

Mr. Bradley stated that fraud and intimidation are hard to prosecute. However, Mr. Bradley made contradictory statements. When asked whether the decision to prosecute on the county level was politically motivated, he first said "no." Later, Mr. Bradley reversed himself stating the opposite.

Mr. Bradley also stated that with respect to US Attorneys, the message to them from the top is that this is not a priority. The Georgia ACLU has turned over information about violations of the Voting Rights Act that were felonies, and the US Attorney has done nothing with the information. The Department of Justice has never been very aggressive in pursuing cases of vote suppression, intimidation and fraud. But, the Georgia ACLU has not contacted Craig Donsanto in DC with information of voter fraud.

Mr. Bradley believes that voter fraud and intimidation is difficult to prove. It is very hard to collect the necessary factual evidence to make a case, and doing so is very labor-intensive.

Recommendations

In Georgia, the Secretary of State puts a lot of work into training local officials and poll workers, and much of her budget is put into that work. Increased and improved training of poll workers, including training on how to respectfully treat voters, is the most important reform that could be made.

Mr. Bradley also suggested that increased election monitoring would be helpful.

Interview with Douglas Webber, Assistant Attorney General, Indiana

February 15, 2006

Background

Mr. Webber was an attorney for the Marion County Election Board and was also part of the Indianapolis Ballot Security Team (sometimes called the Goon Squad). This Team was a group of attorneys well trained in election law whose mission was to enforce ballot security.

Litigation

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

Incidents of fraud and intimidation

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

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

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

Mr. Webber stated that the largest vote problem in Indiana is absentee ballots. Absentee ballot fraud and vote buying are the most documented cases. It used to be the law that applications for absentee ballots could be sent anywhere. In one case absentee votes were exchanged for “a job on election day”---meaning one vote for a certain price. The election was contested and the trial judge found that although there was vote fraud, the incidents of such were less than the margin of victory and so he refused to overturn the election. Mr. Webber appealed the case for the state and argued the judge used the wrong statute. The Indiana Supreme Court agreed and reversed. Several people were prosecuted as a result – those cases are still pending.

Process

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

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

Recommendations

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

Interview with Justice Evelyn Stratton, Supreme Court of Ohio

February 17, 2006

The 2004 Election

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

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

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

General Election Fraud Issues

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

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

Suggestions for Changes in Voting Procedures

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

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Interview with Tony Sirvello, Executive Director, IACREOT

April 12, 2006

Biographical

Sirvello is currently the executive director of the International Association of Clerks, Recorders, Election Officials and Treasurers, an organization of 1700 members. Formerly, he ran elections in Harris County, Texas for 29 years.

Incidents of Election Fraud

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

In 1986, it was found that there were 300 more ballots than voter signatures. It was clear that the elections officials stuffed the ballot boxes. The case was brought before a grand jury, but there was no indictment because all of the defendants were friends and relatives of each other and none would admit what had been done.

Sirvello stated that there have been isolated circumstances where a voter would show up at the poll and his name had already been signed and he had voted.

Finally, Sirvello indicated that some people who worked in Houston but did not live in Harris County were permitted to vote.

Specific Absentee Ballot/Vote By Mail Issues

Sirvello said that mail voting presents the largest problem. With mail voting there is too much opportunity to influence voters or to fraudulently request a ballot.

If one applied for an absentee ballot, their name and address was made available to candidates and political consultants who would often send people to collect the ballot. Many did not want to give up the ballot but wanted to mail it personally. The result was to discourage voting.

In Texas, a person could only apply for an absentee ballot if over 65 years of age. Parties, candidates and consultants would get the list of voters over 65 and send them a professional mail piece telling them they could vote by mail and a ballot with everything filled out except the signature. Problems ensued -- for example, voters would print their

names rather than sign them, and the ballot was rejected. In other cases, the elderly would give their absentee ballot to someone else.

If a person applied for an absentee ballot but then decided not to cast it but to vote in person, that person had to bring the non-voted absentee ballot to the poll and surrender it. If they did not they would not be permitted to vote at the polling place.

Incidents of Voter Intimidation

Sirvello only reported isolated cases of intimidation or suppression in Harris County. These mostly occurred in Presidential elections. Some people perceived intimidation when being told they were not eligible to vote under the law. Sirvello stated that the big issue in elections now is whether there should be a paper trail for touch screen voting.

Recommendations

District attorneys need to put more emphasis on election crime so people will not believe that it goes unpunished.

There should be either a national holiday for Election Day or a day should be given off of work without counting as a vacation day so that better poll workers are available and there can be more public education on election administration procedures.

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

March 1, 2006

As Commissioner Van Sickle has only been in office for about a year, Mr. Boyle answered most of our questions.

Fraud and Intimidation

Neither Van Sickle nor Boyle was aware of any fraud of any kind in the state of Pennsylvania over the last five years. They are not aware of the commission of any deceptive practices, such as flyers that intentionally misinform as to voting procedures. They also have never heard of any incidents of voter intimidation. With respect to the mayoral election of 2003, the local commission would know about that.

Since the Berks County case of 2003, where the Department of Justice found poll workers who treated Latino voters with hostility among other voting rights violations, the Secretary's office has brought together Eastern Pennsylvania election administrators and voting advocates to discuss the problems. As a result, other counties have voluntarily chosen to follow the guidance of the Berks County federal court order.

Regarding the allegations of fraud that surrounded the voter identification debate, Mr. Boyle said was not aware of any instances of fraud involving identity. He believes this is because Pennsylvania has laws in place to prevent this. For example, in 2002 the state legislature passed an ID law that is stricter than HAVA's – it requires all first time voters to present identification. In addition, the SURE System – the state's statewide voter registration database – is a great anti-fraud mechanism. The system will be in place statewide in the May 2006 election.

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

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

Process

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

Recommendations

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

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

January 13, 2006

Questions

How are Prosecution Decisions Made?

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

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

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

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

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

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

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

What Kinds of Complaints Would Routinely Override Principles of Federalism?

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

Are There Too Few Prosecutions?

DOJ can't prosecute everything.

What Should Be Done to Improve the System?

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to “fix” *McNally*, did not include voter fraud.

As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

Other Information

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

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

Cases:

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

If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.*

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought when there was a pattern or scheme to corrupt the process. Charges were not brought against individuals – those cases went un-prosecuted. This change in direction, focus, and level of aggression was by the decision of the Attorney General. The reason for the change was for deterrence purposes.

The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

Felon voters in Milwaukee.

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

Double voters in a variety of jurisdictions.

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

According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot

Interview with Douglas Webber, Assistant Indiana Attorney General

February 15, 2006

Background

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Litigation

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Incidents of fraud and intimidation

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Process

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Recommendations

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

**Interview Sharon Priest, former Secretary of State, Arkansas
January 24, 2006**

Process:

When there is an allegation of election fraud or intimidation, the county clerk refers it to the local district attorney. Most often, the DA does not pursue the claim. There is little that state administrators can do about this because in Arkansas, county clerks are partisanly elected and completely autonomous. Indeed, county clerks have total authority to determine who is an eligible voter.

Data:

There is very little data collected in Arkansas on fraud and intimidation cases. Any information there might be stays at the county level. This again is largely because the clerks have so much control and authority, and will not release information. Any statewide data that does exist might be gotten from Susie Storms from the State Board of Elections.

Most Common Problems

The perception of fraud is much greater than the actual incidence of fraud.

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

their ballots will be opened by these employees to see who they voted for, and if they voted against the county people, retribution might ensue.

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

Suggested Reforms for Improvement:

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

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

March 22, 2006

Background

Thompson is a member of the Cheyenne River Sioux tribe in South Dakota. For many years she worked locally on elections doing poll monitoring and legal work, from a nonpartisan perspective. In 2004, she headed the Native Vote Election Protection, a project run by the National Congress of American Indians, and was in charge of monitoring all Native American voting sites around the country, focusing on 10 or 15 states with the biggest Native populations. She is now permanently on staff of the National Congress of American Indians as the Director of Government relations. NCAI works jointly with NARF as well as the Election Protection Coalition.

Recent trends

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

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

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

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

Nature of Suppression/Intimidation of Native Voters

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

Structural problems

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

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

Photo ID Issues

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

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

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

Partisan Poll-Monitoring

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

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

Yet there are also many instances of purposeful abuse of poll monitoring. While there were indeed problems during the 2002 Johnson election, it was small compared to the Janklow special election. Thompson says Republican workers shunned cultural understanding outreach, and had an extensive pamphlet of what to say at polls and were very aggressive about it. In one tactic, every time a voter would come up with no ID, poll monitors would repeat "You can't vote" over and over again, causing many voters to leave. This same tactic appeared across reservations, and eventually they looked to the Secretary of State to intervene.

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

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

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

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

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

Vote Buying and Fraud

They haven't found a great deal of evidence on vote-buying and fraud. When cash is offered to register voters, individuals may abuse this, although Thompson believes this is not necessarily

unique to the Native community, but a reflection of high rates of poverty. This doesn't amount to a concerted effort at conspiracy, but instead represents isolated incidents of people not observing the rules. While Thompson believes looking into such incidents is a completely fair inquiry, she also believes it has been exploited for political purposes and to intimidate. For example, large law enforcement contingents were sent to investigate these incidents. As Native voters tend not to draw distinctions between law enforcement and other officials, this made them unlikely to help with elections.

Remedies

As far as voter suppression is concerned, Native Vote has been asking the Department of Justice to look into what might be done, and to place more emphasis on law enforcement and combating intimidation. They have been urging the Department to focus on this at least much as it is focusing on enforcement of Section 203. Native groups have complained to DOJ repeatedly and DOJ has the entire log of handwritten incident reports they have collected. Therefore, Thompson recommends more DOJ enforcement of voting rights laws with respect to intimidation. People who would seek to abuse the process need to believe a penalty will be paid for doing so. Right now, there is no recourse and DOJ does not care, so both parties do it because they can.

Certain states should rescind bars on nonpartisan poll watchers on Election Day; Thompson believes this is contrary to the nonpartisan, pro-Indian presence which would best facilitate voting in Native communities.

As discussed above, Thompson believes ID requirements are a huge impediment to native voters. At a minimum, Thompson believes all states should be explicit about accepting tribal ID on Election Day.

Liberalized absentee ballot rules would also be helpful to Native communities. As many Indian voters are disabled and elderly, live far away from their precinct, and don't have transportation, tribes encourage members to vote by absentee ballot. Yet obstacles remain. Some voters are denied a chance to vote if they have requested a ballot and then show up at the polls. Thompson believes South Dakota's practice of tossing absentee ballots if a voter shows up at the ED would serve as an effective built-in protection. In addition, she believes there should be greater scrutiny of GOTV groups requesting absentee ballots without permission. Precinct location is a longstanding issue, but Thompson recognizes that states have limited resources. In the absence of those resources, better absentee ballot procedures are needed.

Basic voter registration issues and access are also important in native communities and need to be addressed.

Thompson is mixed on what restrictions should be placed on poll watcher behavior, as she believes open elections and third party helpers are both important. However, she would be willing to explore some sort of stronger recourse and set of rules concerning poll watchers' behavior. Currently, the parties are aware that no recourse exists, and try to get away with what they will. This is not unique to a single party—both try to stay within law while shaking people up. The existing VRA provision is 'fluffy'—unless you have a consent decree, you have very

little power. Thompson thinks a general voter intimidation law that is left a bit broad but that nonetheless makes people aware of some sort of kickback could be helpful.

Interview with Jason Torchinsky, former attorney with the Civil Rights Section of the Department of Justice, assistant general counsel for the American Center for Voting Rights (ACVR) and Robin DeJarnette, political consultant for C4 and C5 organizations and executive director for the ACVR.

February 16, 2006

ACVR Generally

Other officers of the ACVR-Thor Hearne II-general counsel and Brian Lunde, former executive director of the Democratic National Committee.

Board of Directors of ACVR-Brian Lunde, Thor Hearne II, and Cameron Quinn

ACVR works with a network of attorneys around the country and has been recently involved with lobbying in PA and MO.

Regarding the August 2005 Report

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

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

Voting Problems

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

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

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

Suggestions

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

**Interview with Joe Rich, former Chief of the Voting Section,
US Department of Justice
February 7, 2006**

Background

Mr. Rich went to Yale undergraduate and received his law degree from the University of Michigan. He served as Chief of the Voting Section from 1999-2005. Prior to that he served in other leadership roles in the Civil Rights Division and litigated several civil rights cases.

Data Collection and Monitoring

The section developed a new database before the 2004 election to log complaint calls and what was done to follow up on them. They opened many investigations as a result of these complaints, including one on the long lines in Ohio (see DOJ letter on website, as well as critical commentary on the DOJ letter's analysis). DOJ found no Section 2 violation in Ohio. John Tanner should be able to give us this data. However, the database does not include complaints that were received by monitors and observers in the field.

All attorney observers in the field are required to submit reports after Election Day to the Department. These reports would give us a very good sense of the scope and type of problems that arose on that day and whether they were resolved on the spot or required further action.

The monitoring in 2004 was the biggest operation ever. Prior to 2000, only certain jurisdictions could be observed – a VRA covered jurisdiction that was certified or a jurisdiction that had been certified by a court, e.g. through a consent decree. Since that time, and especially in 2004, the Department has engaged in more informal “monitoring.” In those cases, monitors assigned to certain jurisdictions, as opposed to observers, can only watch in the polling place with permission from the jurisdiction. The Department picked locations based on whether they had been monitored in the past, there had been problems before, or there had been allegations in the past. Many problems that arose were resolved by monitors on the spot.

Processes for Cases not Resolved at the Polling Site

If the monitor or observer believes that a criminal act has taken place, he refers it to the Public Integrity Section (PIN). If it is an instance of racial intimidation, it is referred to the Civil Rights Criminal Division. However, very few such cases are prosecuted because they are very hard to prove. The statutes covering such crimes require actual violence or the threat of violence in order to make a case. As a result, most matters are referred to PIN because they operate under statutes that make these cases easier to prove. In general, there are not a high number of prosecutions for intimidation and suppression.

If the act is not criminal, it may be brought as a civil matter, but only if it violated the Voting Rights Act – in other words, only if there is a racial aspect to the case. Otherwise the only recourse is to refer it to PIN.

However, PIN tends not to focus on intimidation and suppression cases, but rather cases such as alleged noncitizen voting, etc. Public Integrity used to only go after systematic efforts to corrupt the system. Now they focus on scattered individuals, which is a questionable resource choice. Criminal prosecutors over the past 5 years have been given more resources and more leeway because of a shift in focus and policy toward noncitizens and double voting, etc.

There have been very few cases brought involving African American voters. There have been 7 Section 2 cases brought since 2001 – only one was brought on behalf of African American voters. That case was initiated under the Clinton administration. The others have included Latinos and discrimination against whites.

Types of Fraud and Intimidation Occurring

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

The biggest problem is with absentee ballots. The photo ID movement is a vote suppression strategy. This type of suppression is a bigger problem than intimidation. There has been an increase in vote suppression over the last five years, but it has been indirect, often in the way that laws are interpreted and implemented. Unequal implementation of ID requirements at the polls based on race would be a VRA violation.

The most common type of intimidation occurring is open hostility by poll workers toward minorities. It is a judgment call whether this is a crime or not – Craig Donsanto of PIN decides if it rises to a criminal matter.

Election Day challenges at the polls could be a VRA violation but such a case has never been formally pursued. Such cases are often resolved on the spot. Development of a pre-election challenge list targeted at minorities would be a VRA violation but this also has never been pursued. These are choices of current enforcement policy.

Long lines due to unequal distribution of voting machines based on race, list purges based on race and refusal to offer a provisional ballot on the basis of race would also be VRA violations.

Recommendations

Congress should pass a new law that allows the Department to bring civil actions for suppression that is NOT race based, for example, deceptive practices or wholesale challenges to voters in jurisdictions that tend to vote heavily for one party.

Given the additional resources and latitude given to the enforcement of acts such as double voting and noncitizen voting, there should be an equal commitment to enforcement of acts of intimidation and suppression cases.

There should also be increased resources dedicated to expanded monitoring efforts. This might be the best use of resources since monitors and observers act as a deterrent to fraud and intimidation.

Interview with Joe Sandler, Counsel to the DNC

February 24, 2006

Background

Sandler is an election attorney. He worked for the DNC in 1986, was in-house counsel from 1993-1998, and currently is outside counsel to the DNC and most state Democratic Parties. Sandler was part of the recount team in Florida in both 2002 and 2004. He recruited and trained attorneys in voting issues---starting in 2002 Sandler recruited in excess of 15, 000 attorneys in twenty-two states. He is now putting together a national lawyers council in each state.

2004-Administrative Incompetence v. Fraud

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

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

Sandler was asked how often names were intentionally purged from the voter lists. He responded that there will be a lot of names purged as a result of the creation of the voter lists under HAVA. However, Sandler stated most wrongful purging results from incompetence. Sandler also said there was not much intimidation at the polls because most such efforts are deterred and that the last systematic effort was in Philadelphia in 2003 where Republicans had official looking cars and people with badges and uniforms, etc.

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

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

Fraud and Intimidation Trends

Sandler stated that over the years there has been a shift from organized efforts to intimidate minority voters through voter identification requirements, improper purging, failure to properly register voters, not allocating enough voting machines, failure to properly use the provisional ballot, etc., by voter officials as well as systematic efforts by Republicans to deregister voters.

At the federal level, Sandler said, the voting division has become so politicized that it is basically useless now on intimidation claims. At the local level, Sandler does not believe politics prevents or hinders prosecution for vote fraud.

Sandler's Recommendations

Moving the voter lists to the state level is a good idea where carefully done

Provisional ballots rules should follow the law and not be over-used

No voter ID

Partisanship should be taken out of election administration, perhaps by giving that responsibility by someone other than the Secretary of State. There should at least be conflict of interest rules

Enact laws that allow private citizens to bring suit under state law

All suggestions from the DNC Ohio Report:

1. The Democratic Party must continue its efforts to monitor election law reform in all fifty states, the District of Columbia and territories.
2. States should be encouraged to codify into law all required election practices, including requirements for the adequate training of official poll workers.
3. States should adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts, to ensure adequate and nondiscriminatory access. These standards should be based on set ratios of numbers of machines and pollworkers per number of voters expected to turn out, and should be made available for public comment before being adopting.
4. States should adopt legislation to make clear and uniform the rules on voter registration.
5. The Democratic Party should monitor the processing of voter registrations by local election authorities on an ongoing basis to ensure the timely processing of registrations and changes, including both newly registered voters and voters who move within a jurisdiction or the state, and the Party should ask state Attorneys General to take action where necessary to force the timely updating of voter lists.
6. States should be urged to implement statewide voter lists in accordance with the Help America Vote Act ("HAVA"), the election reform law enacted by Congress in 2002 following the Florida debacle.
7. State and local jurisdictions should adopt clear and uniform rules on the use of, and the counting of, provisional ballots, and distribute them for public comment well in advance of each election day.

8. The Democratic Party should monitor the purging and updating of registered voter lists by local officials, and the Party should challenge, and ask state Attorneys General to challenge, unlawful purges and other improper list maintenance practices.
9. States should not adopt requirements that voters show identification at the polls, beyond those already required by federal law (requiring that identification be shown only by first time voters who did not show identification when registering.)
10. State Attorneys General and local authorities should vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.
11. Jurisdictions should be encouraged to use precinct-tabulated optical scan systems with a computer assisted device at each precinct, in preference to touchscreen ("direct recording equipment" or "DRE") machines.
12. Touchscreen (DRE) machines should not be used until a reliable voter verifiable audit feature can be uniformly incorporated into these systems. In the event of a recount, the paper or other auditable record should be considered the official record.
13. Remaining punchcard systems should be discontinued.
14. States should ask state Attorneys General to challenge unfair or discriminatory distribution of equipment and resources where necessary, and the Democratic Party should bring litigation as necessary.
15. Voting equipment vendors should be required to disclose their source code so that it can be examined by third parties. No voting machine should have wireless connections or be able to connect to the Internet.
16. Any equipment used by voters to vote or by officials to tabulate the votes should be used exclusively for that purpose. That is particularly important for tabulating/aggregating computers.
17. States should adopt "no excuse required" standards for absentee voting.

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

**Interview with John Ravitz, Executive Director, New York City Board of Elections
February 16, 2006**

Process

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

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

Incidences of Fraud and Intimidation

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

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

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

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

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

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

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

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

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

Recommendations

- Better poll worker training
- Thorough inspection of absentee ballots subsequent to the election

Interview with John Tanner, Director, Civil Rights Division, U.S. Department of Justice

February 24, 2006

Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. Mr. Tanner would not give us any information about or data from the section's election complaint in-take phone logs; data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws; and would give us only a selected few samples of attorney-observer reports, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. He would not discuss in any manner any current investigations or cases the section is involved in. He also did not believe it was his position to offer us recommendations as to how his office, elections, or the voting process might be improved.

Authority and Process

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

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

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

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

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

When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

Voter Intimidation

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

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

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

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

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

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

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

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

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for

example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands of the states will be helpful because at this higher level of government you find a higher level of professionalism.

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

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

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

Recommendations

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

Interview with Kevin Kennedy, State Elections Director, State of Wisconsin

April 11, 2006

Background

Kennedy is a nonpartisan, appointed official. He has been in this position since 1983.

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

2004 Election Incidents of Fraud

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

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

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

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

In Milwaukee, the main contention was that there were more ballots than voters. However, it was found that the 7,000 vote disparity was tied to poll worker error. The task force found that there was no concerted effort involved. Kennedy explained that there are many ways a ballot can get into a machine without a voter getting a number. These include a poll worker forgetting to give the voter one; someone does Election Day registration and fills out a registration form but does not get a number because the

transaction all takes place at one table; and in Milwaukee, 20,000 voters who registered were not put on the list in time and as a short term solution the department sent the original registration forms to the polling places to be used instead of the list to provide proof of registration. This added another element of confusion that might have led to someone not getting a voter number.

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

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

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

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

Incidents of Voter Intimidation

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

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

Reforms

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

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

Recommendations

Better trained poll workers

Ensure good security procedures for the tabulation process and more transparency in the vote counting process

Conduct post-election audits

Interview with Lori Minnite, Barnard College

February 22, 2006

Background

Ms. Minnite is an assistant professor of political science at Barnard College. She has done substantial research on voter fraud and wrote the report "Securing the Vote." Ms. Minnite also did work related to an election lawsuit. The main question that she was asked to address in the lawsuit was---did election-day registration increase the possibility of fraud?

Securing the Vote

In *Securing the Vote*, Ms. Minnite found very little evidence of voter fraud because the historical conditions giving rise to fraud have weakened over the past twenty years. She stated that for fraud to take root a conspiracy was needed with a strong local political party and a complicit voter administration system. Since parties have weakened and there has been much improvement in the administration of elections and voting technology, the conditions no longer exist for large scale incidents of polling place fraud.

Ms. Minnite concentrates on fraud committed by voters not fraud committed by voting officials. She has looked at this issue on the national level and also concentrated on analyzing certain specific states. Ms. Minnite stressed that it is important to keep clear who the perpetrators of the fraud are and where the fraud occurs because that effects what the remedy should be. Often, voters are punished for fraud committed by voting officials.

Other Fraud Issues

Ms. Minnite found no evidence that NVRA was leading to more voter fraud. She supports non-partisan election administration. Ms. Minnite has found evidence that there is absentee ballot fraud. She can't establish that there is a certain amount of absentee ballot fraud or that it is the major kind of voter fraud.

Recommendations

Assure there are accurate voter records and centralize voter databases

Reduce partisanship in electoral administration.

Interview with Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

March 7, 2006

Background

Ms. Perales is an attorney with the Mexican American Legal Defense Fund (MALDEF). MALDEF's mission is to foster sound public policies, laws and programs to safeguard the civil rights of the 40 million Latinos living in the United States and to empower the Latino community to fully participate in our society. One of the areas MALDEF works in is electoral issues, predominately centered on the Voting Rights Act. Ms. Perales did not seem to have a sense of the overall electoral issues in her working region (the southwest) effecting Hispanic voters and did not seem to want to offer her individual experiences and work activities as necessarily a perfect reflection of the challenges Hispanic voters face.

Largest Election Problems Since 2000

Santa Anna County, New Mexico-2004-intimidated voters by video taping them.

San Antonio-One African American voter subjected to a racial slur.

San Antonio-Relocated polling places at the last minute without Section 5 pre-clearance.

San Antonio-Closed polls while voters were still in line.

San Antonio-2003-only left open early voting polls in predominantly white districts.

San Antonio-2005-racially contested mayoral run-off election switched from touch screen voting to paper ballots.

Voter Fraud and Intimidation

In Texas, the counties are refusing to open their records with respect to Section 203 compliance (bilingual voting assistance), and those that did respond to MALDEF's request submitted incomplete information. Ms. Perales believes this in itself is a form of voter intimidation.

Ms. Perales said it is hard to say if the obstacles minorities confront in voting are a result of intentional acts or not because the county commission is totally incompetent. There have continuously been problems with too few ballots, causing long lines, especially in places that had historically lower turnout. There is no formula in Texas for allocating ballots – each county makes these determinations.

When there is not enough language assistance at the polls, forcing a non-English speaker to rely on a family member to vote, that can suppress voter turnout.

Ms. Perales is not aware of deceptive practices or dirty tricks targeted at the Latino community.

There have been no allegations of illegal noncitizen voting in Texas. Indeed, the sponsor of a bill that would require proof of citizenship to vote could not provide any documentation of noncitizen voting in support of the bill. The bill was defeated in part because of the racist comments of the sponsor. In Arizona, such a measure was passed. Ms. Perales was only aware of one case of noncitizen voting in Arizona, involving a man of limited mental capacity who said he was told he was allowed to register and vote. Ms. Perales believes proof of citizenship requirements discriminate against Latinos.

Recommendations

Ms. Perales feels the laws are adequate, but that her organization does not have enough staff to do the monitoring necessary. This could be done by the federal government. However, even though the Department of Justice is focusing on Section 203 cases now, they have not even begun to scratch the surface. Moreover, the choices DOJ has made with respect to where they have brought claims do not seem to be based on any systematic analysis of where the biggest problems are. This may be because the administration is so ideological and partisan.

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

Interview with Pat Rogers, private attorney

March 3, 2006

Background

In addition to his legal practice with *Modrall, Sperling, Roehl, Harris & Sisk*, Rogers also does some state-level lobbying for Verizon Wireless, GM, Dumont and other companies. His experience in election law goes back to 1988, where his first elections case was a defense against Bill Richardson, who had sued to get another candidate tossed off a ballot because of petition fraud. Since 1988, he has been involved in election cases at least once every two years.

2004 Litigation

In a case that ended before the New Mexico Supreme Court, Rogers represented the Green Party and other plaintiffs against the New Mexico Secretary of State for sending a directive telling local boards not to require ID for first time voters registering by mail. He argued that this watered-down ID check conflicted with what seemed fairly clear statutory requirements for first time voters. In 2004 these requirements were especially important due to the large presence of 3rd party organizations registering voters such as a 527 funded by Governor Richardson, ACORN, and others.

Plaintiffs were seeking a temporary restraining order requiring Secretary of State to follow the law. Yet the Supreme Court ultimately decided that, whether the directive was right or wrong, it was too late to require ID lest Bush v. Gore issues be raised.

Today, the issue is moot as the state legislature has changed the law, and the Secretary of State will no longer be in office. It seems unlikely they will send any policy directives to county clerks lest they violate due process/public notice.

Major issues in NM w/ regard to vote fraud

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

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

Registration Fraud in 2004 election

It came to light that ACORN had registered a 13 year old. The father was an APD officer and received the confirmation, but it was sent to the next door address, a vacant house.

They traced this to an ACORN employee and it was established that this employee had been registering others under 18.

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

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

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

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

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

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

Other incidents

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

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

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

Intimidation/Suppression

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

In-person polling place fraud

There have only been isolated instances of people reporting that someone had voted in their name, and Rogers doesn't believe there is any large scale conspiracy. Yet he contends that perspective misses the larger point of voter confidence. Although there has been a large public outcry for voter ID in New Mexico, it has been deflected and avoided by Democrats.

In 2004, there were more Democratic lawyers at the polls than there are lawyers in New Mexico. Rogers believes these lawyers had a positive impact because they deterred people from committing bad acts.

Counting Procedures

The Secretary of State has also taken the position that canvassing of the vote should be done in private. In NM, they have a 'county canvas' where they review and certify, after which all materials—machine tapes, etc.,—are centralized with the Secretary of State who does a final canvass for final certification. Conducting this in private is a serious issue, especially considering the margin in the 2000 presidential vote in New Mexico was only 366 votes. They wouldn't be changing machine numbers, but paper numbers are vulnerable.

On a related note, NM has adopted state procedures that will ensure their reports are slower and very late, considering the 2000 late discovery of ballots. In a close race, potential for fraud and mischief goes up astronomically in the period between poll closing and reporting. Rogers believes these changes are going to cause national embarrassment in the future.

Rogers attributes other harmful effects to what he terms the Secretary of State's incompetence and inability to discern a nonpartisan application of the law. In the 2004 election, no standards were issued for counting provisional ballots. Furthermore, the Secretary of State spent over \$1 million of HAVA money for 'voter education' in blatant self-promotional ads.

Recommendations

Rogers believes it would be unfeasible to have nonpartisan election administration and favors transparency instead. To make sure people have confidence in the election, there must be transparency in the whole process. Then you don't have the 1960 vote coming down to Illinois, or the Espanola ballot or Dona Anna County (ballots found there in the 2000 election). HAVA funds should also be restricted when you have an incompetent, partisan Secretary of State.

There should be national standards for reporting voting results so there is less opportunity for fraud in a close race. Although he is not generally an advocate of national laws, he

does agree there should be more national uniformity into how votes are counted and recorded.

Interview with Rebecca Vigil-Giron, Secretary of State, New Mexico

March 24, 2006

Background

Vigil-Giron has been Secretary of State for twelve years and was the President of the National Association of Secretaries of State in 2004. Complaints of election fraud and intimidation are filed with the SOS office. She then decides whether to refer it to the local district attorney or the attorney general. Because the complaints are few and far between, the office does not keep a log of complaints; however, they do have all of the written complaints on file in the office.

Incidents of Fraud and Intimidation

During the 2004 election, there were a couple of complaints of polling place observers telling people outside the polling place who had just voted, and then the people outside were following the voters to their cars and videotaping them. This happened in areas that are mostly second and third generation Latinos. The Secretary sent out the sheriff in one instance of this. The perpetrators moved to a different polling place. This was the only incident of fraud or intimidation Vigil-Giron was aware of in New Mexico.

There have not been many problems on Native reservations because, unlike in many other states, in New Mexico the polling place is on the reservation and is run by local Native Americans. Vigil-Giron said that it does not make sense to have non-Natives running those polls because it is necessary to have people there who can translate. Because most of the languages are unwritten, the HAVA requirement of accessibility through an audio device will be very helpful in this regard. Vigil-Giron said she was surprised to learn while testifying at the Voting Rights Act commission hearings of the lack of sensitivity to these issues and the common failure to provide assistance in language minority areas.

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

Under the bill passed in 2004, third parties are required to turn around voter registration forms very quickly between the time they get them and when they must be returned. If

they fail to return them within 48 hours of getting them, they are penalized. This, Vigil-Giron believes, is unfair. She has tried to get the Legislature to look at this issue again. Regarding allegations of vote buying in Espanola, Vigil-Giron said that the Attorney General is investigating. The problem in that area of New Mexico is that they are still using rural routes, so they have not been able to properly district. There has, as a result, been manipulation of where people vote. Now they seem to have pushed the envelope too far on this. The investigation is not just about vote buying, however. There have also been allegations of voters being denied translators as well as assistance at the polls.

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

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

Recommendations

Vigil-Giron believes that linking voter registration databases across states may be a way to see if people who are registered twice are in fact voting twice.

The key to improving the process is better trained poll workers, who are certified, and know what to look for on Election Day. These poll workers should then work with law enforcement to ensure there are no transgressions.

There should be stronger teeth in the voter fraud laws. For example, it should be more than a fourth degree felony, as is currently the case.

**EAC Voting Fraud-Voter Intimidation Preliminary Research
Nexis Articles - Wrongful Removal from Registration Lists**

City / County	State	Date	Type of Election	Alleged Instance of fraud	Original Source	Source1	Source 2	Source 3
Pulaski	Arkansas	16-Apr-04		The US Department of Justice says county officials have violated election law and proposed a consent decree with the county regarding ballot gathering and counting. The Department investigated registration practices that may have disenfranchised numerous voters, including sending voters to multiple poll sites and voters wrongly missing from the registration list. Under the agreement, the county will fix the problems in the database and DOJ lawyers will monitor polling places and the clerk's office	AP			
	Colorado	31-Oct-04	presidential	Democrats are complaining about an attempt to remove up to 6,000 convicted felons from the electoral roll, at the behest of the state's Republican secretary of state, Donetta Davidson, despite a US federal law that prohibits eliminating a voter's rights within 90 days of an election to give time for the voter to protest.	The Observer			
	Florida	29-Sep-04	presidential	Secretary of State Hood tried to revive the discredited 2000 statewide purge list of suspected felons and ex-felons for 2004. That list disproportionately removed black voters from the rolls. The state tried to keep the list secret until forced to release it by court order. When it was released, it was found to contain a disproportionate number of black voters, including 2,000 who had had their rights restored and included several people who could show they had not criminal record at all. In addition, the list of 48,000 contained only 61 Hispanic names, way out of line with the strength of both the general Hispanic population and prison population. Hood was forced to drop the list	The Independent (UK)			
Newark	New Jersey	2-Nov-04	presidential	More than 200 voters sought court orders because they were turned away from a polling place, mostly because their names were not on voter lists. In 95% of the cases the judges ruled they could cast ballots.	AP			
Albany	New York	2-Nov-04	presidential	Students at SUNY Albany found their names no longer on the voter registration rolls, even though they had voted at the same location in the past	AP			

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EAC Voting Fraud-Voter Intimidation Preliminary Research
Nexis Articles - Wrongful Removal from Registration Lists

Resolution of Incident / allegation	Source of Resolution 1	Source of Resolution 2

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EAC Voting Fraud-Voter Intimidation Preliminary Research
 Nexis Articles - Deceptive Practices

City/County	State	Date	Type of Election	Alleged/Instance of fraud	Original Source	Source 1	Source 2	Source 3	Resolution of Incident / allegation	Source of Resolution 1	Source of Resolution 2
Phoenix	Arizona	11-Dec-04	presidential	A Phoenix resident, a registered Democrat, says he received a call three days before the election that he was supposed to cast a ballot across town, 30 miles away, which was wrong. Legal experts believe thousands of other Arizonans received similar calls and are investigating whether the state Republican Party was the source. The Republican Party denies it.	Arizona Republic						
Tucson	Arizona	11-Dec-04	presidential	A voter found a message on her voting machine telling him to go to the wrong polling place. Using the "last number" dial back feature she got the local Republican headquarters.	Arizona Republic						
Jefferson	Colorado	24-Oct-04	presidential	Voters in Jefferson County have received calls from someone posing as an election official and instructing them to throw away their absentee ballots.	Denver Post						
	Florida	19-Jul-04		Election administrators post signs saying "Photo and Signature Identification Required" when those without such ID may vote by affidavit ballot	St Petersburg Times						
	Florida	31-Oct-04	presidential	Rumors have been circulated that people can't vote if they have outstanding child-support statements	New York Post						
Volusia	Florida	2-Nov-04	presidential	The Chair of the Election Assistance Commission was given a flyer distributed in a black neighborhood directing voters to the wrong address for polling stations, giving the contact information for the local NAACP	The New York Sun						
	Florida	3-Nov-04	presidential	From throughout the state, election officials said there were reports of voters receiving phone calls incorrectly telling them their polling places had been moved, or that they weren't allowed to vote. In Osceola County, voting-rights attorney Fatimah Gilliam said some voters received automated phone calls saying that their polling place was closed. The precinct, at the Robert Guevara Community Center in Buenaventura Lakes, is located in a predominantly Hispanic and highly Democratic neighborhood. In rural Lafayette County, Election Supervisor Lana B. Morgan said some voters reported people going door-to-door to tell them they needed to go to another county to vote -- information that Morgan said was both wrong and dangerous.	Orlando Sentinel						

EAC Voting Fraud-Voter Intimidation Preliminary Research
 Nexis Articles - Deceptive Practices

	Florida	17-Nov-04	presidential	DNC Chair says phone calls were received by Democratic Party-aligned voters in Florida telling them to send their absentee ballots in only after Election Day was over.	Ethnic Newswatch							
	Florida	11-Dec-04	presidential	Some voters reported they were told they could vote by phone	Arizona Republic							
New Orleans	Louisiana	12-Dec-02	US Senate	The Landrieu campaign said a pamphlet was circulated in New Orleans public housing complexes just before the runoff. The document said: "Vote!!! Bad Weather? No problem!!! If the weather is uncomfortable on election day (Saturday December 7th) Remember you can wait and cast your ballot on Tuesday December 10th." Anyone who waited past Saturday, however, missed the chance to vote.	Times-Picayune							
Baltimore	Maryland	4-Nov-02	gubernatorial	Democrats produced fliers they said was circulating in some neighborhoods that reminded people to vote on Wednesday -- the day after election day -- and advised them to pay any parking tickets and overdue rent before they could vote	Washington Post							
Ann Arbor	Michigan	2-Nov-04	presidential	The Secretary of State had to put out a statement about where to send absentee ballots after voters in Ann Arbor received calls telling them to mail the ballots to the wrong address	AP							
Clark	Nevada	2-Nov-04	presidential	15-20 Democrats received calls claiming to be from the Board of Elections in which voters were told their poll site had moved. One woman contacted the party Monday and said a group of people visited her home over the weekend and told her that if she filled out her sample ballot, they would deliver it to the election division and save her a trip to the polls today. Hispanic residents have complained of phone calls from Republican representatives who said they can register their vote over the phone. Nevada Democratic Party spokesman Jon Summers said.	Las Vegas Review Journal							
Passaic	New Jersey	4-Dec-01	sheriff	Federal monitor reports that voters in Passaic City and Patterson received phone calls reminding them, falsely, that they would need identification such as a drivers license to vote. He said it seemed aimed at minority voters.	The Record							
	New Mexico	25-Oct-04	presidential	In a mass mailing, the Republican National Committee is citing Hispanic voter registration campaigns in New Mexico as proof that "Democrats...will cheat in order to win."	Washington Post							

EAC Voting Fraud-Voter Intimidation Preliminary Research
 Nexis Articles - Deceptive Practices

	Ohio	26-Oct-04	presidential	<p>In Ohio, within little more than a week, the Board of Elections in Cuyahoga County received complaints of voters being contacted by people they said claimed to be from the election board: One Cleveland woman said her mother got a call from such a man telling her, falsely, that the location of her polling station had changed. Another woman said two men posing as election officials knocked on her door and said they had come to pick up her absentee ballot.</p> <p>An elderly woman in a suburban senior center complained about a call telling her the Nov. 2 election had been postponed until Nov. 3.</p> <p>The deputy director of the Board of Elections in Franklin County, which includes the capital Columbus, said his office was getting similar calls. At first they were "sporadic," he said, but now there are "a lot of them."</p>	Los Angeles Times						
	Ohio	28-Oct-04	presidential	<p>State officials say people have been impersonating party and elections officials on the phone directing people to go to the wrong polling place or to vote November 3. Tricks appeared targeted at African Americans, senior citizens and new voters. Democrats say Republican plans to engage in mass challenges is an effort to deny minorities access to the polls.</p>	UPI						
Lake County	Ohio	29-Oct-04	presidential	<p>A memo with a Lake County Board of Elections letterhead tells residents not to vote if registered by certain Democratic or progressive groups. Many voters received an "urgent advisory" claiming voters registered by the NAACP, the Democratic presidential campaign, their local congressional campaign, or America Coming Together are not eligible to vote</p>	Cleveland Plain Dealer						
	Ohio	31-Oct-04	presidential	<p>In Franklin, both Democrats and Republicans have been receiving phone calls from phony Board of Elections workers telling them that their polling places have been changed. A Republican spokesman say that Ohio Republicans have received calls telling them their absentee ballots will be picked up by election workers, which is illegal. In West Dayton, Democrats received calls reminding them to vote on November 5, three days after the election.</p>	New York Post						
Cleveland	Ohio	3-Nov-04	presidential	<p>In a suburb of Cleveland, some voters reported being told that "if they went in to vote and had any traffic violations, they would be arrested or fined," said Chellie Pingree, president of Common Cause.</p>	Chicago Tribune						

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EAC Voting Fraud-Voter Intimidation Preliminary Research
 Nexis Articles - Deceptive Practices

	Oregon	10-Nov-04	presidential	There are more than a dozen allegations of that would-be voters's registration cards were destroyed, altered or thrown away by canvassers. The cases are under investigation by the AG.	AP							
Philadelphia	Pennsylvania	25-Oct-04	presidential	An official said at a meeting of the city election board that he had received calls from about 30 longtime voters who said that they had received calls from someone telling them not to bother going to the polls because their registrations had expired. They had not.	Philadelphia Inquirer							
Allegheny	Pennsylvania	28-Oct-04	presidential	At the Ross Park Mall people are distributing leaflets printed on bogus, but official-looking, county stationery telling Republicans to vote Tuesday, Nov. 2, and Democrats to wait a day. The election will be over on Nov. 3. The fliers have succeeded in spreading confusion, and county officials spent parts of Wednesday fielding phone calls from residents. Officials say the fliers also turned up in mailboxes of homes in the North Hills. The letter reads in part: "Due to the immense voter turnout that is expected on Tuesday November 2 the state of Pennsylvania has requested and extended the voting period ... Voters will be able to vote on both November 2 and November 3." The letter is signed by "Anne Ryan," and a phone number on the flier rings in Tampa, Fla. Workers there reached by telephone denied any knowledge of the flier. Police are investigating.	Pittsburgh Tribune Review							
Westmoreland	Pennsylvania	3-Nov-04	presidential	Lawyers working for the Election Protection program got a call that in Westmoreland a radio station told listeners that people who had outstanding warrants against them would not be allowed to vote.	The New York Times							
	Pennsylvania	3-Nov-04	presidential	Dorm residents at Temple University and the University of Pennsylvania reported that a doctored version of an Associated Press news article left the impression that out-of-state students voting in Pennsylvania could be forced to repay state grants because of a residency controversy. It was unclear which group was orchestrating the false information, but both of the targeted universities are in heavily Democratic areas.	Knight-Ridder							
Columbia	South Carolina	1-Nov-04	presidential	Election Protection reports on a faked letter using NAACP letterhead that claims that those with an outstanding parking ticket or unpaid child support will be arrested if they vote.	Cox News Service							

EAC Voting Fraud-Voter Intimidation Preliminary Research

Nexis Articles - Deceptive Practices

	South Carolina	2-Nov-04	presidential	AP reported on a letter that falsely purported to be from the South Carolina NAACP to black voters, saying they couldn't vote if they owed more than \$50 in parking tickets	The New York Sun							
	South Carolina	3-Nov-04	presidential	A leaflet claiming to be issued by the NAACP warned residents that if they had outstanding traffic violations or had not submitted credit reports one week prior to the election, they would be barred from voting and could be arrested.	The New York Times							
	Virginia	31-Oct-04	presidential	Rumors have been circulated that police are setting up sting operations at polls to find any voters who are also on the outstanding warrants list.	New York Post							
Fredericksburg	Virginia	9-Nov-05	gubernatorial	Elections registrars receive many complaints of voters getting phone calls telling them falsely that their polling precinct had changed.	Free Lance Star							
Richmond	Virginia	9-Nov-05	gubernatorial	Residents report door-hangers with false precinct information on them	Free Lance Star							
Milwaukee	Wisconsin	31-Oct-04	presidential	In Wisconsin, a flier is circulating in Milwaukee's black neighborhoods that purports to be from the "Milwaukee Black Voters League." "If you've already voted in any election this year, you can't vote in the presidential election," the flier reads. "If you violate any of these laws, you can get ten years in prison and your children will get taken away from you."	Washington Post							
Madison	Wisconsin	27-Oct-05	presidential	Republicans ask the US attorney to investigate a letter a voter received claiming to be from the Republican National Committee and urging a vote for John Kerry	AP							

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Summary of South Dakota Election Irregularities in 2002 and 2004

2002

In fall 2002, one of South Dakota's Senators, Democrat Tim Johnson, was up for re-election, and was engaged in a very close race with his Republican challenger, John Thune. Both parties were engaged in a massive voter registration effort, and registered over 24,000 new voters in the five months between the June primary and the November election, increasing the number of registered voters in the state from around 452,000 to 476,000.¹

A month before the election, several counties reported irregularities in some of the voter registration documents they'd received. In response to these reports, South Dakota Attorney General, Mark Barnett, with the state US Attorney and the FBI, launched an investigation.² Because of the importance of the race in determining the partisan balance of power in the Senate, the voter registration discrepancies got a good deal of national press, including a number of editorials accusing American Indians of stuffing ballot boxes.³ The following allegations were also picked up by out-of-state newssources, including Fox News and the Wall Street Journal:

- Supporters of Thune, who lost the election by 524 votes, collected 47 affidavits from poll watchers claiming voting irregularities.
- Allegations were made that three individuals were offered money by Johnson supporters to vote.

Barnett, who was alerted to the affidavits when he read an early media report that referred to them, stated that these allegations were either false or didn't warrant concern. "Most of the stuff that's in those other 47 affidavits are the kind of problems that we see in every election. People parking too close to the polling place with a sign in their window, people shooting their mouths off at the polling place. The kind of things that local election officials generally do a pretty good job of policing."⁴ The allegations of voter bribery were false.

Though most of the allegations of fraud that were filed turned out to be false, Attorney General Barnett's investigation did uncover two cases of voter registration fraud:

- The most high-profile case was that of Becky Red Earth-Villeda. Ms. Red Earth-Villeda was hired by the state Democratic party to register voters on the American Indian reservations. She was charged with 19 counts of forgery. No fraudulent voting was associated with Ms. Red Earth-Villeda, nor was there any evidence

¹ Kafka, Joe. "More people registered to vote." *Associated Press State and Local Wire*. October 29, 2002.

² Kafka, Joe. "Voter registration fraud being investigated." *Associated Press State and Local Wire*. October 11, 2002.

³ "Barnett: No evidence that fraud affected vote." *Associated Press State and Local Wire*. Sioux Falls, South Dakota. November 21, 2002.

⁴ Kafka, Joe. "Woman charged in voter-fraud case, other claims false." *Associated Press State and Local Wire*. Pierre, South Dakota. December 14, 2002.

that fraudulent voting occurred in the state.⁵ All charges were dropped in January 2004, when, in court, it was determined by the state handwriting specialist that Ms. Red Earth-Villeda had not forged the signatures.⁶

- Lyle Nichols. Mr. Nichols was arrested for submitting five forged voter registration cards to his county office. He was working for an organization called the Native American Voter Registration Project, and was paid \$3 for each registration. The five charges were dropped after Mr. Nichols pleaded guilty to possession of a forgery, and was sentenced with 54 days in jail, which is how much time he'd already spent there because of the charges.⁷

2004

In October 2004, just before the general election, eight people working for a campus GOP Get-out-the-Vote organization resigned their positions after they were accused of submitting absentee ballot requests that had not been notarized properly. Because many of these ballot requests had already been processed and the ballots themselves had been cast, county auditors decided not to pursue the issue.⁸

Besides this incident, there were no reports of voter registration or voting irregularities in the run-up to the November 2004 election, as there were in 2002.⁹ However, as with the primary and special elections in June 2004, there were complaints about voter intimidation from American Indians attempting to vote, as well as difficulties with the adoption of the state's new photo identification regulations (after the 2002 election, the state legislature passed more stringent requirements about the kind of identification voters would need to provide at the polls.)

Incidents:

Voter Intimidation: The Four Directions Committee, an organization dedicated to helping American Indians register to vote and get to the polls, got a temporary restraining order on several Republican supporters who, they alleged, had been setting up video equipment outside of polling places on American Indian reservations and following around American Indians who voted early and recording their license plates.¹⁰

Vote Buying: A Republican election monitor from Virginia, Paul Brenner, claimed that Senator Tom Daschle's campaign was paying people to vote. Local county auditors

⁵ Kafka, Joe. "Woman charged in voter-fraud case, other claims false." *Associated Press State and Local Wire*. Pierre, South Dakota. December 14, 2002.

⁶ Walker, Carson. "Charges dropped against woman accused of voter fraud." *Associated Press State and Local Wire*. Sioux Falls, South Dakota. January 28, 2004.

⁷ "Rapid City man arrested for voter fraud." *Associated Press State and Local Wire*. Rapid City, South Dakota. October 18, 2002.

⁸ Melmer, David. "Voting problems resurface in South Dakota." *Indian Country Today*. October 27, 2004.

⁹ Melmer, David. "Election Day goes smoothly on Pine Ridge, S.D., reservation." *Indian Country Today*. November 10, 2004.

¹⁰ Walker, Carson. "Observer alleges vote buying; worker says he never went to Pine Ridge." *Associated Press State and Local Wire*. October 31, 2004.

believe Brenner started the rumor himself. As there was no evidence for either side, the claims were not taken seriously.¹¹

¹¹ Walker, Carson. "Some problems and oddities reported on Election Day." *Associated Press State and Local Wire*. November 2, 2004.

Summary of Election Irregularities in Washington State 2004

The 2004 Washington state gubernatorial election was decided by one of the narrowest margins in American electoral history; 261 votes – less than a millionth of the 2.8 million votes cast statewide - separated the leading candidate, Republican Dino Rossi, from his competitor, Democrat Christine Gregoire. The state law-mandated recount that followed brought the margin down to 42 votes, and the subsequent hand recount ordered by the state Democratic Party gave Gregoire the lead, with 129 more votes than Rossi.

The race was so close that the parties decided to go to court to dispute the tally – the Republicans wanted the election results set aside and to have a revote; the Democrats sought a court-legitimated win. Each side set out into the field to find a way to swing the election in their favor. The trial and accompanying investigation, which lasted through the spring of 2005, revealed a litany of problems with the state's election system:

- The process by which absentee ballots are matched to the voters who requested them led to discrepancies between the number of absentee ballots received and the number of votes counted.¹
- After the final certification of the election results, King County discovered 96 uncounted absentee ballots, Pierce county found 64, and Spokane County found eight; all had been misplaced following the election, but there was no mechanism for reconciling the number of absentee ballots received with the number counted.²
- Hundreds of felons who were ineligible to vote were able to cast ballots because they were not aware that they needed to apply to have their voting rights reinstated.³
- The system for verifying the eligibility of voters who had cast provisional ballots was found to be questionable.⁴
- Due to poll worker error, about 100 provisional ballots were improperly cast, and a hundred more were counted, though they were not verified as having been cast by eligible voters.⁵

The trial also revealed that most of these problems were the result of understaffing and human error.⁶ In total, 1,678 ballots were proven to have been cast illegally, but none of these votes was subtracted from the candidates' totals because no evidence was produced in court as to how each individual voted.⁷ Further, despite the scrutiny that the election

¹ Ervin, Keith. "County elections official demoted; 2004 balloting fallout – Chief predicts 'series of changes'." *The Seattle Times*. June 15, 2005. See also Postman, David. "Judge left to mull vote-fraud claim." *The Seattle Times*. June 5, 2005.

² Ervin, Keith. "Voters irked by uncounted ballots." *The Seattle Times*. June 17, 2005.

³ Postman, David. "Judge left to mull vote-fraud claim." *The Seattle Times*. June 5, 2005.

⁴ Roberts, Gregory. "GOP contrasts elections offices; Chelan County's work better than King's, judge in gubernatorial case told." *The Seattle Post-Intelligencer*. May 25, 2005.

⁵ Ervin, Keith. "Prosecutors to challenge 110 voters; They are said to be felons – 2 counties discover uncounted ballots." *The Seattle Times*. April 29, 2005.

⁶ Ervin, Keith. "King County ballot numbers don't add up; 4000 discrepancies – Review of records finds flaws at each stage of the election; voting, processing, counting." *The Seattle Times*. May 25, 2005.

⁷ *Borders v. King County*. Court's Oral Decision. 6. June. 2005.

returns revealed, and the extensive discussion of voter fraud throughout the investigation, just eight cases of voter fraud were discovered:

- 4 people were accused of casting absentee ballots for their deceased spouses.⁸
- A mother and daughter were charged with the absentee ballot of the mother's husband who had died earlier in the year
- 1 man cast the ballot of the deceased prior resident of his home.
- A homeless resident of Seattle cast two ballots, one in the name of Dustin Ocoilain.⁹

⁸ Johnson, Gene. "Two plead guilty to voting twice in 2004 general election." *Associated Press*. June 2, 2005.

⁹ Ervin, Keith. "6 accused of casting multiple votes; King County voters face criminal charges - Jail time, fines possible." *Seattle Times*. June 22, 2005.

Summary of Wisconsin Voting Irregularities November 2004

Instances of Illegal Voting, Milwaukee:

A probe led by U.S. Attorney Steve Biskupic and Milwaukee County District Attorney Michael McCann found about 200 cases of illegal felon voting and at least 100 cases of other forms of illegal voting in the city of Milwaukee. Of these, 14 were prosecuted:

10 were instances of felons voting while on probation or parole:

5 are awaiting trial. (one of them is DeShawn Brooks)¹

1 has been acquitted²

1 has been found guilty in trial (Kimberly Prude)²

3 have reached plea agreements (Milo Ocasio³)

[names: Ethel M. Anderson, Correan F. Edwards, Jiyto L. Cox, Joseph J. Gooden⁴]

4 were instances of double voting:

1 produced a hung jury (Enrique Sanders)²

1 was found incompetent to stand trial and his case was dismissed

1 initially pleaded guilty but now wants a trial.⁵

1 is awaiting trial.

Two of those accused of double voting were driven to multiple polling places in a van, but the identity of the driver of the vehicle is not known, and the DA does not suspect conspiracy.⁶

In addition to these, four people were charged with felonies in the Milwaukee County Circuit Court; two cases were filed against people accused of sending in false registration cards under the auspices of the Association of Community Organizations for Reform Now; the other two were felons who voted illegally.⁷

Instances of Illegal Voting, Statewide:

The Legislative Audit Bureau, a nonpartisan research agency, released its analysis of state-wide 2004 election results in September 2005. The agency reviewed the names, addresses, and birthdates of over 348,000 individuals credited with having voted in November 2004, from the electronic voter registration records of 6 cooperating municipalities, and compared them to lists from the Department of Corrections of felons serving sentences on election day, and to lists from the municipalities (to check up on

¹ Barton, Gina. "Man acquitted in voter fraud trial; Felon had been under supervision at time." *Milwaukee Journal-Sentinel*. October 6, 2005.

² Schultze, Steve. "No vote fraud plot found. Inquiry leads to isolated cases, Biskupic says." *Milwaukee Journal-Sentinel*. December 5, 2005.

³ "Felon says he voted illegally." *Milwaukee Journal-Sentinel*. September 17, 2005.

⁴ Barton, Gina. "4 charged with voting illegally in November." *Milwaukee Journal-Sentinel*. August 17, 2005.

⁵ Milwaukee J-S. December 5, 2005.

⁶ Milwaukee J-S. December 5, 2005.

⁷ Milwaukee J-S. December 5, 2005.

double-voting) and to lists from the US Social Security Administration. LAB's search revealed 105 "questionable" votes:

- 98 ballots cast by ineligible felons, 57 of which were in Madison, 2 in Waukesha, 15 in Eau Claire, 16 in Appleton, 1 in the Village of Ashwaubenon
- 2 instances of double-voting (one in Madison, one in Waukesha).
- 4 votes counted despite the voter's having died two weeks or less before the election.
- 1 case in which a 17-year-old voted in Madison.⁸

The LAB referred the names of these people to the appropriate District Attorney for prosecution, and several cases are awaiting trial.

It should be noted that this study is not a complete survey of election returns state-wide in Wisconsin; the LAB's analysis is based on the voting records of the six municipalities that provided the LAB with sufficient information to conduct this study.

It should also be noted that the LAB discovered significant error in the data provided them by these municipalities, including:

- 91 records in which the individual's birthdate was incorrectly recorded as later than November 2, 1986
- 97 cases in which a person was mistakenly recorded as having voted twice
- More than 15,000 records were missing birthdates, making it more difficult to determine voter eligibility by comparing these records to lists of felons and deceased persons.⁹

General Findings

Both reports (the Legislative Audit Bureau's and the report of the Joint Task Force on Election Reform convened in Milwaukee) that did in-depth studies of the Wisconsin election returns in 2004 found that there was no evidence of systematic, wide-spread fraud.¹⁰ As the above statistics indicate, there are very few cases in which an individual intentionally voted illegally, and the majority of the discovered instances of fraudulent voting involved felons who were unaware that they were committing a crime. Certainly the number of fraudulent votes, intentional and unintentional, is dwarfed by the amount of administrative error – and the amount of potential there was for fraud.

Registration Irregularities

⁸ Borowski, Greg J. "State audit digs up wider vote problems; Thousands of voters on rolls more than once." *Milwaukee Journal-Sentinel*. September 17, 2005

⁹ "An Evaluation: Voter Registration." *Legislative Audit Bureau*. Madison, Wisconsin. September 2005. Pg. 50-52.

¹⁰ Brinkman, Phil. "Voting fraud in November not a problem in Madison; Nearly all suspect voters turn out to be people who moved or made innocent mistakes." *Wisconsin State Journal*. May 11, 2005.

Duplicate Registrations: In the data from the six participating municipalities, LAB found 3116 records for individuals who appear to be registered more than once in the same municipality (0.9% of the records they reviewed). These duplications were primarily the result of name changes, in which the registrar neglected to remove the old name from the registration list, previous addresses that were not deleted, and misspellings and other typographical errors.

Deceased Voters: the LAB study found 783 persons who were deceased, but whose records had not been eliminated from the registration lists. Most of the municipalities participating in the survey rely on obituaries and notifications from family members to purge their voter registration lists of deceased voters.

Felons: Comparing a list of felons from the Department of Corrections to their voter registration data lists, LAB found 453 felons who were registered to vote. This is largely because, although municipal clerks are informed of federal felony convictions, they have no way of obtaining records on state felony convictions.¹¹

¹¹ Legislative Audit Bureau Report: pg 43-47.

MAJOR VOTE BUYING CASES SUMMARY

Between 2001 and 2006, allegations and convictions for vote buying and conspiracies to buy votes were concentrated in three states: Illinois, West Virginia and Kentucky.

In **East St. Louis, Illinois**, nine individuals, including a former city council member and the head of the local Democratic Party, Charles Powell, Jr., were convicted or pled guilty to vote buying and conspiracy to commit election fraud during the 2004 general election. The government's conspiracy case was almost entirely based on taped conversations in which the defendants discussed buying votes for \$5 and whether this would be adequate. Federal prosecutors alleged that the vote buying was financed with \$79,000 transferred from the County Democratic Party shortly before the election, although county officials have not been charged. Four defendants were convicted of purchasing or offering to purchase at least one vote directly, while Democratic Party chairman was only convicted of conspiracy.¹ Earlier, three precinct officials and one precinct worker pled guilty to buying votes for \$5 or \$10 in that same election.²

Eastern Kentucky has witnessed a series of vote buying cases over the last several years. The most recent revolved around Ross Harris, a Pike County political fundraiser and coal executive, and his associate Loren Glenn Turner. Harris and Turner were convicted in September 2004 of vote buying, mail fraud, and several other counts.³ Prosecutors alleged Harris and Turner conspired to buy votes and provided the necessary funds in an unsuccessful 2002 bid for Pike County district judge by former State Senator Doug Hays. Harris supplied nearly \$40,000, Turner laundered the money through straw contributors, and the cash was then disbursed in the form of \$50 checks ostensibly for 'vote hauling', the legal practice of paying campaign workers to get voters to the polls which is notorious as a cover for buying votes.⁴ Harris attempted to influence the race on behalf of Hays in order to get revenge on Hays' opponent for a personal matter.⁵

A grand jury initially indicted 10 individuals in connection with the Harris and Turner case, including Hays and his wife, and six campaign workers. Of the remaining defendants, only one, Tom Varney, also a witness in the Hays case, pled guilty. The others were either acquitted of vote buying charges or had vote buying charges dropped.⁶ Prosecutors have announced that their investigation continues into others tied to Harris and may produce further indictments.

The Harris case follows a series of trials related to the 1998 Knott County Democratic primary. Between 2003 and 2004, 10 individuals were indicted on vote buying charges, including a winning candidate in those primaries, Knott County judge-executive Donnie Newsome, who was reelected in 2002. In 2004 Newsome and a supporter were sent to jail and fined. Five other

¹ "Five convicted in federal vote-fraud trial" Associated Press, June 30, 2005; "Powell gets 21 months" Belleville News-Democrat, March 1, 2006.

² "Four Plead Guilty To Vote-Buying Cash Was Allegedly Supplied By St. Clair Democratic Machine" Belleville News-Democrat, March 23, 2005.

³ "2 found guilty in pike county vote-fraud case; Two-year sentences possible," Lexington Herald Leader, September 17, 2004.

⁴ "Jury weighing vote-fraud case," Lexington Herald Leader, September 16, 2004.

⁵ "Pike Election Trial Goes To Jury" Lexington Herald Leader, January 1, 2006.

⁶ "Former state senator acquitted of vote buying," Lexington Herald Leader, November 2, 2004.

defendants pled guilty to vote buying charges, and three were acquitted. The primary means of vote buying entailed purchasing absentee votes from elderly, infirm, illiterate or poor voters, usually for between \$50 and \$100. This resulted in an abnormally high number of absentee ballots in the primary.⁷ Indictments relating to that same 1998 primary were also brought in 1999, when 6 individuals were indicted for buying the votes of students at a small local college. Five of those indicted were convicted or pled guilty.⁸

Absentee vote buying was also an issue in 2002, when federal prosecutors opened an investigation in Kentucky's Clay County after an abnormal number of absentee ballots were filed in the primary and the sheriff halted absentee voting twice over concerns.⁹ Officials received hundreds of complaints of vote-buying during the 2002 primary, and state investigators performed follow up investigations in a number of counties, including Knott, Bell, Floyd, Pike, and Maginoff.¹⁰ No indictments have been produced so far.

So far, relatively few incidents of vote-buying have been substantially identified or investigated in the 2004 election. Two instances of vote buying in local 2004 elections have been brought before a grand jury. In one, a Casey County man was indicted for purchasing votes in a local school board race with cash and whiskey.¹¹ In the second, the grand jury chose not to indict an individual accused of offering to purchase a teenager's vote on a local proposal with beer.¹²

An extensive vote buying conspiracy has also been uncovered in southern **West Virginia**. The federal probe, which handed down its first indictment in 2003, has yielded more than a dozen guilty pleas to charges of vote buying and conspiracy in elections since the late 1980s. As this area is almost exclusively dominated by the Democratic Party, vote-buying occurred largely during primary contests.

The first phase of the probe focused on Logan County residents, where vote buying charges were brought in relation to elections in 1996, 2000, 2002 and 2004. In an extraordinary tactic, the FBI planted the former mayor of Logan City, Tom Esposito, as a candidate in a state legislative race. Esposito's cooperation led to guilty pleas from the Logan County Clerk, who pled guilty to selling his vote to Esposito in 1996,¹³ and another man who took money from Esposito for the purpose of vote buying in 2004.¹⁴

Guilty pleas were also obtained in connection with former county sheriff Johnny Mendez, who pled guilty to buying votes in two primary elections in order to elect candidates including

⁷ "Knott County, KY., Judge Executive sentenced on vote-buying conspiracy charges," Department of Justice, March 16, 2004.

⁸ "6 men accused of vote fraud in '98 Knott primary; Charges include vote buying and lying to FBI"

⁹ "Election 2002: ABSENTEE BALLOTING; State attorney general's office investigates voting records in some counties" The Courier-Journal, November 7, 2002.

¹⁰ "Election 2002: Kentucky; VOTE FRAUD; Investigators monitor 17 counties across state" The Courier-Journal, November 6, 2002.

¹¹ "Jury finds man guilty on vote-buying charges" Associated Press, November 11, 2005.

¹² "Man in beer vote case files suit" The Cincinnati Enquirer, March 17, 2005.

¹³ "Two plead to vote fraud; Logan clerk sold vote; politician tried to buy votes" Charleston Gazette, December 14, 2005.

¹⁴ "Logan man gets probation in vote-fraud scandal" Charleston Gazette, March 1, 2006.

EAC Preliminary Research on Voting Fraud and Voter Intimidation

himself. In 2000, with a large amount of funding from a prominent local lawyer seeking to influence a state delegate election for his wife, Mendez distributed around \$10,000 in payments to voters of \$10 to \$100. Then, in the 2004 primary, Mendez distributed around \$2,000 before his arrest.¹⁵ A deputy of Mendez', the former Logan police chief, also pled guilty to a count of vote buying in 2002.¹⁶

Prosecutors focusing on neighboring Lincoln County have alleged a long-standing vote-buying conspiracy extending back to the late 1980s. The probe identified Lincoln County Circuit Clerk Greg Stowers as head of a Democratic Party faction which routinely bought votes in order to maintain office. Stowers pled guilty in December 2005 to distributing around \$7,000 to buy votes in the 2004 primary. The Lincoln County Assessor, and Stowers' longtime political ally, Jerry Allen Weaver, also pled guilty to conspiracy to buy votes.¹⁷ These were accompanied by four other guilty pleas from party workers for vote buying in primaries. While most specific charges focused on vote buying in the 2004 primary, defendants also admitted buying votes as far back as the 1988, 1990, and 1992 primaries.

The leading conspirators would give party workers candidate slates and cash, which workers would then take to the polling place and use to purchase votes for amounts between \$10 and \$40 and in one instance, for liquor. Voters would be handed the slate of chosen candidates, and would then be paid upon exiting the polling place. In other cases, the elected officials in question purchased votes in exchange for non-cash rewards, including patronage positions, fixed tickets, favorable tax assessments, and home improvements.¹⁸

The West Virginia probe is ongoing, as prosecutors are scrutinizing others implicated during the proceedings so far, including a sitting state delegate, who may be under scrutiny for vote buying in a 1990 election, and one of the Lincoln county defendants who previously had vote buying charges against him dropped.¹⁹

¹⁵ "Mendez confined to home for year Ex-Logan sheriff was convicted of buying votes" Charleston Gazette, January 22, 2005.

¹⁶ "Ex-Logan police sentenced for buying votes" Associated Press, February 15, 2005.

¹⁷ "Clerk says he engaged in vote buying" Charleston Gazette, December 30, 2005.

¹⁸ "Lincoln clerk, two others plead guilty to election fraud" Charleston Daily Mail, December 30, 2005.

¹⁹ "Next phase pondered in federal vote-buying probe" Associated Press, January 1, 2006.

TOVA WANG ON THE EAC GAG ORDER

I have just received this press release via email:

Contact James Joseph, Arnold & Porter -- (202) 942-5355, james_joseph@aporter.com

Tova Andrea Wang, Co-Author of the Voter Fraud and Voter Intimidation Report for the Election Assistance Commission, Calls for an End to the Censorship

Over the last few weeks, there has been a developing controversy in the press and in the Congress over a report on voter fraud and voter intimidation I co-authored for the Election Assistance Commission ("EAC"). It has been my desire to participate in this discussion and share my experience as a researcher, expert and co-author of the report. Unfortunately, the EAC has barred me from speaking. Early last week, through my attorney, I sent a letter to the Commission requesting that they release me from this gag order. Despite repeated follow-up, the EAC has failed to respond to this simple request. In the meantime, not only can I not speak to the press or public -- it is unclear under the terms of my contract with the

013551

EAC whether I can even answer questions from members of Congress.

My co-author and I submitted our report in July 2006; the EAC finally released its version of the report in December 2006. As numerous press reports indicate, the conclusions that we found in our research and included in our report were revised by the EAC, without explanation or discussion with me, my co-author or the general public. From the beginning of the project to this moment, my co-author and I have been bound in our contracts with the EAC to silence regarding our work, subject to law suits and civil liability if we violate the EAC-imposed gag order. Moreover, from July to December, no member of the EAC Commission or staff contacted me or my co-author to raise any concerns about the substance of our research. Indeed, after I learned that the EAC was revising our report before its public release, I contacted the EAC, and they refused to discuss with me the revisions, or the reasons such revisions were necessary.

Stifling discussion and debate over this report and the critical issues it addresses is contrary to the mission and

goals of the EAC and to the goal of ensuring honest and fair elections in this country. Commissioner Hillman stated in her defense of the EAC's actions that the EAC seeks to "ensure improvements in the administration of federal elections so that all eligible voters will be able to vote and have that vote recorded and counted accurately." I share this aspiration. But I believe that the best way to achieve that end is not by suppressing or stifling debate and discussion, but by engaging in a thoughtful process of research and dialogue that ultimately arrives at the truth about the problems our voting system currently confronts.

I'm ready to wear my "Free Tova Wang" t-shirt. **UPDATE:**

More from Dan Tokaji [here](#).

Posted by Rick Hasen at [08:46 AM](#)

013553

Defining Election Fraud

Deliberative Process Privilege

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

Examples include the following:

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

- acting in any other manner with the intention of suppressing voter registration or voting, or interfering with vote counting and the certification of the vote.

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

DRAFT

**Deliberative Process
Privilege**

Voter fraud is any intentional action or any omission to act when there is a duty to do so 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. This includes: (1) coercing a voter's choice on an absentee ballot; (2) using a false name and signature on an absentee ballot; (3) destroying or misappropriating of an absentee ballot; (4) voting by felons or in some states ex-felons; (5) misleading an ex-felon about his or her right to vote; (6) voting more than once; (7) voting by non-citizens; (8) intimidating practices aimed at vote suppression; (9) deceiving voters with false information (10) mishandling of ballots by election officials; (11) miscounting of ballots by election officials; (12) misrepresenting vote tallies by election officials; (13) adding of ballots by election officials; (14) destroying ballots by election officials; (15) removing of eligible voters from voter registration lists; (16) falsifying voter registration information; (17) destroying completed voter registration forms; (18) buying of votes; (19) failing to follow the requirements of the Voting Rights Act and other voting rights laws, such as the National Voter Registration Act; (20) failing to enforce required state election laws; (21) abusing voter challenges; (22) purging of voter rolls in violation of HAVA; (23) failing to follow the requirements of the Uniformed and Overseas Citizens Absentee Voting Act; (24) acting in any other manner with the intention of suppressing voter registration, voting, or the corrupting of the voting process.

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Deliberative Process Privilege

Voter fraud is any intentional action or any omission to act when there is a duty to do so that corrupts the process in a way that has an actual impact on election outcomes. This can include the way in which ballots are obtained, marked, or tabulated; the process by which election results are canvassed and certified; or the process by which voters register to vote. Examples include the following: (1) coercing a voter's choice on an absentee ballot; (2) using a false name and/or signature on an absentee ballot; (3) destroying or misappropriating of an absentee ballot; (4) felons or in some states ex-felons who vote when they know they are ineligible to do so; (5) misleading an ex-felon about his or her right to vote; (6) voting more than once; (7) intentional voting by non-citizens who know they are ineligible to do so; (8) intimidating practices aimed at vote suppression or deterrence; (9) deceiving voters with false information (10) intentional mishandling of ballots by election officials; (11) intentional miscounting of ballots by election officials; (12) intentional misrepresenting vote tallies by election officials; (13) adding of ballots by election officials; (14) destroying ballots by election officials; (15) removing of eligible voters from voter registration lists; (16) knowingly falsifying voter registration information pertinent to eligibility to cast a vote, e.g. residence, criminal status, etc.; (17) destroying completed voter registration forms; (18) buying of votes; (19) failing to follow the requirements of the Voting Rights Act and other voting rights laws, such as the National Voter Registration Act; (20) failing to enforce required state election laws; (21) abusing voter challenge laws; (22) purging of voter rolls in violation of HAVA and NVRA; (23) failing to follow the requirements of the Uniformed and Overseas Citizens Absentee Voting Act; (24) acting in any other manner with the intention of suppressing voter registration, voting, or vote counting.

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Voter fraud means intentional misrepresentation, trickery, deceit, or deception, arising out of or in connection with voter registration or voting

Case Summaries

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

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Powers v. Donahue	Supreme Court of New York, Appellate Division, First Department	276 A.D.2d 157; 717 N.Y.S.2d 550; 2000 N.Y. App. Div. LEXIS 12644	December 5, 2000	Petitioner appealed an order of the supreme court, which denied his motion to direct the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to count only the absentee ballot listing correct candidates' names.	When the New York County Board of Elections learned some absentee ballots mailed to voters in one district listed the wrong candidates for state senator it sent a second set of absentee ballots to absentee voters informing them the first ballot was defective and requesting they use the second ballot. The board agreed if two ballots were received from the same voter, only the corrected ballot would be counted.	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>Appellant candidate moved in support of the board's determination. Respondent candidate opposed the application, contending that only the first ballot received should have been canvassed. The trial court denied appellant's motion, ruling that pursuant to New York law, where two ballots were received from the same voter, only the ballot with the earlier date was to be accepted. The court found the</p>			

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Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					local board officials should have resolved the dispute as they proposed. The order was modified and the motion granted to the extent of directing the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to accept only the corrected ballot postmarked on or before November 7, 2000, and otherwise affirmed.			
Goodwin v. St. Thomas--	Territorial Court of the	43 V.I. 89; 2000	December 13, 2000	Plaintiff political candidate alleged that certain general	Plaintiff alleged that defendants	No	N/A	No

013562

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
St. John Bd. of Elections	Virgin Islands	V.I. LEXIS 15		election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.	counted unlawful absentee ballots that lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The court held that plaintiff was not entitled to relief since he failed to			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot</p>			

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper. Request for declaratory and injunctive relief denied.</p>			
Townson v. Stonicher	Supreme Court of Alabama	2005 Ala.	December 9, 2005	The circuit court overturned the results of a mayoral	The voters and the incumbent all	No	N/A	No

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
		LEXIS 214		election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross--appealed. In the meantime, the trial court stayed enforcement of its judgment pending resolution of the appeal.	challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that at least 30 absentee voters who voted for the incumbent provided with			

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					<p>their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat "cure" that defect by providing a proper form of identification at the trial of the election contest, because, under those circumstances, it was difficult to conclude that those voters made an honest effort to comply with the law. Moreover, to</p>			

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					<p>count the votes of voters who failed to comply with the essential requirement of submitting proper identification with their absentee ballots had the effect of disenfranchising qualified electors who choose not to vote but rather than to make the effort to comply with the absentee-voting requirements. Affirmed.</p>			
Gross v. Albany County Bd. of Elections	Supreme Court of New York, Appellate Division, Third Department	10 A.D.3d 476; 781 N.Y.S.2d 172; 2004 N.Y.	August 23, 2004	Appellant candidates appealed from a judgment entered by the supreme court, which partially granted the candidates' petition challenging the method used by respondent	The candidates argued that the Board violated a federal court order regarding the election. The appellate court	No	N/A	No

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		App. Div. LEXIS 10360		Albany County Board of Elections for counting absentee applications and ballots for the office of Albany County Legislator, 26th and 29th Districts, in a special general election required by the federal courts.	held that absentee ballots that were sent to voters for the special general election based solely on their applications for the general election were properly voided. The Board had no authority to issue the ballots without an absentee ballot application for the special general election. Two ballots were properly invalidated as the Board failed to retain the envelopes. Ballots were properly counted for voters who failed to			

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					<p>identify their physician on their applications. A ballot was properly counted where the Board failed to scrutinize the sufficiency of the reason for the application. A ballot containing two signatures was properly rejected. A ballot was properly rejected due to extraneous marks outside the voting square. A ballot was properly counted despite the failure of the election inspector to witness the voter's signature. A ballot was</p>			

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					properly counted as the application stated the date of the voter's absence. A ballot was properly counted as the failure to date the application was cured by a time stamp. Affirmed.			
Erlandson v. Kiffmeyer	Supreme Court of Minnesota	659 N.W.2d 724; 2003 Minn. LEXIS 196	April 17, 2003	Petitioners, representing the Democratic--Farmer--Labor Party, brought an action against respondents, the Minnesota Secretary of State and the Hennepin County Auditor, seeking relief in regard to the election for United States Senator, following the death of Senator Wellstone. The issue concerned the right of absentee voters to obtain replacement ballots. Individuals intervened on behalf of the Republican	The appellate court found that, while it may have seemed unfair to the replacement candidate to count votes for other candidates from regular absentee ballots on which the replacement candidate did not appear, those were properly cast ballots voting for a properly	No	N/A	No

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				Party. The instant court granted review.	nominated candidate. Petitioners' request that the Minnesota supreme court order that votes for United States Senator cast on regular absentee ballots not be counted was denied. A key issue was Minn. Stat. § 204B.41 (2002), which provided, in--part, that official supplemental ballots could not be mailed to absent voters to whom ballots were mailed before the official supplemental ballots were			