-

Please take a look at this draft e-mail and let me know if it captures all that it needs to.

Would like to get this out ASAP- appreciate your feedback..

Dear Jonathan Nagler
Dear Jan Leighley
Dear Adam Berinsky

On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paper's findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:

- The research methodology which was used to support the paper's conclusions
- The specific statistical applications which were used to analyze the data and arrive at various conclusions

If there are alternate methodological and statistical approaches to analyzing the data on voter identification, and if there is other data on voter identification that you think should have been included in the analysis, please be certain to note this in your comments.

On **May 11, 2006** EAC will conduct a 60-90 minute phone call with key Eagleton Institute staff responsible for the research, members of Eagleton's peer review group and the EAC-identified reviewers who have been asked to consider the research. Through this dialogue EAC hopes to gather varying perspectives and insights on the research strategies and methods that were employed by Eagleton. As a result of this conversation, EAC anticipates that some revisions will be made to the Eagleton research paper. This paper is scheduled to be presented to EAC's Board of Advisors and Standards Boards in late May.

While EAC agency policy does not allow us to provide you with financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

05/01/2006 02:58 PM

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