

demonstrate that the Photo ID requirement will discourage voting by minority voters.

At this point, however, the Court simply cannot agree with Plaintiffs that the evidence is sufficient to demonstrate that Plaintiffs have a substantial likelihood of succeeding on the merits with respect to their § 2 vote denial claim. The Court therefore is reluctant to grant preliminary injunctive relief to Plaintiffs based on their § 2 vote denial claim. Recognizing that Plaintiffs may be able to produce sufficient evidence at a later stage of the proceedings to support their § 2 vote denial claim, the Court reserves a final ruling on the merits of that claim for a later date.

B. Irreparable Harm

The Court next addresses the second factor for obtaining a preliminary injunction--whether Plaintiffs will suffer irreparable harm if the Court does not enter a preliminary injunction. For the reasons discussed supra Part III.A., the Court concludes that the Photo ID requirement unduly burdens the fundamental right to vote, and likely will cause a number of Georgia voters to be unable to cast a vote and to have their votes counted. The Court also concludes that the Photo ID requirement constitutes a poll tax.

Although Defendants argue that the Photo ID requirement will not deprive a single Georgia voter of the right to vote,

because voters without Photo IDs can vote absentee ballots, as a practical matter, a significant number of the registered Georgia voters who lack Photo IDs likely are unaware of that alternative or would not be able to navigate the absentee ballot voting process successfully. Voters who lack Photo IDs and are unaware of the absentee voting alternative, yet still desire to vote, must undertake the often difficult and burdensome process of obtaining a Photo ID card. Still others who can navigate this process successfully either must pay a fee for a Photo ID card or sign an Affidavit swearing that they are indigent and do not have the funds to pay for the card--whether or not that statement is true--to obtain a free Photo ID card. The Photo ID requirement thus has the likely effect of causing a significant number of Georgia voters to forego going to the polls or to forego obtaining and voting an absentee ballot. For the reasons discussed above, the Court finds that Plaintiffs have demonstrated that they or their constituents will suffer irreparable harm if the Court declines to enter a preliminary injunction. This factor therefore weighs in favor of granting Plaintiffs' Motion for Preliminary Injunction.

C. Threatened Injury to Plaintiffs Weighed Against the Damage to the State Caused by a Preliminary Injunction

Next, the Court must weigh the threatened injury to Plaintiffs against the damage to the State caused by a preliminary injunction. Defendants presented evidence that the entry of a preliminary injunction likely will result in confusion for voters, poll workers, and elections officials, and may result in an inconsistent application of the identification requirements. Defendants have pointed out that it will be extremely difficult for the Elections Division to produce new voter certificates and posters and for all local elections officials to receive sufficient numbers of voter certificates and posters for polling locations. Further, Defendants' evidence indicates that local elections officials lack sufficient time to conduct training for poll workers and to educate the public.

The Court certainly appreciates and understands the inconvenience and expense that entering a preliminary injunction may work upon the State and Defendants. The Court, however, is mindful that the right to vote is a fundamental right and is preservative of all other rights. Denying an individual the right to vote works a serious, irreparable injury upon that individual. Given the right at issue and the likely injury caused by not entering a preliminary injunction,

the Court finds that the potential injury to Plaintiffs outweighs the harm to the State and Defendants caused by entering a preliminary injunction. This factor therefore counsels in favor of entering a preliminary injunction.

D. Public Interest

Finally, the Court must determine whether issuing a preliminary injunction will serve the public interest. At the outset, the Court acknowledges that preventing voter fraud serves the public interest by ensuring that those individuals who have registered properly to vote are allowed to vote and to have their votes counted in any given election. As discussed supra Part III.A., however, the current Photo ID requirement simply is not targeted toward eliminating or preventing the only types of voter fraud that are supported by the evidence presented thus far: fraudulent voter registrations and fraudulent absentee voting. Rather, HB 244 opens the door wide for fraudulent absentee voting by removing the conditions for obtaining an absentee ballot. As discussed supra Parts III.A.2. and A.3., the Photo ID requirement unduly burdens the right of many properly registered Georgia voters to vote, is a poll tax, and has the likely effect of causing many of those voters to forego voting or of precluding those voters from voting at the polls. Because the right to vote is a fundamental right, removing the undue burdens on that right

imposed by the Photo ID requirement serves the public interest. This factor therefore counsels in favor of granting Plaintiffs' Motion for Preliminary Injunction.

E. Summary

In sum, the Court finds that the four factors for granting a preliminary injunction weigh in favor of Plaintiffs. In particular, the Court concludes that Plaintiffs have a substantial likelihood of success on the merits of their claim that the Photo ID requirement unduly burdens the right to vote and a substantial likelihood of success on the merits of their claim that the Photo ID requirement constitutes a poll tax. The Court also finds that Plaintiffs and their constituents will suffer irreparable harm if the Court does not grant a preliminary injunction, and that the threatened harm to Plaintiffs outweighs the injury to Defendants and the State that will result from issuing a preliminary injunction. Finally, the Court finds that entering a preliminary injunction will serve the public interest. Consequently, the Court grants Plaintiffs' Motion for Preliminary Injunction.

In reaching this conclusion, the Court observes that it has great respect for the Georgia legislature. The Court, however, simply has more respect for the Constitution. Because the Court finds that Plaintiffs have a substantial

likelihood of succeeding on their claims that the Photo ID requirement unduly burdens the right to vote and constitutes a poll tax, the Court must enter a preliminary injunction against the Photo ID requirement.¹⁰

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The Court acknowledges that its conclusion differs from the decisions reached in League of Women Voters v. Blackwell, 340 F. Supp. 2d 823 (N.D. Ohio 2004), Bay County Democratic Party v. Land, 347 F. Supp. 2d 404 (E.D. Mich. 2004), and Colorado Common Cause v. Davidson, No. 04CV7709, 2004 WL 2360485 (D. Colo. Oct. 18, 2004). All of those cases, however, involved identification requirements that allowed voters to show means of identification other than Photo IDs. Georgia's Photo ID requirement, however, applies to in-person voting and goes one step further than the laws challenged in Blackwell, Bay County Democratic Party, and Colorado Common Cause.

For instance, Blackwell involved a challenge to an Ohio law implementing HAVA that required individuals who registered to vote by mail and who did not submit acceptable documentary proof of identity with their voter applications to provide "acceptable documentary proof" of their identities prior to voting. 340 F. Supp. 2d at 826. Such proof could include "a current and valid photo identification," or "[a] copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows [the voter's] name and address." Id.

Bay County Democratic Party, in turn, involved a challenge to directives issued to Michigan local elections officials concerning casting and tabulating provisional ballots, as well as a directive pertaining to proof of identity for first-time voters who registered by mail. 347 F. Supp. 2d at 410-11. The directive concerning proof of identity for first-time in-person voters who registered by mail was revised to allow those voters to furnish the identification required by HAVA either at the polls or during a six-day period after election day. Id. at 434. The HAVA requirements, however, allowed individuals who registered by mail to present a current, valid Photo ID or "a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter." 42 U.S.C.A. § 15483.

Finally, Colorado Common Cause also involved

IV. Conclusion

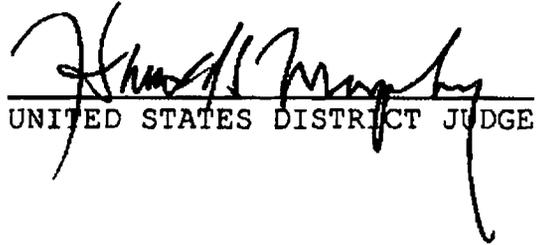
ACCORDINGLY, the Court **GRANTS** Plaintiffs' Motion for Preliminary Injunction [2] [23], and **ENJOINS** and restricts Defendants individually and in their official capacities from enforcing or applying the 2005 amendment to O.C.G.A. § 21-2-417 (Act No. 53, Section 59), which requires voters to present a Photo ID as a pre-condition to in-person voting in Georgia, to deny Plaintiffs or any other registered voter in Georgia

identification requirements that permitted voters to show several forms of identification, including: (1) a valid Colorado driver's license; (2) a valid ID card from the Colorado Department of Revenue; (3) a valid United States passport; (4) a valid government employee Photo ID; (5) a valid pilot's license; (6) a valid United States military Photo ID; (7) a copy of a current utility bill, a bank statement, government check, paycheck, or other government document showing the voter's name and address; (8) a valid Medicaid or Medicare card; (9) a certified copy of a birth certificate; or (10) certified documentation of naturalization. 2004 WL 2360485, at *6. The Colorado Common Cause court observed that the identification requirement was intended to reduce voter fraud, and concluded that the identification requirement was reasonably related to the interest proffered by the state and was not unduly burdensome. Id. at *10.

The identification requirements used by Ohio, Michigan, and Colorado, however, are of little relevance to the case now before the Court because those requirements are much less stringent than Georgia's Photo ID-only requirement. Each of the requirements challenged in Blackwell, Bay County Democratic Party, and Colorado Common Cause allowed voters to produce alternative forms of identification as well as Photo IDs. If Georgia's voter identification law permitted use of such alternative means of identification for purposes of in-person voting, Plaintiffs likely would not have filed this case. In sum, given the unique nature of Georgia's Photo ID requirement, the Court finds Blackwell, Bay County Democratic Party, and Colorado Common Cause cases unpersuasive. The Court therefore declines to follow those cases.

admission to the polls, a ballot, or the right to cast their ballots and to have their ballots counted in any special, general, run off, or referenda election in the State of Georgia because of their failure or refusal to present a Photo ID.

IT IS SO ORDERED, this the 18th day of October, 2005.


UNITED STATES DISTRICT JUDGE



U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

**STATEMENT BY COMMISSIONER GRACIA HILLMAN
OF THE U.S. ELECTION ASSISTANCE COMMISSION
ON THE "EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION"**

Washington, DC – December 7, 2006: Today the U.S. Election Assistance Commission (EAC) voted on the findings of its preliminary study of voting fraud and voter intimidation and accepted recommendations to conduct a comprehensive study on election crimes. The findings and recommendations are in an EAC report, "Election Crimes: An Initial Review and Recommendations for Future Study," which is based largely on the research of two consultants and includes a working definition of election crimes that encompasses voting fraud and voter intimidation. This report and its appendices are available at www.eac.gov.

Today's vote marks EAC's acceptance of the core recommendation that voting fraud and voter intimidation deserve more than just anecdotal assessment but rather a comprehensive, nationwide survey and study of the information that is available from election officials, investigatory agencies, prosecutorial bodies and the courts on the number and types of complaints lodged with the authorities and the disposition of those complaints.

With today's actions, EAC moves toward the next steps, which include the first nationwide, comprehensive study of election crimes based on hard data, with findings to be released to the public by the end of 2007.

It is my expectation that based on the findings of the comprehensive study, EAC will have useful data that can inform future discussions and debates about voting fraud, voter intimidation and other election crimes. It is my hope that based on the data, EAC will move forward early in 2008 to release suggested standards and/or best practices that will be useful to election officials and prosecuting authorities as they collect and assess claims and acts of election crimes, and bring offenders to justice. I also hope EAC will continue to collect and assess data on election crimes from future federal election cycles.

While I am pleased with the direction that we are taking on this important topic, I am also aware that some have voiced their concerns and raised questions about the delay EAC encountered in releasing this report. As we have explained, EAC's process to review the consultants' findings took far longer than anticipated. Hindsight is twenty-twenty vision and we at EAC now understand that we should have handled the delay differently. The resulting situation from the delay was both personally and professionally embarrassing for me. I truly hope this is the one and only time EAC will ever experience this type of difficult circumstance.

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Committee on
House Administration

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Testimony By Mr. Paul Bettencourt

Tax Assessor-Collector and Voter Registrar Harris County, Texas

Mr. Chairman and members of the committee:

My name is Paul Bettencourt, and I am the elected Tax Assessor-Collector and Voter Registrar for Harris County, Texas, the county that includes the City of Houston. I am honored to have been asked to speak before you today on an issue of great importance to those of us charged with ensuring the accuracy and integrity of the nation's voter registration rolls, which totals 1,892,883 in Harris County alone.

My office collects approximately \$3.8 billion in taxes from Harris County residents every year. Most of my constituents aren't happy about parting with their hard-earned money, but it is in my role as voter registrar that I can hear from over 50,000 constituents in just one day.

Since my election in 1998, the Tax Office has emphasized upgrading voter technology and the training of our staff because we know that the "right to vote" is sacrosanct. As voter registrar for Harris County, I work constantly with my staff to try to maintain the most accurate voter roll possible by employing the most up-to-date technology available. This includes comparing our voter registration list with other known good governmental services, such as the Texas Department of Public Safety, the United States Postal Service's National Change of Address List, the Social Security Department's Deceased List, and the Secretary of State's Statewide Voter Roll. Our original efforts in 2000 found more than 50,000 registrations that had to be deleted or suspended under law just by comparing the voter roll to these other governmental databases.

The Harris County Voter Registration Office has been recognized by various groups for our efforts to guarantee an accurate voter roll, including the National Association of Latino Elected and Appointed Officials, the Texas Secretary of State's Office and other organizations. We work extremely hard to avoid even minor problems with the voter roll by staffing a large "cross-trained" Call Center on election days to answer questions from precinct judges and county voters. On Election Day 2004 alone, our Call Center answered more than 51,000 live calls, in addition to an automated call system ably

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supported by our County Clerk, Beverly Kaufman, who conducts elections in Harris County.

Illegal voting and registration by foreign nationals is difficult for my office to prevent without federal assistance. We have three main ways to try to identify illegal registrations; the first is reliance on the "honor system" from the public; secondly, U.S. Immigration and Customs Enforcement checks during the naturalization process; and thirdly, and most effectively, is through juror records maintained by Harris County District Clerk Charles Bacarisse. The District Clerk's office routinely submits lists of jurors who have been excused from jury duty for non-citizenship, and we compare that list against our records of registered voters and send written challenges to those individuals who have used this exemption from jury duty.

With the help of Congress, we can do far more. Passage of legislation such as the Federal Election Integrity Act of 2006 would help my office ensure that only U.S. citizens are allowed to vote in federal, state and local elections. I am aware that some municipalities allow foreign citizens to vote in local elections, but the State of Texas amended its Constitution in 1921 to require that voters be U.S. citizens. Voting should be a right of citizenship in the United States.

The extent of illegal voting by foreign citizens in my home county is impossible to determine, but we know that it has and will continue to occur. Harris County is the third most populous county in the United States, with nearly 3.7 million residents - nearly 1.9 million of whom are registered to vote. If you've ever been to Houston, you know it's a remarkably diverse city. More than 22 percent of our county residents - nearly 1 in 4 - were born outside the United States, and more than 500,000 of them are estimated to be non-U.S. citizens.

As it now stands, we have no real way to stop a foreign citizen from voting. If a foreign national sends in a voter registration application and checks off that he or she is a citizen of the United States, they will get a card - unless we have some prior knowledge that their information is false. There is no reliable database of which I am aware that we can check against for proof of citizenship, but there could be at the federal level.

Just last year, a reporter with the Houston Chronicle called me, asking how it was that a resident of suburban Houston, a Norwegian citizen, was able to vote in the November 2004 federal, state and local elections. The answer, of course, was that he was not legally allowed to vote.

Neither was the Brazilian citizen whose registration was canceled in 1996 after she acknowledged on a jury summons that she was not a U.S. citizen. She then reapplied in 1997, again claiming to be a U.S. citizen, and was again given a voter card, which was again canceled. Records show she was able to vote at least four times in general and

primary elections. With the Harris County Tax Office's modern voter registration system, this type of fraud can easily be detected in 2006 but not in 1997.

A review by my office in early 2005 turned up at least 35 cases in which foreign nationals either applied for or received voter's cards. Even in the nation's third-largest county, we regularly have elections decided by one, two, or just a handful of votes in any one of our more than 400 local government jurisdictions. Therefore, every vote truly counts.

The federal government could combine the 50 states list from their Department of Public Safety driver's license records that maintain photo identification records, many with proof of citizenship. These records could be compared to federal data like passport lists, ICE records, or Social Security numbers to confirm these records electronically. In a county larger than 22 states, my office regularly maintains 7.1 million database records annually that can change on a yearly basis, so I know from real-world experience that this effort is feasible both technically and operationally.

Is voting taken so lightly that we cannot require so little an effort as the production of a photo ID? We require such identification from those buying tobacco or alcohol, boarding an airplane or using a credit card. Those not having a photo ID can be provided one by government at no cost to the voter.

Without a federal remedy, local registrants can do little to stop foreign citizens from registering in any election. Requiring proof of citizenship at the time of registration or re-registration will stop this documented fraud. We are all aware of the argument that such a requirement is a barrier or an inconvenience to those attempting to vote, but with 21st century technology, the task can be easily done and almost transparent to the citizen voters of this nation.

Additional information on the Harris County Voter Registration department's efforts can be seen at our Web site, hcvoter.net. Thank you again for your time and attention.

Posted on Thu, Oct. 12, 2006

Questions abound in voter push

ACORN's registration drive in the KC area generates 35,000 applications, but thousands of them appear to be duplicates or contain dubious data.

By RICK MONTGOMERY
The Kansas City Star

A group seeking a boost in Missouri's minimum wage said Wednesday it helped 35,000 Kansas City area residents register to vote next month.

However, at least a few thousand "questionable" applicants are clogging the verification system and probably won't be added to voter rolls for the November balloting, election officials said.

Near the top of the fishy list would be a man named Mark who apparently registered seven times over a three-day period using his mother's home address and phone number. She told *The Star* that Mark hadn't lived there in six years.

Sharon Turner Buie, Kansas City's Democratic director of elections, said about 3,000 of the 16,000 applications examined so far bore discrepancies, including suspicious signatures, applicants being too young, and birth dates and Social Security numbers not jibing with state databases.

The new applications were collected in a massive registration drive organized by the Association of Community Organizations for Reform Now, known as ACORN.

Wednesday was the final day for Missourians to submit applications to vote Nov. 7.

ACORN leaders said they were excited by the number of applications — which, if all are valid, would increase the number of registered Kansas City voters by nearly 20 percent.

Brian Mellor, the national group's election counsel, said several factors could lead to bad forms, including illegible handwriting and typos in Social Security numbers.

A check of several questionable applications at the Kansas City election office turned up a variety of puzzles: four forms with identical data except for an applicant's middle name; three other forms with identical data except for an applicant's place of birth.

If it's not fraudulent, submitting sloppy or duplicate applications "is dangerous" because it slows the verification process, said Kansas City election director Ray James, a Republican.

"We're hearing from many, many innocent people who registered at their libraries and haven't gotten their notices from us yet," he said.

He said an attorney for the election board was reviewing the matter for prosecution.

Not only did ACORN recruit volunteers to register people, it also paid more than 40 workers to collect applications — always a concern to election officials. Missouri law prohibits those workers from being paid on a quota basis.

ACORN said it paid only an hourly wage, about \$8, to avoid encouraging phony forms. And it says it consults with election officials and has internal checks in an effort to cut down on duplications and fraud.

In St. Louis, elections officials called nearly 1,500 of the 15,000 registration cards collected by ACORN

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"potentially fraudulent," according to the *St. Louis Post-Dispatch*.

Similar ACORN drives have come under fire recently in Ohio, Pennsylvania and other states. But the group notes that investigations into fraud allegations stemming from its 2004 efforts turned up no wrongdoing.

To reach Rick Montgomery, call [REDACTED] or send e-mail to [REDACTED]@com.

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Absentee balloting fraught with risks, legal scholar says

Mark Reutter, Business and Law Editor

4/13/06

CHAMPAIGN, Ill. — The rising popularity of absentee voting, especially the use of “no-excuse” absentee ballots, poses a risk of vote tampering and election fraud, a University of Illinois legal scholar argues.

In the name of offering voters flexibility and saving the government money, more than 25 states, including California, Florida and Ohio, have enacted laws letting registered voters cast a ballot before Election Day without providing a reason.

In addition, 20 states permit early voting by mail, and about 15 states offer voters permanent absentee status, which lets them register to vote absentee for an indefinite period.

Jessica A. Fay writes that voting outside of the polling place on Election Day carries with it the danger that absentee ballots can be collected and turned in by partisans. Or that voters can be pressured by campaign workers or others in ways that are not possible when ballots are cast in secret at a polling booth.

“With a growing elderly population and insufficient absentee-ballot regulation, it may be only a short time before the public spotlight shifts from the remnants of the infamous butterfly-ballot debacle of the 2000 presidential election to the increasingly critical issue of absentee voter fraud,” she wrote in the *Elder Law Journal*, published by the University of Illinois College of Law.

In many states with large numbers of seniors, including Illinois, allegations of absentee-ballot fraud have been reported. In Chicago, for example, a man reportedly helped 35 seniors apply for absentee ballots at a senior housing center during the 2002 primary, then returned several weeks later to illegally punch their signed ballots.

Traditionally, according to Fay, absentee voting was permitted only for limited groups of people, including soldiers and other U.S. citizens stationed abroad, and for voters with disabilities that restricted their ability to come to polling stations. “Over the last 30 years, there has been a significant movement away from the traditional polling place, instead embracing the concept of ‘convenience voting,’” she wrote.

Several factors have triggered this change, most notably a concern about the low voter turnout rates in America and the belief that absentee voting was a good way to increase turnout.

Among elderly voters, the problem of campaign workers interfering with voting, especially in retirement and nursing homes, has been documented in a number of jurisdictions. Several states require election officials to oversee balloting if a certain number of absentee ballots are requested at a retirement or nursing home, but most states have no laws tailored to curb absentee-voter abuse.

Especially under the system of no-excuse absentee voting, the possibilities of coercion or other irregularities are numerous. "Once an elector has qualified to vote in absentia, or is permitted to do so based on a state enacted no-excuse absentee voting provision, he or she receives a ballot in the mail, makes his or her balloting choices, and returns the ballot to the proper authorities. But what happens while the ballot is in the hands of the voter is unknown to election officials," Fay wrote.

In 2002, Congress responded to the widespread flaws in the 2000 presidential election by requiring states to replace faulty punch-card systems. The federal Election Assistance Commission was set up to establish best practices for state and local voting systems.

The Illinois scholar calls on Congress to direct EAC to focus attention on absentee-voting procedures, with a goal of "establishing the foundation of a more uniform and effective system of absentee voting."

For example, the 2002 law requires that each state implement a "single, uniform, official, centralized, interactive computerized statewide voter registration list" that contains the name and registration information of every legally registered voter in the state.

By utilizing these databases, states could maintain accurate lists of absentee voters, thereby flagging irregularities in ballot submissions, such as unusual surges in the number of ballots cast in a particular jurisdiction.

Her article is titled, "Elderly Electors Go Postal: Ensuring Absentee Ballot Integrity for Older Voters."

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http://obama.senate.gov/press/051108-on_election_day_obama_introduces_legislation_to_prevent_election_fraud/index.html

On Election Day, Obama Introduces Legislation to Prevent Election Fraud

Tuesday, November 8, 2005

FOR IMMEDIATE RELEASE

Obama Contact: Robert Gibbs or Tommy Vietor, (202) 228-5511

Illinois Contact: Julian Green, (312) 886-3506

Date: November 8, 2005

On Election Day, Obama Introduces Legislation to Prevent Election Fraud

WASHINGTON - U.S. Senator Barack Obama (D-IL) Tuesday introduced legislation to protect Americans from using tactics that intimidate voters and prevent them from exercising their rights on Election Day.

Obama's legislation, the Deceptive Practices and Voter Intimidation Prevention Act of 2005, would make it illegal for anyone to knowingly attempt to prevent others from exercising his or her right to vote by providing deceptive information and would require the Attorney General to fully investigate these allegations. The legislation would also require the Attorney General, in conjunction with the Election Assistance Commission, to provide accurate election information when allegations of deceptive practices are confirmed.

"One of our most sacred rights as Americans is the right to make our voice heard at the polls," said Obama. "But too often, we hear reports of mysterious phone calls and mailers arriving just days before an election that seek to mislead and threaten voters to keep them from the polls. And those who engage in these deceptive and underhanded

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campaign tactics usually target voters living in minority or low-income neighborhoods. This legislation would ensure that for the first time, these incidents are fully investigated and that those found guilty are punished."

As recently as the 2004 Presidential election there have been reports of tactics aimed at preventing rightful voters from exercising their right to cast a ballot. In Milwaukee some voters received fliers from the non-existent "Milwaukee Black Voters League," warning that voters risk imprisonment for voting if they were ever found guilty of any offense - even a traffic violation. In one county in Ohio, some voters received false mailings claiming that anyone registered to vote by the Kerry Campaign or the NAACP would be barred from voting. Similar reports were echoed in jurisdictions across the country and underscore the need for concerted action against such tactics. But many of these incidents are never investigated, and the culprit is never discovered.

Obama's legislation would provide a criminal penalty for deceptive practices, with penalties of up to \$100,000 or one year imprisonment, or both. The legislation would also require the Attorney General to work with the Federal Communications Commission and the Election Assistance Commission to determine the feasibility of using the public broadcasting system as a means of providing voters with full and accurate Election Day information.

Obama's legislation is supported by the National Association for the Advancement of Colored People, Common Cause, the Arc of the United States, the People for the American Way, the National Disability Rights Network, United Cerebral Palsy and the Lawyers' Committee for Civil Rights Under Law.

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Testimony of
Dr. Larry J. Sabato, Director
University of Virginia Center for Governmental Studies
Before
The Committee on Rules and Administration
United States Senate

June 27, 2001

Mr. Chairman, Members of the Committee, thank you for this opportunity to speak with you today about election reform. I would like to talk specifically about the intertwined issues of voter registration and vote fraud in the United States.

Of course, this is a subject that has received considerable attention during the months since the ballots were cast in the 2000 Presidential election.

Let me begin my remarks by stating what all of us familiar with politics already know. Fraud and corruption in the American electoral system did not start with the 2000 Presidential election. In fact, evidence of corruption spans the entire history of our Republic. One example I cited in my book, Dirty Little Secrets: The Persistence of Corruption in American Politics, is the following: "For the 1844 election, New York City had a reasonably large voter pool of 41,000, but the turnout on Election Day was far more spectacular: 55,000, or 135 percent of the entire pool of voters! As one observer put it, 'the dead filled in for the sick,' and the city's dogs and cats must have been imbued with irresistible civic spirit, too (276)."

What could be unique at this point in our nation's history is the degree to which we, as a nation, can embark on a serious discussion of how to reform the system to limit the extent of electoral fraud and corruption.

The November 2000 election can serve as the catalyst for such a debate. By all means, we should toss out antiquated voting machines that poorly count properly cast ballots. But we ought simultaneously to spend sufficient resources to reduce vote fraud in several states.

When we look at the registration system and voting process in the U. S., we have to balance two conflicting values, two equally worthy objectives:

1. The goal of full and informed participation of the electorate.

2. The integrity 1. As Election 2000 demonstrated, the problems are numerous. I draw your attention to several of the most egregious instances of fraud that were encountered last year, and in other recent elections.

Last November, as reported by The Miami Herald, the votes of a 90-year-old woman and 21-year-old man were among more than 2,000 illegal ballots cast by Florida residents who swore they were eligible to vote, but in fact were not. The woman voted absentee and in person, while the man voted despite a felony drug conviction. These 2,000 illegal ballots were discovered in just 25 of Florida's 67 counties - this in a presidential race won by only 537 ballots in Florida.

These voters cast ballots even though their names were not on precinct voter registration lists, because all they had to do was sign an affirmation swearing they were eligible to vote.

Even though they were supposed to, poll workers never checked to see if these 2,000 people were actually registered. In addition to these 2,000, there were 1,200 instances of convicted Florida felons who no longer had the right to vote, but nevertheless managed to stay on the voting rolls and cast their ballot in the last election. There is also some indication that at least a few people who maintain two residencies cast ballots in two different states, one by absentee and the other in person.

Similarly, in Wisconsin, the Milwaukee Journal Sentinel found that at least 361 felons voted illegally last November 7th, breaking the state law that disqualifies felons from voting until they are off probation and parole. Like Florida, Wisconsin was the site of a very close Bush-Gore contest.

But it doesn't stop with Florida and Wisconsin, and as I suggested, fraud didn't just appear during the 2000 Presidential election.

Just a glance at the past decade shows many examples of electoral fraud. You don't even have to look very closely to find, as I did in my book Dirty Little Secrets: The Persistence of Corruption in American Politics:

Extensive absentee ballot fraud in Alabama.

Hundreds of phony registrations in California.

Nearly 1,000 illegal votes in New Jersey including some by people who were unregistered and others who were dead.

Significant absentee ballot fraud in Philadelphia.

Votes stolen from the elderly and infirm in Texas.

And the list goes on and on.

2. Voter fraud is not limited only to these examples. My strong suspicion - based on scores of investigated and unexplored tips from political observers and interviewees over the years - is that some degree of vote fraud can be found almost everywhere, and serious outbreaks can and do occur in every region of the country.

Whether fraud is Democratic or Republican, or located in the North or the South or the West, the effect on American democracy is similar. While electoral hanky-panky affects the outcome in only a small proportion of elections (mainly in very tight races), one fraudulent ballot is one too many for the integrity of the system and the confidence that the people have in the system.

The need for reform is urgent and clear. Voter turnout in the United States is traditionally too low, and cynicism among citizens too high, to permit the malodorous malady of election fraud to continue unchecked - or to spread.

The first best step is to ensure accurate lists of registered voters. Merely replacing one type of voting machine with another does nothing to address whether the voter is legally eligible and registered.

Just as with other areas of election reform, state action, not federal mandates, is the best fix of the system. I believe states should require that a photo identification card (of any sort) should be produced by each voter at the polls.

Second, voters should be asked at the time of registration to give a number unique to them - a social security number, a driver's license number - that can be prerecorded on the voter list provided each precinct's workers.

Third, every voter should have to sign his name on the voting rolls at the polls so that the signature can be compared to the one on the registration form to see if they match up. This comparison would probably be made only in the event the results of a close election were challenged, although again, the computer technology already exists for instantaneously scrolling, side by side, the poll signature and the registration signature.

Fourth, all potential voters ought to be advised at the polls, whether orally by an elections official or by means of a printed statement of the eligibility requirements for voting and the penalties for fraudulent voting. A similar warning should be prominently featured on all absentee and early-voting/mail-in ballots. These four overlapping safeguards, if adopted by the states, are not too burdensome for voters and poll workers, but they would go a long way toward discouraging fraud at the precinct stations on Election Day.

Fifth, no early-voting/mail-in and absentee ballot should ever be separated from its cover sheet and counted until the voter's signature has been carefully checked against the registration file signatures. Every envelope containing the marked absentee or early-voting/mail-in ballot should also be signed by an adult witness whose address should also be listed.

3. Finally, Mr. Chairman let me say that these regulations, even if adopted universally and followed to the letter, will be insufficient if:

(1) registrars and elections offices are not staffed and funded adequately;

(2) state statutes do not punish fraud severely - major felonies are required, not minor misdemeanors;

(3) law enforcement authorities do not make voter fraud a priority and press for substantial legal penalties against those found violating the fraud statutes; and

(4) the news media do not begin to look for evidence of voter fraud - a probable prerequisite to their finding it. A good first step would be for every news organization to establish and publicize an "election corruption hotline."

The examples I listed earlier, and others throughout the nation make it obvious that the solutions required for voter fraud must necessarily be adapted to each locality's culture and practice. But one imperative unites all the cases: While registration and voting should be as easy as possible, the process should also be as fraud-proof as possible.

As Congress moves to address these and other election reform issues, they must recognize and respect the needs of states and localities for flexibility. No two states are exactly alike—each has unique needs and challenges. While parameters tied to federal funding will provide necessary accountability for fund usage, Congress should stop well short of nationwide mandates on voting systems.

As I noted earlier, we must maximize the full and informed participation of the electorate while still preserving the integrity of our system. One can generally observe that our zealous focus on the full, but not necessarily informed, participation of the electorate may in fact challenge the integrity of our democratic process. Increasing informed participation must be our primary goal. For this reason, my Center for Governmental Studies at the University of Virginia has launched the Youth Leadership Initiative. This program helps schools to improve civic education, and it shows middle and high school students across America the value of informed participation.

Many of you on this committee have supported this program in the past. I applaud you for doing so and encourage you to continue to support the Youth Leadership Initiative and other programs like it that drive young people into our political process.

Informed participation combats fraud both by increasing salience and scrutiny, and by diminishing the proportional impact of fraudulent votes. Clearly, we must do all we can to improve the implementation of our registration and voting procedures. I believe the measures I have discussed today would move us in the right direction. However, I believe strongly that a focus on civic education must also be a part of any serious effort to revive confidence in our democracy.

Thank you Mr. Chairman.



Securing the Vote

An Analysis of Election Fraud

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Securing the Vote

An Analysis of Election Fraud

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Preface

When the Help America Vote Act (HAVA) was enacted last fall, a new era began in the history of electoral reform. The law provides sweeping guidance to the states on how to overhaul their voting systems and provides new funding for reform measures. Unfortunately, this major step forward has been shadowed by bitter partisan divisions over how best to prevent election fraud. As finally enacted, the new election law contains requirements for verifying the identity of voters that many critics worry will create obstacles to full voter participation.

As the states begin to implement HAVA, and as they consider other important electoral reforms such as election day registration, many claims and counterclaims are being heard about the problem of election fraud. In the absence of strong empirical research, anecdotal stories too often drive these debates. This report represents an important contribution to our understanding of the problem of election fraud. Based on an extensive research effort, it is the most in-depth examination of election fraud issues to date. The research, led by Barnard College professor Lori Minnite, used several approaches to analyzing the incidence of election fraud nationwide, as well as in a handful of major states. The report also examines claims about whether various electoral reforms—such as the National Voter Registration Act, mail-in voting, and election day registration—have led to increased fraud.

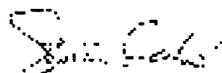
The overall conclusion of the report is that the incidence of election fraud in the United States is low and that fraud has had a minimal impact on electoral outcomes. The report also finds that the important electoral reforms of recent years have not led to increased election fraud and, in some cases, have helped reduce the potential for fraud. More generally, the report observes that the conditions that have historically led to election fraud have been on the decline for many years. Technological improvements in voting technology, stronger enforcement efforts, and changes in election administration can further reduce the likelihood of fraud.

Based upon these research findings, we strongly believe that the states should work to make registering and voting as accessible as possible to all Americans and can feel confident in doing so without increasing the chances of fraud. Dēmos is proud to be part of an energetic national network of reform groups that are seeking to maximize electoral participation.

We hope that public officials, reform advocates, and others will find this report to be a useful resource. Please do not hesitate to contact Dēmos for further information or assistance.



Miles Rapoport
President, Dēmos



Steven Carbó
Director, Democracy Program

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Executive Summary

Election fraud is a hotly contested topic in public debates about electoral reform. Debates over election fraud are not new. They have been a staple part of discussions about elections and democracy in the United States for more than a century. But in recent years, issues of fraud and voting integrity have increasingly come to the forefront of public policy discussions over the health of America's democracy.

Since the 2000 election, a historic effort has been underway to strengthen voting systems across the 50 U.S. states and also to address obstacles to broader electoral participation. However, at both the federal and state level, efforts to move forward a reform agenda have frequently been complicated by heated debates over issues of election fraud and the integrity of voting systems.

In Congress, disagreement over voter identification provisions in federal election reform legislation resulted in an acrimonious legislative process that delayed passage of the Help America Vote Act.

The 2002 election further underscored the salience of the issue in U.S. electoral politics. With control of the U.S. Senate hanging on the outcome of at least eight Senate races too close to call, the integrity of all ballots was viewed as a matter of grave importance. Allegations of fraudulent registration and balloting, as well as voter intimidation, were made in a number of states.

Opponents of efforts to make voting easier and more accessible often cite the potential for election fraud as a reason to oppose reforms, such as election day registration, aimed at addressing one of the most challenging issues facing our electoral system: low voter turnout.

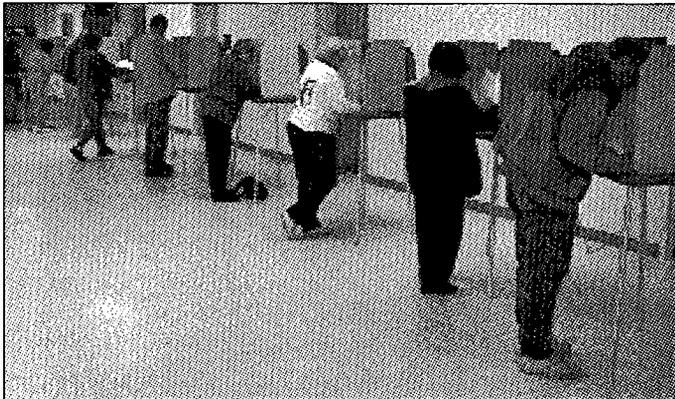
As federal and state officials consider future reform efforts, as well as the merits of existing reforms, and begin implementing the new Help America Vote Act, there is an acute need for better information and analysis about election fraud issues.

Yet to date *there have been no major studies of election fraud in the United States*. Too often, hearsay and anecdotal stories are put forth as fact during critical policy deliberations. This research report provides a new foundation of information and analysis to inform public discussions about the integrity of America's electoral system.

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Approach

Election fraud is defined in this report as the corruption of the process by which votes are cast and counted. Fraud may involve wrongdoing by either individual voters or, as is more commonly the case, by organized groups such as campaigns or political parties. This report examines both kinds of fraud. Drawing on a wide range of sources, we address the following questions: How often does election fraud occur? How serious a problem is fraud, compared



to other problems with the election process, such as those that occurred in Florida in the 2000 election? What kinds of voting methods are most vulnerable to corruption? What administrative, technological, and legal steps can be taken to reduce the chances of election fraud while also expanding the opportunities to register and vote?

Central Findings

Available evidence suggests that the incidence of election fraud is minimal across the 50 U.S. states and rarely affects election outcomes.

- Election officials generally do a very good job of protecting against fraud in the system and ensuring that election outcomes fairly reflect the intentions of voters.
- 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.

- The disenfranchisement of voters through antiquated voting systems, system error, and improper management of registration databases, as occurred in Florida in the 2000 election, is a far bigger problem than traditional forms of election fraud.

Efforts to make it easier to register and vote are compatible with the prevention of election fraud. Fears of election fraud should not inhibit electoral reform efforts aimed at addressing the problem of low voter participation.

- States can reduce the potential for fraud by integrating and computerizing state voter registration records, as mandated by the new federal election law, the Help America Vote Act. These same reforms also reduce problems at the polls and make registration and voting easier.
- Reduced partisanship among election officials decreases the chances of fraud and also helps create more professionalized election administration.
- Election day registration (EDR), which has been proven to increase voter participation, also reduces the possibility for fraud as more registrations are handled by election officials.
- Vigorous signature-matching procedures can prevent fraud under mail-in voting election systems.

Best practices in select states show how to prevent fraud while keeping voting accessible.

- Ten states have very effective unified, computerized statewide records that are checked against other records, such as state death records and the National Change of Address database. Under the Help America Vote Act, all states must now develop similar registration databases, which will go a long way toward preventing opportunities to commit fraud.
- A number of states have voter identification requirements that allow a wide range of voter I.D., which can be used when implementing HAVA's I.D. requirements for certain first-time voters.
- A few states have made strides toward reducing partisan control of elections by having bipartisan state elections boards oversee elections. An even better practice would be the adoption of nonpartisan state elections boards.

Policy Recommendations

- **Upgrade technology in the states.** The new Help America Vote Act, which mandates the creation of state-wide computerized registration systems and also provides states with money to upgrade voting machines, should be fully funded and effectively implemented in a uniform and nondiscriminatory manner. It is especially important that new state-of-the-art registration systems allow for interagency networking (for prompt and proper transmittal of registration information under NVRA) and local polling place access to systems (through laptops or other means).
- **Implement I.D. requirements that do not burden voters.** The new federal election law puts undue burdens on voters to prove their identity at the polls. The law should be modified to expand the list of acceptable identifying documents and to allow state or local officials discretion to incorporate or expand forms of identification currently in use. State officials should ensure the equal and non-discriminatory application of requirements.
- **Reduce partisan control of elections.** Important election administration positions should only be filled by nonpartisan professionals. Regular training and exchanges with elections administrators from other jurisdictions can increase officials' commitment to the professional administration of the democratic process itself, as opposed to party loyalty.
- **Strengthen enforcement.** The federal and state criminal penalties for election fraud are significant and serve as a powerful deterrent against fraud. All states should ensure adequate funding and authority for offices responsible for detecting and prosecuting fraud. In addition, all states should track allegations of election fraud, as well as the outcomes of criminal investigations, and make this data available to the public.
- **Establish election day registration (EDR).** EDR usually requires voter identification and authorization in person before a trained election worker, which reduces the opportunity for registration error or fraud.

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I. Election Fraud in the United States

An Overview

Since the 2000 election, a historic effort has been underway to strengthen voting systems across the 50 U.S. states and to address obstacles to broader electoral participation. At both the federal and state level, however, efforts to move forward a reform agenda have frequently been complicated by heated debates over issues of election fraud and the integrity of voting systems. In Congress, disagreement over voter identification provisions in federal election reform legislation resulted in an acrimonious legislative process that delayed passage of the Help America Vote Act. Similarly emotional debates over I.D. provisions have occurred in the states, and these debates are likely to heat up as state governments begin work to implement the new federal election law.

The 2002 election further underscored the salience of the issue in U.S. electoral politics. With control of the U.S. Senate hanging on the outcome of at least eight Senate races that were too close to call, the integrity of all ballots was viewed as a matter of grave importance. In the wake of the election, fraudulent registrations and absentee balloting were alleged to have occurred in a hotly contested Senate race in South Dakota¹ and elsewhere. Allegations of voter intimidation were made in Arkansas and other states. Meanwhile, the specter of fraud played a major role in the defeat of ballot initiatives in California and Colorado that would have enacted election day registration into law, with opponents of the initiatives arguing that election day registration would increase the potential for fraud.²

Debates over election fraud are not new. They have been a staple of discussions about elections and democracy in the United States for more than a century. But in recent years, issues of fraud and voting integrity have increasingly come to the forefront of public policy discussions over the health of America's democracy. Even before the 2000 election, consistently low voter turnout rates and obstacles to participation motivated various efforts to increase voter registration and turnout—efforts that in turn raised questions about voting integrity. Critics of reforms—such as the institution of mail-in voting in Oregon, the loosening of guidelines for absentee ballot use, and, most notably, the National Voter Registration Act of 1993 (the “motor voter” act)—have charged that

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While the issue of fraud is raised continually in discussions of election reform, to date there have been no major studies of election fraud in the United States.

these reforms increase the chances of voter fraud. Other frequently proposed reforms, such as election day registration, have been criticized on the same grounds.

As federal and state officials consider future reform efforts, as well as the merits of existing reforms, and begin implementing the new Help America Vote Act, there is an acute need for better information and analysis about election fraud issues. While the issue of fraud is raised continually in discussions of election reform, to date *there have been no major studies of election fraud in the United States*. Too often in this area, hearsay and anecdotal information are put forth as fact in important public policy debates. Many key questions about fraud remain unanswered, including: How often does election fraud occur? How serious a problem is fraud compared with other problems with the election process, such as those that occurred in Florida in the 2000 election? What kinds of voting methods are most vulnerable to corruption? What administrative, technological, and legal steps can be taken to reduce the chances of election fraud while also expanding opportunities to register and vote? This report seeks to provide some initial answers to these and other vital questions.

What Is Fraud and Why Does It Matter?

Elections are the mechanisms by which people choose their representatives. Given that the integrity of this process is central to American democracy, there can be no compromise on the need for fair elections determined without the taint of fraud—whether on the part of voters, political parties, election administrators, or others.

A general definition of election fraud is the corruption of the process of casting and counting votes. Fraud may involve wrongdoing by either individual voters or, as is more often the case, by organized groups such as campaigns or political parties. This report focuses on fraud as it has traditionally been defined, and specifically on two common forms of fraud:

Individual Fraud. Voting in America is a two-stage process. In nearly all states, an eligible citizen who wants to vote must first register using his or her permanent home address. After successfully completing a voter registration application, the voter goes to the polls—or, in Oregon, receives voting materials through the mail—and casts his or her ballot. Voters may violate laws governing the registration process by misrepresenting themselves as eligible when they are not, or submit-

ting registration applications for fictitious people, dead people, or real people who can be ineligible or eligible to vote and who may or may not know of or consent to the fraud. Second, voters may commit fraud at the point of voting. A voter may vote multiple times using the name or names of another voter. In the case of a vote cast using the name of a real person, that person may or may not be eligible to vote and may or may not consent to the fraud. Voters consenting to the appropriation of their vote by another may do so because they do not plan to vote, have little interest in voting, or receive some kind of material benefit—a practice called vote buying.

Organized Fraud. Fraud is easier for organized groups to commit than it is for individual voters because such groups have resources and/or direct access to election machinery. In all but the most extraordinary of cases—for instance, when an election victory depends on a handful of votes—fraud must be committed through a conspiracy to have an impact on the outcome of an election. Existing systems for registration and voting provide considerable opportunity for organized fraud. Such fraud can take several forms. First, political parties, campaign organizations, or other groups can perpetrate organized fraud through filling out fraudulent absentee or mail-in ballots. Second, local election administrators or poll workers can commit clear-cut fraud by not counting or destroying ballots, allowing votes that should have been barred, and tampering with ballots. Third, interested groups can organize large-scale vote buying—for example, providing incentives for otherwise uninterested voters to go to the polls and vote in a certain way—or coordinate efforts to help large numbers of voters vote more than once.

Beyond these traditional conceptions of fraud, many people are concerned about official efforts to corrupt the election process or erect barriers to participation. For example, election officials can deliberately corrupt the election process by manipulating registration databases to remove the names of people likely to vote in a certain way so that these people are unable to cast ballots when they arrive at polling places. Corruption of this kind was widely alleged to have taken place in Florida and other states during the 2000 election. Deliberate disenfranchisement of voters may also occur because of other kinds of official misconduct: turning away voters already in line when polls close; intimidating or misinforming voters when they arrive the polls; producing misleading or poorly designed ballots; failing to provide bilingual

voting materials, as required by law; failing to upgrade or repair antiquated voting systems in specific election districts; and by other means.

Overall, the disenfranchisement of voters through antiquated voting systems, errors, mismanagement of registration bases, and intimidation or harassment is a far bigger problem today than traditional forms of election fraud. The problems in Florida in 2000, which determined the outcome of a presidential election, are dramatic evidence of this



point. These problems have been analyzed and highlighted in a number of studies and reports over the past two years.³ Civil rights advocates have been particularly active in challenging official forms of election malfeasance as violating various provisions of the Voting Rights Act. This report does not focus on these issues. Rather, it looks exclusively at election fraud as the problem has commonly been discussed over the past century.

Research Methodology

The administration of elections for all public offices in the United States, from county dogcatcher to the U.S. presidency, is controlled by state and local election officials. This makes election procedures radically different from state to state and, in many places, from county to county. Given this diffused reality, it is difficult to assess the overall integrity of U.S. election systems. While no other aspect of American politics has received as much scrutiny over the last fifty years as the behavior of the American electorate, the one area in this vast field of inquiry that has received very little attention by

scholars is election fraud. Remarkably, there are no definitive academic studies of election fraud in the contemporary period, nor are there studies of fraud by government agencies concerned with the administration of elections in this country.

The difficulty of gathering data on fraud explains much of this vacuum in analysis. Like many of the rules governing American elections, the rules dealing with election fraud and the state and local agencies assigned the responsibility of handling fraud claims vary widely from state to state and, in some cases, from locality to locality. In many states the secretary of state is the chief elections officer, and his or her office is the state office primarily responsible for maintaining election records and receiving complaints of fraud. In other states, complaints of election fraud are first received and investigated by the state attorney general. In still other states, neither the secretary of state nor the attorney general maintains voting and elections records or handles any matters related to fraud at all. Instead, those responsibilities are assigned to a state board of elections or other elections agency. Since so few fraud claims evidence criminal intent, law enforcement agencies are only occasionally involved in prosecuting cases. Finally, a number of states, especially those lacking a centralized voter registration or elections management system, allocate the responsibility for receiving and investigating complaints of election fraud to local or county boards of elections or district attorneys, with little to no responsibility or accountability vested in any state agency.

While the analysis of this report is limited by the lack of comprehensive and accessible statistical data on election fraud, the authors were able to develop an in-depth analysis of election fraud in the United States today by drawing on a wide range of sources.

- First, we conducted an analysis of the incidence of election fraud from 1992 to 2002 in 12 states that collectively represent about half of the electorate and are drawn from all of the major regions of the country. These states include: Alabama, California, Florida, Georgia, Illinois, Minnesota, Mississippi, New York, Oregon, Pennsylvania, Texas, and Wisconsin. For each of these states, we conducted Lexis-Nexis searches of news databases, as well as the statutory and case law for evidence of a record of prosecution of voter fraud. We also contacted selected state officials, including attorneys general and secretaries of state.

Overall, the disenfranchisement of voters through errors, antiquated voting systems, and mismanagement of registration databases is a far bigger problem today than traditional forms of election fraud.

- Second, we conducted a complete Nexis search on voter fraud throughout the United States since the 2000 election, supplemented by searches related to several high-profile cases of election fraud that occurred before 2000. The search produced close to 2,000 references, each of which was thoroughly examined.
- Third, we surveyed the academic literature, a wide variety of government documents, congressional testimony and research reports, law journal articles, and other sources on election reform from professional, research, and reform organizations.
- Fourth, we analyzed in considerable depth some of the highest-profile cases of real or alleged fraud in the United States over the past decade, including notable cases in Missouri, California, and Florida.
- Fifth, we conducted an extensive analysis of fraud issues that surround particular voting methods or reforms, such as the NVRA, election day registration, and absentee balloting. Drawing on state and federal reports, as well as news and legal databases, we evaluated the charges often made about fraud and these reforms.
- Finally, we examined “best practices” in the states aimed at balancing fraud prevention with increased opportunities for voting.

A Framework for Understanding Fraud

While heated debates over election fraud have been going on for more than a century, the circumstances that surround voting and elections have changed dramatically over time and continue to evolve rapidly today. Elections remain as contested as ever, but the conditions conducive to election fraud have steadily declined. This trend is likely to continue in the foreseeable future. Three factors account for this change: declining political parties and machines, strengthened election administration, and improved voting technology. While some level of fraud, as traditionally defined, is likely to exist within any electoral system, current trends suggest that it is more possible than ever to further open

the process and facilitate voting without bringing about greater fraud. Exaggerated fears of fraud should not stand as an obstacle to reforms aimed at expanding participation.

Declining Political Parties. Historically, local political parties have played an important role in perpetrating election fraud. During the late 19th century and well into the 20th century, a key motive for fraud was the immense local patronage benefits afforded to winning parties. Under these conditions, parties, patronage, and fraud were intertwined. Election fraud was perpetrated by partisans acting together to steal elections. Local party organizations competed for voters and controlled votes through patronage. When elections were fully controlled by local party organizations, ballots were easily destroyed, miscounted, or falsely multiplied, and voters could be strongly influenced by bosses or local elites to vote in specific ways. Typically, cases of election fraud involved organized efforts by partisan election officials, party leaders, and politicians rather than by the voters themselves.⁴ Today, local party organizations are relatively weak to nonexistent, in part because their access to patronage has all but disappeared. They no longer control lucrative franchises, run police and fire departments, set utility rates, or build large-scale public works. However, in many states key election officials are openly partisan and may also play an active role in partisan political campaigns, a conflict of interest that increases the potential for fraud.

Strengthened Election Administration. At the same time that political parties have weakened, modern election administration has become more sophisticated and fraud has become more difficult. The reforms put in place in the late 19th century and early 20th century required voters to register in advance of elections and election authorities to keep registration records. While some of these reforms reduced the opportunities for fraud, they also had a negative impact on democratic participation, making voting especially more difficult for poor and working-class people.⁵ The NVRA, as well as the advent of election day registration in six states, has helped to reduce the obstacles to voting that accompanied voter registration requirements. In the wake of the 2000 election, considerable attention has been focused on ways to improve election administration to strengthen the integrity of the election process; a number of reform mea-

asures have already been passed in the states. Particular attention has been given to the need to create statewide computerization registration systems in all states, as now required by the Help America Vote Act. As further reforms are enacted, facilitated by new federal monies, election administration will continue to be strengthened as a bulwark against fraud. (See Section IV.)

Improved Voting Technology. Steadily improving voting technology has also served to reduce opportunities for election fraud, a trend that is likely to accelerate in the near future. Despite the many problems with voting systems that were spotlighted by the 2000 election, U.S. voting systems as a whole are substantially more reliable and ensure higher levels of voting integrity than was the case even a few decades ago. Since the 2000 election, a number of states have already moved to implement major technology upgrades in voting technology. Additional upgrades will certainly occur as federal funds for such improvements flow to the states as a result of the Help America Vote Act.

Fewer Trade-Offs: Easier Balloting, Secure Balloting. Some level of fraud has always been seen as inevitable and acceptable in the U.S. electoral system. In historical terms, there is less and less opportunity to commit fraud today in ways likely to decide elections. This makes it more possible than ever to facilitate voting without trading off the goal of secure elections. As this report shows, steps taken in the past decade to open the process have not resulted in increased fraud.

Election Fraud Today

Based on the research and analysis for this report, we offer several conclusions about election fraud in America today:

- Election fraud appears to be very rare in the 12 states examined. 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. An authoritative study undertaken in the largest U.S. state, California, by CalTech professor R. Michael Alvarez found little incidence of fraud during the period 1994–2001.⁶

- Notable election reforms of the past decade—such as the NVRA, more permissive absentee balloting rules, all mail-in voting in Oregon, and the enactment of election day registration in three new states—do not appear to have resulted in any significant increase in voter fraud. (See Section III.)
- Analysis of several cases of election fraud that have received significant attention in recent years suggests that some of the most notable allegations of fraud have proved to be baseless. (See Appendix.) While the 1997 primary mayoral election in Miami, Florida, was the most egregious fraud case in recent history, there are other noted cases where charges of significant vote fraud have been disproved, such as the 1996 Dornan/Sanchez contest for the House of Representatives in Orange County, California. There are yet other cases, such as the 2000 election in St. Louis, Missouri, in which politicians have made great hay, but charges of widespread fraud have not been substantiated.

The low level of election fraud in the United States today does not preclude the need for continued vigilance to ensure the integrity of election systems. But it does suggest that reforms aimed at simplifying registration and voting can be implemented without risking a significant corrupting of elections by fraud. Even if only partly implemented, the many technological and administrative reforms recommended by national and state commissions since the 2000 election, as well as other best practices discussed in this report, can go a long way toward enhancing election integrity. (See Section IV.) These same reforms can facilitate programs, such as election day registration, that are intended to make voting easier.

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II. Election Fraud and the Law

The opportunity to commit election fraud is constrained by a matrix of state and federal laws. Election fraud is a serious crime that can be prosecuted at the federal and state levels, where penalties carry fines, lengthy prison terms, and, in the case of illegal voting by non-citizens, deportation.⁷ However, the effectiveness of laws depends on their enforcement and implementation.

State Laws and Enforcement

The Constitution grants states broad jurisdiction over the elective process, though the authority of the states in these matters is not absolute.⁸ The Fifteenth, Nineteenth, and Twenty-sixth Amendments prohibit states from restricting the franchise based on race or color, gender, or minimum age (18 years) of the voter, respectively. The Supreme Court has found that Congress is within its constitutional authority to pass laws governing the timing of federal elections, voter registration, access to the ballot for the elderly and disabled, and, perhaps most important, in the area of prohibitions against racially discriminatory voting practices.⁹ However, within this framework, the states are granted wide powers to qualify voters and establish rules for conducting federal, state and local elections.

Within this framework for regulating the electoral process, the states have exhibited a full flowering of differences in the manner in which they administer elections. State election laws governing voting vary in their level of specificity, with many states granting localities considerable discretion in the way they run elections. For example, Oklahoma has standard election day procedures and a single voter registration and election management system, and it uses only one type of voting machine. In contrast, before a recent reform law was enacted, Pennsylvania's election law provided few statewide guidelines and near-autonomy to the state's 67 counties in the matter of election day procedures. Pennsylvania had 67 different election systems using a variety of voting machines.¹⁰

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On election day in South Dakota, where the biggest story of alleged voter fraud in the 2002 election cycle took place, the statewide phone number set up by federal officials to report any voting irregularities received only one call.

Federalism, and the authority over election procedures granted to states, also explains why laws criminalizing fraud differ across the states. All states have laws governing election crime. However, because of the historically parochial manner in which states administer elections, there is wide variability in how they handle the problem of criminal election fraud. All states prohibit voting by noncitizens (although some localities permit such voting in local elections); most states have various restrictions that bar voting by individuals convicted of felonies,¹¹ as well those who have been ruled mentally incompetent by a court. Most states have prohibitions against falsifying voter registration information, voting more than once in an election, impersonating another voter, intimidating or coercing voters, and bribing voters or buying votes. Most of these crimes are classified as felonies and carry fines and prison sentences. In some states, a person convicted of voter fraud can permanently lose his or her right to vote.

State election laws allocate the responsibility for ensuring fair elections to various agencies and officials, and it is their responsibility to administer and monitor the electoral process to ensure that it is free of corruption. Local election and law enforcement officials also play a role in enforcing election laws, although the familiarity of these officials with the ins and outs of election laws and the lines of enforcement authority varies considerably within states. While it is incumbent upon government officials to bring criminal charges where appropriate, all states also empower private citizens and organizations to bring civil suits to contest election results.¹² Likewise, the NVRA provides a private right of action to any person aggrieved by a violation of the Act.¹³

Federal Laws and Enforcement

Despite state jurisdiction over election administration, there is a role for the federal government in prosecuting voter fraud when federal interests are at stake.

Historically, the federal role has extended to ensuring elections that are free of corruption and in eliminating discrimination against minority voters protected by the Voting Rights Act of 1965, as amended. The enforcement of the Voting Rights Act concerns civil offenses and is handled by

the Justice Department's Civil Division. Election-related crimes are handled by the Public Integrity Section of the Justice Department's Criminal Division. A manual for federal prosecutors of election crimes defines election fraud as "conduct that corrupts the process by which ballots are obtained, marked, or tabulated; the process by which election results are canvassed and certified; or the process by which voters are registered."¹⁴

Federal election law is an amalgamation of statutes. Some of them expressly apply to elections and voting, and others, such as statutes prohibiting mail fraud, have been used to prevent and punish voter fraud. Most federal statutes apply only to federal or mixed federal/state and local elections. In order for election crime to rise to the level of federal prosecution, "there must be some *substantive* irregularity in the voting act ... which has the potential to taint the election itself."¹⁵ The Supreme Court has found a constitutionally guaranteed right to vote and Congress has passed legislation to protect this most fundamental of all rights. There remains debate, however, over whether or not the Constitution guarantees a right to vote in purely state and local contests—here the judicial record is inconsistent. Federal prosecutors, therefore, avoid investigating fraud allegedly committed in these elections.

Federal election law can be divided into two categories: *anti-intimidation* laws and *anti-trafficking* laws. Anti-intimidation laws make it a felony to conspire to "injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or because of his having exercised the same."¹⁶ They also provide for criminal punishment of anyone who deprives another of federally secured rights to vote. Anti-trafficking laws, on the other hand, restrict a citizen's right to vote by prohibiting the offering, making, soliciting, or receiving of payments in return for voting or withholding a vote. Penalties include a fine of up to \$10,000 and five years imprisonment. The Justice Department, as a matter of practice, does not prosecute voters whose only involvement in voter fraud is in compromising their votes, nor does it prosecute isolated instances of vote buying, because "isolated incidents do not implicate federal interests sufficiently" to warrant federal interference in what is traditionally a state

function. It appears that the majority of vote buying schemes that are prosecuted involve small amounts of money and occur in low-income neighborhoods.¹⁷

On October 1, 2002, U.S. Attorney General John Ashcroft announced the Voting Access and Integrity Initiative, aimed at enhancing the Department of Justice's "ability to deter discrimination and election fraud, and ... to prosecute violators vigorously whenever and wherever these offenses occur."¹⁸ The initiative

involved the creation of task forces of district election officers, assistant U.S. attorneys appointed by each of the U.S. Attorneys to serve in this new capacity for the 2002–2004 period, and FBI officials whose job it is was to coordinate "on-the-ground investigative and prosecutorial coordination" with state and local elections and law enforcement personnel to "deter and detect discrimination, prevent elec-

toral corruption, and bring violators to justice."¹⁹ Federal monitoring of elections has been around since the Reconstruction period, but most often it has been directed toward protecting the voting rights of minority groups at the polls. What is significant about the Justice Department's involvement in the recent midterm elections is the linking of voting rights with protection from corruption of the electoral process by voter fraud, reflecting a new view that voter fraud deserves the same level of scrutiny from federal law enforcement officials historically required to guard against racial discrimination in voting. During the month of October 2002, the district election officers opened 16 cases into allegations of voter fraud.²⁰ Federal officials do not comment on the status of open investigations, but it is of interest to note that on election day in South Dakota, where the biggest story of alleged voter fraud in the 2002 election cycle took place, the statewide phone number set up by federal officials to report any voting irregularities received only one call.²¹



III. The Impact of Election Reforms on Voting Integrity

Proposals for election reform aimed at broadening participation have historically generated widespread concerns about increased fraud. In this section, we analyze issues of fraud in relation to three major reforms: the National Voter Registration Act, voting by mail, and election day registration. Examining available evidence, including federal and state studies, we discuss how these reforms have affected opportunities to commit election fraud.

National Voter Registration Act of 1993

The NVRA, also known as the “motor voter” law, established national standards governing voter registration and voter roll purging. The law simplified voter registration by permitting mail-in registration; by increasing the locations where voters could register to include driver’s license offices, military recruiting offices, and welfare and other public agencies; and by requiring these agencies to send registration cards to county registrars. It also established safeguards for voters who move within their jurisdiction.

The NVRA has shifted some of the burden of expanding voter registration from voters to states and localities by requiring states and localities to comply with new voter list purging and reporting standards. As such, the act has presented challenges for keeping voter rolls up-to-date. Prior to the NVRA, states and localities established their own standards for purging voter files, and some removed voters from voting rolls for failure to vote. NVRA requires states to keep voter rolls up-to-date, but restricts their ability to purge voters, permitting purges only upon a voter’s request, death, felony conviction, mental incompetence, or upon relocation, provided the voter verifies the address change in writing.²²

Despite a slow start, the NVRA is proving very successful in meeting its purpose of increasing the number of eligible citizens who register to vote in federal elections. Registration rolls have grown nationally by nearly 30 percent since its passage. Project Vote recently estimated that NVRA is responsible for more than 70 million new voter

In their responses to the most recent FEC inquiries about the NVRA, no states raised the issue of voter fraud among their implementation problems.

registrations.²³ Along with this increase in access to the franchise, however, has come the argument that greater access inevitably leads to more voter fraud. For example, Senator Christopher S. “Kit” Bond (R-Mo.) charged in a *Washington Post* opinion piece that the NVRA “not only caused sloppy voter rolls, it actually facilitated organized vote fraud” in the 2000 election in Missouri.²⁴ John Samples, the director of the Center for Responsive Government at the conservative Cato Institute, recently testified before the Senate Rules and Administration Committee that the NVRA has encouraged lax registration requirements (through the use of mail-in registration forms) that “have left the voter rolls in a shambles in many states,” breeding mistrust in the electoral process and “foment[ing] ‘the appearance of corruption,’ that has, fairly or not, done real damage to American government.” Because the NVRA “has made it difficult if not impossible to maintain clean registration rolls,” Samples said, the NVRA deserves the blame for part of the decline in trust in government observed by political scientists over the past four decades.²⁵ *The Wall Street Journal* wrote no fewer than four editorials in 2001 claiming voter fraud is out of control and lambasting the NVRA.²⁶

One way that the NVRA has increased access to voter registration has been by increasing the number of physical sites where citizens may submit voter registration forms to include motor vehicle agencies and state agencies administering services to the indigent, elderly, and disabled. The NVRA also requires state officials at these sites to inform clients about voter registration opportunities. People who visit motor vehicle agencies, welfare offices, and the like more than once therefore have the opportunity to register to vote multiple times. Moreover, multiple registrations can occur if a registrant submits updated information using a new application form. Local election officials must spend time and resources verifying new registration applications for duplication. In fact, a recent GAO report on election administration found that 99 percent of voting jurisdictions nationwide checked for multiple registrations.²⁷ On the other hand, other election officials told the GAO they supported the motor vehicle authorities’ policy of encouraging citizens to reapply if they had any reason to believe they might not be registered.

Critics of the NVRA’s restrictions on list purges (and the costs now associated with purging) point to the considerable amount of “deadwood,” or ineligible voters, on voting rolls. Deadwood is presumed to be fodder for voter fraud—names of voters no longer living in a jurisdiction, dead, or otherwise ineligible to vote but available for identity theft by those who would commit fraud by voting in their name. Indeed, as the states have come into compliance with the NVRA’s list maintenance and anti-purging requirements, the number of “inactive” registrants has significantly increased, from 1.7 million in 1994 to more than 18 million in 2000, or 11 percent of the total number of registered voters.²⁸

The NVRA permits the maintenance of inactive lists, or lists of voters who have failed to respond to an address verification notice sent by the voter registrar confirming a change of address. Inactive lists represent the churning of voter records that results from combining a voter registration system tied to territorially based eligibility criteria with high voter mobility.²⁹ Voters do not stay on inactive lists indefinitely; they may be deleted from inactive lists after failing to vote in two successive federal elections. In fact, many of the names of inactive voters on the current rolls will be deleted from the lists after the 2002 election.³⁰ “Inactive” voters, therefore, may be left on such lists for as little as two and a half years before they are purged entirely from the rolls. Contrary to popular opinion, this represents a *decrease* in the length of time a voter can remain inactive before being deleted entirely from the rolls in about half of the 40 states that utilized the purge for failure to vote prior to the enactment of the NVRA.³¹ Moreover, the new requirements permit deletions from the rolls in eight states that did not purge for nonvoting before implementing the NVRA.³² In the 1999–2000 cycle, five of those states purged 1,888,795 names from their new inactive lists—names that could have remained on state and local voter registries prior to 1993.³³ They removed an additional 719,761 voters from their active lists. In sum, the NVRA is responsible for significantly tightening up, not loosening, list maintenance requirements for deadwood in many states.

Another problem with the argument that an increase in the number of inactive registered voters opens the door to voter fraud is a misunderstanding of how states and localities manage those lists on election day. Only about half the states covered by the NVRA even allow inactive voters to vote on election day. When inactive voters are permitted to vote, it is

usually by affidavit or through the use of some form of provisional ballot subject to further verification of such voters' qualifications, which by no means guarantees a provisional vote will be counted. A number of high profile cases of voter fraud involving the manipulation of "deadwood" voter registration records, mostly through absentee ballot fraud, have given critics' arguments some weight. But mismanagement of voter registration lists involving the erroneous removal of voters from active lists used at the polls is a more significant problem. It emerged in the 2000 presidential election and was compounded by the failure of election officials to provide opportunities for those voters to vote, as mandated by the NVRA's fail-safe provisions.³⁴ (Under the new federal election law, all states must provide voters with the opportunity to cast provisional ballots.)

In its most recent report to Congress on the impact of the NVRA on election administration in federal elections, the Federal Elections Commission noted an increasing effort by the states to maintain accurate voter registration lists. While the NVRA permits states latitude in designing list maintenance programs that reflect local conditions and needs, most of the 12 states reporting improvements in list maintenance managed these improvements through upgraded statewide computer information systems. Improvements also came about through enhanced networking between localities supervising the registration process and state agencies generating records related to voter list management—for example, death and criminal conviction records. A number of states are leading the way in the use of computer technology to clean the voter registration lists. Oklahoma now requires voters to provide the last four digits of their social security number to help identify duplicate registrations, and North Carolina has introduced a barcode-scanning technology that automatically assigns voter status based on returned mail.

A number of states initially resisted the implementation of the NVRA by challenging the legislation's constitution-



ality and raising concerns about voter fraud. None of the federal courts hearing the challenges found the evidence of fraud convincing or the concerns legitimate.³⁵ Today, states reporting problems in maintaining accurate voter registration lists complain mostly about the high cost of complying with mailings under state implementation of the NVRA. In their responses to the most recent FEC inquiries about the NVRA, no states raised the issue of voter fraud among their implementation problems.

Properly implemented and adequately funded, the NVRA helps guard against the possibility of voter fraud. The NVRA requires the states to clean their voter registration rolls by deleting voters who have moved out of the jurisdiction or have died. It requires voters to sign their names attesting to their eligibility to vote under penalty of perjury, and deportation for noncitizens. The NVRA does not prohibit states from requiring mail-in registrants to vote in person the first time they vote, nor does it prohibit states from checking individuals' identification prior to registration, as some critics of the NVRA have alleged.³⁶ Finally, the NVRA strengthens enforcement provisions against fraud.³⁷

Voting By Mail

Mail-in voting is proving to be an increasingly popular method of voting in the United States. As a proportion of total votes cast, the use of mail-in or absentee ballots doubled between 1970 and 1990, and then doubled again over the last decade, so that fully 14 percent of all ballots cast nationwide in 2000 were cast by absentee ballot.³⁸ This represents an increase of approximately 4.2 million absentee votes cast over the previous presidential election. This increase in mail-in voting has led to concerns about the opportunities that exist for election fraud under such arrangements. Significant fraud in the 1997 Miami mayoral race—perpetrated using absentee ballots—helped to amplify these concerns.

All states and the District of Columbia permit mail-in absentee voting but differ on the rules that qualify registered voters to vote absentee.³⁹ With the exception of Maine and Wisconsin, all of the states in the midwestern, southern, and eastern half of the country require voters to provide a reason or excuse for why they cannot vote in person on election day. All the rest of the states, save Texas, Utah, and South Dakota, allow for no-excuse absentee voting. Where,

As a proportion of total votes cast, the use of mail-in or absentee ballots doubled between 1970 and 1990, and then doubled again over the last decade.

when, and how registered voters apply for absentee ballots differ across the states, with the eastern and southern states generally more restrictive in their rules.

The states also differ widely in the manner in which they process absentee ballot applications, such as in deadlines for filing applications. And they differ in the level of assistance provided by election officials to absentee applicants. Differences also exist across states in the manner in which incomplete, illegible or confusing applications are reviewed and handled. Some states aggressively pursue clarification in order to qualify the application, and others fail even to notify applicants when there are problems with their forms. A number of states, such as Oklahoma and Texas, require that absentee ballots only be returned by mail; others, such as New York, allow the voter to return the ballot in person. Still other states, such as California, Michigan, and Illinois, allow a family member to return another's absentee ballot on election day or, in California's case, during the week before the election. Variations in state policies continue to carry over to the manner in which ballots are counted once election officials receive them. One-third of the states, for example, require notarization or witnessing of voter signatures on absentee ballots; others do not. Cut-off dates and times for submitting absentee ballots differ, as does the time frame for counting such ballots and the designation of local officials doing the counting.⁴⁰

The GAO's survey of election officials found that while most states and jurisdictions have laws and procedures for addressing the potential for fraud in mail-in absentee voting, some officials remain concerned that fraud still can be committed. They worry about someone other than the qualified voter voting in his or her place, multiple voting by an absentee voter casting a ballot by mail and in person, and intimidation of an absentee voter casting his or her ballot at home, without the supervision of election officials. Overall, the absentee mail-in ballot process is the feature most vulnerable to voter fraud within the decentralized, patchwork U.S. electoral system, at least in theory. This is not to say that there is a lot of evidence of absentee ballot fraud but rather that 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. For example, according to the GAO survey, only two-thirds (64 percent) of voting jurisdictions check absentee ballot applications against their records to

determine whether applicants have previously applied for a mail-in ballot for that election.⁴¹ Nearly half (45 percent) of all jurisdictions do not verify a voter's signature on absentee ballots against signatures provided on voter registration forms. Seven states require that absentee ballots be notarized or signed in the presence of two witnesses,⁴² and 38 states require no third-party witnessing at all.

Election Day Registration

Most states require voters to register as early as one month before an election in which they wish to participate. However, one state, North Dakota, has no voter registration at all, and another six states allow voters to register on election day: Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming. Each of the six states that use EDR experience significantly higher voter turnout than the national mean—10 percent higher on average. Political scientists who have studied EDR assert that it has been a key factor in creating higher turnout rates in these states, and they also estimate that nationwide implementation of EDR would increase participation in presidential elections by 8.5 million voters.⁴⁵ As reformers press to implement EDR in a wider variety of states, they face strong opposition because of the perceived potential for fraud. However, according to election officials in the states with EDR, as well as other available evidence, these concerns appear to be largely unfounded.⁴⁶

The GAO's postelection survey of local election officials found that some officials in states without EDR worried that the elimination of the time between voter registration cut-off deadlines and election day would introduce fraud because officials would not be able to verify an applicant's eligibility quickly enough. Indeed, EDR shifts the burden of the two-stage registration and voting process toward local election officials and away from voters. But all of the states that practice EDR have adopted administrative procedures that work; they all require citizens to verify their identification and residence and have a variety of methods for preventing fraud. Acceptable I.D. differs among the states, ranging from driver's licenses and passports to leases and utility bills.

Some EDR states require picture identification, while others do not. In Maine, election day registrants must either show proof of identity and residence or cast a challenged

ballot, which would be investigated in the case of a close election. Officials in most EDR states see active, ongoing involvement from administrators as a prerequisite to fraud-free elections. In Minnesota, for example, officials verify the residence of each new registrant with a nonforwardable postcard mailing, and after elections the counties record and validate all new registrations within thirty days.⁴⁸ In both Minnesota and Wisconsin, election officials distinguish voter fraud from erroneous registration, mistakes that can result from inattentive poll workers, or unintentional registration at the wrong polling place on the part of the applicant. Those

who do register erroneously are sent a warning card informing them of the penalties they face if they repeat their mistake.⁴⁹

As a deterrent to fraud, election officials in EDR states also publicize the stiff penalties that accompany a fraud conviction. In Maine, knowingly attempting to vote more than once for the same election is a felony punishable by fines of up to \$5,000 and up to five years of imprisonment. Knowingly registering at more than one voting place without revealing the prior registration address is a felony punishable by fines of up to \$2,000 and up to one year of imprisonment. The state provides each municipality with

Oregon and All-Mail Balloting

Oregon has been experimenting with voting by mail (VBM) for 20 years and in 2000 became the first state in the nation to conduct a presidential election entirely by mail. Available evidence indicates that voter fraud in Oregon is negligible, suggesting that with proper safeguards and ample time for voters to become accustomed to voting by mail, this method of casting ballots can increase participation while ensuring the integrity of the electoral process.

Fraud charges and fraud detection in Oregon begin at the local level with the clerks of Oregon's 36 county boards of elections. Oregon maintains a vigorous signature-matching process for qualifying mail-in ballots. Approximately two and a half weeks before election day, local registrars mail ballots, and instructions for returning them, to all registered voters in their jurisdictions. Ballots that are undeliverable are returned to the county elections office by the post office. Voters mark their ballots and place them in "secrecy" envelopes that are then sealed in return envelopes the voter signs. Ballots must be returned by mail to county election offices or delivered by 8 p.m. on election day to special secure drop boxes established by the county registrars. Teams of election workers verify each signature against computerized records of registered voters and pass to the county election clerk any ballots whose signatures do not match the files. Clerks review the problem ballots and take a number of actions to resolve the problem. If a signature is missing, the ballot is not counted. If a signature does not match the signature on file for the voter, the clerk may try to contact the voter to have him or her come into the office to re-sign the ballot in the presence of an election official. A signature for a voter who does not appear on the registration list is investigated by the clerk, who attempts to contact the voter, or, if the voter's county can be determined, the clerk forwards the ballot to the appropriate county. If the clerk determines that a voter has voted more than once, the voter is contacted, and if fraud is suspected the case is forwarded to the secretary of state's office, which then forwards cases to the attorney general for prosecution. A review of records maintained by the secretary of state's office shows that over the past 10 years 1,001 cases of multiple voting and 1,056 cases of signature-matching problems have been referred to that office for investigation, out of tens of millions of votes cast. Of the combined 2,057 cases, only 15 have been referred to the Oregon attorney general for possible prosecution.⁴³ Eight of the 15 cases are currently pending investigation; one person was acquitted; and the remaining six people were found guilty of voter fraud, contaminating approximately a dozen ballots.

Elections officials in Oregon believe that VBM and the way it has been implemented over the years in Oregon helps prevent fraud better than most procedures used in polling place elections. Oregon's rigorous signature-matching procedures are key to the state's success with VBM. Overall, the Oregon secretary of state's office argues that given the frequency of elections in Oregon, which is a referendum and initiative state, the state has the cleanest registration lists in the country. Because voters receive three or four unforwardable ballots a year, they are forced to keep their registration current and the county boards of elections are forced to clean the rolls.⁴⁴

Despite the lack of evidence that EDR increases the potential for fraud, fears of this kind helped to defeat EDR ballot initiatives in California and Colorado during the 2002 election.

“voting penalty posters” that must be posted in each voting place and each voter registration place. In Minnesota, where penalties are similarly high, the state’s registration law requires county attorneys to give immediate attention to fraud allegations.

In many ways, election day registration may reduce opportunities for fraud. Because EDR typically requires voter identification and authentication in person, it actually makes voter registration fraud more difficult than a voter registration system that only requires a signature on a mailed-in form (although this may change as the result of the new federal law). Also, most voter registrations in EDR states occur at polling places and thus come through the election system—as opposed to through agencies like the DMV that are mandated to offer registration. As a result, under EDR, voter registration is more tightly under the supervision of election officials.

Despite the lack of evidence that EDR increases the potential for fraud, fears of this kind helped to defeat EDR ballot initiatives in California and Colorado during the 2002 election. In both states, opponents of the initiatives argued that eliminating the waiting period for verifying voter eligibility would open up the voting process to ineligible people and fraud schemes. Elections officials in California worried that the state’s electoral administration was not technologically advanced enough to instantaneously check for duplicate registrations. In Colorado, EDR opponents warned that setting up the program would cost millions of dollars in new equipment and training, and worried that election judges, wary of lawsuits, would avoid vigorous questioning of the authenticity of voters’ identification documents. Opponents persuaded the electorate that making voting easier was not worth the potential price of making cheating easier.

EDR Under Fire in Wisconsin

The election day registration system in Wisconsin came under significant attack following the 2000 election, amid claims of fraud in Milwaukee. On closer inspection, these claims have turned out to be groundless. A student at Marquette University told ABC News that he had registered under his own name and voted four times on election day, and a student survey found that 174 students claimed to have voted more than once. In addition, a Democratic campaign operative allegedly offered cigarettes to homeless people in exchange for their votes.⁵⁰ Both allegations sparked investigations by the Milwaukee County Attorney’s Office. In the first case, the county attorney inspected the registration lists, voter lists, and ballots in the precincts in question. After intensive investigation, no cases of fraudulent voting were found at the precincts at Marquette University. Weeks after the story broke on ABC News, the student who reported the story recanted. He stated that he had invented the story to bring attention to the fact that voter fraud could occur, not that it had.⁵¹

The second case was more disturbing. A Democratic party activist from New York offered cigarettes to homeless people if they would vote. However, the case involved absentee ballots, not polling place registration.⁵² Apart from these cases, the Milwaukee County Attorney’s Office did find evidence of voter fraud involving election day registration in two cases in 2000. Both cases were individuals who were felons on parole and who voted even though they were not allowed to under state law. In neither case was the prosecution successful, because the parole boards failed to inform the individuals that they were not permitted to vote until the duration of their sentences had been served. According to the Milwaukee County and city election offices, the number of allegations of fraud in 2000 was unusual. The city and county of Milwaukee typically have one or two cases each election.⁵³ Nevertheless, opponents of EDR in the Wisconsin have aggressively trumpeted the 2000 allegations in an effort to repeal the EDR law. To date, these efforts have been unsuccessful.

IV. Key Election Administration Issues and Fraud

The 2000 election generated wide-ranging debates about how to strengthen the administrative, procedural, and technological infrastructure of elections. Issues of fraud have surfaced frequently in these debates. This section explores questions related to voter identification and fraud, as well issues of technical modernization and partisanship in election administration.

Fraud and Voter Identification

The issue of identification requirements for registration and voting have become a contentious issue at both the state and national level. Those who favor more restrictive I.D. requirements argue that they are necessary to prevent voter fraud. Opponents counter that such procedures create discriminatory and potentially unconstitutional obstacles to the right to vote. The new federal election law, signed in October 2002 by President Bush, requires all voters to provide their driver's license number or the last four digits of their social security number when registering. Voters who have neither will have a number assigned to them. It also requires first-time voters who registered by mail to attest to their identity when they arrive at the polls with a driver's license, utility bill, or other proof of residence, including a bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

The NVRA allows the states to conduct identity checks the first time a person votes if that person has registered by mail. It also allows states to require a person who has registered by mail to vote in person the first time they vote (eight states do). Until now, I.D. has generally not been a mandatory aspect of voting and registration in the states. Only 11 states presently require proof of identity to vote by law, and generally acceptable forms of I.D. differ widely, from driver's licenses to fishing licenses, leases, or utility bills.⁵⁴ The most common form of identification used at the polls is a signature: Thirty-eight states and the District of Columbia require voters to sign the poll book in order

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Stiffer I.D. restrictions will likely disproportionately encumber low-income, disabled, and other minority group citizens as they seek to exercise their right to vote.

to vote.⁵⁵ Some states, for example, compare a voter's signature with one on file, others with the signature on a piece of identification supplied by the voter. The states have widely differing rules for identifying absentee voters and for voters who show up to vote without any identification; some states give local poll workers, or other voters, the authority to vouch for the identity of a voter who shows up to vote without the requisite identification. As with nearly all of the rules for administering elections in the states, rules governing voter identification take many forms and range from lenient to restrictive. However, bills calling for more restrictive I.D. requirements have recently been introduced in a number of states and are gaining ground.⁵⁶

There are potentially discriminatory consequences of requiring specific forms of identification to register and vote. For example, many low-income, elderly, disabled, urban, and out-of-state student voters do not have driver's licenses. As some judicial decisions have found, requiring such people to purchase another form of photo I.D. in order to vote could function as a poll tax—an unconstitutional abridgement of the right to vote. Proof of residency through other documents, such as utility bills or leases, is also potentially discriminatory, as racial and ethnic minorities who are disproportionately poor are less likely than whites to have them. (Indeed, many Americans live in domiciles as roommates, spouses, or relatives where their name is not on the lease or on utility bills.) Those who work in the service industry or perform domestic work and are paid in cash are less likely to have a government paycheck or other paycheck for proof of identity. And as advocates for the disabled point out, requiring photo identification makes it harder to vote absentee.⁵⁷

When first-time voters are required to vote in person, the disabled and wheelchair-bound are unduly burdened, as nearly 70 percent of the nation's polling sites are not wheelchair accessible. Finally, voting rights advocates are concerned that a mandatory I.D. requirement might result in voter discrimination and harassment. According to the Asian American Legal Defense and Education Fund, during a recent municipal election, one in six Asian Americans in New York City, where only a signature is required to vote,

were illegally asked for I.D. at the polls.⁵⁸ Stiffer I.D. restrictions will likely disproportionately encumber low-income, disabled, and other minority group citizens as they seek to exercise their right to vote.

Technical Modernization

Voter fraud is best prevented today by accurate record keeping on the part of election administrators. Accurate record keeping is greatly facilitated by computerization and centralization of voter lists. Unified voter databases, networked to state agencies providing voter registration services to eligible citizens so that new registration records can be instantly processed, can help keep voter lists clean by preventing duplicate registration and by keeping address information current. Voter databases can be also cross-checked with other relevant records, such as death records, criminal convictions, and postal address records, to verify voter eligibility and eliminate "deadwood." In addition, technology is increasingly available that can electronically record and transmit signatures as part of voter registration records.

Currently, there is wide variation across states in the technological sophistication for maintaining voter registration records.⁵⁹ Ten states, Michigan being the largest, maintain unified databases that permit information sharing and records management between state and local agencies. Thirteen states maintain statewide lists compiled from local lists. Localities reserve responsibility for their own records, using the statewide list to check for duplicates. In some states localities can choose to use the statewide list as their own. Fourteen other states compile local lists but do not provide direct access to localities for verification of duplicate records. These states perform the checks for duplicate records and may also match their lists with other state records, and then notify localities of their findings. Finally, 13 states maintain no statewide voter registration records at all.

Beginning with its first mandated reports to Congress on the implementation of the NVRA in the mid-1990s, the FEC has recommended that states that have not yet done so develop and implement statewide computerized voter registration databases; computerize all local election regis-

tration offices; and link their statewide computerized system, where feasible, with the computerized systems of the collateral public agencies relevant to the NVRA (motor vehicle offices, public assistance offices, etc.).⁶⁰ The FEC's recommendation, repeated in each of its biannual reports to Congress, has not gone unheeded, but meager resources in the states for technological upgrades have served as a barrier to implementation.

It is not easy to generalize about the costs involved in bringing all states online.⁶¹ Costs vary across a wide range of circumstances, including the distribution of responsibility for administering elections between state and county governments, the state of the existing computer infrastructure in the relevant state and local agencies, the level of sophistication desired in a statewide voter registration system, and how fast a state wants its new system operational. The FEC estimates that costs to implement such systems over the past two decades have ranged from less than \$1 million to more than \$8 million. Michigan's database, the Qualified Voter File, a unified database considered one of the best systems in the country, cost the state \$7.6 million to develop and \$3 million for annual maintenance.⁶²

Help should be on the way. The new federal election reform law would provide roughly \$3.9 billion in federal funds for the upgrading of voting equipment and procedures and the training of poll workers. The law would require the states to implement interactive computerized statewide voter registration lists that are accessible to each state and local election official. However, while funds to implement reform had been authorized as of this writing, these funds had not yet been appropriated.

Partisanship in Election Administration

Partisan control of election administration has historically created greater potential for election fraud. Partisan control of local election administration is much less of a problem now than when fraud prevention measures were first introduced a century ago, but it nevertheless has the potential to compromise elections. In very decentralized election systems, as in Florida, it can be even more difficult to monitor

administrative arrangements and keep partisanship out of the process. Yet even in more centralized systems, effective oversight can be difficult and there is considerable latitude for discretionary actions by local board officials and the influence of dominant politicians.

The 2000 election in Florida vividly showed the perils of such partisanship in a close race. In particular, major questions were raised about the fairness and propriety of local election officials in Seminole and Martin Counties, where elections officials gave Republican Party employees special opportunities to add information to incomplete absentee ballot forms. Questions were also raised about the partisan ties of Secretary of State Katherine Harris, who was closely connected to the Bush presidential campaign and who made critical decisions about purging Florida voter lists in ways that disadvantaged Democrats. In addition, the image of partisan local election officials presiding over hand vote recounts in Palm Beach and elsewhere during the 2000 election further underscored the problematic nature of partisanship in elections.

In almost every state, final authority over election systems rests with state government—generally in the secretary of state's office. How those officials are chosen has important effects on the level of partisanship in elections. Thirty-six secretaries of state are elected statewide in partisan elections. In Alaska, Hawaii, and Utah, the lieutenant governor serves as the secretary of state. In Texas, the secretary of state is appointed by the governor without legislative approval. The legislatures of Maine, New Hampshire, and Tennessee elect the secretary of state. In other ways, election officials at the county and state level are dependent on dominant politicians and parties.⁶³

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V. Best Practices in the States

As government officials and reformers grapple with the challenge of maximally expanding registration and voting opportunities—while constraining opportunities for fraud—they can learn from procedures and infrastructure already in place in various states aimed at successfully achieving this balance.

Managing Voter Registration Records

The best available means of keeping accurate, continually updated records of voter registration are through statewide, unified registration systems, where the state and all localities share the same database. As a result of the new federal election law, such systems will be required of all states. Statewide coordination has a number of advantages over locally controlled databases. By integrating all local lists, duplicates are easier to identify and remove. States can more easily coordinate records with other state-held records, such as driver's licenses. Ten states currently employ unified systems. They are Alaska, Delaware, Hawaii, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, South Carolina, and Virginia. Unified databases are not enough, however, to facilitate accurate registration and voting. States are much better served by systems designed to link together election agencies with those agencies relevant to NVRA provisions, so that new applications are processed and recorded without delay. Ideally, poll workers should have laptops so that they can resolve registration problems that arise on election day. Currently, only ten states have statewide registration systems that allow voter information to be automatically transferred online to a central statewide database and updated immediately in “real time.” They are Alabama, Alaska, Delaware, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Oklahoma, and South Carolina. Of these, the systems in Kentucky and Michigan are generally seen as among the best.

- **Kentucky:** From local terminals, county election officials access a statewide database located in the statehouse, and state election officials regularly update the database by comparing voter lists with lists of those deemed ineligible for reasons of death, mental

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database by comparing voter lists with lists of those deemed ineligible for reasons of death, mental incompetence, felony conviction, relocation, or voter inactivity. Local election officials can update records and receive confirmation from state officials within a day. In the near future, they will be able to access the database at the precincts on election day via the Internet.

- **Michigan** : Michigan's Qualified Voter System is also an exemplary structure for accurate and efficient records management. Michigan's motor vehicle agencies are linked electronically to the electronic voter list, so new registrations are transmitted there directly and automatically, reducing the chance of losing registrations. The state matches its registration list against the U.S. Postal Service National Change of Address records, death records, and felony records.

Voter Identification Requirements

In recent months, the issue of voter identification has been the subject of much legislative scrutiny, thanks to the I.D. requirements mandated by the new federal election reform law, the Help America Vote Act (HAVA). HAVA imposes I.D. requirements on first-time voters who register by mail. Many fear that the new requirement will depress voter participation, particularly among low-income voters, people of color, voters with disabilities, young voters, senior citizens, and others who are less likely to possess the necessary documents. Given these concerns, states should look to reduce the burden on voters by adopting a broad and flexible approach to identity and residence verification. The following states permit the use of a variety of I.D.s that voters are more likely to have.

- **Alaska** : Voters must present an I.D. at the polls, including a registration card, a driver's license, a birth certificate, a passport, a hunting or fishing license, or others prescribed by regulation. *The voter I.D. requirement is waived if an election official corroborates a voter's identity.*
- **Connecticut** : Voters must present an I.D. at the polls, including a social security card or other preprinted identification that includes name and either address, signature, or photograph. *Voters may sign an affirmation instead of presenting I.D.*

- **Georgia** : Voters must present an I.D. at the polls, including a driver's license, a government-issued I.D., an employee or student I.D. card with photo, a weapons' license, a pilot's license, a military I.D., a birth certificate, a social security card, court records showing adoption, name, or sex change, or naturalization documents. If the voter does not have I.D., he or she can sign an affidavit.
- **Virginia** : Voters must present a Virginia voter card, a driver's license, a social security card, a federal, state, or local government-issued I.D., or a photo I.D. issued by an employer in the course of regular business. Voters without I.D.s can sign a statement under oath. Voters who registered by mail are required to vote in person the first time they vote.

Nonpartisan or Bipartisan Election Administration

Reducing partisanship in election administration is an important step toward ensuring the integrity of elections. While partisanship in election administration is the norm in the majority of states, it varies in intensity. Some states have devised different systems for choosing state election officers in ways that are either nonpartisan, or at least bipartisan. Among them are:

- **Illinois** : The Illinois State Board of Elections has eight bipartisan members, four appointed by the governor and four selected by the governor from a list of nominees submitted by the highest-ranking official of the opposite political party. Members serve staggered, four-year terms. The board provides a uniform manual of instructions for election judges; certifies ballots for all federal, state, and multi-county offices; and serves as the electoral board for objections to petitions for federal, state, and multi-county offices and statewide referenda.

- **Kentucky:** The State Board of Elections has six members, three from each of the two major parties, appointed for a four-year term by the governor. The secretary of state is chairman of the board and therefore the chief election official in the state. The board supervises voter registration, purgation of voters and the administration of election laws; supervises the county boards of election; prescribes voter registration forms; and furnishes county clerks with master lists of registered voters before each election.
- **North Carolina:** The State Board of Elections oversees administration of elections. Its five members are appointed by the governor, but its composition is bipartisan. The board issues and enforces rules and regulations binding on local officials; has power to remove local officials for fraud, neglect, or incompetence; prescribes form and content of ballots and other forms used in elections; investigates possible election irregularities; appoints members to county boards; approves all voting machines before use; and tabulates election returns, certifies the results, and sends the results to the secretary of state.

VI. Policy Recommendations

The guardians of America's election systems have two equally solemn responsibilities: on the one hand, to realize the promise of democracy and make voting as accessible as possible, and on the other hand, to ensure that elections are carried out with the utmost integrity and are not susceptible to malfeasant manipulation. This report suggests that election officials are already doing a good job of protecting against fraud in the system, as it had traditionally been defined. Yet while the incidence of fraud appears to be very low and to have little impact on election outcomes, many barriers to voting endure, and too much disenfranchisement occurs within an election system that is outdated, prone to error, and too partisan. Below, we build on the previous section on best practices and offer four core recommendations to help guarantee safe elections that are as open as possible.

- **Upgrade Technology in the States.** Computerized voter registration records and state-of-the-art voting technology are critical components of election systems that both facilitate participation and reduce the potential for fraud. The new federal election law, which mandates the creation of statewide computerized registration systems and also aims to provide states with money to upgrade voting machines, will be an important step forward if it is fully funded and effectively implemented. It is especially important that new state-of-the-art registration systems allow for interagency networking (for prompt and proper transmission of registration information under NVRA) and local poll access to systems (through laptops or other means). We also endorse the CalTech/MIT Voting Technology Project recommendation for the establishment of a National Elections Research Lab that would continue to foster the development of better voting equipment and voting systems, so that as technological advances take place they can be harnessed to help provide systems that are increasingly secure and accessible.
- **I.D. Requirements That Do Not Burden Voters.** The new federal election law places undue burdens on voters to prove their identity at the polls. We recommend modifying the law in certain respects and following several guidelines: (1) expanding the list of

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At the very least, states and counties should strive to remove ambiguity and conflicts of interest from all aspects of election laws, from registration to postelection procedures.

acceptable identifying documents; (2) allowing state or local officials discretion to incorporate or expand forms of identification currently in use; (3) stipulating that all provisions should be uniformly applied; and (4) enforcing a voter's bill of rights that outlines acceptable forms of I.D.

- **Reduce Partisanship in Election Administration.** We recommend that state legislatures explore ways to make election administration free of partisan control. At the very least, states and counties should strive to remove ambiguity and conflicts of interest from all aspects of election laws, from registration to postelection procedures. The National Association of Counties (NACo) and the National Association of County Recorders, Election Officials, and Clerks (NACRC) have recommended professionalization as a way to curtail partisanship.⁶⁴ Regular training and exchanges with elections administrators from other jurisdictions may increase officials' commitment to the integrity of the democratic process itself, as opposed to party loyalty.
- **Strengthen Enforcement.** The federal and state criminal penalties for election fraud are significant and should serve as a powerful deterrent against fraud. However, this will not be the case if laws are poorly enforced, or enforced unevenly. All states should ensure adequate funding and authority for offices responsible for detecting and prosecuting fraud. In addition, all states should track allegations of election fraud, as well as the outcomes of criminal investigations, and make this data available to the public.
- **Establish Election Day Registration.** As some elections experts have pointed out, EDR may allow better forms of fraud prevention than other systems.⁶⁵ Under NVRA, election officials have lost some measure of control over registration. Most registrations now come through departments of motor vehicles, through registration drives, and through the mail. EDR requires voter identification and authorization in person before a trained election worker, which should reduce the opportunity for registration error or fraud.

Appendix

Major Recent Cases of Alleged Election Fraud

A. The 1997 Primary Mayoral Election, Miami, Florida

Perhaps the best-known contemporary case of uncontroverted absentee ballot fraud is the disputed 1997 primary mayoral election in Miami, Florida.⁶⁶ Running for reelection as mayor, Joe Carollo received 51.4 percent of the ballots cast at the polls, while his opponent, former mayor Xavier Suarez, received 61.5 percent of the absentee ballots, giving Suarez a slim lead (155 votes) over Carollo in total balloting. Because neither candidate received more than 50 percent of the vote, a run-off election was held, and Suarez narrowly won both the precinct and absentee ballots.⁶⁷

Immediately after the November 4 election, Carollo challenged the results, claiming fraud in the absentee ballot vote that swung the election to Suarez, thus denying Carollo the majority support he received at the polls and forcing him into a run-off. A week after the election the Florida Department of Law Enforcement arrested two Suarez supporters for buying absentee ballots and falsely witnessing absentee ballots. The day after he lost the run-off election to Suarez, Carollo petitioned the Circuit Court for the Eleventh Judicial Circuit of Florida to overturn the results of the November 4 election on the grounds of voter fraud.

The trial was held in February 1998. For two and a half weeks, the trial court heard evidence and read depositions from 87 witnesses and examined 195 exhibits.⁶⁸ Its March 3 decision noted “a pattern of fraudulent, intentional and criminal conduct” in the extensive abuse of absentee ballot laws.⁶⁹ An expert documents examiner testified that 225 absentee ballots cast had forged signatures; there was evidence of 14 stolen ballots and 140 improperly witnessed ballots. Another 480 ballots were procured or witnessed by 29 “ballot brokers,” 27 of whom invoked their Fifth Amendment privilege against self-incrimination instead of testifying at trial. One such ballot broker was 92-year-old Alberto Russi, a campaign volunteer for Humberto Hernandez, a Suarez ally on the five-member City Commission. Within days of the November 4 election, Russi was arrested and charged with three counts of election fraud. Police traced Russi to the absentee ballot of a dead man whose ballot he witnessed. When police searched

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In its zeal to address the embarrassing behavior of politicians in Miami, the Republican-controlled legislature passed a law that paved the way for one of the more underreported scandals of the 2000 election in Florida.

Russi's home they seized 75 absentee ballots already filled out and intended for the November 13 run-off, many of which were addressed to Russi's home in the names of other voters. A separate grand jury, convened to investigate the fraud allegations and make recommendations for improvements in the absentee ballot process, found that absentee ballots were stolen from mailboxes, that "unscrupulous individuals" had secured ballots for people under the guise of "helping the voter," and that voters had been coerced into voting for particular candidates in return for past favors done for them.⁷⁰

At the center of what the trial court subsequently found to be "a massive, well-conceived and well-orchestrated absentee ballot voter fraud scheme" were a large number of absentee ballots—nearly 70 percent of the total—cast from Little Havana. Little Havana voters reinstated Commissioner Hernandez, the embattled Suarez ally who won reelection to the City Commission by a large majority after being removed from office by the governor following a 23-count indictment for bank fraud and money laundering.⁷¹ An expert in statistical analysis testified at trial that the large number of absentee ballots from Little Havana were a statistical "outlier," the Little Havana absentee ballot rate an "aberrant case" so unlikely that it was "literally off the [statistical probability] charts."

The trial judge, Thomas S. Wilson Jr., concluded that "the evidence shows a pattern of fraudulent, intentional and criminal conduct that resulted in such an extensive abuse of the absentee ballot laws that it can fairly be said that the intent of these laws was totally frustrated.... This scheme to defraud, literally and figuratively stole the ballot from the hands of every honest voter in the city of Miami."⁷² Judge Wilson overturned the results of the November 4 election and ordered a new election, but his remedy was overturned on appeal. The appellate court affirmed the finding of fraud but voided the remedy of a new election and remanded the case to the lower court with instructions to enter a final judgment that voided all of the absentee ballots, determining the outcome of the election by the machine total alone. This decision took victory out of Xavier Suarez's hands and gave it to Miami's new mayor, Joe Carollo.

The 1997 Miami mayor's race presents one of the most egregious cases of election fraud in recent memory. News coverage of the fraud scheme and trial was extensive and national and local leaders and residents loudly bemoaned the further tarnishing of the city's image as one steeped in political corruption. The state legislature acted quickly to pass a \$4 million election law reform package to root out voter fraud. But the law did much more than that. In its zeal to address the embarrassing behavior of politicians in Miami, the Republican-controlled legislature passed a law that paved the way for one of the more underreported scandals of the 2000 election in Florida: the massive disenfranchisement of Florida voters—most of them African American—whose names erroneously appeared on felony lists.⁷³

In May 1998 the legislature added Section 98.0975 to Title IX, Chapter 98 of Florida's statutes. Section 98.0975 required the Division of Elections in the secretary of state's office to contract with a private company to compare the central voter file with databases of persons deceased, those with felony convictions, and those adjudicated mentally incompetent and to provide lists of matching names to the division. The division was required to provide the information to the county supervisors of elections who were to undertake their own verification process on local voter registration databases. Florida was the only state in the United States to require its local election officials to verify their voter rolls using data processed by a private firm.⁷⁴

B. The 1996 Sanchez/Dornan Contest for the U.S. House of Representatives, Orange County, California

Orange County, California, is the fourth largest county in the United States, with 2.8 million people, more than one-quarter of them Latino. The 46th Congressional district is nestled in the heart of Orange County and includes centers of Latino concentration, Santa Ana, the county seat, and most of Garden Grove and Anaheim, giving the 46th district a population that is nearly two-thirds Latino. Vast

growth and demographic change, along with careful redistricting by Democrats in California's state legislature, have facilitated political change in Orange County. Orange County was once a Republican stronghold, a core constituency for the Republican party in presidential elections because it could swing California to the party. As late as 1988, voters in the 46th district gave 62 percent of their votes to George Bush. By 2000, however, a 24 percent Republican margin in presidential elections had been replaced by a 12 percent Democratic margin when Al Gore won the 46th with 54



percent, to 42 percent for George W. Bush. The advancing ability of new immigrant and Latino voters to define Orange County politics and the transformation in party dominance toward the Democrats set the stage for an explosive case of alleged voter fraud in 1996.

The contested election between the nine-term Republican incumbent Robert K. Dornan and a little-known businesswoman named Loretta Sanchez involved a blizzard of allegations of registration fraud, noncitizen and illegal immigrant voting, double voting, voting from nonresidential addresses, illegal inducements to register and vote, voter intimidation, ballot box tampering and absentee ballot fraud, all under the canopy of a bitter and protracted partisan battle that quickly bled into national politics.

One day after the November 5, 1996, election, Dornan led Sanchez by 233 votes, but 12,000 absentee and provisional ballots had yet to be counted. A week later, when

about 3,000 ballots were still left to tally, the Associated Press called the election for Sanchez, who had moved into the lead with a 929-vote margin. As the count proceeded, Dornan repeatedly raised the issue of "noncitizen" voter fraud and vowed to take his reelection fight to the floor of the House of Representatives if he lost. He added that his Republican colleagues were looking for a case to use in challenging the recently implemented National Voter Registration Act, signaling the likely entry of national political forces into the fray.⁷⁵ Dornan specifically charged that a well-known Latino rights group and the Democratic Party signed up illegal voters in a drive he argued may have led to "the first case in history where a congressional election was decided by noncitizens."⁷⁶ His lawyer later called the case "what we think is the single largest example of voter fraud in a federal election in the last 50 years, and, yes, maybe in this century."⁷⁷

On November 22, 1996, the Orange County Registrar of Voters certified Loretta Sanchez the winner by 984 votes,⁷⁸ and a 14-month battle to deny Sanchez a seat in the House was joined. State electoral and law enforcement agencies were the first to open investigations into the alleged election irregularities. Then, on December 26, 1996, Dornan filed a three-page Notice of Electoral Contest in the House of Representatives requesting an investigation of the election. This was within keeping of his prerogative and the constitutional authority of the House under Article 1, Section 5, Clause 1, which provides that each House of Congress shall be the judge of the "elections, returns and qualifications" of its members. Under the rules of the FCEA, the contest is first heard by the Committee on House Oversight, which conducts its own investigation, and then by the whole House, which disposes of the contest, by resolution or majority vote. In the 105th Congress, the eight-member committee was chaired by Rep. William M. Thomas, a Republican from Bakersfield, California, and dominated 5-to-3 by Republican members. Thomas created a three-person task force comprised of Rep. Vernon Ehlers (R-Mich.) and Rep. Robert Ney (R-Ohio), and, later, Rep. Steny Hoyer (D-Md.) to conduct the investigation and recommend a

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The Dornan-Sanchez electoral dispute fits squarely in what political scientists Benjamin Ginsberg and Martin Shefter call “politics by other means.”

course action to the full committee. Along with the Orange County D.A. and secretary of state investigations, the House committee’s investigation took a year to complete and produced, in the end, a disputed finding of fraud that was too insubstantial to convince the Republican dominated House to upset or reverse Sanchez’s victory.⁷⁹ On February 12, 1998, the House voted 378-33 to dismiss Dornan’s contest.

The Dornan-Sanchez electoral dispute fits squarely in what political scientists Benjamin Ginsberg and Martin Shefter call “politics by other means.” Politics by other means involve the use of legal strategies and the courts, revelation, prosecution and investigation, and the media to win.⁸⁰ The fraud allegations and subsequent 14-month investigations by state, county, and federal government agencies cost American taxpayers well over \$1.4 million.⁸¹ And in the end, very little voter fraud was convincingly substantiated. On April 29, 1998, California’s secretary of state announced that the people identified by the task force as illegal, noncitizen voters in the 46th congressional district election of 1996 would not be prosecuted for voter fraud, the secretary deciding that they had registered in error and not from criminal intent.⁸²

C. The 2000 Election, St. Louis, Missouri

Like most big cities, St. Louis has had its share of election fraud.⁸³ In the wake of the 2000 election, allegations of voter fraud in St. Louis were raised that included illegal registration; voting by deceased people, felons, and people whose addresses appear to be vacant lots; multiple voting; and unqualified election judges permitting unqualified voters to cast illegal ballots. All the facts are not yet in, but it appears that claims of a vast conspiracy on the part of the Democrats to undertake “a major criminal enterprise designed to defraud voters” are strongly exaggerated.⁸⁴

The St. Louis case has gained national notoriety beyond what the available evidence of voter fraud would suggest, because the partisan conflict between a senior Missouri Republican senator and a newly elected St. Louis Democratic representative underlying it has erupted in congressional hearings and other public venues, giving the story a wider national audience than it would have had otherwise. As such, the

contemporary St. Louis case is a classic case of the conflict between forces promoting expanded access to the franchise and those that would contain them.

African-American leaders became concerned that the removal of more than 30,000 names from the registration rolls to an “inactive” list in St. Louis during the summer and fall before the election would create problems at the polls on election day. State Senator William Lacy Clay Jr., a candidate for a seat in the U.S. House of Representatives, gave a speech the day before the election in which he warned that if legal voters were prohibited from voting at the polls because of inaccurate registration records, lawsuits would be brought to keep the polls open past their legal closing time of 7 p.m.⁸⁵ In fact, that is exactly what happened. Late afternoon on election day, Lacy Clay’s campaign, the Gore-Lieberman campaign, and the Missouri State Democratic Committee filed suit in St. Louis City Circuit Court to keep the polls open until 10 p.m. A sympathetic judge issued an order to extend voting hours, but the Missouri Court of Appeals overruled her. The polls in St. Louis shut down at 7:45 p.m., with only an estimated 100 votes cast after the official 7 p.m. poll closing time.

As expected, the Democrats did very well in St. Louis, a heavily Democratic city, but they also did well statewide, electing a Democrat to the U.S. Senate and as governor. Within two days of the election, U.S. Senator Bond called for a federal investigation of voting in St. Louis, hinting at a conspiracy behind the Democrats’ efforts to extend polling place hours. “What I saw and heard on Tuesday night is an outrage,” he said, adding that the St. Louis Election Board and the Democratic Party should be investigated for “orchestrat[ing] a concerted scheme to deny all Missouri voters a valid count by keeping the polls open.”⁸⁶

Postelection investigations by the newly elected Republican secretary of state, Matt Blunt, and the *St. Louis Post-Dispatch* suggest a marginal amount of voter fraud may have been committed in 2000. But most of the initial charges about criminal conspiracies and the defrauding of Missouri voters have been shown to be overblown. For example, the newly elected Republican circuit attorney, Jennifer Joyce, convened a St. Louis grand jury to investigate fraudulent voter registration cards delivered to the city board of elections on the last day of the voter regis-

tration period; three months later, the grand jury disbanded without issuing any indictments, though the case presumably is being investigated now by a federal grand jury looking into all the fraud issues. According to press reports, a third of the more than 3,000 cards under suspicion were clearly fraudulent—they appeared to be completed in the same handwriting and included at least three deceased aldermen, the deceased mother of a sitting alderman, a former deputy mayor, and a dog named Ritzy Mekler.⁸⁷ A number of these registrations, and then, upon further research, hundreds more, listed addresses that the board said were vacant lots. Bond and others jumped on this information to further fuel their fraud charges. The secretary of state's probe significantly reduced the number of vacant lot addresses to 79 voters, and subsequent investigations a year later by reporters at the *Post-Dispatch* discovered that “dozens of St. Louis voters are being wrongly accused of casting ballots from fraudulent addresses” in the 2000 election. The *Post-Dispatch* surveyed 1,000 supposedly vacant lots and found that 704 of them had buildings on them, some of them more than 50 years old.⁸⁸ Errors in the city's property records and methods for classifying vacant a multi-parcel address if only one of the parcels at the address is vacant account for the mistakes in the voter records. With no indictments in fraudulent voter registration and the problem of vacant lot addresses solved, Bond and Blunt focused on court orders permitting 1,233 people to vote. The court orders were issued by St. Louis City and St. Louis County election judges for reasons Blunt argued do not conform to Missouri law.

Most of the court orders appeared to be granted to people who acknowledged that they had failed to register by the October 11 deadline, although judges interviewed by the *St. Louis Post-Dispatch* said that they believed their court orders complied with state laws. St. Louis County judge Robert S. Cohen said that election officials first screened voters who believed they were eligible to vote but who were not on voter registration lists; voters then had to wait in long lines to have their cases reviewed by an election judge.⁸⁹ At this time, the alleged voter fraud scandal in St. Louis looks more like a case of managerial ineptitude and underfunding, and poor implementation of NVRA on the part of St. Louis and Missouri election officials.⁹⁰

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Notes

1. Juliet Eilperin, "Voter Registrations Are Probed; In S.D., Irregularities Cloud Democrats' Outreach to Indians," *The Washington Post*, October 24, 2002: A9.
2. Kevin Fagan and Mark Simon, "Election-Day Registration Loses; Opponents Said Prop. 52 Would Have Opened Door to Fraud," *San Francisco Chronicle*, November 6, 2002: A5.
3. See for example: *Voting: What Is, What Could Be*, Caltech/MIT Voting Technology Project, July 2001; Democratic Investigative Staff, House Judiciary Committee, *How to Make a Million Votes Disappear: Electoral Sleight of Hand in the 2000 Presidential Election* (U.S. Congress, House Committee on the Judiciary, August 20, 2001).
4. Dayna Cunningham, "Who Are to Be Electors? A Reflection on the History of Voter Registration in the U.S.," *Yale Law and Policy Review* 9(2) (1991): 383.
5. *Ibid.*, 384, citing Joseph P. Harris, *Election Administration in the United States* (Washington, D.C.: The Brookings Institution, 1934); Frances Fox Piven and Richard A. Cloward, *Why Americans Don't Vote and Why Politicians Want It That Way* (Boston: Beacon Press, 2000): 25-6, 91-2.
6. R. Michael Alvarez, "How Widespread is Voting Fraud," Unpublished paper, September 2002. The paper analyzes data provided by the California Secretary of State's Election Fraud Investigation Unit.
7. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), perhaps the most radical reform of U.S. immigration laws ever, makes it much easier to deport otherwise lawful noncitizens for illegal voting in federal elections (see Title II).
8. U.S. General Accounting Office, *Elections: The Scope of Congressional Authority in Election Administration*, Report to the Congress (March 2001), GAO-01-470.
9. *Ibid.*, 4-7.
10. *Ibid.*, 11.
11. Elizabeth Simson, *Justice Denied: How Felony Disenfranchisement Laws Undermine American Democracy*, Americans for Democratic Action Education Fund, March 2002.
12. One critic of the NVRA has suggested in recent testimony before the Senate Committee on Governmental Affairs that the lack of an evidentiary record of voter fraud prosecutions should not be taken as indicative of a lack of voter fraud. This assumes that only the states can pursue fraud claims in court, which is not the case. See the testimony of Deborah Phillips, founder and chair of the Voting Integrity Project, who asserts without evidence that "Prosecutors do not like election fraud cases because they take precious resources from strained budgets needed for more serious crimes." U.S. Congress, Senate Committee on Governmental Affairs, *Hearing on Election Administration Reform*, 107th Cong., 2nd sess. (May 3, 2001).
13. Section 11(b). See below for a discussion of the NVRA and fraud.
14. United States Department of Justice, Criminal Division, Public Integrity Section, *Federal Prosecution of Election Offenses*, 21.
15. *Ibid.*, 22 (underlined in original).
16. 18 U.S.C., Section 241 (1988); see also Richard Craswell, "Comments: Federal Prosecution for Local Vote Fraud Under Section 241 of the Federal Criminal Code," *University of Chicago Law Review* 43 (1976), 542-572.
17. See *United States v. Daugherty*, 952 F.2d 969, 971 (8th Cir. 1991); *United States v. Saenz*, 747 F.2d 930, 935 (5th Cir. 1984); *United States v. Canales*, 744 F.2d 413, 416 (5th Cir. 1984).
18. Prepared Remarks of Attorney General John Ashcroft, Voting Integrity Symposium, U.S. Department of Justice, Washington, D.C., October 8, 2002 (<http://www.usdoj.gov:80/ag/speeches/2002/100802ballotintegrity.htm>).
19. *Ibid.*

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20. William Walker, "Deeply Divided America Heads to the Polls," *Toronto Star*, November 5, 2002: A1.
21. Chet Brokaw, "Voting Claims Still Under Investigation," *Yankton Press and Dakotan* On the Web, December 7, 2002 (http://www.yankton.net/stories/120702/new_20021207027.shtml).
22. U.S. Congress, Committee on House Administration, *National Voter Registration Act of 1993*, 103rd Cong. 1st sess., H. Rept. 103-9 (February 2, 1993): 27. Officials in those states were concerned that the multiple registration sites required by the law would result in duplicate registrations, and that the costs of maintaining the quality of voter rolls would be prohibitive. At least six states sued to block implementation of the law. The states included California, Illinois, Louisiana, Michigan, South Carolina, and Virginia. See Jonathan E. Davis, "Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud," *Temple Political and Civil Rights Law Review* 6 (Fall 1996-Spring 1997), 117, n20.
23. U.S. Congress, Senate Committee on Governmental Affairs, *Hearing on Federal Election Practices and Procedures, Part I*, 107th Cong., 2nd sess. (May 3, 2001) (testimony of Ralph O. Neas).
24. Christopher S. "Kit" Bond, "'Motor Voter' Out of Control," *Washington Post* (June 27, 2001): A25. This case is discussed below. According to Deborah M. Phillips of the Voting Integrity Project, a national organization concerned about voter fraud, and a critic of NVRA, "the National Voter Registration Act has tied the hands of election directors to protect the rights of legitimate voters from the dilution of vote fraud." U.S. Congress, Senate Committee on Rules and Administration, *Hearing on Election Reform*, 107th Cong., 2nd sess. (March 14, 2001) (testimony of Deborah M. Phillips).
25. U.S. Congress, Senate Committee on Rules and Administration, *Hearing on Election Reform* (testimony of John Samples). At the same hearing, Todd F. Gaziano, Senior Fellow in Legal Studies and director of the Center for Legal and Judicial Studies at the Heritage Foundation, testified that "Regardless of the intent of the Motor Voter law, it has helped create the most inaccurate voting rolls in our history. Citizens are registered in multiple jurisdictions at the same time, and very few states have effective procedures to ensure that those registered even are citizens...you can almost guarantee that illegal voting may provide the margin of victory in a close contest."
26. See *The Wall Street Journal*, "Blind To Voter Fraud" (March 2, 2001): 10; "The Voter Fraud Iceberg" (March 12, 2001): 22; "Manufacturing Votes" (May 8, 2001): 26; and "Too Easy To Steal" (December 11, 2001): 18.
27. U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*, Report to Congressional Requesters (October 2001), GAO-02-3: 75.
28. Federal Elections Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1999-2000*, 22 and Table 1.
29. According to the U.S. Census Bureau, nearly one in five Americans of voting age moves annually. See Jason Schachter, "Geographical Mobility: Population Characteristics, March 1999 to March 2000," Current Population Reports, U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau (May 2001).
30. Federal Elections Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1999-2000*: 22.
31. Steve Barber *et al.*, "The Purging of Empowerment: Voter Purge Laws and the Voting Rights Act," *Harvard Civil Rights-Civil Liberties Law Review* 23 (1988): 499 and Appendix A. The other states purging for failure to vote did so on an accelerated schedule, purging registered voters after two years of inactivity or for failure to vote in a single election.
32. Those states are Alabama, Connecticut, Kentucky, Maine, Massachusetts, Missouri, Nebraska, and Texas.
33. Federal Elections Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1999-2000*, Table 3. Kentucky, Maine, and Nebraska have yet to delete any names from their inactive lists.
34. These provisions apply to voters assigned to inactive lists for failure to respond to notices asking for address confirmation, and are meant to secure the right of these voters to vote as long as they are eligible. While NVRA does not specifically require states to provide provisional ballots to voters disputing their denial to vote, the House Report on the Act recommended "it would be appropriate, and in compliance with the requirements of this Act, to require that such a person vote by some form of provisional ballot." See U.S. Congress, Committee on House Administration, *National Voter Registration Act of 1993*, 103rd Cong. 1st sess., H. Rept. 103-9 (February 2, 1993): Section 8. Moreover, a number of analyses of the 2000 elections have concluded that reforms should seek to expand the use of provisional balloting given the documented level of error in list management contributing to an estimated 3 million eligible voters being denied their right to vote. These numbers are drawn from the U.S. Census Bureau Current Population Survey's estimate that 7.4 percent of the 40 million nonvoters in 2000 did not vote due to registration problems.

35. See *ACORN v. Miller*, 129 F.3d 833 (6th Cir. 1997); *ACORN v. Edgar*, 56 F.3d 791 (7th Cir. 1995); *Voting Rights Coalition v. Wilson*, 60 F.3d 1411 (9th Cir. 1995); *Condon v. Reno*, 913 F. Supp. 946 (D.S.C. 1995); and Jonathan E. Davis, "The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud," *Temple Political & Civil Rights Law Review* 6 (1997): n20 at 119, citing Human Serve and ACORN, "Legal Obstructions to the Implementation of the National Voter Registration Act Including Constitutional Challenges: An Update," (September 1995) at 2–8.
36. U.S. Congress, Senate Committee on Governmental Affairs, *Hearing on Federal Election Practices and Procedures, Part 2*, 107th Cong., 2nd sess., (May 9, 2001) (testimony of Hans A. von Spakovsky).
37. U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*: 22.
38. *Ibid*; see also, J. Eric Oliver, "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout," *American Journal of Political Science* 40(2) (May 1996): 498–513.
39. Thirty-nine states and the District of Columbia also permit in-person absentee or early voting.
40. Poll workers are given the responsibility of counting ballots in Alabama; in Florida, New Jersey, Oklahoma, and Maryland, county election boards count absentee ballots; an array of local judges are designated to count absentee ballots in Colorado, Minnesota, Ohio, and Vermont; finally, special absentee ballot committees or boards are set up to count ballots in North Dakota, Montana, Nevada, and Texas.
41. U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*: 129.
42. Upon investigation it turned out that the vast majority of the remaining cases were cases of voter error. The secretary of state's Office sends letters to voters committing mistakes admonishing them of the rules. (E-mail correspondence to the author from Norma Buckno of the Oregon Secretary of State's Office, dated February 14, 2002. Data were compiled by Ms. Buckno.)
43. Phone interview by author with John Lindback, Elections Division, Oregon Secretary of State's Office (February 21, 2002).
44. Those states are Alaska, Alabama, Louisiana, Missouri, North Carolina, Oklahoma, and Rhode Island. An election for chief judge of the Alabama Supreme Court was recently overturned on a technical violation of the law after an 11-month court battle. A number of absentee ballots larger than the margin of victory for the presumed winner were thrown out by a federal court because they were unwitnessed. See, Lori A. Tarle, "Comment: Statutory Interpretation and the Alabama Absentee Ballot Controversy," *Cumberland Law Review* 26 (1995-1996): 197+.
45. Mark J. Fenster, "The Impact of Allowing Day of Registration Voting on Turnout in U.S. Elections from 1960 to 1992," *American Politics Quarterly*, 22(1): 84; Benjamin Highton, "Easy Registration and Voter Turnout," *Journal of Politics*, 59: 565–75; Craig Leonard Brians and Bernard Grofman, "Election Day Registration's Effect on U.S. Voter Turnout," *Social Science Quarterly* 82(1): 171–183.
46. National Conference of State Legislatures, *Voting in America: Final Report of the NCSL Elections Reform Task Force* (July 2001), <http://www.ncsl.org/programs/press/2001/electref0801.htm>.
47. U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*: 71.
48. Prepared text by Joan Growe for the panel "Election Day Registration in Practice," *Symposium on Election Day Registration*, Brennan Center for Justice, New York City, November 30, 2001.
49. R. Michael Alvarez and Stephen Ansolabehere, *Expanding the Vote: Election Day Registration in California*, Dēmos, March 2002, 22.
50. Andrew Nieland, "In Milwaukee Activists Use New Tactics to Help Boost Voter Registration, Turnout," *The Wall Street Journal Interactive Edition*, December 18, 2000, <http://interactive.wsj.com/archive/retrieve.cgi?id=SB977098086874819675.djm>. Nieland offers the following observation about EDR and fraud by Milwaukee Mayor John Norquist: "To rig any significant number of ballots would just be an unimaginable pain in the butt."
51. A series of articles in the *Milwaukee Journal Sentinel* covered the case. See David Doege, "No Evidence Found of Multiple Voting: McCann concludes students misled Marquette newspaper," <http://www.jsonline.com/news/metro/dec00/vote21122000a.asp>.
52. "Cigarette case involves 15 to 25," *Milwaukee Journal Sentinel On Line*, November 14, 2000. <http://www.jsonline.com/news/metro/nov00/smokes15111400a.asp>.

53. Interview with Mike Mahoney, assistant attorney, Milwaukee County, February 6, 2002.
54. The states are Alaska, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Missouri, South Carolina, Texas, and Virginia. See the Constitution Project, *Election Reform Briefing: Voter Identification* (April, 2002); and U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*: 188–90.
55. U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*: 189.
56. “Spotlight: Voter Identification Requirements,” *Democracy Dispatches*, Number 15 (February 15, 2002), Dēmos.
57. American Association of People With Disabilities, “Kill the Senate Election Reform Bill,” <http://www.aapd-dc.org/docs/votekill.html>.
58. “Groups Protest Senate Bill for Voter ID Checks; Say Will Make Many New Yorkers ‘Second Class Voters’” News release, the Citywide Coalition for Voter Participation, (April 3, 2002).
59. The Constitution Project, *Election Reform Briefing: Statewide Voter Registration Databases*, March 2002. See also: Demos, *An Overdue Reform: The Need for Statewide Computerized Voter Registration Systems*, February 2002.
60. Federal Election Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1995-1996, A Report to the 105th Congress*, 39–41.
61. Federal Election Commission, *Developing a Statewide Voter Registration Database: Procedures, Alternatives, and General Models*, Autumn 1997: 9.
62. The Constitution Project, *Election Reform Briefing: Statewide Voter Registration Databases*: 2.
63. Ronald Hayduk, “The Weight of History: Electoral Reform in the Progressive Era and Today,” in Ronald Hayduk and Kevin Mattson, *Democracy’s Moment: Reforming the American Political System for the 21st Century* (Lanham, MD: Rowman and Littlefield, 2002): 40–41.
64. Report and Recommendations to Improve the American Elections System, NACO and NACRAC, May 20, 2001. <http://www.naco.org/programs/infotech/elections/election.pdf>.
65. Alvarez and Ansolabehere, *Expanding the Vote: Election Day Registration in California*: 14–16.
66. The City of Miami is not to be confused with Miami-Dade County government. Approximately 365,000 people live in the City of Miami, one of 30 municipal jurisdictions within Miami-Dade County where consolidated government represents the larger “Miami” community and performs most of the functions local government.
67. Suarez received 23,598 votes or 53.2 percent to Carollo’s 20,739 votes (46.8 percent). See “Former Mayor Wins an Upset in Miami Ballot,” *The New York Times* (November 14, 1997): A30.
68. William T. McCauley, “Florida Absentee Voter Fraud: Fashioning an Appropriate Judicial Remedy,” *University of Miami Law Review* 54 (2000): 627.
69. *In re Matter of Protest of Election Returns and Absentee Ballots in the November 4, 1997, Elections for the City of Miami, Dade County, Fla., No. 97-25596 CA 09* (Fla.. Dade County Ct. March 4, 1998).
70. “‘Outright Fraud’ Found in Miami Mayoral Elections,” *The Washington Post* (February 3, 1998): A4.
71. Hernandez was eventually convicted of attempting to cover-up the election fraud scheme and sentenced to one year in jail. Governor Chiles again removed him from office.
72. Mike Clary, “Miami Without Mayor as Judge Voids Election: Voting: ‘Massive ... Fraud’ in Absentee Forms Cited; New Balloting to Take Place Within 60 Days,” *Los Angeles Times* (March 5, 1998): A11; Donald P. Baker, “New Mayoral Election is Ordered for Miami; ‘Fraud and Abuse’ Prevalent, Judge Says,” *The Washington Post* (March 5, 1998): A2.
73. Florida is one of only seven states that permanently disenfranchises persons convicted of felony crimes. Its felony disenfranchisement laws are the harshest in the country, with about one third of all disenfranchised ex-felons in the U.S. reside in Florida. Human Rights Watch and the Sentencing Project, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States* (1998), <http://www.hrw.org/reports98/vote>.
74. Greg Palast, *The Best Democracy Money Can Buy* (Sterling, Virginia: Pluto Press, 2002): 16.
75. Peter M. Warren, “Dornan Vows Appeal to House if Lead is Lost,” *Los Angeles Times*, Orange County Ed. (November 12, 1996): A1.
76. *Ibid.*
77. Dexter Filkins, Peter M. Warren, and Jean O. Pasco, “Dornan, Sanchez Square Off Before House Task Force,” *Los Angeles Times*, Orange County Edition (April 20, 1997): A1.

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78. A recount requested by Dornan reduced the final margin by five votes.
79. See: U.S. Congress, House, Committee on House Oversight, Task Force for the Contested Election in the 46th Congressional District of California, *Dismissing the Election Contest Against Loretta Sanchez: Report of the Committee on House Oversight on H.R. 355, Together with Minority Views* (February 12, 1998), H. Rept. 105-416.
80. Benjamin Ginsberg and Martin Shefter, *Politics by Other Means: Politicians, Prosecutors and the Press from Watergate to Whitewater*, Revised and Updated Edition (New York: W.W. Norton & Company, 1999): 44.
81. Cost estimates are as follows: investigation by the House Oversight Committee (\$300,000); expenditures by the INS to conduct data analysis (\$500,000); reimbursement to Dornan for costs associated with his contest (\$320,000); reimbursement to Sanchez for her defense (\$250,000). These costs do not include the expenditures by the Orange County Registrar of Voters to conduct an internal review and assist the Committee in its investigation, the Orange County District Attorney's Office for its criminal investigation of Hermandad Mexicana Nacional, or the California Secretary of State's Office for its investigation of noncitizen voting in Orange County.
82. "California Won't Prosecute Noncitizen Voters," *The Washington Post* (March 1, 1998): A19.
83. Missouri, Office of the Secretary of State, *Mandate for Reform: Election Turmoil in St. Louis, November 7, 2000*, Report by Secretary of State Matt Blunt (July 24, 2001): 39-46.
84. Carolyn Tuft, "Bond Wants Federal Investigation of Problems at City Polls; He Accuses Democrats of 'Criminal Enterprise' in Keeping Polls Open Late; Democrats Criticize Election Board," *St. Louis Post-Dispatch* (November 10, 2000): A1.
85. Jo Mannies, "Vote Fraud Charges are Hogwash, Clay Says, But Bond Stands Firm," *St. Louis Post-Dispatch* (February 21, 2001): C2.
86. See Tuft. Bond's assumption of criminal intent behind the effort to clear out what all parties agree was a chaotic situation inside many St. Louis polling places, may have a personal dimension. Speaking of his successful run for governor in Missouri in 1972, Bond said, "They [St. Louis Democrats] tried the same stunt on me. This time was one too many"—referring to his belief that St. Louis Democrats intentionally kept the polls open until midnight in 1972 to prevent his election as the youngest governor in the state's history. See Mannies (February 11, 2001). One of the lawyers for the Democrats in 2000 was Douglas Dowd, the son of Ed Dowd Sr., the man Bond defeated in 1972.
87. Carolyn Tuft, "Grand Jury Looks at Voter Registration," *St. Louis Post-Dispatch* (February 14, 2001): A1; Stephanie Simon, "National Perspective: Politics: In St. Louis, Dead Are Causing Lively Debate With Their Votes," *Los Angeles Times* (February 28, 2001): Part A1, Page 5; Christopher S. "Kit" Bond, "'Motor Voter' Out of Control," *The Washington Post* (June 27, 2001): A25.
88. Jo Mannies and Jennifer LaFleur, "City Mislabeled Dozens as Voting From Vacant Lots; Property Records Appear to be in Error, Survey Finds; Just 14 Ballots Are Found Suspect," *St. Louis Post-Dispatch* (November 5, 2001): A1. Further investigation by the *Post-Dispatch* fully debunked the vacant lot claims. According to reporter Jo Mannies, "Basically, we checked every one of the 2,000-plus props [properties] listed as vacant lots with voters, and found virtually all had houses on them—had been misclassified by the assessor's office." (E-mail correspondence with the author, February 25, 2002.)
89. St. Louis County judge Robert S. Cohen said, "This process had taken them hours and hours. Some had babies with them; some had wheelchairs; some had taken off work. We were trying to accommodate people in a long line and get them in and out. We were erring on the side of allowing people to vote. Rejecting an American citizen at the poll who appears to have engaged in no fraud ... it's a difficult thing to turn that person away and say you cannot vote, you cannot participate in the democracy today." Jo Mannies, "Secretary of State Says Local Judges Erred in Election; 1,233 People Were Improperly Allowed to Vote, Report Says," *St. Louis Post-Dispatch* (July 25, 2001): A1.
90. In one of three recent reports on voting in St. Louis, Secretary of State Blunt called the communications between local polls and the St. Louis City Board of Elections on election day 2000 "grossly inadequate." One of his recommendations for improving election administration on election day was the providing of working cell phones to local poll workers and elections judges and the installation of more telephone lines at Board of Elections headquarters so that poll workers could more easily access the inactive voter files by calling in their inquiries. On election day 2000 in St. Louis, many cell phones at the local polls had no batteries and a new telephone system at the Board of Elections malfunctioned, preventing judges from checking whether voters were listed on the inactive file. Under such circumstances, Missouri voters must get a court order to vote, a partial explanation for why so many court orders were issued. Blunt's recommendations were heeded for the March 6, 2001, municipal primary election. See Missouri, Office of the Secretary of State, *Making Every Vote Count: A Report of Secretary of State Matt Blunt to the People of Missouri* (January 29, 2001).

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U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
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Statement of Vice-Chair Rosemary E. Rodriguez Regarding
Request by Tova Wang, Co-Author of the Draft Voter Fraud and Voter
Intimidation Report for the Election Assistance Commission
April 26, 2007

On April 16, 2007, Ms. Tova Wang, formerly a contract employee of the United States Election Assistance Commission (EAC), made the following request of the EAC: “to discuss with third parties any and all aspects of her work for the EAC and to release her research and other information relating to her work for the EAC and the draft report that she submitted to the EAC.”

Today, Ms. Wang issued a public statement restating her request to the EAC, pointing out that we have not yet responded to her April 16 request. As a member of the EAC, I am compelled to comment on her request. I cannot bind the Commission, as one member, but I believe that the EAC should immediately respond to Ms. Wang’s request. I further believe that releasing Ms. Wang to discuss her work for the EAC will be a positive step as we endeavor to operate with more transparency.

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**PRELIMINARY RESEARCH PROJECT ON VOTING FRAUD AND VOTER INTIMIDATION
U.S. Election Assistance Commission's (EAC)**

Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the issues listed in the statute are the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- methods of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that EAC make research on these topics a high priority. Subsequently, the Commission contracted with two consultants (Tova Wang and Job Serebrov) to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the background research to the working group;
- convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

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Links



issues

Election Fraud

Questions and Answers

[How prevalent is voter fraud?](#)

[What best practices can states implement to combat voter fraud?](#)

[What kinds of voter suppression have occurred recently?](#)

[Are there criminal penalties?](#)

[Are they enforced?](#)

How prevalent is voter fraud?

There is very little systematic data to tell us how widespread voter fraud actually is; most evidence of individuals attempting to subvert the election system is anecdotal. For this reason, the debate surrounding voter fraud and its supposed remedy, voter identification, often gets mired in politically partisan rhetoric rather than facts.

Nonetheless, the evidence that exists suggests voter fraud at the polling place is a relatively minor problem in American elections. The historically close 2004 gubernatorial election in Washington state resulted in a long litigation that involved extensive investigation of voter fraud. Of the 1678 illegal votes uncovered in this investigation, about 1 percent were cast fraudulently, either as "double votes" or on behalf of deceased voters; the rest of the votes were improperly included in the ballot tally as a result of errors on the part of election officials. In addition, a survey produced by

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the Coalition on Homelessness and Housing and the League of Women Voters of Ohio's 88 counties showed four instances of fraudulent voting out of a total of nine million votes cast in the state's 2002 and 2004 general elections.

Sources/More Information:

[A Joint Report on Election Reform Activities](#) 
(Coalition on Homelessness and Housing in Ohio, League of Women Voters of Ohio) June 14, 2005

What best practices can states implement to combat voter fraud?

As a means of dealing with the perceived problem of voter fraud, many states are currently passing legislation requiring all voters to produce some form of identification—sometimes insisting upon government issued photo identification—when they go to vote. While these restrictive voter identification requirements can often disenfranchise eligible voters (for more on this topic see the [section on voter ID](#)) there are policies states can implement to guard against voter fraud that make the election system as a whole more secure without disenfranchising voters who lack standard forms of identification.

- **Technology:** Upgrading the linkages between local and state voter registration databases and the electronic databases of other state agencies can significantly cut down on the number of duplicate and ineligible registrations on the rolls. Providing access to these databases at the local polling places themselves (via laptop) can head off fraudulent voting at the polls as well.
 - **Enforcement:** Strengthening the prosecution of actual cases of fraud and enforcing voter fraud laws will help to deter potential fraud.
 - **Election Day Registration:** Although many people believe the myth that allowing voters to register to vote on Election Day increases voter fraud, Election Day Registration (EDR) actually can prevent fraud because it puts registration under the direct supervision of trained election officials, rather than allowing workers at the Department of Motor Vehicles and other sites to control voter registration. Studies show that states offering EDR report very few incidents of fraud, while their turnout is nearly ten points higher than average turnout in states that do not offer EDR.
 - **Absentee Ballot Security:** Many states consider absentee ballot fraud a more serious threat than polling place fraud. Some states, such as Oregon, which conducts its elections entirely by mail, have successfully implemented systems to prevent fraud. Absentee ballots cannot be forwarded, and each voter must sign an outside envelope that is later verified using a computer signature on record. The state requires ballot drop boxes, set up so voters can save on stamps by hand-delivering them, to be labeled as "official" if they have been set up by elections administrators and "unofficial" when they are set up by outside groups.
-

What kinds of voter suppression have occurred recently?

In the 2004 election there were many reports of voter suppression and intimidation, though incidents such as these have occurred throughout American history:

- **Challenges:** Making use of an obscure law allowing challenges to an individual's right to vote, the Republican Party in Ohio preemptively disputed the registrations of more than 35,000 first-time voters from predominantly Democratic and minority areas, requiring them to appear in court to defend their eligibility to vote just days before the election. The GOP also announced plans to dispatch people to polling sites to challenge registrations of pre-selected voters in person—these plans were the subject of several last-minute lawsuits. Similar challenges also occurred in a number of other states, including Florida and Wisconsin.
- **Voter Registration Suppression:** In Nevada, according to press reports, workers for a Republican funded private voter registration company that targeted registration efforts at Republicans destroyed forms filled out by Democrats. In Florida, several thousand students and other potential voters found that their party affiliations and addresses had been changed on their registration forms.
- **Deception:** In African-American neighborhoods of Milwaukee, a flier purportedly from the "Milwaukee Black Voters League" was distributed, reading,

SOME WARNINGS FOR ELECTION TIME

IF YOU'VE ALREADY VOTED IN ANY ELECTION THIS YEAR YOU CAN'T VOTE IN THE PRESIDENTIAL ELECTION.

IF YOU [OR ANYBODY IN YOUR FAMILY] HAVE EVER BEEN FOUND GUILTY OF ANYTHING, EVEN A TRAFFIC VIOLATION, YOU CAN'T VOTE IN THE PRESIDENTIAL ELECTION.

... IF YOU VIOLATE ANY OF THESE LAWS YOU CAN GET TEN YEARS IN PRISON AND YOUR CHILDREN WILL BE TAKEN AWAY FROM YOU.

Letters sent on fake NAACP letterhead warned African-American voters that they would be arrested if they tried to vote and had outstanding parking tickets or had not paid child support.

In Pennsylvania, leaflets were distributed on fake county letterhead in a mall, announcing that Republicans should vote on Tuesday, November 2, and Democrats should vote on Wednesday November 3. A similar incident occurred in Cleveland, where letters printed on fake Board of Elections letterhead warned that registrations through the Kerry campaign, America Coming Together, and the NAACP were invalid.

Sources/More Information:

Color It Wrong

Steve Carbo (Demos) December 22, 2004

Election 2004: A Report Card

Tova Wang (The Century Foundation) January 4, 2005

Voter Suppression and Intimidation 

Panel Discussion Transcript (Voting in 2004: A Report to the Nation on America's Election Process) December 7, 2004

Are there criminal penalties?

The Voting Rights Act of 1965 states that "no person [...] shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote." This legislation addresses some of the more outright forms of intimidation, but sometimes intimidation is difficult to distinguish from ordinary election-related activity. For example, in Florida, false allegations of voter fraud led to fruitless investigations that involved sending uniformed officers to the homes of African-American voters for questioning. Investigations such as these have the effect of intimidating voters, by invoking memories, especially for older African-Americans, of police persecution at the polls fifty years ago, but they do not necessarily fall under the Voting Rights Act unless it is clear that they were part of an intentional effort to intimidate voters.

Sources/More Information:

Efforts to Suppress the Vote: An Overview

Edward B. Foley and Amber Lea Gosnell (Election Law @ Moritz) September 2004

Text of Voting Rights Act of 1965

Are they enforced?

There has been a limited effort to investigate allegations of intimidation and suppression, and to prosecute the responsible parties, especially after the 2004 election, in which there were widespread reports of such tactics. However, it is likely that these laws are under-enforced, both because

they are difficult to detect or difficult to prosecute.

Sources/More Information:

Nationwide Election Incidents Database
(VoteProtect.org)

**UNDERSTANDING, DETECTING, AND PREVENTING ELECTION
FRAUD:
DOMESTIC AND INTERNATIONAL PERSPECTIVES**

Book Prospectus

July 19, 2006

R. Michael Alvarez, California Institute of Technology
Thad E. Hall, University of Utah
Susan Hyde, Yale University

There has been much discussion of fraud in elections in the popular media since the 2000 election, but social scientists have been studying this phenomenon for a very long time. Historical accounts of election fraud—and the procedural mechanisms that administrators have attempted in order to combat it—illustrate the complexity and the myriad of ways in which fraud has been perpetrated. Procedures from the Australian ballot to voter registration, things that we take for granted today, are innovations that were put into place to address election fraud concerns.

However, while there have been many popular accounts of allegations of election fraud in recent elections, there has not been sufficient and systematic study of this question from the academic and policy research communities. Despite the recent efforts by a handful of scholars (most of whom are contributors to this project), researchers and policymakers do not have any consistent place to turn for discussion of academic research on election fraud, for discussion of the methodologies of fraud detection, nor for advice on how to best prevent the occurrence of election fraud.

Our goal in this project is to provide such a resource for the academic and policymaking community, and hopefully also for the interested public. By bringing together the top researchers and policymakers in this field, we will provide in a single reference an accumulation of what the research and policy community now knows about election fraud — the incidence of election fraud, the best methodological tools for studying election fraud, and methods of fraud prevention. The contributions contained in this volume are to be presented and discussed extensively at an upcoming workshop at the University of Utah in late September 2006.

The papers in this volume examine three facets of election fraud. First, we open the book with a chapter that overviews the extant literature on election fraud, both domestically and internationally. We then continue with this theme in the first section, which examines our understanding of election fraud in specific contexts and through different measurements. In the second section, we examine specific methodological means by which election fraud can be

detected. These methods use existing data to determine when election results may be problematic. The third section of the book considers policy recommendations and considerations for making elections fair, accurate, and secure. The book will conclude with a chapter from the editors, summarizing the perspectives offered in the book, and providing an outline of research questions that should frame the next stage of research on election fraud.

Project Timeline

As noted above, the contributions to this project will be presented and discussed at a workshop in late September 2006. We will then allow the authors of each contribution approximately eight weeks to return to us edited and revised manuscripts (due at the end of November 2006). The editors anticipate that by end of January 2007 the complete manuscript will be finalized and submitted for final consideration. This would put this project on schedule for potential publication in early 2008, which will coincide with the beginning of the 2008 presidential election cycle.

Brief Book Description

INTRODUCTION: THE IMPORTANCE OF UNDERSTANDING ELECTION FRAUD

In this introduction the editors will present, briefly, the three basic themes of this project: what social scientists currently know about election fraud, what methodologies can be used to detect election fraud, and the mechanisms that can help prevent election fraud. In this introduction, the editors will provide a brief discussion of the contributions contained in the rest of the volume.

Section 1: Understanding Election Fraud

GAMZE ÇAVDAR

WHEN "IRREGULARITIES" BECOME REGULAR: ELECTION FRAUD IN IRAQ, EGYPT AND THE PALESTINIAN TERRITORIES

Although the Middle East as a region has seen a rise in the number of elections over the last decade, these elections are far from being free and fair. Both local and international NGOs have often reported fraud as a widely-experienced phenomenon in such elections. This paper examines election fraud in three Middle Eastern cases, namely Iraq, Egypt and the Palestinian territories, by discussing its manifestations, pervasiveness and significance. These cases have been selected due to their significance. In each case, the recent parliamentary elections marked turning points with actual and potential repercussions for their respective countries as well as the region. Iraq held its first parliamentary elections on December 15, 2006, after the constitution was approved in a referendum following the collapse of Saddam's regime. In Egypt, the November 2005 elections challenged the ruling National Democratic Party's overwhelming majority in the parliament, leading the Muslim Brotherhood, a banned Islamist party, to control one-fifth of the seats. In January 2006, the voters of the Palestinian territories unexpectedly brought Hamas, a political party that has been on the U.S. terrorist list, to power. Although the extent of the fraud varies from one case to another, many types of fraud have been reported by the election monitors in these cases. These include: harassment of monitors and candidate agents, intimidation of voters, incidents of violence, lack of voter secrecy inside the polling station, polling centers opening late, inaccurate voters' lists, vote-buying and multiple voting, and violation of the secrecy of the ballot.

This paper first discusses general characteristics of elections in the region, with the aim of demonstrating how the electoral systems have been engineered there. Then, it discusses various manifestations of fraud in these cases by underlining their common characteristics as well as their peculiarities. Finally, it discusses the obstacles to holding free and fair elections in all these cases. The paper argues that the election fraud in the Middle East cannot be fully understood without understanding the political and economic context within which such elections take place. Restrictions on basic human rights such as the freedoms of expression and assembly in Egypt, and ongoing violence and foreign occupation in Iraq and Palestine, illustrate the point.

PETER ORDESHOOK AND MISHA MYAGKOV

011747

THE FLOW OF VOTES IN RUSSIA: COHERENT VERSUS SUSPICIOUS PATTERNS

In our earlier research we have developed a variety of methods of looking at official election returns for detecting and measuring the extent of election irregularities (fraud) in both Russia and Ukraine. We were able to show that evidence consistent with a rigged vote exists in official election returns. But we also showed that, naturally, the strength of such evidence depends heavily on quality of the data, and, most importantly on the level of aggregation of election returns that we use. The main aggregation units in our analysis were so-called "rayons" (counties). That fairly high level of aggregation combined with strong data homogeneity requirements limited our findings to cases of mostly "massive" election fraud, which were clearly present in both latest Russian and Ukrainian presidential elections. In this paper we will report results of a much more refined application of our methods using Russian and Ukrainian election data aggregated to the level of individual polling stations.

The unique dataset analyzed here is comprised of approx 100,000 observations from Russia and 30,000 observations from Ukraine. In addition we will be able to use the time series piece of our methodology (based on ecological inference) on the refined data set. We will use the new precinct level data that should be shortly available as a result on the upcoming parliamentary elections in Ukraine.

FRED BOEHMKE AND MICHAEL ALVAREZ

CONTEMPORARY ELECTION FRAUD: A QUANTITATIVE ANALYSIS OF ELECTION FRAUD CASES IN CALIFORNIA

Studies of electoral fraud have generally consisted of demonstrating the existence and pervasiveness of fraud in various contexts based on elite interviews, voter surveys, newspaper stories or case-study analysis. Yet none of these studies has yielded data with sufficient variation across time or space to permit systematic testing of hypotheses regarding the frequency of electoral fraud. In addition, many of these studies have gone where the fraud is by intentionally studying cases or countries where fraud is considered problematic. In this paper we conduct a quantitative analysis of election fraud using data from California's 58 counties between 1994-2003. Our data consist of all electoral fraud cases filed during this period and are disaggregated by allegation and resolution. We conduct event count regressions to test hypotheses about the timing and location of fraud cases, including measures of competitiveness, ideology, economics and demographics. Our results provide evidence that fraud allegations are associated with competitiveness, ideology, race and population density. Results are similar across a variety of specific violations as well as case outcomes.

MICHAEL ALVAREZ AND THAD E. HALL

PERCEPTIONS OF ELECTION THREATS: WHAT DO VOTERS KNOW ABOUT ELECTION SECURITY AND DO THEY CARE?

Since before the 2004 presidential election, we have been conducting periodic public opinion polls to assess the perceptions of Americans about the electoral system. We have asked questions specifically about the potential problems associated with electronic voting systems in three successive surveys, and more recently, we have asked respondents about their perceptions of general security threats to the electoral process. In this paper we present data from our

surveys, providing important information on the perceptions of Americans about the security of their electoral system.

DELIA BAILEY

CAUGHT IN THE ACT: WHAT WE CAN LEARN FROM CRIMINAL ELECTION FRAUD CASES

Although fraud regularly features in academic and media discussions of election reform, there are relatively few recorded cases of large-scale vote fraud in recent U.S. history. Of course, it is difficult to know whether the lack of cases is due to the small number of perpetrators of election fraud, or to the ability of many perpetrators to avoid detection. This paper utilizes recent election fraud cases, both those highly publicized in the media, and smaller federal cases prosecuted within the 2000-2005 period, to identify commonalities and suggest avenues for further research in this area.

THAD E. HALL AND TOVA WANG

THE POLITICS OF IS: HISTORICAL RESEARCH ON VOTER IDENTIFICATION AND QUALIFICATION AT THE POLLS

In addition to using quantitative social science research methodologies to study election fraud, we can also study this issue by examining election fraud's historical and political dimensions. Specifically, we can use data on voter identification requirements to determine whether recent laws requiring voters to present identification at the polls are neutral to voting platforms—that is, they treat early, absentee, and in-precinct voters equally—in their purported attempt to combat fraud. We also examine whether historically other reforms that seek to ensure the voter is qualified have been neutral, treating all voters equally. Finally, we assess whether the current reforms are likely to result in all voters being treated equally, regardless of their voting method. This analysis can help to inform us as to whether laws and procedures are designed to address fraud or to serve other political or symbolic needs.

Section 2: Detecting Election Fraud

MICHAEL ALVAREZ & JONATHAN KATZ

DETECTING ELECTORAL FRAUD: THE CAST OF THE 2002 GENERAL ELECTION IN GEORGIA

Detecting election fraud is difficult for many reasons. Allegations of election fraud are widespread, but actual empirical evidence of election fraud is illusory. In our paper we focus on the specific case of the two statewide elections in Georgia's 2002 general election. Drawing upon a large body of social science research, which has for decades used statistical tools to study election outcomes, we undertake a variety of statistical studies of these two Georgia elections. Our analysis concludes that there is little direct evidence of fraud in these two elections, using the past history of electoral data from Georgia. Our analysis also provides a series of methodological tools that might be used in future situations where allegations of electoral fraud arise.

CHARLES H. FRANKLIN

CAN EXIT POLLS EVER DETECT VOTE FRAUD?

The exit polls were prominently used in 2004 to cast doubt on the vote count in Ohio. Regardless of the specific merits of the 2004 case, it is of interest to ask how exit polls may ever be used as checks on fraudulent vote counts, in the U.S. and elsewhere. The difficulty is that simple discrepancy between the exit polls and the official count can be due to error in either or both the polls or the counts. In this situation it is crucial that we have reliable estimates of the true variability in exit polls, their potential biases and the extent to which we can ever question a tabulated vote based on the exit polls.

In this paper I exploit archival data in which multiple exit polls are available for most of the 50 states to estimate the reliability of exit polls. This provides an independent estimate of the variability in exit poll estimates (beyond sampling theory alone), which in turn places constraints on how large fraud must be in an electoral district for the exit polls to cast credible doubt on the results. One aspect of this issue is that the exit poll need not be treated as the definitive source of evidence. It merely needs to be convincing enough to trigger a formal investigation of the vote count. Thus an exit poll need not have unattainably low variance to play a roll in the monitoring of elections. The level of variability, however, sets a limit below which exit polls will be useless as fraud alarms.

D. RODERICK KIEWIET, THAD E. HALL, R. MICHAEL ALVAREZ, AND JONATHAN N. KATZ
USING INCIDENT REPORTS TO DETECT ELECTION ANOMALIES AND IRREGULARITIES

In this paper, we present research using incident reports from election jurisdictions, and demonstrate how these incident reports can be used to study election anomalies and irregularities. Much of the analysis in this paper will focus on the May 2006 primaries in Cuyahoga County, Ohio, and incident reports from that election.

DAN KNOEPFLE
THE POWER AND RELIABILITY OF STATISTICAL TECHNIQUES FOR DETECTION OF ELECTION FRAUD

Both election error and outright fraud pose a number of significant threats to our democratic process, including the possibility of erroneous outcomes or even fixed or stolen elections. In addition, the specters of fraud and election mistakes provide a premise for partisan maneuvering, putting the power to determine close, contested elections in the hands of a small group of officials and derailing election reform legislation. Previous research on statistical detection of election abnormalities has focused on finding known errors in county-level election returns (e.g. Wand et al., 2001). Despite a number of successes in implicating areas independently known to have suffered abnormalities, the feasibility of such methods for identifying occurrences of common election anomalies has not been investigated. We analyze the ability of various statistical techniques to identify simulated errors added to real election data using Monte Carlo experiments. The experiments give estimates of the power and reliability of the methods and suggest reasonable bounds on the potential of these methods. We extend earlier technical work and give suggestions for real-world application.

WALTER MEBANE
USING BENFORD'S LAW AND RANDOMIZATION TO DETECT ELECTION FRAUD

What can we do to detect corruption in election results using only the vote totals reported in one election? Being able to test for corruption using such limited information is important if we wish to implement fully automated, routine vetting of election returns. Such tests should not depend on any substantive assumptions peculiar to the particular election at hand. For example, ideas about party loyalties, ideological commitments or the contents of the given campaigns should play no role. Not using such assumptions may help obviate controversies about whether the substantive model is correct, controversies that not only may delay reaching a conclusion about the status of the current election but also may distract attention from the core issue of whether the vote tallies are valid.

Benford's Law may serve as the foundation for such tests. I show that a kind of mixture process that generally occurs in elections produces vote counts that have second digits that satisfy Benford's Law, at least when the counts are for totals at the level of precincts. Benford's Law may also hold for higher levels of aggregation, but the usefulness of examining higher levels is questionable when the goal is to detect vote fraud. At lower levels of aggregation, in particular for machine-level vote totals, I show that Benford's Law may not hold if multiple voting machines are used at each polling place and voters are randomly assigned to voting machines. The random assignment of voters to machines may eliminate a key feature of clustering among voters that is important for producing digits that satisfy Benford's Law. If machine-level totals and other important information about how the voting machines were used are available, a randomization test can be used to check for distortions in the vote counts. I use simulation exercises to assess how sensitive the tests are to various kinds of corruption, and I apply the tests to various collections of data from recent elections.

ALBERTO SIMPSE

FRAUD TECHNOLOGY AND THE ESTIMATION OF ELECTION FRAUD

How can election fraud be detected and measured? I use a simple model to show how information about the technology of electoral corruption together with voting data can be used to estimate the extent of electoral corruption when both treatment and control observations are available. I apply this model to a cross-section of subnational-level historical data from Mexico, using observations after the electoral reforms of the 1990s as controls for the pre-reform "treatment" observations on the same units.

Section 3: Preventing Election Fraud

SUSAN HYDE

INTERNATIONAL ELECTION OBSERVATION AND FRAUD

The practice of international election observation spread rapidly throughout the world since the early 1990s, and few elections today take place without the presence of international election observers. How do international election observers influence election fraud?

One of the challenges for international election observers is that there are virtually limitless means of manipulating an election. This paper documents methods used by the leading international observer organizations to detect election fraud, including the parallel vote tabulation, voter registration audits, the expansion of long-term election observation, and coordination with domestic election observers. Each of these methodological innovations

makes it more likely that certain forms of election manipulation will be caught by international observers. By improving their abilities to detect certain forms of election fraud, international election observers have given potential election manipulators the incentive to engage in less direct and less traceable means of manipulating the election.

However, the record of elections in the past fifteen years has shown that despite all of the improvements in international election observation and the resulting increased likelihood that direct fraud will be caught, some leaders continue to engage in Election Day voting fraud. International election observers have witnessed and documented election fraud in a number of high profile elections in recent years. Can international observers also deter these more blatant forms of voting manipulation? The final portion of this paper presents evidence that international observers can deter election fraud. In some cases, the presence of foreign observers in polling stations makes it less likely that voting fraud will occur. By randomly assigning international observers throughout the country on Election Day, observers can detect election-day fraud even if it is well concealed in their presence, and can measure the degree to which they had a deterrent effect on Election Day fraud.

MICHAEL ALVAREZ, THAD E. HALL, KATHY ROGERS

ADMINISTERING ELECTIONS TO DETER FRAUD: APPLYING CHAIN OF CUSTODY PROCEDURES TO ELECTIONS

The social sciences not only provide us with methodological mechanisms for identifying fraud, but also with mechanisms for deterring fraud. In this paper, we use data from the EAC Vote Count Project to examine legal and procedural mechanisms that exist in the states for deterring fraud by promoting the maintenance of chains of custody of all critical election components. We review models of implementing such chains of custody, with special attention paid to models used in Georgia and Austin, Texas, as well as consideration given to holes that exist in current regulatory schemes in most states.

DOUG CHAPIN

PROHIBITING VOTE FRAUD AND INTIMIDATION

In addition to the social science literature on election fraud, there is also a formal legal and regulatory component to understanding and deterring fraud. This chapter complements the existing discussion in the previous chapter by providing a survey of prohibitions on vote fraud and intimidation at the federal, state, and (where appropriate) the local level. The formal practices for deterring fraud and intimidation are influenced by many factors, including a state's political and legal culture, as well as experience in elections. This chapter includes both empirical and normative considerations regarding how the law can help to mitigate and prevent fraud.

TED SELKER

ERGONOMICS, TECHNOLOGY, AND FRAUD PREVENTION

Many current and proposed technologies purport to reduce opportunities for voting fraud. But the unintended consequences for the end user's experience of "technical solutions" can themselves introduce or perpetuate opportunities for voting fraud. Fraud can occur at any stage

of a voting process from registering a bogus candidate to changing the reported count from an election. Every kind of voting fraud involves some aspect of the human experience in the electoral process. Understanding the limitations of voter's perceptual, cognitive, motor and psychological abilities can help researchers and election officials in their efforts to evaluate the opportunity, level of threat, and consequences of various kinds of voting fraud. While research on the voter's user experience is only at early stages, the research that has been done to date can shed light on better ways to understand and to prevent voting fraud.

This chapter will examine how the user experience can itself be critical in establishing the possibilities for voting fraud, and for preventing it. By understanding the ways in which voters interact with the process and technologies involved in elections, many approaches can be developed to prevent or to mitigate fraudulent registration and voting. Ballot design continues to be a source of great voter confusion, and is one area where improved design can reduce confusion and increase the odds that fraud is prevented. Also, the limitation of voter ability to verify their choices easily and accurately when they vote makes many existing vote verification systems vulnerable to fraud. The choice of personnel and their placement can greatly affect the voter's experience in a polling place, and can mitigate many forms of voting fraud. The polling place procedures, including voter check-in, instructions and ballot presentation, often present problems that can open the door for various types of fraud schemes. Access to and handling of voting machines has long been a source of voting problems and continues to be a major concern. Precinct close-down procedures are often carried out with inadequate supervision. Handling of the counting process is a typical place where procedures and supervision have been questionable.

The list of ways fraud can occur is not new; this chapter will show how perceptual, cognitive, motor and psychological evaluation of voting process and technology must be factored into any evaluation of potential fraud. Successful voting requires viewing the process as a set of user experiences that must be designed to respect the abilities of people and be done with successful checks for all human actions.

Section 4: Conclusions and Implications

In this chapter, the editors will summarize the conclusions of the project and provide some perspectives on a future research strategy. What is the current state of research on election fraud in social science? How can that research be improved? Are the existing methods sufficient, or is there a need for the development and application of new methodologies for studying election fraud? And finally, how can the social science community who studies this question best communicate their research to the election officials who are in a position to put that knowledge to use?

Brief Biographical Sketches

The Editors (in alphabetical order)

R. Michael Alvarez is professor of political science at Caltech, and has been associated with the Caltech/MIT Voting Technology project since its inception in 2000. He has written extensively on voting behavior, campaigns and elections, survey research, statistical methodology, and election administration.

Thad E. Hall is assistant professor of political science at the University of Utah. He is an expert on public administration, and has published widely on policymaking, election administration, voting technology and election reform.

Together the editors have collaborated on a number of significant projects since 2000, including a range of research papers and monographs, collaborating on foundation grant research and government contract research, and the publication of two books (*Point, Click and Vote: The Future of Internet Voting* [Brookings Institution Press, 2004] and *Paper or Vapor: The Debate Over Electronic Voting* [Princeton University Press, forthcoming]).

Contributors (in alphabetical order)

Delia Bailey is a Ph.D. candidate at the California Institute of Technology, where she studies statistical methodology. She has studied methodological issues associated with the analysis of the reliability of voting technologies and election reforms.

Fred Boehmke is an assistant professor of political science at the University of Iowa, and currently is a Robert Wood Johnston fellow at the University of Michigan. He is an expert on state politics, the initiative and referendum process, and political methodology.

Gamze Çavdar is an assistant professor of political science at Colorado State University, where she studies Middle Eastern politics.

Doug Chapin is executive director of electionline.org, and has analyzed policy developments associated with election reform and voting technology since the inception of electionline.org in the wake of the 2000 election.

Charles Franklin is professor of political science at the University of Wisconsin, and is an expert on political behavior, statistical methodology, and survey research.

Susan Hyde is an assistant professor of political science at Yale University. Her research has focused on international election monitoring, and on fraud prevention.

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Dan Knoepfle is an undergraduate student at the California Institute of Technology, where he is majoring in Biology and Economics. He has been studying election fraud and anomaly detection since his freshman year at Caltech.

Walter Mebane is a professor of Government at Cornell University, and has written many seminal studies on elections and electoral behavior; his expertise also includes political and statistical methodology.

Misha Myagkov is an associate professor of political science at the University of Oregon. He has studied elections and politics in the former Soviet Union and current Eastern European states, and is a leading figure in research literature regarding those regions of the world.

Peter Ordeshook is a professor of political science at the California Institute of Technology, and is a leading scholar of formal political theory and game theory in political science. He has published seminal studies in virtually every subfield of political science, and recently has focused research efforts on the former Soviet Union and East European politics.

Kathy Rogers is the Director of Election Administration for the State of Georgia. In 2002, she oversaw the state's transition to electronic voting statewide and the development of regulations to support this new system.

Ted Selker is an associate professor at the MIT Media and Arts Technology Laboratory, and is co-director of the Caltech/MIT Voting Technology Project. His research on voting and elections has focused on usability, election administration procedures, and the development of innovative new voting and election management technology.

Alberto Simpser is an assistant professor in political science at the University of Chicago. He has completed his dissertation on democratic accountability and electoral corruption, and will begin in the fall of 2006.

Tova Wang is the Democracy Fellow at The Century Foundation, and has been studying and writing about elections and election reform issues there since 2001, when she served on the professional staff of the National Commission on Federal Election Reform. Currently she is undertaking a study of election fraud for the United States Election Assistance Commission.



Report refutes fraud at poll sites

Updated 10/11/2006 12:32 PM ET

By Richard Wolf, USA TODAY

WASHINGTON — At a time when many states are instituting new requirements for voter registration and identification, a preliminary report to the U.S. Election Assistance Commission has found little evidence of the type of polling-place fraud those measures seek to stop.

USA TODAY obtained the report from the commission four months after it was delivered by two consultants hired to write it. The commission has not distributed it publicly.

NEW LAWS: Thousands of voters shut out | Read the preliminary report

At least 11 states have approved new rules for independent voter-registration drives or requirements that voters produce specific forms of photo ID at polling places. Several of those laws have been blocked in court, most recently in Arizona last week. The House of Representatives last month approved a photo-ID law, now pending in the Senate.

The bipartisan report by two consultants to the election commission casts doubt on the problem those laws are intended to address. "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, non-citizen voting and felon voters," the report says.

The report, prepared by Tova Wang, an elections expert at the Century Foundation think tank, and Job Serebrov, an Arkansas attorney, says most fraud occurs in the absentee ballot process, such as through coercion or forgery. Wang declined to comment on the report, and Serebrov could not be reached for comment.

Others who reviewed the report for the election commission differ on its findings. Jon Greenbaum of the liberal Lawyers' Committee for Civil Rights Under Law says it was convincing. The committee wrote to the commission Friday seeking its release.

Conservatives dispute the research and conclusions. Thor Hearne, counsel to the American Center for Voting Rights, notes that the Justice Department has sued Missouri for having ineligible voters registered, while dead people have turned up on the registration rolls in Michigan. "It is just wrong to say that this isn't a problem," he says.

That's one reason the commission decided not to officially release the report. "There was a division of opinion here," Chairman Paul DeGregorio says. "We've seen places where fraud does occur."

The consultants found little evidence of that. Barry Weinberg, former deputy chief of the voting section in the Justice Department's civil rights division, reviewed their work. "Fraud at the polling place is generally difficult to pull off," he says. "It takes a lot of planning and a lot of coordination."

Published

Best Practices for Facilitating Military & Overseas Voting (Section 242)

Human Factors (Section 243)

The EAC, in consultation with the Director of NIST, studied and assessed the areas of human factor research, including usability and human-computer/machine interaction that could be applied to voting products and system design to ensure usability and accuracy.

Guidance for Statewide Voter Registration Lists

Voluntary Voting System Guidelines

Underway

Statewide Voter Registration Lists - Technology Issues

Best Practices for Recruitment, Retention, and Training of Poll Workers

Sections 241(a) and 242(b) of HAVA direct EAC to periodically “conduct and make available to the public studies regarding... methods of recruiting, training, and improving the performance of pollworkers.” I

Best Practices for Recruitment, Retention, and Training of College Poll Workers

The overall objectives of the project are to: (1) collect information on relevant state requirements; issues and options in college poll worker and poll assistant recruitment, training, retention; and effective methods of recruiting, training, and retaining such election workers, including sample materials used in these efforts; (2) produce a user-friendly recruitment manual that includes marketing and training materials; (3) conduct a pilot program in conjunction with colleges or universities in a minimum of three election jurisdictions during the 2006 election cycle; and (4) based on the pilot programs, provide recommendations for revisions to the manual and for future activities to benefit efforts to recruit, train, and retrain college poll workers.

Election Management Guidelines

On June 29, EAC published its proposed VVSG for public comment. These guidelines augmented and updated the 2002 Voting System Standards. The first set of standards was promulgated in 1990. While there have been three editions of guidelines for voting equipment in the past 15 years, there is no companion document that covers the election administration and management aspects of the voting process. It is well known that deficiencies in procedures have just as much impact on the enfranchisement of voters and the outcome of elections as the functioning of voting machines.

For many years, the Voting Systems Board of the National Association of State Election Directors (NASSED) has called for the development of a set of election management guidelines to complement the technical standards for voting equipment. The EAC

recognized the need to create election management procedures to accompany the 2005 guidelines, and in Fiscal Year 2005 awarded a contract to develop election management guidelines.

Activities will begin by assembling a working group of experienced state and local election officials to provide subject matter expertise and to assist the project managers with the development of the guidelines. The project will focus on developing procedures related to the use of voting equipment and procedures for all other aspects of the election administration process. The election management guidelines will be available to all election officials if they wish to incorporate these procedures at the local and state levels.

Vote Counts and Recounts

Section 241(b)(13) - The major tasks associated with vote count research include: (1) review and analyze data collected on definitions of what constitutes a vote for each state by voting system; (2) draft comprehensive report that includes the data analysis and the state-by-state summary of definitions of what constitutes a vote for each voting system; and (3) review literature for methodologies used to establish best practices, and develop definitions of what shall constitute a best practice with respect to vote counts.

The major tasks associated with recount research include: (1) Review and analyze states' recount procedures; (2) draft a comprehensive report that includes the data analysis and the state-by-state summary of recount and contest procedures; and (3) develop definitions of what shall constitute a best practice with respect to recounts and contests of determinations.

After conducting the research, EAC will provide election officials throughout the country with a set of best practices for both vote counts and recounts.

Provisional Voting

Provisional voting in federal elections was created as a response to people who believed that they were registered to vote in 2000 but were turned away from the polling places because their names did not appear on the poll lists. HAVA Section 303(b) mandates that any eligible voter who appears at the polls must be given a provisional ballot if their name does not appear on the poll list. Provisional voting was not a new concept for all states, but in those jurisdictions enacting provisional voting for the first time, there was a lot of confusion surrounding the issue. Therefore, EAC awarded a contract to research the provisional voting requirements in each state, U.S. territory and the District of Columbia. EAC will then create guidance about implementing this important HAVA mandate, and make this information available to elections officials before the 2006 elections.

Voter Identification

HAVA Section 303(b) mandates that first-time voters who register by mail for a federal election provide proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the states for its implementation. In 2005, some states enacted new voter identification requirements in addition to what is required for federal elections, resulting

in many inquiries to EAC regarding the implications of these new state laws. To provide states with assistance when making decisions regarding voter identification laws, EAC is researching all of the relevant state laws and procedures relating to voter identification and produce related guidance, and make it available to elections officials before the 2006 elections.

Effective Designs for the Administration of Federal Elections

Section 302(b) of HAVA requires the appropriate state or local election official to publicly post voting information at each polling place on the day of each election for federal office. Section 241(b) of HAVA describes ballot designs for elections for federal office as one of the election administration issues to be periodically studied to promote effective administration of federal elections. Therefore, EAC awarded a contract to develop best practices regarding the design of ballots and voter information posted in the polling place on Election Day. This effort will also include assistance with the redesign of the National Voter Registration Form to make it more accessible to all voters in terms of readability and usability.

Public Access Portal Design Conference

Section 245(a) of HAVA mandates that EAC conduct a thorough study of issues and challenges presented by incorporating communications and internet technologies. Section 245(a)(2)(C) indicates that EAC may investigate the impact the new communications or internet technology systems for use in the electoral process could have on voter participation rates, voter education, and public accessibility. In addition, HAVA allows EAC to periodically study election administration issues, including methods of educating voters on all aspects of participating in elections.

One of the emerging technologies allowing voters to obtain information about voting that may affect participation rates and public accessibility is the public access portal, which is a website that disseminates voter education information. EAC conducted research to determine what information was available to voters during the last election cycle, and staff discovered that the information was duplicative, disorganized, and sometimes erroneous. Therefore, EAC will perform additional research on dissemination of information to voters, and then conduct a conference with election officials and technology experts to discuss the elements of implementing effective public access portals. EAC will then share the findings with election officials throughout the country to assist them in creating access portals that will serve their respective communities.

Language Minority Working Groups

Section 241 of HAVA allows the EAC to carry out studies and other activities with the goal of promoting effective administration of federal elections. Effective administration methods are to be the most convenient, accessible, and easy to use for voters, including voters with limited proficiency with the English language. Section 241(b) (5) and (14) directly refer to conducting studies to address issues faced by voters with limited proficiency in the English language. To meet these requirements, in August EAC convened its first Hispanic Working Group meeting to provide guidance to the agency as it focuses on research to address language barriers to voting as well as input on the

readability and usability of the National Voter Registration Form, the National Mail-In Registration form and the updated List of Translated Election Terms. After conducting an initial assessment of these issues, the Working Group will assist the EAC in developing a Best Practices document containing methods of effective administration of federal elections affecting the Hispanic and Spanish-speaking communities.

Results and findings of all EAC research projects, best practices and guidance will be available to the public by accessing EAC's National Clearinghouse at www.eac.gov.

Legal Resources Clearinghouse

Section 241(b)(13) of HAVA allows EAC to study the laws and procedures used by each state that govern: recounts of ballots cast in elections for federal office; contests of determinations regarding whether votes are counted in such elections; and standards that define what will constitute a vote on each type of voting equipment used in the state to conduct elections for federal office. Consequently, EAC has awarded a contract to develop a legal resources clearinghouse. This web-based application will house a database containing statutes, regulations and rules as well as state and federal court decisions that impact the administration of elections for federal office under HAVA and/or the National Voter Registration Act. It will provide election officials, state legislators, government officials and the general public with a central location to conduct election administration research.

To be Initiated This Year

A Study on the Effect of HAVA Voter Registration by Mail Requirements and a Study on the Use of Social Security Information in Voter Registration (Section 244)

Feasibility of Providing Free Absentee Ballot Postage (Section 246)

Legal Resources Clearinghouse

Section 241(b)(13) of HAVA allows EAC to study the laws and procedures used by each state that govern: recounts of ballots cast in elections for federal office; contests of determinations regarding whether votes are counted in such elections; and standards that define what will constitute a vote on each type of voting equipment used in the state to conduct elections for federal office. Consequently, EAC has awarded a contract to develop a legal resources clearinghouse. This web-based application will house a database containing statutes, regulations and rules as well as state and federal court decisions that impact the administration of elections for federal office under HAVA and/or the National Voter Registration Act. It will provide election officials, state legislators, government officials and the general public with a central location to conduct election administration research.

Best Practices for Recruitment, Retention, and Training of Poll Workers

Sections 241(a) and 242(b) of HAVA direct EAC to periodically “conduct and make available to the public studies regarding... methods of recruiting, training, and improving the performance of pollworkers.” In response to this mandate and to the many election officials who continue to have difficulty recruiting and retaining poll workers, the EAC awarded a contract to identify strategies to address the shortage of poll workers.

The project will include conducting research about the state rules and procedures regarding poll workers and the kinds of resources available in the states to maintain adequate number of poll workers. EAC will then produce a manual encompassing a collection of best practices in poll worker recruitment, training, and retention as well as specific steps required to implement effective poll worker programs.

Best Practices for Recruitment, Retention, and Training of College Poll Workers

Section 501 of HAVA requires EAC to develop the HAVA College Program. Further, HAVA Section 502 states that EAC shall “develop materials, sponsor seminars and workshops, engage in advertising targeted at students, make grants, and take such other actions as is considers appropriate” to implement this program.

In accordance with HAVA sections 501 and 502, EAC conducted a grant program in 2004 designed to “(1) encourage students enrolled at institutions of higher education to assist state and local governments in the administration of elections by serving as non-partisan poll workers or assistants; and (2) to encourage state and local governments to use the services of the students participating in the program.”

The 2004 Help America Vote College Program was extremely well received overall, but several issues, most notably a short implementation timeline, may have hindered the program’s success.

Consequently, in Fiscal Year 2005 EAC awarded a contract to identify and build upon aspects of this program that were successful, to identify successful methods employed in the U.S. for similar programs, and to allow for replication in as many jurisdictions as possible. This project will examine the differences among community colleges, public

institutions, and private universities. It will seek to determine if varying strategies for college poll worker recruitment are more effective at different types of educational institutions.

The overall objectives of the project are to: (1) collect information on relevant state requirements; issues and options in college poll worker and poll assistant recruitment, training, retention; and effective methods of recruiting, training, and retaining such election workers, including sample materials used in these efforts; (2) produce a user-friendly recruitment manual that includes marketing and training materials; (3) conduct a pilot program in conjunction with colleges or universities in a minimum of three election jurisdictions during the 2006 election cycle; and (4) based on the pilot programs, provide recommendations for revisions to the manual and for future activities to benefit efforts to recruit, train, and retrain college poll workers.

Vote Counts and Recounts

Section 341(b)(13) of HAVA allows EAC to study the laws and procedures used by each state that govern: recounts of ballots cast in elections for federal office; contests of determinations regarding whether votes are counted in such elections; and standards that define what will constitute a vote on each type of voting equipment used in the state to conduct elections for federal office. Consequently, in Fiscal Year 2005 EAC awarded a contract to conduct research activities to develop best practices on vote count and recount procedures.

The major tasks associated with vote count research include: (1) review and analyze data collected on definitions of what constitutes a vote for each state by voting system; (2) draft comprehensive report that includes the data analysis and the state-by-state summary of definitions of what constitutes a vote for each voting system; and (3) review literature for methodologies used to establish best practices, and develop definitions of what shall constitute a best practice with respect to vote counts.

The major tasks associated with recount research include: (1) Review and analyze states' recount procedures; (2) draft a comprehensive report that includes the data analysis and the state-by-state summary of recount and contest procedures; and (3) develop definitions of what shall constitute a best practice with respect to recounts and contests of determinations.

After conducting the research, EAC will provide election officials throughout the country with a set of best practices for both vote counts and recounts.

Voting Fraud and Voter Intimidation Project

Section 241 enumerates a number of periodic studies of election administration issues which the EAC may elect to conduct. "On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b)." Sections 241(b)(6) and (7) list the following election administration issues: nationwide statistics

and methods of identifying, deterring, and investigating voting fraud in election for federal office; and identifying, deterring, and investigating methods of voter intimidation.

Building on this reference to studies of voting fraud and voting intimidation, EAC awarded a contract to perform the following tasks: (1) identify what constitutes voting fraud and voter intimidation affecting federal elections; (2) perform background research, including federal and state-by-state administrative and case law review related to voting fraud and voter intimidation and a review of current voting fraud and voter intimidation activities taking place with key government agencies and civic and advocacy organizations; (3) identify, in consultation with EAC, and convene a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation; and (4) author a report summarizing the key findings, including suggestions for specific activities that EAC may undertake to address these topics.

Provisional Voting

Provisional voting in federal elections was created as a response to people who believed that they were registered to vote in 2000 but were turned away from the polling places because their names did not appear on the poll lists. HAVA Section 303(b) mandates that any eligible voter who appears at the polls must be given a provisional ballot if their name does not appear on the poll list. Provisional voting was not a new concept for all states, but in those jurisdictions enacting provisional voting for the first time, there was a lot of confusion surrounding the issue. Therefore, EAC awarded a contract to research the provisional voting requirements in each state, U.S. territory and the District of Columbia. EAC will then create guidance about implementing this important HAVA mandate, and make this information available to elections officials before the 2006 elections.

Voter Identification

HAVA Section 303(b) mandates that first-time voters who register by mail for a federal election provide proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the states for its implementation. In 2005, some states enacted new voter identification requirements in addition to what is required for federal elections, resulting in many inquiries to EAC regarding the implications of these new state laws. To provide states with assistance when making decisions regarding voter identification laws, EAC is researching all of the relevant state laws and procedures relating to voter identification and produce related guidance, and make it available to elections officials before the 2006 elections.

Effective Designs for the Administration of Federal Elections

Section 302(b) of HAVA requires the appropriate state or local election official to publicly post voting information at each polling place on the day of each election for federal office. Section 241(b) of HAVA describes ballot designs for elections for federal office as one of the election administration issues to be periodically studied to promote effective administration of federal elections. Therefore, EAC awarded a contract to develop best practices regarding the design of ballots and voter information posted in the

polling place on Election Day. This effort will also include assistance with the redesign of the National Voter Registration Form to make it more accessible to all voters in terms of readability and usability.

Minority Language Working Groups

Section 241 of HAVA allows the EAC to carry out studies and other activities with the goal of promoting effective administration of federal elections. Effective administration methods are to be the most convenient, accessible, and easy to use for voters, including voters with limited proficiency with the English language. Section 241(b) (5) and (14) directly refer to conducting studies to address issues faced by voters with limited proficiency in the English language. To meet these requirements, EAC convened meetings of its Hispanic Working Group and its Asian Working Group to provide guidance to the agency as it focuses on research to address language barriers to voting as well as input on the readability and usability of the National Voter Registration Form, the National Mail-In Registration form and the updated List of Translated Election Terms. After conducting an initial assessment of these issues, the Working Groups will assist the EAC in developing a Best Practices document containing methods of effective administration of federal elections affecting the Hispanic and Asian communities.

Results and findings of all EAC research projects, best practices and guidance will be available to the public by accessing EAC's National Clearinghouse at www.eac.gov.

Alaska Report

Think globally, protect the vote locally

December 7th, 2006

By Paul Rogat Loeb - Just as local cities have adopted environmental and wage laws that exceed federal standards, maybe it's time for local initiatives protecting the sanctity of the vote. We've been seeing electoral abuses and manipulations since the Bush administration took power. So we need to ensure the Democrats make national electoral protection a priority. But we can also act on a local level.

Though the Democratic surge took back the Senate and House, some ugly actions quite likely shifted several close Congressional races. The poster race for this election's abuses, appropriately, is Katherine Harris's old Congressional district in Sarasota, FL. Whether through manipulation or error, electronic voting machines in that district logged 18,000 fewer votes in this neck-and-neck congressional race than for governor or senator, and fewer than wholly uncontroversial down-ballot races like the Sarasota Public Hospital Board. Whatever the causes, these votes disappeared in a county that Democrat Christine Jennings carried by 53 percent, and would have likely allowed her to defeat Republican Vern Buchanan.

Harris's district saw more than just voting machine problems. In the Jennings/Buchanan election as in over 50 key races throughout the country, Republicans called voters again and again with automated robocalls that led with the name of the Democratic candidate, and then followed with scurrilous attacks. Because voters tend to hang up on these harassing calls as soon as they begin, or delete them from answering systems, many assumed they were coming from the Democrats, so switched their votes in anger. Volunteers all over the country heard people say they'd never vote for Democratic candidates, they were so furious at the presumed source of this harassment. As a Venice, Florida, man wrote to the Sarasota Herald Tribune, "So Christine Jennings lost by 368 votes. I think I can tell her why. She should sit at home and have the telephone ring twice a day, at lunch and dinner time, for two or three weeks, and then decide if she should vote for the person doing the calling."

In Maryland, the Democrats won, but Republicans bused in homeless men from Philadelphia to hand out fliers in black neighborhoods featuring photographs of former Congressman Kweisi Mfume and Prince Georges County executive Jack Johnson. "Ehrlich-Steele Democrats," proclaimed the flier, and announced: "These are OUR

Choices," as if Mfume and Johnson had endorsed Republican gubernatorial and senatorial candidates, Robert Ehrlich and Michael Steele. Since both Mfume and Johnson unequivocally supported their fellow Democrats, it was a blatant lie, as were the accompanying fliers headlined "Democratic Sample Ballot" with boxes checked in red promoting Ehrlich and Steele.

These weren't the only abuses. Republican-linked calls in various states gave misleading information on polling locations or told legitimate voters that they were registered in other states so would be arrested if they voted. A letter to Latino voters in Orange County, CA threatened jail to all immigrants who voted, ignoring that many were naturalized citizens. In Tucson, the Mexican American Legal Defense and Educational Fund photographed armed men attempting to prevent Hispanic voters from entering polling places. In Texas, a federal judge stopped Republican Attorney General Greg Abbott from prosecuting 13 largely elderly Democrats who took sealed absentee ballots from their friends to place in mail boxes. The abuses probably weren't on the level of 2000 or 2004, in part because of major coordinated voter protection efforts where citizens monitored the polls and had lawyers on call for instant intervention. But they were substantial enough to have probably diminished the margin of their victory.

To prevent similar future abuses, Barack Obama's Deceptive Practices and Voter Intimidation Prevention Act would make it a felony to give deliberately misleading information on the time, date or location of elections, or about voter eligibility. New Jersey Congressman and former Princeton physicist Rush Holt has offered the Voter Confidence and Increased Accessibility Act, mandating a verifiable paper trail for all election machines, requiring random audits to ensure ballots are properly counted, and banning wireless connections to make machines less vulnerable to hacking. Holt's bill had a majority of House members supporting it even before the past election, and should have an irrefutable additional argument with the meltdown of the machines in the Jennings/Buchanan race (not to mention the inability of Republicans to do comprehensive recounts in states like Virginia, where most machines lacked a paper trail). An even stronger and more secure alternative would be Dennis Kucinich's HB 6200, mandating paper ballots hand counted at the precinct level.

The Democrats need to do all they can to pass this legislation. They also need to ensure that that new state and federal voter identification laws don't disenfranchise poor and minority voters, as seems to be their frequent intent, and that abuses like the misleading robocalls carry the maximum possible penalties (which might mean outlawing robocalls of all kinds). In the process, they can hold visible hearings on the entire Republican legacy of purged voters, tossed provisional ballots, and voting machines pulled from key

Democratic districts (perhaps building on the unofficial hearings convened by incoming House Judiciary Committee chair John Conyers about pervasive Republican-linked abuses in Ohio, during the 2004 election). If the Republicans filibuster or Bush vetoes these laws, citizens need to ensure the Democrats keep pressing the issue.

But just as local minimum wage and environmental ordinances often surpass federal standards, we don't have to rely entirely on national efforts to protect the vote. Because most of the areas targeted by voter suppression attempts are urban and minority communities, Democratic mayors, county executives and governors already control many of the key jurisdictions. They just need to act on the potential power that they have.

Where useful local laws already exist, elected officials can use them to hold the perpetrators of these abuses accountable for every instance. The New Hampshire Attorney General's office already threatened the National Republican Congressional Committee with prosecution under a state law mandating \$5,000 fines for each prerecorded calls to anyone on the national do-not-call list. Activists now need to convince the state to prosecute the NRCC for the 200,000 illegal calls they made before finally stopping a suit that would potentially bankrupt the NRCC if successful. Former Bush-Cheney New England coordinator James Tobin has already been convicted for an illegal phone-jamming operation during the 2002 New Hampshire Senate campaign. Other states may be able to sue the NRCC and their allies as well. Perhaps former Congressman Mfume and County Executive Johnson could even sue the Republican creators of the leaflets that featured their picture-arguing that this reckless disregard for the truth defames their good name by implying they endorse politicians they diametrically oppose. Whether or not these suits entirely succeed, they'd keep these profoundly antidemocratic actions in the public eye.

Passing tough new local laws to protect the vote could create an immediate check against voter suppression in a situation where the Bush administration is unlikely to prosecute its own political allies. California, Connecticut, Illinois, Minnesota, and Wisconsin already have laws with strong penalties. Since the election, elected officials in Missouri, Florida, Virginia, Pennsylvania, and Wisconsin have introduced bills to protect citizens from automated robocalls. Michigan already had a robocall bill on the agenda, and some Connecticut legislators are reportedly interested in addressing this as well. Statewide same-day registration laws, like those in Idaho, Maine, Minnesota, Wisconsin, and North Dakota can also counter the possibility of politically driven voter purges or refusals to accept people's registrations, not to mention encouraging voter participation in general. If state and local voter protection laws were enacted before 2008, they could prove a major

deterrent against the kinds of abuses we've seen in the past several elections, ensuring their perpetrators could be prosecuted no matter who won at the national level.

We still need strong national laws to safeguard elections in Republican controlled states- Florida, for instance, has continued its voter purges, and instituted draconian procedures and penalties that have made it virtually impossible for groups like the League of Women Voters to even begin major registration drives. But even in these situations, local initiatives can mitigate disenfranchisement. In the most recent election, California's since-defeated Republican Secretary of State Bruce McPherson tried to reject 40% of new registrants, primarily Democratic-leaning Hispanics, by claiming they didn't match state databases. In response, the office of Los Angeles mayor Antonio Villagrosa contacted those purged, verified their information, and got almost all of them back on the rolls. Local officials in Miami, Tampa, and Orlando could have done the same to challenge Jeb Bush and Catherine Harris when they gave Bush his 2000 victory by knocking out 94,000 largely Democratic and minority voters for supposedly being disenfranchised felons-a BBC follow-up found that 90 percent of those scrubbed were legitimate voters. Officials in Cleveland and Columbus might have countered Ken Blackwell's purging of 300,000 largely Democratic voters in 2004, his pulling of voting machines from key urban neighborhoods, and his refusal to count ballots cast in the wrong precincts. Strong local laws and aggressive citizen oversight can counter electoral manipulation even while the federal executive branch remains in the hands of a party that's benefiting from its use.

Imagine if the Republicans risked jail for making misleading Robocalls into Philadelphia or Cleveland, Houston, Miami, or Albuquerque, or for telling voters they'd be arrested for voting while being behind on their rent. Imagine if they ran this risk whether or not the Feds intervened. The stronger the local laws, the more they could set a federal standard. The recent election has created a window of opportunity to help protect the vote, for now and in the future. Linking national and local protection efforts could help ensure that this actually happens.

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Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General

by

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and

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According to a recent report submitted to the New Jersey Attorney General, 63-year-old K _____ Sullivan was so determined to vote in the November 2, 2004, election that she voted in person in Cape May and then drove to Bergen – or vice versa – traveling 161 miles across the length of the state so that she could vote in person a second time.

There is something bizarre afoot here, but it probably has little to do with Ms. Sullivan. Rather, the problem is with the report – a flawed partisan document stirring up the specter of voter fraud by listing thousands of allegedly illegitimate voters. Among other things, the report 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. These lists were submitted to the Attorney General in mid-September, as exhibits to a report demanding that New Jersey counties purge their voter files based on the findings therein. The report's findings were widely publicized, in New Jersey and elsewhere.

We obtained the lists of voters submitted to the New Jersey Attorney General, as well as a copy of the New Jersey county voter registration files, and have conducted an initial investigation of the report's claims.

Our analysis shows that the lists submitted to the New Jersey Attorney General are substantially flawed, and must not be used to interfere with New Jersey citizens' right to vote.

These suspect lists were compiled by attempting to match the first name, last name, and birth date of persons on county voter registration files. Entries that supposedly "matched" other entries were apparently deemed to represent the same individual, voting twice. This methodology is similar to the method used in compiling the notoriously inaccurate Florida "purge lists" of suspected ineligible felons in 2000 and 2004. As Florida's experience shows, matching names and birthdates in the voter registration context is a tricky business, and can easily lead to false conclusions – as was almost certainly the case here.

Care and caution are required in any attempt to accurately match information in one data system with information in another, but special care must be taken when individual rights are at stake to make sure that unreliable matching results are not used to deprive individuals of their fundamental right to vote. Unfortunately, that level of care appears to be absent from the lists submitted to the Attorney General. As a result, neither these lists nor any that are compiled in a similar manner should form the basis of any decision that would impede any voter's registration status or access to the ballot.

Our review reveals several serious problems with the methodology used to compile the suspect lists that compromise the lists' practical value. For example, the data used in the report from one county appears to be particularly suspect and anomalous, and may have substantially skewed the overall results. In addition, middle initials were ignored throughout all counties, so that "J _____ A. Smith" was presumed to be the same person as "J _____ G. Smith."¹ Suffixes were also ignored, so that fathers and sons – like "B _____ Johnson" and "B _____ Johnson, Jr." – were said to be the same person.

More fundamentally, underlying many of the entries on these lists, and similar lists compiled in Florida and elsewhere, is a presumption that two records with the same name and date of birth must represent the same person. As we explain in this analysis, this presumption is not consistent with basic statistical principles. Even when votes appear to have been cast in two different cities under the same name and birth date, statistics show that voter fraud is not necessarily to blame. With 3.6 million persons who voted in the 2004 election in New Jersey, the chance that some have the same name and birth date is not far-fetched. Which is more reasonable: that there are two K _____ Sullivans born on July 5, or that one 63-year-old woman drove three hours across the state, from Cape May to Bergen, to make sure that she voted twice on Election Day?²

Individual examples like Ms. Sullivan's purported Election Day journey may seem trivial once they are caught and debunked. But the potential for harm is no laughing matter. Using flawed lists like these to purge the registration rolls would inevitably lead to disfranchisement of eligible voters and disruption at the polls when the eligible citizens arrive to vote in the next election. The voters deserve better. New Jersey should forswear use of the lists – and any list constructed with similarly flawed methods – to question the eligibility of voters of any political affiliation.

¹ The names used in this report represent actual entries in datafiles submitted to the New Jersey Attorney General. In order to understand the methodological flaws involved in the compilation of the datafiles, it is important to cite particular examples. But in order to protect individual privacy, we have reprinted only the first initial of each voter's given name. A discussion of "John A. Doe" and "John B. Doe" therefore appears in this analysis as "J _____ A. Doe" and "J _____ B. Doe." In each instance comparing one voter to another, these abbreviations ("J _____" and "J _____") represent the same first name.

² This is, obviously, a rhetorical question highlighting a methodological flaw in the report. But the question also has a real answer: a quick telephone inquiry confirmed that two different New Jersey residents named K _____ Sullivan were born on the same date; each voted separately (and quite legally) in 2004.

Background: The September 15, 2005 Report and Accompanying Lists

The following analysis documents several of the methodological flaws in the lists of voters included as exhibits to the voter fraud report submitted to the New Jersey Attorney General on September 15, 2005. The analysis is based on methodology only: we have not gained access to original documents related to registration or original pollbook records; we have only recently acquired and compiled copies of the counties' original registration datafiles, which contain some notable gaps; and the lists submitted to the Attorney General contain significant errors and little documentation, which complicates the analysis. Nonetheless, the information we have collected so far is sufficient for the purposes of generally assessing the quality of the evidence presented to support the September 15 report. Our review 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.

The suspect lists were apparently prepared by assembling and compiling voter registration files from New Jersey's counties. It is clear that these registration files were subjected to data processing to format the data uniformly, but no documentation was submitted with the files to explain how the processing was done. All that we have is the end product: several lists of New Jersey voters that allegedly reveal fraud or the potential for fraud.

Most of these lists were apparently constructed by attempting to find each citizen's registration and voting records – across counties and supplemented by external data – by matching the first name, last name, and date of birth associated with each record. For example, all registration and voting data for any “J _____ Smith” born on June 6, 1960 were apparently compiled and merged into one record, showing that such a J _____ Smith registered in one New Jersey town and voted there in 2004, and that such a J _____ Smith registered in a different New Jersey town and voted there in 2004.

The report submitted to the Attorney General analyzes these compiled records. It concludes – for example – that the J _____ Smith records above show not two “J _____ Smiths” born on the same day, but that a single individual voted twice. Indeed, the report claims, in similar fashion, that the data reveal widespread voter fraud in the 2004 general election, including approximately 4,397 individuals in New Jersey who allegedly voted twice. **These claims, however, are not supported by the evidence submitted.**