

convicted of a felony and sentenced to less than 12 months' custody have been sent to county jails and hence, are eligible to vote.

4. Disenfranchisement results in contradictory policies within states:

- The "crazy-quilt" pattern of disenfranchisement laws exists even within states. Alabama and Mississippi have both the most and least restrictive laws in the country, a result which is brought about by the fact that certain felonies result in the loss of voting rights for life, while others at least theoretically permit people in prison to vote.
- Most felonies in Alabama result in permanent disenfranchisement, but drug and DUI offenses have been determined to not involve the "moral turpitude" that triggers the loss of voting rights.
- In Mississippi, ten felonies result in disenfranchisement, but do not include such common offenses as burglary and drug crimes.

5. Confusing policies lead to the exclusion of legal voters and the inclusion of illegal voters:

- The complexity of state disenfranchisement policies results in frequent misidentification of voter eligibility, largely because officials differ in their knowledge and application of disqualification and restoration law and procedures.

6. Significant variation and uncertainty in how states respond to persons with a felony conviction from other states:

- No state has a systematic mechanism in place to address the immigration of persons with a felony conviction, and there is no consensus among indefinite-disenfranchisement states on whether the disqualification is properly confined to the state of conviction, or should be considered in the new state of residence.
- Interpretation and enforcement of this part of disenfranchisement law varies not only across state lines, but also from one county to another within states. Local officials have no way of knowing about convictions in other states, and many are unsure what they would do if a would-be voter acknowledged an old conviction. Because there is no prospect of a national voter roll, this situation will continue even after full HAVA implementation.

7. Disenfranchisement is a time-consuming, expensive practice:

- Enforcement requires elections officials to gather records from different agencies and bureaucracies, including state and federal courts, Departments of Corrections, Probation and Parole, the state Board of Elections, the state police, and other counties' elections offices.

### Policy Implications

1. Policies disenfranchising people living in the community on probation or parole, or who have completed a sentence are particularly difficult to enforce:

- States which disenfranchise only persons who are currently incarcerated appear able to enforce their laws more consistently than those barring non-incarcerated citizens from voting.

2. Given large-scale misunderstanding of disenfranchisement law, many eligible persons incorrectly believe they cannot vote, or have been misinformed by election officials:

- More than one-third of election officials interviewed incorrectly described their state's law on voting eligibility.
- More than 85% of the officials who misidentified their state's law either did not know the eligibility standard or specified that the law was more restrictive than was actually the case.

3. Occasional violation of disenfranchisement law by non-incarcerated voters not surprising:

- Given the complexity of state laws and the number of state officials who lack an understanding of restoration and disqualification procedures, it should come as no surprise that many voters are ignorant of their voting status, a fact that is likely to have resulted in hundreds of persons with a felony conviction registering and voting illegally in recent years.
4. Taken together, these findings undermine the most prominent rationale for disenfranchisement: that the policy reflects a strong, clear consensus that persons with a felony conviction are unfit to vote and constitute a threat to the polity:
- First, when significant numbers of the people who administer elections do not know important aspects of disenfranchisement law, it is hard to conclude that the restriction is necessary to protect social order and the “purity” of the ballot box.
  - Second, because they are all but invisible in the sentencing process, “collateral” sanctions like disenfranchisement simply cannot accomplish the denunciatory, expressive purposes their supporters claim. We now know that disenfranchisement is not entirely “visible” even to the people running American elections.
  - Third, deep uncertainty regarding the voting rights of people with felony convictions who move from one state to another indicates that we do not even know what purpose disenfranchisement is supposed to serve – whether it is meant to be a punishment, or simply a non-penal regulation of the franchise.

#### Recommendations

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

Deliver the Vote: A History of Election Fraud, An American Political Tradition---1742-2004

by Tracy Campbell.

In Deliver the Vote, Campbell traces the historical persistence of voter fraud from colonial times through the 2004 Bush-Kerry election. From the textual information, it quickly becomes obvious that voter fraud was not limited to certain types of people or to certain political parties. Major American political figures fail to emerge unscathed. For instance, before independence, George Washington plied potential voters with drink as payment for their vote. This type of early vote buying succeeded in electing Washington to the Virginia Assembly over a heavily favored candidate. Both the Democrat and Republican Parties also participated in vote fraud. Finally, there were several regions of the country know for fraudulent voting problems such as Chicago, St. Louis, Texas, and Kentucky, especially Louisville.

Germane to the voter fraud project, Campbell indicates that in the Bush-Gore election, both camps committed major errors. Campbell contends that the central problem in that election was the 175,000 invalidated votes. It is evident that Florida was procedurally unprepared to deal with the voluminous questions that arose in determining valid from invalid votes. Campbell glosses over the Bush-Kerry election but does note from one who opposed Kerry, that there was something amiss with the Ohio final vote tally. This book is well researched and provided numerous citations to source material.

Building Confidence in U.S. Election, National Commission on Federal Election Reform ("Carter/Baker Commission)

The impetus for the Carter-Baker Commission and its report was the sense of the members that not enough had been done to reform the system since the 2000 election and that Americans had lost confidence in elections. The report makes several observations about the current system and makes 87 recommendations. Several of those recommendations are meant to be implemented in conjunction with one another in order to be effective, so the report is really a push for a comprehensive overhaul of the system as it works today.

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

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

obtaining sufficient evidence for prosecution or because of the low priority given to election fraud cases.

- Absentee ballots remain the largest source of potential voter fraud
- Non-citizens have registered to vote in several recent elections
- The growth of "third-party" (unofficial) voter registration drives in recent elections has led to a rise in reports of voter registration fraud.
- Many states allow the representatives of candidates or political parties to challenge a person's eligibility to register or vote or to challenge an inaccurate name on a voter roll. This practice of challenges may contribute to ballot integrity, but it can have the effect of intimidating eligible voters, preventing them from casting their ballot, or otherwise disrupting the voting process.

Its pertinent recommendations for reform are as follows:

- Interoperable state voter databases are needed to facilitate updates in the registration of voters who move to another state and to eliminate duplicate registrations, which are a source of potential fraud.
- Voters should be informed of their right to cast a provisional ballot if their name does not appear on the voter roll, or if an election official asserts that the individual is not eligible to vote, but States should take additional and effective steps to inform voters as to the location of their precinct
- The Commission recommends that states use "REAL ID" cards for voting purposes.
- To verify the identity of voters who cast absentee ballots, the voter's signature on the absentee ballot can be matched with a digitized version of the signature that the election administrator maintains. While such signature matches are usually done, they should be done consistently in all cases, so that election officials can verify the identity of every new registrant who casts an absentee ballot.
- Each state needs to audit its voter registration files to determine the extent to which they are accurate (with correct and current information on individuals), complete (including all eligible voters), valid (excluding ineligible voters), and secure (with protections against unauthorized use). This can be done by matching voter files with records in other state agency databases in a regular and timely manner, contacting individuals when the matches are inconclusive, and conducting survey research to estimate the number of voters who believe they are registered but who are not in fact listed in the voter files.
- Each state should oversee political party and nonpartisan voter registration drives to ensure that they operate effectively, that registration forms are delivered promptly to election officials, that all completed registration forms are delivered to the election officials, and that none are "culled" and omitted according to the registrant's partisan affiliation. Measures should also be adopted to track and hold accountable those who are engaged in submitting fraudulent voter registrations. Such oversight might consist of training activists who conduct voter registration drives and tracking voter registration forms to make sure they are all accounted for. In addition, states should apply a criminal penalty to any activist who deliberately fails to deliver a completed voter registration form.

- Investigation and prosecution of election fraud should include those acts committed by individuals, including election officials, poll workers, volunteers, challengers or other nonvoters associated with the administration of elections, and not just fraud by voters.
- In July of even-numbered years, the U.S. Department of Justice should issue a public report on its investigations of election fraud. This report should specify the numbers of allegations made, matters investigated, cases prosecuted, and individuals convicted for various crimes. Each state's attorney general and each local prosecutor should issue a similar report.
- The U.S. Department of Justice's Office of Public Integrity should increase its staff to investigate and prosecute election-related fraud.
- In addition to the penalties set by the Voting Rights Act, it should be a federal felony for any individual, group of individuals, or organization to engage in any act of violence, property destruction (of more than \$500 value), or threatened act of violence that is intended to deny any individual his or her lawful right to vote or to participate in a federal election.
- To deter systemic efforts to deceive or intimidate voters, the Commission recommends federal legislation to prohibit any individual or group from deliberately providing the public with incorrect information about election procedures for the purpose of preventing voters from going to the polls.
- States should define clear procedures for challenges, which should mainly be raised and resolved before the deadline for voter registration. After that, challengers will need to defend their late actions. On Election Day, they should direct their concerns to poll workers, not to voters directly, and should in no way interfere with the smooth operation of the polling station.
- State and local jurisdictions should prohibit a person from handling absentee ballots other than the voter, an acknowledged family member, the U.S. Postal Service or other legitimate shipper, or election officials. The practice in some states of allowing candidates or party workers to pick up and deliver absentee ballots should be eliminated.
- All states should consider passing legislation that attempts to minimize the fraud that has resulted from "payment by the piece" to anyone in exchange for their efforts in voter registration, absentee ballot, or signature collection.
- Nonpartisan structures of election administration are very important, and election administrators should be neutral, professional, and impartial.
- No matter what institutions are responsible for conducting elections, conflict-of-interest standards should be introduced for all federal, state, and local election officials. Election officials should be prohibited by federal and/or state laws from serving on any political campaign committee, making any public comments in support of a candidate, taking a public position on any ballot measure, soliciting campaign funds, or otherwise campaigning for or against a candidate for public office. A decision by a secretary of state to serve as co-chair of his or her party's presidential election committee would clearly violate these standards.

## **Existing Research Analysis**

There are many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. There is little research that is truly systematic or scientific. The most systematic look at fraud is the report written by Lori Minnite. The most systematic look at voter intimidation is the report by Laughlin McDonald. Books written about this subject seem to all have a political bias and a pre-existing agenda that makes them somewhat less valuable.

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

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

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate, but some reports say it is a major problem, albeit hard to identify.
- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.

- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

DOJ Public Integrity Reports 2002, 2003, and 2004

General Background

The Public Integrity Reports are submitted to Congress pursuant to the Ethics in Government Act of 1978, which requires the Attorney General to report annually to Congress on the operations and activities of the Justice Department's Public Integrity Section. The Report describes the activities of the Public Integrity Section. It also provides statistics on the nationwide federal effort against public corruption. The Public Integrity Section was created in 1976 in order to consolidate in one unit of the Criminal Division the Department's oversight responsibilities for the prosecution of criminal abuses of the public trust by government officials. Section attorneys prosecute selected cases involving federal, state, or local officials, and also provide advice and assistance to prosecutors and agents in the field regarding the handling of public corruption cases. In addition, the Section serves as the Justice Department's center for handling various issues that arise regarding public corruption statutes and cases. An Election Crimes Branch was created within the Section in 1980 to supervise the Department's nationwide response to election crimes, such as ballot fraud and campaign financing offenses. The Branch reviews all major election crime investigations throughout the country and all proposed criminal charges relating to election crime.

One of the Section's law enforcement priorities is its supervision of the Justice Department's nationwide response to election crimes. The purpose of Headquarters' oversight of election crime matters is to ensure that the Department's nationwide response to election crime is uniform, impartial, and effective. An Election Crimes Branch, headed by a Director and staffed by Section attorneys on a case-by-case basis, was created within the Section in 1980 to handle this supervisory responsibility.

The Election Crimes Branch oversees the Department's handling of all election crime allegations other than those involving civil rights violations, which are supervised by the Voting Section of the Civil Rights Division. Specifically, the Branch supervises four types of corruption cases: crimes that involve the voting process, crimes involving the financing of federal election campaigns, crimes relating to political shakedowns and other patronage abuses, and illegal lobbying with appropriated funds. Vote frauds and campaign-financing offenses are the most significant and also the most common types of election crimes.

Divisions of the Election Crimes Branch

As affecting the present EAC study, the appropriate divisions of the Election Crimes Branch are:

Vote frauds-During 2002 the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, Utah, West Virginia, and

Wisconsin in handling vote fraud matters that occurred in their respective districts. This assistance included providing expertise in the evaluation of allegations to determine whether investigation would produce prosecutable federal criminal cases, helping to structure investigations, providing legal assistance with respect to the formulation of charges, and assisting in establishing task force teams of federal and state law enforcement officials to investigate vote fraud matters.

During 2003 the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virgin Islands, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. This assistance included providing expertise in the evaluation of allegations to determine whether investigation would produce prosecutable federal criminal cases, helping to structure investigations, providing legal assistance with respect to the formulation of charges, and assisting in establishing task force teams of federal and state law enforcement officials to investigate vote fraud matters.

During 2004 the Branch assisted United States Attorneys' Offices in the following states in the handling of vote fraud matters that occurred in their respective districts: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Washington, and Wisconsin. This assistance included evaluating vote fraud allegations to determine whether investigation would produce a prosecutable federal criminal case, helping to structure investigations, providing legal advice concerning the formulation of charges, and assisting in establishing several task force teams of federal and state law enforcement officials to investigate vote fraud matters.

**Litigation-**The Branch Director or Section attorneys also prosecute selected election crimes, either by assuming total operational responsibility for the case or by handling the case jointly with a United States Attorney's Office. The Section also may be asked to supervise the handling of a case in the event of a partial recusal of the local office. For example, in 2002 the Branch continued to supervise the prosecution of a sheriff and his election attorney for using data from the National Crime Information Center regarding voters' criminal histories to wage an election contest.

**District Election Officer Program-**The Branch also assists in implementing the Department's long-standing District Election Officer (DEO) Program. This Program is designed to ensure that each of the 93 United States Attorneys' Offices has a trained prosecutor available to oversee the handling of election crime matters within the district and to coordinate district responses with Headquarters regarding these matters. The DEO Program involves the appointment of an Assistant United States Attorney in each federal district to serve a two-year term as a District Election Officer; the training of these

prosecutors in the investigation and prosecution of election crimes; and the coordination of election-related initiatives and other law enforcement activities between Headquarters and the field. In addition, the DEO Program is a crucial feature of the Department's nationwide Election Day Program, which occurs in connection with the federal general elections held in November of even-numbered years. The Election Day Program ensures that federal prosecutors and investigators are available both at the Department's Headquarters in Washington and in each district to receive and handle complaints of election irregularities from the public while the polls are open and that the public is aware of how these individuals can be contacted on election day. In 2002 the Department enhanced the DEO Program by establishing a Ballot Integrity Initiative.

Ballot Integrity Initiative-Beginning in September of 2002, the Public Integrity Section, acting at the request of the Attorney General, assisted in the implementation of a Ballot Integrity Initiative for the 2002 general election and subsequent elections. This initiative included increasing the law enforcement priority the Department gives to election crimes; holding a special day-long training event in Washington, DC for representatives of the 93 United States Attorneys' Offices; publicizing the identities and telephone numbers of the DEOs through press releases issued shortly before the November elections; and requiring the 93 U.S. Attorneys to communicate the enhanced federal prioritization of election crime matters to state and local election and law enforcement authorities. As part of Ballot Integrity Initiative, on October 8, 2002, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a Voting Integrity Symposium for District Election Officers representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Attorney General John Ashcroft delivered the keynote address on the importance of election crime and ballot integrity enforcement. Assistant Attorney General of the Civil Rights Division Ralph Boyd and Assistant Attorney General of the Criminal Division Michael Chertoff also spoke to attendees on the protection of voting rights and the prosecution of election cases.

As part of Ballot Access and Voting Integrity Initiative, on September 23 and 24, 2003, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a two-day Symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Assistant Attorney General of the Civil Rights Division Alexander Acosta and Assistant Attorney General of the Criminal Division Christopher A. Wray delivered the keynote addresses on the importance of protecting voting rights and the prosecution of election cases.

On July 20 and 21, 2004, the Public Integrity Section and the Voting Section of the Department's Civil Rights Division co-sponsored a two-day symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes available to prosecute such cases, and the handling of civil rights matters involving

voting. Attorney General John Ashcroft delivered the keynote address on the importance of protecting voting rights and the prosecution of election fraud. In addition, Assistant Attorney General Christopher A. Wray of the Criminal Division and Assistant Attorney General R. Alexander Acosta of the Civil Rights Division addressed conference attendees on voting rights and election fraud enforcement issues respectively.

### Federal Election Crimes

During 2002 the Public Integrity Section continued its nationwide oversight role regarding the handling of election crime allegations. As part of a general Department effort to increase its effectiveness in this important area, the Section assisted in the planning and execution of the Department's 2002 Ballot Integrity Initiative. The purpose of this ongoing Initiative is to increase the Department's ability to deter, detect, and prosecute election crimes and voting abuses by prioritizing election crime cases. As a result of the Initiative, during 2002 the number of election crime matters opened by federal prosecutors throughout the country increased significantly, as did the Section's active involvement in election crime matters stemming from the Initiative. At the end of 2002, the Section was supervising and providing advice on approximately 43 election crime matters nationwide. In addition, as of December 31, 2002, 11 matters involving possible election crimes were pending in the Section.

During 2002 the Section closed two election crime matters and continued its operational supervision of the following election crime case: *United States v. Woodward and Jordan*, Northern District of Alabama. Jimmy Woodward, the former Sheriff of Jefferson County, Alabama, and Albert Jordan, an attorney from Birmingham, were indicted in 2000 for conspiring to obtain criminal history records from the National Crime Information Center (NCIC) for use in an election contest, for converting NCIC records, and for accessing government computers without authority. The indictment charged that Woodward and Jordan conspired to use Sheriff's office personnel to access NCIC computers to run criminal history checks on hundreds of voters in Jefferson County who had voted by absentee ballot in the 1998 general election, in the hopes they would find criminal histories they could use to challenge the qualifications of voters who cast votes for Woodward's opponent. The charges were dismissed in 2000 on procedural grounds. The Department appealed the dismissal of the charges. In 2001 the case was argued before the Eleventh Circuit Court of Appeals by the Appellate Section of the Criminal Division. The Court of Appeals subsequently reversed the trial court's dismissal of the charges and remanded the case for retrial. The former United States Attorney for the Northern District of Alabama was recused from the case. The case is being prosecuted by an Assistant United States Attorney under the supervision of the Public Integrity Section.

The following cases are the result of an extensive federal investigation into vote-buying in the May 1998 primary election in Knott County, Kentucky, an Appalachian county in the Eastern District of Kentucky. The primary was contested by two slates of candidates. The ballot included the race for the position of Knott County Judge Executive, which controls local government hiring, contracting, and services. The ballot also included a primary contest for the office of United States Senator, conferring federal jurisdiction

over vote buying in the election even though the electoral corruption was directed at local races.

The following cases are being handled jointly by the Section and the United States Attorney's Office for the Eastern District of Kentucky:

*United States v. Calhoun.* On March 28, 2003, a federal grand jury indicted Jimmy Calhoun on two counts of vote-buying. On August 19, 2003, Calhoun pled guilty to two counts of vote-buying on behalf of a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive in the May 1998 Knott County, Kentucky primary election. Calhoun paid two persons to vote by absentee ballot. On April 7, 2004, Calhoun was sentenced to six months in prison and two years of supervised release. Calhoun pled guilty to two counts of vote-buying on behalf of a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive in the May 1998 Knott County, Kentucky primary election. Calhoun paid two persons to vote by absentee ballot.

*United States v. Conley.* On March 28, 2003, a federal grand jury indicted Jimmy Lee Conley on five counts of vote-buying and one count of making a false statement in a matter within federal jurisdiction. Conley was charged with paying five persons to vote by absentee ballot for a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive. During the investigation, Conley allegedly made false statements to an agent of the FBI. A jury acquitted Conley on June 19, 2003.

*United States v. Johnson.* On April 24, 2003, a federal grand jury indicted Newton Johnson on four counts of vote-buying, one count of making a false statement in a matter within federal jurisdiction, and two counts of obstructing justice. On June 2, 2003, Johnson pled guilty pursuant to a plea agreement to one count of vote-buying, and one count of obstructing justice. Johnson paid four persons to vote by absentee ballot in the May 1998 Knott County, Kentucky primary election. Johnson paid the voters to vote for a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive. During the investigation of this vote-buying, Johnson made a false statement to an agent of the FBI, and pressured grand jury witnesses to falsely deny that he bought their votes. Pursuant to his plea agreement, Johnson pled guilty to paying one of the voters for her vote, and to endeavoring to obstruct the grand jury investigation by urging her to lie under oath. Johnson agreed to cooperate with the government. On October 6, 2003, Johnson was sentenced to three years of probation. Johnson had previously testified at the trial of Donnie Newsome to the nature and extent of the broader conspiracy to approach and pay numerous impoverished, handicapped, illiterate, or otherwise impaired persons to vote for the slate of candidates headed by Newsome. Newsome offered Johnson a road improvement and a county job in exchange for participation in the conspiracy. Johnson, who is impoverished, illiterate, and unable to leave his remote mountain hollow without the road improvement, agreed and purchased the votes of four persons. A jury convicted Newsome on all counts.

*United States v. Madden.* On March 28, 2003, a federal grand jury indicted Patrick Wayne Madden on three counts of vote-buying and one count of making a false statement in a matter within federal jurisdiction. On October 6, 2003, Madden pled guilty to one count of vote-buying. Madden paid three persons to vote by absentee ballot for a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive in the May 1998 Knott County, Kentucky primary election. During the investigation of this vote-buying, Madden made a false statement to an agent of the FBI. On February 2, 2004, Madden was sentenced to 20 months in prison and two years of supervised release. Madden pled guilty to one count of vote-buying. Madden paid three persons to vote by absentee ballot for a slate of candidates headed by Newsome.

*United States v. Newsome, Pigman, and Smith.* On April 24, 2003, a federal grand jury indicted sitting County Judge Executive Donnie Newsome and two of his supporters, Willard Smith and Keith Pigman, on one count of conspiracy to commit vote-buying. The grand jury further charged five substantive counts of vote-buying, one count charging Newsome, two counts charging Smith, one count charging Smith and Pigman, and one count charging all three defendants. Newsome, Pigman, and Smith, working together and with other conspirators, approached and paid numerous impoverished, handicapped, illiterate, or otherwise impaired persons to vote for Newsome by absentee ballot, resulting in a large increase in the rate of absentee voting, and long lines at the County Clerk's Office. Newsome won the election to remain the County Judge Executive.

On July 8, 2003, Pigman pled guilty pursuant to a plea agreement to conspiracy to commit vote-buying, and one count of vote-buying. Pigman cooperated with the government following his plea, and provided substantial assistance by testifying against Newsome and Smith. Pigman explained the nature and extent of the broader conspiracy to approach and pay numerous impoverished, handicapped, illiterate, or otherwise impaired persons to vote for the slate of candidates headed by Newsome. Pigman further explained that such voters were purposefully chosen because they would present severe credibility problems for the government in any investigation and prosecution of their conspiracy. Newsome offered and ultimately gave Pigman a county job in exchange for Pigman's participation in the conspiracy. On October 30, 2003, Pigman was sentenced to four months of imprisonment, four months of community confinement, and two years of supervised release. On October 1, 2003, a jury convicted both Newsome and Smith on all counts. Newsome, while in office as a Kentucky State Representative, became a candidate for County Judge Executive. Newsome, Pigman, and Smith, working together and with other conspirators, approached and paid numerous persons to vote for Newsome and certain other candidates by absentee ballot, resulting in a large increase in the rate of absentee voting, and long lines at the County Clerk's Office. Newsome, who won the primary election and subsequent elections, was ordered detained pending sentencing, together with Smith, in light of threats to government witnesses during the trial.

On March 16, 2004, Newsome, the former County Judge Executive for Knott County, Kentucky, was sentenced to 26 months of in prison, a \$20,000 fine, and three years of supervised release. Smith was sentenced to 24 months in prison, a \$5,000 fine, and three

years of supervised release. A jury previously convicted Newsome and Smith on all counts of an indictment that charged them with conspiracy to buy votes and five counts of vote-buying. Pigman, previously pled guilty to the conspiracy charge, and was sentenced to four months in prison, four months of community service, and two years of supervised release.

*United States v. Ronnie Slone and Brady Slone.* On March 28, 2003, a federal grand jury indicted Ronnie Neal Slone and Brady Warren Slone (who are brothers) on three counts of vote-buying, and on one count each of making a false statement in a matter within federal jurisdiction. The Slones allegedly paid three persons to vote by absentee ballot for a slate of candidates headed by Donnie Newsome. During the investigation of this vote-buying, each of the Slones allegedly made a false statement to an agent of the FBI. On August 15, 2003, a jury acquitted both defendants.

*United States v. Phillip Slone.* On March 28, 2003, a federal grand jury indicted Phillip Slone (who is not directly related to Ronnie and Brady Slone) on seven counts of vote-buying and one count of making a false statement in a matter within federal jurisdiction. On June 4, 2003, Slone pled guilty pursuant to a plea agreement to one count of vote-buying. Slone paid seven persons to vote for a slate of candidates headed by Homer Sawyer, the unsuccessful incumbent candidate for County Judge Executive in the May 1998 Knott County, Kentucky primary election. During the investigation of this vote-buying, Slone made a false statement to an agent of the FBI. On October 15, 2003, Slone was sentenced to ten months in prison and two years supervised release. Slone appealed his sentence and the district court's jurisdiction, and that appeal is pending.

Democracy At Risk: The November 2004 Election in Ohio  
Democratic National Committee

In December 2004, the DNC announced a comprehensive investigative study and analysis of election administration issues arising from the conduct of the 2004 general election in Ohio. The DNC decided to undertake this study because of the many reports, made to the Democratic Party, appearing in the press and made to advocacy groups, immediately after the election, of problems in the administration of the election in that state—problems that prevented many Ohio citizens who showed up at the polls to be able to vote and to have their vote counted. This study was intended to address the legitimate questions and concerns that have been raised and to develop factual information that would be important and useful in crafting further necessary election reforms.

**Most Pertinent Findings**

- Overall, 28 percent of Ohio voters reported problems with their voting experience, including ballot problems, locating their proper polling place and/or intimidation.
- Twice as many African American voters as white voters reported experiencing problems at the polls (52 percent vs. 25 percent).
- Scarcity of voting machines caused long lines that deterred many people from voting. Three percent of voters who went to the polls left their polling places and did not return due to the long lines.
- Statewide, African American voters reported waiting an average of 52 minutes before voting while white voters reported waiting an average of 18 minutes.
- Overall, 20 percent of white Ohio voters reported waiting more than twenty minutes, while 44 percent of African American voters reported doing so.
- Of provisional voters in Cuyahoga County, 35 percent were African American, compared to 25 percent of non-provisional voters, matched by geography. African American voters were 1.2 times more likely than white voters to be required to vote provisionally.
- Under Ohio law, the only voters who should have been asked for identification were those voting in their first Federal election who had registered by mail but did **not** provide identification in their registration application. Although only 7 percent of all Ohio voters were newly registered (and only a small percentage of those voters registered by mail and failed to provide identification in their registration application), more than one third (37 percent) reported being asked to provide identification.—meaning large numbers of voters were illegally required to produce identification.
- African American voters statewide were 47 percent more likely to be required to show identification than white voters. Indeed, 61 percent of

African American men reported being asked to provide identification at the polls.

- 6 percent of all voters reported feelings of intimidation.
- Statewide, 16 percent of African Americans reported experiencing intimidation versus only 5 percent of white voters.

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

### **Most Pertinent Recommendations**

- States should be encouraged to codify into law all required election practices, including requirements for the adequate training of official poll workers.
- 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.
- States should adopt legislation to make clear and uniform the rules on voter registration.
- 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.
- 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.
- 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.)
- 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.
- States should make voter suppression a criminal offense at the state level, in all states.
- States should improve the training of pollworkers.
- States should expend significantly more resources in educating voters on where, when and how to vote.
- Partisan officials who volunteer to work for a candidate should not oversee or administer any elections.

EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

**Articles**

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

This report **describes the pervasive and repeated practices of voter intimidation and vote suppression that have taken place in very recent years and during contemporary American history.** It goes on to describe the numerous instances of voter intimidation and suppression during the 2000 election, the 1990s, the 1980s and back through the civil rights movement of the 1960s, putting current efforts in historical perspective.

Describing the chronology of events in this way demonstrates the developing patterns and strategic underpinnings of the tactics used over the last forty years. **Examples** include:

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

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

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

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

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

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**programs** (especially voter ID). Indicates that the crux of the problem is **lax enforcement of federal voters rights laws** ("there is no record of the purveyors of any ballot-security program being criminally prosecuted by federal authorities for interfering with the right to vote." The only positive case law McDonald cited was a decision by the United States Court of Appeals for the Eighth Circuit that affirmed "an award of damages ranging from \$500 to \$2,000, payable by individual poll officials to each of seven black voters who had been unlawfully challenged, harassed, denied assistance in voting or purged from the rolls in the town of Crawfordville [Arkansas].")  
Recommends that Congress and the states should adopt "nondiscriminatory, evenly applied measures to ensure the integrity of the ballot."

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

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

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

Recommendations:

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

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

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

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

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

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

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

Investigation also found:

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

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

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

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

Its pertinent recommendations for reform are as follows:

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

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

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

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election committee would clearly violate these standards.

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

### Recommendation on Voter Identification -

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

Other points in ID requirement:

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

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

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

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

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

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

Focuses on **vote suppression through "ballot security programs"** (programs that, in the name of protecting against vote fraud, almost exclusively target heavily black, Latino, or Indian voting precincts and have the intent or effect of discouraging or preventing voters in those precincts from casting a ballot). Noteworthy **characteristics of these programs:**

- **focus on minority precincts almost exclusively**
- **is often on only the flimsiest evidence that vote fraud is likely to be perpetrated in such precincts;**
- **in addition to encouraging the presence of sometimes intimidating white Republican poll watchers or challengers who may slow down voting lines and embarrass potential voters by asking them humiliating questions, these programs have sometimes posted people in official-looking uniforms with badges and side arms who question voters about their citizenship or their registration**
- **warning signs may be posted near the polls, or radio ads may be targeted to minority listeners** containing dire threats of prison terms for people who are not properly registered—messages that seem designed to put minority voters on the defensive.
- **sometimes false information about voting qualifications** is sent to minority voters through the mail."
- **doing mailings, collecting returned materials, and using that as a basis for creating challenger lists** and challenging voters at the polls,

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

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

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

1. **An organized, often widely publicized effort to field poll watchers in what Republicans call "heavily Democratic," but what are usually minority, precincts;**
2. **Stated concerns about vote fraud in these precincts, which are occasionally justified but often are not;**
3. **Misinformation and fear campaigns directed at these same precincts, spread by radio, posted signs in the neighborhoods, newspapers, fliers, and phone calls, which are often anonymously perpetrated;**
4. **Posting "official-looking" personnel at polling places, including but not limited to off-duty police—sometimes in uniform, sometimes armed;**
5. **Aggressive face-to-face challenging techniques at the polls that can confuse, humiliate, and intimidate—as well as slow the voting process—in these same minority precincts;**
6. **Challenging voters using inaccurate, unofficial lists of registrants derived from "do-not-forward" letters sent to low-income and minority neighborhoods;**
7. **Photographing, tape recording, or videotaping voters; and**
8. **Employing language and metaphors that trade on stereotypes of minority voters as venal and credulous.**

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

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

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

### Major Conclusions:

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

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

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

### Policy Implications

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

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

Recommendations

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

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

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

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

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

The Advancement Project, “America’s Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy” November 7, 2001

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

### Findings:

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

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problems”;

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

Recommendations:

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

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

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

Re Claim of Double Voting by 4,497 Individuals:

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

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

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

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

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

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

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

Pertinent recommendations:

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

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

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

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

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

**Supervision of the Justice Department's nationwide response to election crimes:**

Election Crimes Branch oversees the Department's handling of all election crime allegations other than those involving civil rights violations, which are supervised by the Voting Section of the Civil Rights Division. Specifically, the Branch supervises four types of corruption cases: crimes that involve the voting process, crimes involving the financing of federal election campaigns, crimes relating to political shakedowns and other patronage abuses, and illegal lobbying with appropriated funds. Vote frauds and campaign-financing offenses are the most significant and also the most common types of election crimes. The purpose of Headquarters' oversight of election crime matters is to ensure that the Department's nationwide response to election crime is uniform, impartial, and effective. An Election Crimes Branch, headed by a Director and staffed by Section attorneys on a case-by-case basis, was created within the Section in 1980 to handle this supervisory responsibility.

**Voting Fraud:**

During **2002** the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. During **2003** the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virgin Islands, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. During **2004** the Branch assisted United States Attorneys' Offices in the following states in the handling of vote fraud matters that occurred in their respective districts: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Washington, and Wisconsin. This assistance included evaluating vote fraud allegations to determine whether investigation would produce a prosecutable federal criminal case, helping to structure investigations, providing legal advice concerning the formulation of charges, and assisting in establishing several task force teams of federal and state law enforcement officials to investigate vote fraud matters.

**Litigation:**

The Branch Director or Section attorneys also prosecute selected election crimes, either by assuming total operational responsibility for the case or by handling the case jointly with a United States Attorney's Office. The Section also may be asked to supervise the handling of a case in the event of a partial recusal of the local office. For example, in 2002 the Branch continued to supervise the prosecution of a sheriff and his election attorney for using data from the National Crime Information Center regarding voters' criminal histories to wage an election contest.

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### **District Election Officer Program:**

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

### **Ballot Integrity Initiative:**

**Beginning in September of 2002**, the Public Integrity Section, acting at the request of the Attorney General, assisted in the implementation of a Ballot Integrity Initiative for the 2002 general election and subsequent elections. This initiative included increasing the law enforcement priority the Department gives to election crimes; holding a special day-long training event in Washington, DC for representatives of the 93 United States Attorneys' Offices; publicizing the identities and telephone numbers of the DEOs through press releases issued shortly before the November elections; and requiring the 93 U.S. Attorneys to communicate the enhanced federal prioritization of election crime matters to state and local election and law enforcement authorities. As part of Ballot Integrity Initiative, on October 8, **2002**, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a Voting Integrity Symposium for District Election Officers representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Attorney General John Ashcroft delivered the keynote address on the importance of election crime and ballot integrity enforcement. Assistant Attorney General of the Civil Rights Division Ralph Boyd and Assistant Attorney General of the Criminal Division Michael Chertoff also spoke to attendees on the protection of voting rights and the prosecution of election cases. As part of Ballot Access and Voting Integrity Initiative, on September 23 and 24, **2003**, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a two-day Symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Assistant Attorney General of the Civil Rights Division Alexander Acosta and Assistant Attorney General of the Criminal Division Christopher A. Wray delivered the keynote addresses on the importance of protecting voting rights and the prosecution of election cases. On July 20 and 21, **2004**, the Public Integrity Section and the Voting Section of the Department's Civil Rights Division co-sponsored a two-day symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes available to prosecute such cases, and the handling of civil rights matters involving voting. Attorney General John Ashcroft delivered the keynote address on the importance of protecting voting rights and the prosecution of election fraud. In addition, Assistant Attorney General Christopher A. Wray of the Criminal Division and Assistant Attorney General R. Alexander Acosta of the Civil Rights Division addressed conference attendees on voting rights and election fraud enforcement issues respectively.

As a result of the Initiative, during **2002** the number of election crime matters opened by federal prosecutors throughout the country increased significantly, as did the Section's active involvement in election crime matters stemming from the Initiative. At the end of 2002, the Section was supervising and providing advice on approximately 43 election crime matters nationwide. In addition, as of December 31, 2002, 11 matters involving possible election crimes were pending in the Section. During 2002 the Section closed two election crime matters and continued its operational supervision of 8 voting fraud cases (conspiracy to illegally obtain criminal history records to use to challenge voters (AL) and 7 cases of vote buying involving 10 defendants (KY).

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Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)

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

### **Four situations where federal prosecution is appropriate:**

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

### **Four advantages to federal prosecution:**

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

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

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

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

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

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

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

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

### **Voter Intimidation and Suppression Stories (Abridged):**

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

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

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

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

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

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Report to Congressional Requesters, September 2005.

**[SUMMARY FAILS TO NOTE ELECTION OFFICIALS' RESPONSES THAT LITTLE VOTING FRAUD OR VOTER INTIMIDATION WAS DETECTED. DETECTED VOTING FRAUD WAS RELATED TO SUBMISSION OF FALSE/MATERIALLY INCORRECT VOTER REGISTRATION APPLICATIONS AND TO ABSENTEE BALLOT FRAUD. VOTER SUPPRESSION EFFORTS OCCUR.]** This Report focuses on the efforts of local election officials in 14 jurisdictions within 7 states to manage the registration process, maintain accurate voter registration lists, and ensure that eligible citizens in those jurisdictions had the opportunity to cast ballots during the 2004 election. The Report concentrates on election officials' characterization of their experiences with regard to (1) managing the voter registration process and any challenges related to receiving voter registration applications; checking them for completeness, accuracy, and duplication; and entering information into voter registration lists; (2) removing voters' names from voter registration lists and ensuring that the names of eligible voters were not inadvertently removed; and (3) implementing HAVA provisional voting and identification requirements and addressing any challenges encountered related to these requirements. The Report also provides information on motor vehicle agency (MVA) officials' characterization of their experiences assisting citizens who apply to register to vote at MVA offices and forwarding voter registration applications to election offices. The Report analyzed information collected from elections and motor vehicle agency offices in seven states—Arizona, California, Michigan, New York, Texas, Virginia, and Wisconsin. The 14 jurisdictions we selected were Gila and Maricopa Counties, Arizona; Los Angeles and Yolo Counties, California; City of Detroit and Delta Township, Michigan; New York City and Rensselaer County, New York; Bexar and Webb Counties, Texas; Albemarle and Arlington Counties, Virginia; and the cities of Franklin and Madison, Wisconsin. Election officials representing all but one of the jurisdictions surveyed following the November 2004 election said they faced some challenges managing the voter registration process, including (1) receiving voter registration applications; (2) checking them for completeness, accuracy, and duplication; and (3) entering information into voter registration lists; when challenges occurred, election officials reported they took various steps to address them. All but 1 of the jurisdictions reported removing names from registration lists during 2004 for various reasons, including that voters requested that their names be removed from the voter registration list; information from the U.S. Postal Service (USPS) showing that voters had moved outside the jurisdiction; felony records received from federal, state, or local governments identifying voters as ineligible due to felony convictions; and death records received from state or local vital statistics offices. All of the jurisdictions reported that they permitted citizens to cast provisional ballots during the November 2004 election. In addition, 12 of the 14 jurisdictions to which this was applicable reported that they offered certain first-time voters who registered by mail the opportunity to cast provisional ballots. Local election officials in 12 of the 13 jurisdictions we surveyed reported that they set up mechanisms to inform voters—without cost—about the outcome of their provisional votes during the November 2004 election. These mechanisms included toll-free telephone numbers, Web sites, and letters sent to the voters who cast provisional ballots. Election officials representing 8 of the 14 jurisdictions reported facing challenges implementing provisional voting for various reasons, including some poll workers not being familiar with provisional voting or, in one jurisdiction representing a large number of precincts, staff not having sufficient time to process provisional ballots.

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

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

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

### **Suggested reforms to prevent what voter fraud does take place:**

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

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

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

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

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

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

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

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

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

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

**Books**

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

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

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

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

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

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

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

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and types of voter fraud and voter intimidation occurring.

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

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

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

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

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

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

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

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

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

**Legal**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(*Id.*)

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

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

It is also important to understand that the **nature of in-person election fraud is such that it is nearly impossible to detect or investigate. Unless a voter stumbles across someone else trying to use her identity, see Sabato & Simpson, supra, 292, or unless the over-taxed poll worker happens to notice that the voter's signature is different from her registration signature State Ext. 37, ¶ 9, the chances of detecting such in-person voter fraud are extremely small. Yet, inflated voter-registration rolls provide ample opportunity for those who wish to commit in-person voter fraud.**

See Fund, *supra*, 24, 65, 69, 138; Sabato & Simpson, *supra*, 321. And there is **concrete evidence that the names of dead people have been used to cast fraudulent ballots.** See Fund, *supra*, 64. Particularly in light of Indiana's highly inflated voter rolls State Ex. 27, p. 9, Plaintiffs' repeated claims that there has never been any in-person voter fraud in Indiana can hardly be plausible, even if the state is unable to prove that such fraud has in fact occurred.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

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

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

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

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

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

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

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**1. Everyone does not define voting fraud and voter intimidation the same way.**

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

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

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

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

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

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

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

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

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

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

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

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

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

- 8. Proper recordkeeping and post-election auditing is an important key to identifying and preventing voting fraud, and for subsequent prosecution of such activities; but is not being done consistently.**
- 9. Poll worker recruitment and training is a key component to combating actions that are perceived as suppressing or intimidating voters.**
- 10. Both sides on election reform debates are using incomplete data to bolster their arguments.**

## Prosecution Of Electoral Fraud Under United States Federal Law

By Craig Donsanto

In Prosecution of Electoral Fraud, Donsanto discusses what sort of conduct is currently considered to be actionable as vote fraud, the historical background for the role of the criminal prosecutor in this area, and the various federal laws and juridical precedents governing the prosecution of vote fraud. It is a very useful document for understanding the current Department of Justice's view of its mission in this area, its interpretation of the federal laws governing its work, and how the Department has and has not been able to utilize applicable provisions.

Donsanto stresses that because electoral administration is primarily a state rather than a federal matter, the federal government usually only has authority over electoral issues where: federal candidates are standing for election; a corrupt act occurs; a federal instrumentality is employed in the fraud; the fraud involves the participation of public officials "acting under color of law" in such a manner that the constitutional right to Due Process and/or Equal Protection is violated; and/or the fraud is motivated by an intent to deprive a class of voters who's rights have been specifically guaranteed by the United States Constitution.

Donsanto defines election fraud as "a substantive irregularity relating to the voting act--- such as bribery, intimidation, or forgery---which has the potential to taint the election itself." Specifically, this includes:

- \* Preventing voters from participating in elections where a federal candidate is on the ballot, or when done "under color of law" in any election—18 U.S.C. sections 241 & 242.
- \* Vote buying, 42 U.S.C. section 1973i(c).
- \* Voting more than once, 42 U.S.C. section 1973i(e).
- \* Fraudulent voting, 42 U.S.C. sections 1973i(c), 1973i(e) & 1973gg-10.
- \* Intimidating voters through physical duress in any election, 18 U.S.C. section 245(b)(1)(A), or through physical or economic threats in connection with their registering to vote or their voting in federal elections, 42 U.S.C. section 1973gg-10, or to vote for a federal candidate, 18 U.S.C. section 594.
- \* Malfeasance by election officials acting "under color of law" for actions such as ballot-box stuffing, falsely tabulating votes, or preventing valid voter registrations or votes from being given effect in any election, 18 U.S.C. sections 241 & 242, as well as in elections where federal candidates are on the ballot, 42 U.S.C. sections 1973i(c), 1973i(e) & 1973gg-10.

- \* Submitting fictitious names on voter registration roles, 42 U.S.C. sections 1973i(c) & 1973gg-10.
- \* Knowingly procuring eligibility to vote for federal office by persons who are not entitled to vote under applicable state law, 42 U.S.C. sections 1973i(c) & 1973gg-10 (criminal voting—prohibited in approximately 40 states) and 42 U.S.C. sections 1973i(c), 1972gg-10, 18 U.S.C. 1015(f) & 611 (non-citizen voting).
- \* Knowingly making a false claim of United States citizenship to register to vote in any election, 18 U.S.C. section 1015(f), or falsely claiming United States citizenship for registering or voting in any election, 18 U.S.C. section 911.
- \* Providing false information concerning a person's name, address or period of residence in a district in order to establish that person's eligibility to register or to vote in a federal election, 42 U.S.C. sections 1973i(c) & 1973gg-10.
- \* Causing the production of voter registrations that qualify alleged voters to vote for federal candidates, or the production of ballots in federal elections, that the actor knows are materially defective under applicable state law, 42 U.S.C. section 1973gg-10.
- \* Using the United States mails, or interstate wire facilities, to obtain the salary and emoluments of an elected official through any of the activities mentioned above, 18 U.S.C. sections 1341 & 1343.
- \* Ordering, keeping or having under one's authority or control any troops or armed men at any polling place in any election. The actor must be an active civilian or military officer or an employee of the United States government, 18 U.S.C. section 592.
- \* Intimidating or coercing a federal employee to induce or discourage "any political activity" by that employee, 18 U.S.C. section 610.

#### Other Points of Interest

- Most election fraud is aimed at corrupting elections for local offices, which control or influence patronage positions. Election fraud occurs most frequently where there are fairly equal political factions, and where the stakes involved in who controls public offices are weighty -- as is often the case where patronage jobs are a major source of employment, or where illicit activities are being protected from law enforcement scrutiny
- Vote buying offenses have represented a sizable segment of the federal election crime docket in modern times.
- Voter intimidation requires proof of a difficult element: the existence of physical or economic intimidation that is intended by the defendant and felt by the victim. The crime of voter "intimidation" normally requires evidence of threats, duress, economic coercion, or some other aggravating factor which tends to improperly induce conduct on the part of the victim. If such evidence is lacking, an

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

- Section 1973gg-10(2) is a specific intent offense. This means that the offender must have been aware that citizenship is a requirement for voting and that the registrant did not possess United States citizenship. In most instances, proof of the first element is relatively easy because the citizenship requirement is stated on the voter registration form, and the form requires that the voter check a box indicating that he or she is a citizen. Proof of the second element, however, may be more problematic, since the technicalities of acquiring United States citizenship may not have existed in the culture of the registrant's country of birth, or otherwise been evident to him, and because the registrant may have received bad advice concerning the citizenship requirement. These issues can also usually be overcome by the fact that all voter registration forms now require a registrant to certify that he or she is a citizen. Section 611 is a relatively new statute that creates an additional crime for voting by persons who are not United States Citizens .It applies to voting by non-citizens in an election where a federal candidate is on the ballot, except when: (1) non-citizens are authorized to vote by state or local law on non-federal candidates or issues, and (2) the ballot is formatted in a way that the non-citizen has the opportunity to vote solely for the non-federal candidate or issues on which he is entitled to vote under state law. Unlike section 1015(f), section 611 is directed at the act of voting, rather than the act of lying. But unlike section 1015(f), Section 611 is a strict liability offense in the sense that the prosecution must only prove that the defendant was not a citizen when he registered or voted. Section 611 does not require proof that the offender be aware that citizenship is a prerequisite to voting.

**The Federal Crime of Election Fraud**

By Craig Donsanto

In The Federal Crime of Election Fraud, Donsanto addresses the role of the United States Department of Justice in matters of election fraud. Specifically, it answers the most frequently asked questions concerning the federal law enforcement role in election matters. Particularly, what sort of election-related conduct is potentially actionable as a federal crime, what specific statutory theories apply to frauds occurring in elections lacking federal candidates on the ballot, what federalism, procedural, and policy considerations impact on the federalization of this type of case, and how Assistant United States Attorneys should respond to this type of complaint.

Donsanto indicates that as a general rule, the federal crime of voter fraud embraces only organized efforts to corrupt of the election process itself: i.e., the registration of voters, the casting of ballots, and the tabulation and certification of election results. Moreover, this definition excludes all activities that occur in connection with the political campaigning process, unless those activities are themselves illegal under some other specific law or prosecutorial theory. This definition also excludes isolated acts of individual wrongdoing that are not part of an organized effort to corrupt the voting process. Finally, Donsanto points out that mistakes and other gaffs that inevitably occur are not included as voter fraud. Where mistakes occur on a significant enough level to potentially affect the outcome of an election, the appropriate remedy is an election contest brought by the loser seeking civil judicial redress through the appropriate state election contest process.

Along with the limits discussed above, prosecuting election fraud offenses in federal court is further complicated by the constitutional limits that are placed on federal power over the election process. The conduct of elections is primarily a state rather than a federal activity.

Donsanto lists four types of election fraud: schemes to purposely and corruptly register voters who either do not exist, or who are known by the putative defendant to be ineligible to vote under applicable state law; schemes to cast, record or fraudulently tabulate votes for voters who do not participate in the voting act at all; schemes to corrupt the voting act of voters who do participate in the voting act to a limited extent; and, schemes to knowingly prevent voters qualified voters from voting.

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

angle will yield evidence useful in the prosecution of other categories of federal offense.

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

Several prosecutorial theories used by United States Attorneys to federalize election frauds are discussed. These include: schemes by polling officers to violate their duty under state law to safeguard the integrity of the election process by purposefully allowing void ballots to be cast (stuffing the ballot box), or by intentionally rendering fraudulent vote tallies which can be prosecuted as civil rights violations under 18 U.S.C. sections 241 or 242; schemes to stimulate or reward voter registration by offering or giving voters things having monetary value violate the "payment for registering" clause of 42 U.S.C. section 19731(c); schemes to register voters fraudulently through providing election officials materially false information about the voter's eligibility for the franchise; and, schemes to obtain and cast ballots that are materially defective in nonfederal elections can still be prosecuted under 18 U.S.C. section 1341. There are also some other federal statutes involved in election fraud cases such as 18 U.S.C. section 597 that prohibits making expenditures for the specific purpose of stimulating voters to cast ballots for candidates seeking the federal offices of Senator, Congressman or President and 42 U.S.C. section 1973i (e) that prohibits voting more than once in elections where federal candidates are on the ballot.

Donsanto lists four questions used by prosecutors in evaluating the credibility of election complaints: does the substance of the complaint assuming it can be proven through investigation - suggest a potential crime; is the complaint sufficiently fact-specific that it provides leads for investigators to pursue; is there a federal statute that can be used to federalize the criminal activity at issue; and, is there a special federal interest in the matter that warrants federalization rather than deferral to state law enforcement.

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

Finally, Donsanto indicates that election crimes based on race or language minority status are treated as civil rights matters under the Voting Rights Act.

Fooled Again, Mark Crispin Miller

Fooled Again sets out to show that the 2004 election was won by Bush through nefarious means, and indicts the news media for not taking anomalies, irregularities, and alleged malfeasance in the process seriously enough.

Miller identifies a number of statistical anomalies based on polling and turnout results that he alleges puts the validity of the 2004 election in doubt. He accuses Republicans of committing crimes and improprieties throughout the country. These include deliberate disparities in voting machine distribution and long lines in Democratic jurisdictions; misinterpretation of voting laws by elections officials to the detriment of Democratic voters; dirty tricks and deceptive practices to mislead Democratic and minority voters about voting times, places and conditions; machine irregularities in Democratic jurisdictions; relocating polling sites in Democratic and minority areas; suspicious mishandling of absentee ballots; refusing to dispense voter registration forms to certain voter registration groups; intimidation of students; suspicious ballot spoilage rates in certain jurisdictions; "strategic distribution of provisional ballots," and trashing of provisional ballots; harassment of Native American voters; a Republican backed organization engaging in voter registration efforts throughout the country that allegedly destroyed the voter registration forms of Democrats; illegitimate challenges at the polls by Republican poll watchers; improper demands for identification in certain areas; Republican challenges to the voter registration status of thousands of voters before the election, and the creation of lists of voters to challenge at the polls; wrongful purging of eligible voters from voting rolls; partisan harassment; the selective placement of early voting sites; and the failure to send out absentee ballots in time for people to vote.

Miller details what he says was the inappropriate use of the Federal Voter Assistance Program that made voting for the military easy while throwing up obstacles for civilians overseas in their efforts to vote by absentee ballot, leading many of them to be disenfranchised. Miller says that most of the military voters would be Republicans and most of the overseas civilians Kerry voters.

In this book, Miller clearly tries to prove the Republican Party won the 2004 through illegitimate means. This must be kept strongly in mind in making any use of this work. However, the book is well sourced, and individual instances of alleged malfeasance discussed may be worth looking at.

## Election Protection 2004

By the Election Protection Coalition

### **Election Protection – the Program**

Election Protection 2004 was the nation's most far-reaching effort to protect voter rights before and on Election Day. The historic nonpartisan program included:

- A toll-free number, 1-866-OUR-VOTE, with free, immediate and multi-lingual assistance to help voters with questions about registration and voting, and assist voters who encounter barriers to the ballot box.
- Distribution of more than five million "Voters' Bills of Rights" with state-specific information
- 25,000 volunteers, including 6,000 lawyers and law students, who watched for problems and assisted voters on the spot at more than 3,500 predominantly African-American and Latino precincts with a history of disenfranchisement in at least 17 states.
- Civil rights lawyers and advocates represented voters in lawsuits, preserved access to the polls, exposed and prevented voter intimidation, worked with election officials to identify and solve problems with new voting machines, technology and ballot forms, and protected voter rights in advance and on Election Day.

### **Voter Intimidation and Suppression Stories (Abridged)**

- An Associated Press story noted Election Protection's exposure of reported voter suppression tactics in Colorado: Officials with the Election Protection Coalition, a voter-rights group, also said some voters in a predominantly black neighborhood north of Denver found papers on their doorsteps giving them the wrong address for their precinct
- Election Protection received a report from Florissant County, Missouri from a voter who lives in predominantly white neighborhood. While waiting in line to vote, a Republican challenger challenged the black voters by requesting more proof of identification, residence, and signature match, while asking nothing from white voters. Also, the same voter reportedly asked a few questions about voting but an election officials refused to provide any meaningful answer, insisting that "it's very simple", but provided white voters with information when requested. There was one other black voter in line who was also singled out for same treatment while white voters were not.
- Election Protection received a report from Boulder County, Colorado that a poll worker made racist comments to Asian American voter and then told her she was not on the list and turned her away. The voter saw others filling out provisional ballots and asked for one but was denied. Another Asian American woman behind

her in line was also given trouble by the same poll worker (he questioned her nationality and also turned her away).

- The Election Protection hotline received reports from Pinellas County, Florida that individuals purporting to be from the Kerry campaign are going door-to-door handing out absentee ballots, and asking voters to fill them out, and then taking the ballots from them, saying "Vote here for Kerry. Don't bother going to the polls."
- The Election Protection Coalition received a report from a woman whose sister lives in Milwaukee and is on government assistance. Her sister was reportedly told by her "case manager" that if she voted for Kerry, she would stop receiving her checks.
- An illiterate, older and disabled voter in Miami-Dade asked for assistance reading the ballot and reported that a poll worker yelled at him and refused to assist him and also refused to allow him to bring a friend into the booth in order to read the ballot to him.
- The Election Protection Coalition have gathered reports that flyers are circulating in a black community in Lexington, South Carolina claiming they those who are behind on child support payments will be arrested as the polls.
- Minority voters from Palm Beach County, Florida reported to the hotline that they received middle-of-the-night, live harassing phone calls warning them away from the polls.
- A volunteer for Rock the Vote reported that two illiterate voters in Michigan requested assistance with their ballots but were refused and reportedly mocked by poll workers.
- The hotline received a call from a radio DJ in Hillsborough County, Florida, who stated that he has received many calls (most of which were from African-Americans) claiming that poll workers were turning voters away and not "letting" them vote.
- The hotline received a call from Pima County, Arizona, indicating that Democratic voters received calls throughout Monday evening, providing incorrect information about the precinct location. Voters have had to be transported en masse in order to correct the problem.
- A caller from Alabama claims that he was told at his polling place that he could vote there for everything but the President and that he would have to go elsewhere in order to vote for a presidential candidate.

- Poll monitors in Philadelphia reports groups of lawyers, traveling in threes, who pull voters out of line and challenge them to provide ID, but when challenged themselves, they hop into waiting cars or vans and leave. Similar activity by Republican lawyers in Philadelphia was reported in the 2002 election.
- In Cuyahoga, Ohio, a caller reported that all black voters are being asked to show ID, while white voters are not. Caller report that he is black and had to show ID while his girlfriend is white and did not have to show ID.
- Two months ago, suspicious phone calls to newly registered Democrats —telling them they weren't, in fact, registered to vote — were traced to the Republican headquarters in the Eastern Panhandle. On Monday, Democrats there said the calls have started again, even after the Berkeley County Clerk — a Republican — sent the party a cease-and-desist letter. The Berkeley prosecutor, who also is county Democratic chairman, has called on the U.S. attorney to investigate.
- In Tuscon, Arizona a misleading call informing voters that they should vote on November 3 has been traced back to the state GOP headquarters. The FBI is investigating.
- A man driving around in a big van covered in American flags and a big picture of a policeman was reportedly parked in front of a polling place; he then got out and moved within the 75 ft limit, until he was asked to leave; he then was found inside the polling place and was again asked to leave. Election Protection volunteers contacted officials and the man was eventually removed.
- The Election Protection hotline has received a report from individuals who claim to have received recorded telephone message coming from Bill Clinton and ACT and reminding them to vote on Nov. 3rd.
- In Massachusetts, the EP Hotline has received a report that a radio station (WILD) is broadcasting that voters will be arrested on the spot if they have outstanding parking tickets.
- In Richland, South Carolina Election Protection has received a report of a poll manager turning away individuals who do not have photo ID issued to the county or a driver's license; an EP lawyer spoke with the Poll Manager at 8:20 am and told her that people with other forms of ID should be allowed to vote by provisional ballot.
- In Greenville, a caller reported that a white poll worker was asking Blacks for multiple form of I.D. Fortunately, the voter who reported the problem did have a second I.D. but reported that some others were turned away. Election Protection attorneys have alerted election officials.

- In Allegheny County, Pennsylvania, an official looking flyer advises Democratic voters to "create a peaceful voting environment" by voting on Wednesday, November 3
- The week before the election, flyers were circulated in Milwaukee under the heading "Milwaukee Black Voters League" with some "warnings for election time." The flyer listed false reasons for which you would be barred from voting (such as a traffic ticket) and then warned that "If you violate any of these laws you can get ten years in prison and your children will get taken away from you."
- There is a Jefferson County flyer which tells voters "See you at the Poles![sic]"... on November 4.

## **Summary and Relevant Excerpts From Georgia Voter ID Litigation**

### **Complaint For Declaratory And Injunctive Relief**

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

Although the Secretary of State had informed the members of the General Assembly and the Governor prior to the enactment of Act 53, that her office had received many complaints of voter fraud involving absentee ballots and no documented complaints of fraud that involve ballots that were cast in person at the polls, the General Assembly ignored this information and arbitrarily chose instead to require only those registered voters who vote in person to present a Photo ID as a condition of voting, but deliberately refused to impose the same requirement on absentee voters

### **The Stated Purpose Of The Photo ID Requirement Fraud Is A Pretext**

According to a press release prepared by the Communications Office of the Georgia House of Representatives, the purpose of Act 53 is:

... to address the issue of voter fraud by placing tighter restrictions on voter identification procedures. Those casting ballots will now be required to bring a photo ID with them before they will be allowed to vote.

Al Marks, Vice Chairman for Public Affairs and Communication of the Hall County GOP told the Gainesville Times:

I don't think we need it for voting, because I don't think there's a voter fraud problem. Gainesville Times, "States Voters Must Present Picture IDs" (September 15, 2005) ([www.gainesvilletimes.com](http://www.gainesvilletimes.com)).

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

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

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

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

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

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

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

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Letter from Secretary of State Cathy Cox to Governor Sonny Purdue, April 8, 2005

One of the primary justifications given by the Legislature for the passage of the photo identification provisions of House Bill 244 - the elimination of voter ID fraud at the polls is an unfounded justification I cannot recall one documented case of voter fraud during my tenure as Secretary of State or Assistant Secretary of State that specifically related to the impersonation of a registered voter at voting polls. Our state currently has several practices and procedures in existence to ensure that such cases of voter fraud would have been detected if they in fact occurred, and at the very least, we would have complaints of voters who were unable to vote because someone had previously represented himself or herself as such person on that respective Election Day. As a practical matter, there is no possibility that vote fraud of this type would have gone undetected if it had in fact occurred because there is a list of registered voters at each polling place that is checked off as each person votes. If the impersonator voted first and the legitimate voter came to the polling place later in the day and tried to vote, he or she would be told that they had already voted and would not be allowed to vote a second time in the same day. It is reasonable to suspect that a voter who cared enough to show up at the polls to cast a ballot would almost certainly have complained - but there have been no such complaints. If the opposite occurred, and the legitimate person came to the polls first and cast his ballot, the impersonator who showed up later would not be allowed to vote for the same reason and the attempted fraud would have been prevented.

In addition, this state has adopted severe criminal sanctions for the type of vote impersonation that is purportedly of concern and it is evident that such penalties have been a sufficient deterrent. In essence, there is no voter fraud problem currently in existence that House Bill 244 addresses.

In contrast to the lack of voter fraud relating to impersonation of voters at polls during my tenure the State Election Board has reviewed numerous cases of voter fraud relating to the use of absentee ballots.

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There are 159 counties and an even larger number of municipalities in Georgia that conduct elections. Neither the Secretary of State nor her staff can be physically present at the polling places for those elections and therefore could not possibly be aware of all in-person voter fraud that might occur. (Cox Decl. ¶ 6.)

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fraud, and both her scenario and others were possible under the law as it existed prior to the enactment of HB 244. (Id.) As stated by the Director of Elections for the Forsyth County Board of Elections, the typical case of in-person voter fraud would be committed by identifying persons who do not typically vote and then having other individuals vote as those persons. (Smith Decl. ¶ 4.)

The Executive Director of the Richmond County Board of Elections has been aware of such complaints, but has been unable to gather evidence to prove the violations because the nature of the conduct makes such evidence hard to develop. (Bailey Decl. ¶ 9.) Indeed, past incidents of fraudulent registrations in Forsyth County and Fulton County were reported to the District Attorneys' offices in those respective counties. (Smith Decl. ¶ 6; MacDougald Decl. ¶ 4.) In Fulton County, the fraudulent registrations were also reported to the United States Attorney for the Northern District of Georgia, and he has opened an investigation of the fraudulent registrations. (MacDougald Decl. ¶ 4.)

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According to Secretary of State Cox, Georgia has procedures and practices in place to detect voter fraud. Those procedures include verifying the voter's correct address, as well as the voter's name, during the check-in process for in-person voters. Georgia also imposes criminal penalties for voter impersonation. Most violations of Georgia election laws are punishable as felonies. No evidence indicates that the criminal penalties do not sufficiently deter in-person voter fraud.

The integrity of the voter list also is extremely important in preventing voter fraud. The Atlanta Journal Constitution published an article indicating that Georgia had experienced 5,412 instances of voter fraud during a twenty-year period. Secretary of State Cox's office undertook an investigation in response to that article. The investigation revealed that the specific instance of voter fraud outlined in the Atlanta Journal-Constitution, involving a report that Alan J. Mandel had voted after his death, actually did not occur. Instead, an individual with a similar name, Alan J. Mandle, had voted at the polls, and the poll worker had marked Alan J. Mandel's name rather than marking Alan J. Mandle, the name of the individual who actually voted. Secretary of State Cox's office compared the

signature on the voter certificate to the voter registration card of the living individual, and concluded that the living individual, Alan J. Mandle, rather than the deceased Alan J. Mandel, had voted.

The Secretary of State's Office subsequently attempted to ensure that voter records were maintained and up to date. The Secretary of State's Office sends information concerning dead voters to local elections officials on a monthly basis, and now has the authority to remove the names of deceased voters from the voter rolls if the local elections officials fail to do so in a timely manner. Secretary of State Cox is not aware of any reports of dead individuals voting since her office received authority to remove the names of deceased individuals from the voter rolls.

There seems to be little doubt that the Photo ID requirement fails the strict scrutiny test: accepting that preventing voter fraud is a legitimate and important State concern, the statute is not narrowly drawn to prevent voter fraud. Indeed, Secretary of State Cox pointed out that, to her knowledge, the State had not experienced one complaint of in-person fraudulent voting during her tenure. In contrast, Secretary of State Cox indicated that the State Election Board had received numerous complaints of voter fraud in the area of absentee voting. Furthermore, the Secretary of State's Office removes deceased voters from the voting rolls monthly, eliminating the potential for voter fraud noted by the Atlanta Journal-Constitution article alleging that more than 5,000 deceased people voted during a twenty-year period.

Further, although Defendants have presented evidence from elections officials of fraud in the area of voting, all of that evidence addresses fraud in the area of voter registration, rather than in-person voting. The Photo ID requirement does not apply to voter registration, and any Georgia citizen of appropriate age may register to vote without showing a Photo ID. Indeed, individuals may register to vote by producing copies of bank statements or utility bills, or without even producing identification at all. The Photo ID law thus does nothing to address the voter fraud issues that conceivably exist in Georgia.

## Summary and Relevant Excerpts From Georgia Voter ID Litigation

### Complaint For Declaratory And Injunctive Relief

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

Although the Secretary of State had informed the members of the General Assembly and the Governor prior to the enactment of Act 53, that her office had received many complaints of voter fraud involving absentee ballots and no documented complaints of fraud that involve ballots that were cast in person at the polls, the General Assembly ignored this information and arbitrarily chose instead to require only those registered voters who vote in person to present a Photo ID as a condition of voting, but deliberately refused to impose the same requirement on absentee voters

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

According to a press release prepared by the Communications Office of the Georgia House of Representatives, the purpose of Act 53 is:

... to address the issue of voter fraud by placing tighter restrictions on voter identification procedures. Those casting ballots will now be required to bring a photo ID with them before they will be allowed to vote.

Al Marks, Vice Chairman for Public Affairs and Communication of the Hall County GOP told the Gainesville Times:

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**Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote**

GAO Report

In 2002, the Help America Vote Act (HAVA) was enacted and, among other things, it requires states to implement provisional voting for elections for federal office. HAVA, in general, requires that individuals not listed as registered or whose eligibility is questioned by an election official must be notified about and permitted to cast a provisional ballot that is set aside for review by election officials at a later time so that they can determine whether the person is eligible to vote under state law. HAVA also requires that provisional ballots be provided to first-time voters who had registered to vote by mail on or after January 1, 2003, but were unable to show photo identification or another qualifying identification document when voting in person or by mail in a federal election. In addition, HAVA requires that election officials must provide access to information that permits voters to learn if their provisional ballot was counted, and, if not, why not.

This Report focuses on the efforts of local election officials in 14 jurisdictions within 7 states to manage the registration process, maintain accurate voter registration lists, and ensure that eligible citizens in those jurisdictions had the opportunity to cast ballots during the 2004 election. Specifically, for the 2004 election, the Report concentrates on election officials' characterization of their experiences with regard to (1) managing the voter registration process and any challenges related to receiving voter registration applications; checking them for completeness, accuracy, and duplication; and entering information into voter registration lists; (2) removing voters' names from voter registration lists and ensuring that the names of eligible voters were not inadvertently removed; and (3) implementing HAVA provisional voting and identification requirements and addressing any challenges encountered related to these requirements. The Report also provides information on motor vehicle agency (MVA) officials' characterization of their experiences assisting citizens who apply to register to vote at MVA offices and forwarding voter registration applications to election offices.

The Report analyzed information collected from elections and motor vehicle agency offices in seven states—Arizona, California, Michigan, New York, Texas, Virginia, and Wisconsin. These states take various approaches to administering elections. Within each of the seven states, using population data from the 2000 U.S. Census, two jurisdictions were selected: a local jurisdiction with a large population and a local jurisdiction with a small population. The 14 jurisdictions we selected were Gila and Maricopa Counties, Arizona; Los Angeles and Yolo Counties, California; City of Detroit and Delta Township, Michigan; New York City and Rensselaer County, New York; Bexar and Webb Counties, Texas; Albemarle and Arlington Counties, Virginia; and the cities of Franklin and Madison, Wisconsin.

Information was gathered for the Report in a number of ways. First, relevant laws, state reports, and documents related to the voter registration process in the seven states were reviewed. Second, state and local election officials in the 7 states and 14 jurisdictions

were interviewed to obtain information on their registration processes and implementation of the HAVA requirements for provisional voting and voter identification. Third, a survey was sent to election officials in the 14 jurisdictions to gather information about their experiences with the November 2004 election. Finally, a survey was sent to state and local MVA officials in 6 of the 7 states and 12 of the 14 jurisdictions. The survey primarily asked questions about the MVA offices' experiences with (1) assisting citizens with completing voter registration applications, (2) forwarding the applications to election offices, and (3) responding to individuals and state or local election officials who contacted their offices about individuals who declared they had applied to register to vote at MVA offices but their names were not on voter registration lists when they went to vote in the November 2004 election.

Election officials representing all but one of the jurisdictions surveyed following the November 2004 election said they faced some challenges managing the voter registration process, including (1) receiving voter registration applications; (2) checking them for completeness, accuracy, and duplication; and (3) entering information into voter registration lists; when challenges occurred, election officials reported they took various steps to address them. Officials in 7 of the 14 jurisdictions reported that their staff faced challenges checking voter registration applications for completeness, accuracy, or duplicates. According to these officials, these challenges occurred for a variety of reasons, including problems contacting individuals to obtain complete and accurate information and insufficient staffing to check the applications. They reported that, among other things, their staff addressed these challenges by sending letters or calling applicants to obtain correct information. Finally, 6 of the 14 election officials reported that their staff faced challenges entering or scanning voter information into registration lists for reasons such as the volume of applications received close to Election Day and problems with the scanning equipment. To address these challenges, they reported that more staff were hired and staff worked overtime.

All but 1 of the jurisdictions reported removing names from registration lists during 2004 for various reasons, including that voters requested that their names be removed from the voter registration list; information from the U.S. Postal Service (USPS) showing that voters had moved outside the jurisdiction; felony records received from federal, state, or local governments identifying voters as ineligible due to felony convictions; and death records received from state or local vital statistics offices. When removing names from registration lists, election officials reported that they took various steps to ensure that the names of eligible voters were not inadvertently removed from voter registration lists. These steps included sending letters or postcards to registrants to verify that voters wanted their names removed; matching voters' identifying information with USPS data and sending voters identified by USPS as having moved outside the jurisdiction notices of removal; and matching voter registration records with felony records or death records to confirm it was the same person.

All of the jurisdictions reported that they permitted citizens to cast provisional ballots during the November 2004 election. In addition, 12 of the 14 jurisdictions to which this was applicable reported that they offered certain first-time voters who registered by mail

the opportunity to cast provisional ballots. Election officials in 13 of the 14 jurisdictions reported that 423,149 provisional ballots were cast, and 70 percent (297,662) were counted. Not all provisional votes were counted because, as election officials reported, not all provisional ballots met states' criteria for determining which ballots should be counted. Reasons that provisional ballots cast during the 2004 election were not counted, as reported by election officials, included, among others, that individuals did not meet the residency eligibility requirements, had not registered or tried to register to vote with the election office, had not submitted the voter registration applications at motor vehicle agency offices, or election officials did not have time to enter information from applicants into their voter registration lists because applications were received at the election offices very close to or after the state registration deadline.

Local election officials in 12 of the 13 jurisdictions 13 we surveyed reported that they set up mechanisms to inform voters—without cost—about the outcome of their provisional votes during the November 2004 election. These mechanisms included toll-free telephone numbers, Web sites, and letters sent to the voters who cast provisional ballots. Election officials also reported that provisional voters in their jurisdictions received written information at their polling places about how to find out the outcome of their provisional ballots, and provisional voters in 8 of the 13 jurisdictions had the opportunity to access information about the outcome of their ballots within 10 days after the election. Finally, election officials representing 8 of the 14 jurisdictions reported facing challenges implementing provisional voting for various reasons, including some poll workers not being familiar with provisional voting or, in one jurisdiction representing a large number of precincts, staff not having sufficient time to process provisional ballots. To address these challenges, the officials reported that they provided additional training to poll workers and hired additional staff to count provisional ballots.

## **Existing Literature Reviewed**

### **Reports**

The Long Shadow of Jim Crow, People for the American Way and the NAACP

The New Poll Tax, Laughlin McDonald

Wisconsin Audit Report, Voter Registration Elections Board

Preliminary Findings, Milwaukee Joint Task Force Investigating Possible Election Fraud

Building Confidence in U.S. Elections, National Commission on Federal Election Reform (Carter/Baker Report)

Response to the Report of the 2005 Commission on Federal Election Reform (Carter/Baker Report), The Brennan Center and Professor Spencer Overton

Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?, Chandler Davidson

A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law, Alec Ewald

Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election, American Center for Voting Rights

America's Modern Poll Tax, The Advancement Project

Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General, The Brennan Center and Professor Michael McDonald

Democracy at Risk: The November 2004 Election in Ohio, Democratic National Committee

Department of Justice Public Integrity Reports 2002, 2003, 2004

Prosecution of Election Fraud under United States Federal Law, Craig Donsanto

Election Protection 2004, Election Protection Coalition

The Federal Crime of Election Fraud, Craig Donsanto

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

Securing the Vote: An Analysis of Election Fraud, Lori Minnite

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

**Books**

Stealing Elections, John Fund

Steal this Vote: Dirty Elections and the Rotten History of Democracy in American, Andrew Gumbel

Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004, Tracey Campbell

A Funny Thing Happened on the Way to the White House, David E. Johnson and Jonny R. Johnson

Foiled Again, Mark Crispin Miller

**Legal**

*Indiana Democratic Party vs. Rokita*

*Common Cause of Georgia vs. Billup*

U.S. Department of Justice Section 5 Recommendation Memorandum (Georgia voter identification)

016442

## Existing Research Analysis

There are many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. There is little research that is truly systematic or scientific. The most systematic look at fraud is the report written by Lori Minnite. The most systematic look at voter intimidation is the report by Laughlin McDonald. Books written about this subject seem to all have a political bias and a pre-existing agenda that makes them somewhat less valuable.

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

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

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate, but some reports say it is a major problem, albeit hard to identify.
- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.

- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

**INDIANA ID LITIGATION SUMMARY**

**MEMORANDUM IN SUPPORT OF DEMOCRATS. MOTION FOR SUMMARY JUDGMENT**

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

The State cannot show any compelling justification for subjecting only voters who vote in person to the new requirements of the Photo ID Law, while exempting absentee voters who vote by mail or persons who live in state-certified residential facilities. On the other hand, absentee ballots are peculiarly vulnerable to coercion and vote tampering since there is no election official or independent election observer available to ensure that there is no illegal coercion by family members, employers, churches, union officials, nursing home administrators, and others.

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

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

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

In evaluating the breadth of the law and whether the State has used the least restrictive means for preventing fraud, the Court must take into account the other mechanisms the State currently employs to serve the statute's purported purposes, as well as other, less restrictive means it could reasonably employ. *Krislov*, 226 F.3d at 863. The State of Indiana has made it a felony for a voter to misrepresent his or her identity for purposes of casting a fraudulent ballot.

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

**MEMORANDUM OF THE STATE OF INDIANA, THE INDIANA SECRETARY OF STATE, AND THE CO-DIRECTORS OF THE INDIANA ELECTION DIVISION IN SUPPORT OF THEIR JOINT MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO THE MOTIONS FOR SUMMARY JUDGMENT FILED BY BOTH SETS OF PLAINTIFFS**

In-person voter-identity fraud is notoriously difficult to detect and investigate. In his book *Stealing Elections*, John Fund observes that actual in-person voter fraud is nearly undetectable without a voter photo-identification requirement because anybody who provides a name that is on the rolls may vote and then walk away with no record of the person's actual identity. *See generally* John Fund, *Stealing Elections* (2004). The problem is only exacerbated by the increasingly transient nature of society. Documentation of in-person voter fraud often occurs only when a legitimate voter at the polls hears a fraudulent voter trying to use her name, as happened to a woman in California in 1994. *See* Larry J. Sabato & Glenn R. Simpson, *Dirty Little Secrets* 292 (1996).

Regardless of the lack of extensive evidence of in-person voter fraud, the Commission on Federal Election Reform (known as the Baker-Carter Commission) recently concluded that "there is no doubt that it occurs." State Ex. 1, p. 18.<sup>1</sup> Legal cases as well as newspaper and other reports confirm that in-person voter-identity fraud, including voter impersonation, double votes, dead votes, and fake addresses, plague federal and state elections. [The memorandum details several specific cases of various types of alleged voting fraud from the past several years]

Though they are largely unable to study verifiable data concerning in-person voter fraud, scholars are well aware of the conditions that foster fraudulent voting. *See* Fund, *supra*; Sabato & Simpson, *supra*, 321. In particular, fraud has become ever more likely as "it has become more difficult to keep the voting rolls clean of 'deadwood' voters who have moved or died" because such an environment makes "fraudulent voting easier and therefore more tempting for those so inclined." Sabato & Simpson, *supra*, 321. "In

general, experts believe that one in five names on the rolls in Indiana do not belong there.” State Ex. 25.

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

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

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

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

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

Securing the Vote: An Analysis of Election Fraud, by Lorraine Minnite

Professor Lori Minnite conducted a comprehensive survey and analysis of vote fraud in the United States. The methodology included doing nexis searches for all 50 states and surveying existing research and reports. In addition, Minnite did a more in-depth study of 12 diverse states by doing nexis searches, studying statutory and case law, and conducting interviews with election officials and attorneys general. Finally, the study includes an analysis of a few of the most high profile cases of alleged fraud in the last 10 years, including the Miami mayoral election (1997), Orange County congressional race (1996), and the general election in Missouri (2000). In these cases, Minnite shows that many allegations of fraud do not end up being meritorious.

Minnite finds that available evidence suggests that the incidence of election fraud is minimal and rarely affects election outcomes. Election officials generally do a very good job of protecting against fraud. Conditions that give rise to election fraud have steadily declined over the last century as a result of weakened political parties, strengthened election administration, and improved voting technology. There is little available evidence that election reforms such as the National Voter Registration Act, election day registration, and mail-in voting have resulted in increases in election fraud.

Election fraud appears also to be very rare in the 12 states examined more in-depth. Legal and news records turned up little evidence of significant fraud in these states or any indication that fraud is more than a minor problem. Interviews with state officials further confirmed this impression.

Minnite found that, overall, the absentee mail-in ballot process is the feature most vulnerable to voter fraud. There is not a lot of evidence of absentee ballot fraud but the potential for fraud is greatest in this area because of a lack of uniformly strong security measures in place in all states to prevent fraud.

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

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

Shattering the Myth is a description and analysis of the complaints and allegations of voting irregularities gathered by the Election Protection program during the 2004 presidential election. Election Protection was an effort involving hundreds of organizations and thousands of citizens to protect the voting rights of Americans across the country. The project included sending thousands of monitors to the polls and hosting a national toll free voters' rights hotline. EP mounted extensive field efforts in 17 states.

Election Protection received more than a thousand complaints of voter suppression or intimidation. Complaints ranged from intimidating experiences at polling places to coordinated suppression tactics. For example:

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

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

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

1. Improper implementation of voter identification rules, especially asking only African Americans for proof of identity: Florida, Ohio, Pennsylvania, Illinois, Missouri, Arkansas, Georgia, Louisiana

2. Individuals at the polls posing as some sort of law enforcement authority and intimidating and harassing voters: Arizona, Missouri
3. Intimidating and harassing challengers at the polls: Ohio, Michigan, Wisconsin, Missouri, Minnesota
4. Deceptive practices and disinformation campaigns, such as the use of flyers with intentional misinformation about voting rights or voting procedures, often directed at minority communities; the use of phone calls giving people misinformation about polling sites and other procedures; and providing verbal misinformation at the polls in a way that appears to have been intentionally misleading: Florida, Pennsylvania, Illinois, Wisconsin, Missouri, North Carolina, Arkansas, Texas
5. Refusal to provide provisional ballots to certain voters: Ohio, Pennsylvania, Illinois, Michigan, Colorado, Missouri, Texas, Georgia, Louisiana
6. Registration applications submitted through third parties that were not processed: Arizona, Michigan, Nevada (registration forms destroyed by Sproul Associates)
7. Improper removal from the voter registration list: Arizona
8. Individuals questioning voters' citizenship: Arizona
9. Police officers at the polls intimidating voters: Illinois, Michigan, Wisconsin, Missouri, North Carolina

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

Summary of the U.S Department of Justice Section 5 Recommendation Memorandum:  
August 25, 2005 regarding HB 244 – parts that pertain to the issue of voter fraud.

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

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

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

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

In the legal analysis, the attorneys state that if they determine that Georgia could have fulfilled its stated purpose of election fraud, while preventing or ameliorating the retrogression, an objection is appropriate. /They conclude that the state could have avoided retrogression by retaining various forms of currently accepted voter ID for which no substantiated security concerns were raised. Another non-retrogressive alternative would have been to maintain the affidavit alternative for those without ID, since "There is no evidence that penalty of law is an insufficient deterrent to falsely signing an affidavit of identity."

The attorneys point out that the state's recitation of a case upholding voter fraud in Dodge County does not support the purpose of the Act because that case involved vote buying and selling, not impersonation or voting under a false identity.

### Stealing Elections, John Fund

In Stealing Elections, John Fund says that “Election fraud, whether its phony voter registrations, illegal absentee ballots, shady recounts or old-fashioned ballot-box stuffing, can be found in every part of the United States, although it is probably spreading because of the ever-so-tight divisions that have polarized the country and created so many close elections lately. Although most fraud is found in urban areas, there are current scandals in rural South Dakota and Texas.” Fund admits that “Democrats figure prominently in the vast majority of examples of election fraud described in this book.” He argues Republican fraud is less common because Republicans are middle class and Democrats are poor and most fraud occurs in inner cities where there are a lot of minorities. However, because of politics, state and local prosecutors are reluctant to go after fraud.

He also stipulates that Democrats and Republicans have different worldviews on voting: Democrats are concerned about intimidation and disenfranchisement while Republicans are concerned with fraud and the need to police the polls.

Fund argues that fraud has been made easier by the passage of the National Voting Rights Act because it allows ineligible voters to remain on the voter rolls, allowing a voter to vote in the name of someone else. He claims dead people, people who have moved, and people in jail remain on the voting list. He believes because of NVRA illegal aliens have been allowed to vote. Absentee balloting makes it even worse: someone can register under false names and then use absentee ballots to cast multiple votes. Groups can get absentee ballots for the poor and elderly and then manipulate their choices.

Fund goes through a number of examples of alleged voter fraud, mostly perpetrated by Democrats. For example, he claims much fraud in St. Louis in 2000, including illegal court orders allowing people to vote, felons voting, people voting twice, dead people voting, voters were registered to vacant lots, election judges were not registered and evidence of false registrations

Another case he pays a great deal of attention to are the alleged transgressions by Democrats in Indian Country in South Dakota 2002, including voter registration fraud, suspicious absentee ballot requests, vote hauling, possible polling place fraud, abusive lawyers at polling sites, and possible vote buying.

Fund criticizes and scorns “conspiracy theories” around electronic voting perpetuated by Democrats. He says that “By whipping up a frenzy of suspicion about electronic voting, Democrats will have built a platform from which, if the presidential or key Senate elections in November 2004 are close, the can launch endless lawsuits everywhere there were problems with electronic machines.”

Stealing Elections focuses almost entirely on alleged transgressions by Democrats. Fund’s accusations, if credible, would indicate that fraud such as voter registration fraud, absentee ballot fraud, dead people voting, and felon voting is prevalent throughout the country. However, due to its possible biases, lack of specific footnoting, and insufficient

identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount and types of voter fraud and voter intimidation occurring.

The Long Shadow of Jim Crow, People for the American Way and the National Association for the Advancement of Colored People

This report describes the pervasive and repeated practices of voter intimidation and vote suppression that have taken place in very recent years and during contemporary American history. The most recent cases included in the report are the incident in which Florida law enforcement questioned elderly African American voters in Orlando regarding the 2003 mayoral race, which had already been resolved, shortly before the 2004 election; the 2004 Florida felon purge list; the case of South Dakota in 2004 in which Native Americans were improperly and illegally required to show photo identification at the polls or denied the right to vote, and similar improper demands for ID from minorities in other parts of the country; the use of challengers in minority districts in many locations; the challenge to the right of African American students to vote in Texas in 2004; the presence of men looking like law enforcement challenging African American voters at the polls in Philadelphia in 2003; the distribution of flyers in Louisiana and elsewhere in a number of elections over the last few years in minority areas telling them to vote on the wrong day; and the FBI investigation into thousands of Native American voters in South Dakota in 2002, which resulted in no showing of wrongdoing.

The report also points out that, "Over the past two decades, the Republican Party has launched a series of 'ballot security' and 'voter integrity' initiatives which have targeted minority communities. At least three times, these initiatives were successfully challenged in federal courts as illegal attempts to suppress voter participation based on race.

It goes on to describe the numerous instances of voter intimidation and suppression during the 2000 election, the 1990s, the 1980s and back through the civil rights movement of the 1960s, putting current efforts in historical perspective. Describing the chronology of events in this way demonstrates the developing patterns and strategic underpinnings of the tactics used over the last forty years.

Steal this Vote-Dirty Elections and the Rotten History of Democracy in America by Andrew Gumbel

The bulk of the book comprises stories from United States electoral history outside the scope of this project. However, these tales are instructive in showing how far back irregular and illegal voting practices go. Cases include the 1868 New York City elections; the Tilden-Hayes election; the impact of the introduction of the secret ballot; the 1981 consent decree; the 1990 Helms campaign; the 1960 presidential election controversy in Chicago; the rise of the voting machine business, including the introduction of punch card machines; and allegations by Republicans regarding NVRA.

Steal this Vote focuses almost entirely on alleged transgressions by Republican, although at times it does include complaints about Democratic tactics. Gumbel's accusations, if credible, especially in the Bush-Gore election, would indicate there were a number of problems in key states in such areas as intimidation, vote counting, and absentee ballots. However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount and types of voter fraud and voter intimidation occurring.

An Evaluation: Voter Registration Elections Board: Wisconsin Audit Report 05-12:  
September 2005

The Joint Legislative Audit Committee of the Wisconsin Legislature required the Wisconsin Audit Report. The Report obviously does not include the 2006 statistics for statewide voter registration as required by HAVA. Wisconsin voter registration is required by statute in only 172 municipalities---those with populations of 5,000 or more. Another 167 smaller municipalities opted to maintain voter registration lists. Currently, 28.9 % of the voting-age population is not required to register before voting.

According to the Report, great variation was found in the implementation of existing voter registration laws. For example, 46 % of municipalities that responded to the survey did not send address verification cards to individuals who registered by mail or at the polls on Election Day in November 2004.

Further, only 85.3 % of survey respondents reported updating their voter registration lists to remove inactive voters, as required by law.

Current voter registration practices were determined to be insufficient to ensure the accuracy of voter registration lists used by poll workers or to prevent ineligible persons from registering to vote. The Report identified 105 instances of voting irregularities in six municipalities, including 98 ineligible felons who may have voted. The names of these individuals were forwarded to appropriate district attorneys for investigation.

Due to concerns about ineligible voting, stemming from the 2004 election, the Joint Legislative Audit Committee requested that voter registration procedures be evaluated. The following was investigated for this Report:

- \* voter registration requirements and the methods by which voters register, including requirements in other states;
- \* the address verification process, including the use of address verification cards to confirm the residency of those who register by mail or at the polls;
- \* procedures and practices for updating voter registration lists; and,
- \* the role of the Elections Board.

Wisconsin allows qualified electors to register in person, by mail, or with a special registration deputy before Election Day, and at the polls on Election Day. In municipalities where registration is required by statute, 20.3 % of Wisconsin voters registered at the polls on Election Day in November 2004. Municipal clerks rely on registrants to affirm their eligibility, including citizenship and age. However, requirements for providing identification or proof of residence vary depending on when an individual registers and by which method.

Address verification cards are the primary tool available to municipal clerks for verifying the residency of registered voters and detecting improper registrations by mail or at the polls. Statutes require that clerks send cards to everyone who registers by mail or on Election Day. However, only 42.7 % of the 150 municipalities surveyed sent cards to both groups, and 46 % did not send any address verification cards.

Statutes also require clerks to provide the local district attorney with the names of any Election Day registrants whose cards are undeliverable at the address provided. However, only 24.3 % of the clerks who sent cards also forwarded names from undeliverable cards to district attorneys. District attorneys surveyed indicated that they require more information than is typically provided to conduct effective investigations.

To ensure that voter registration lists contain only the names of qualified electors, municipal clerks are required by statute to remove or inactivate the names of individuals who have not voted in four years, to update registration information for individuals who move or change their names, and to remove or inactivate the names of deceased individuals. They are also required to notify registered voters before removing their names from registration lists. These statutory requirements are not consistently followed:

\* 85.3 % of municipalities removed the names of inactive voters from their voter registration lists;

\* 71.4 % sometimes or always notified registered voters before removing their names; and

\* 54.0 % reported removing the names of ineligible felons.

Because of such inconsistencies, registration lists contain duplicate records and the names of ineligible individuals. For example, more than 348,000 electronic voter registration records from eight municipalities were reviewed, identifying 3,116 records that appear to show individuals who are registered more than once in the same municipality.

In six municipalities where sufficient information was available, there was 105 instances of potentially improper or fraudulent voting in the 2004 elections. These included: 98 ineligible felons who may have voted; 2 individuals who may have voted twice; 1 voter who may have been underage; and 4 absentee ballots that should not have been counted because the voters who cast them died before Election Day.

Recommendations:

\* adjusting the early registration deadline to provide clerks more time to prepare registration lists;

\* establishing more stringent requirements for special registration deputies, including prohibiting compensation based on the number of individuals registered;

- \* establishing uniform requirements for demonstrating proof of residence for all registrants;
- \* providing municipal clerks with more flexibility in the use of address verification cards;
- \* Authorizing civil penalties for local election officials and municipalities that fail to comply with election laws; and,
- \* implementing mandatory elections training requirements for municipal clerks.

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

Preliminary Findings of Joint Task Force Investigating Possible Election Fraud: May 10, 2005

On January 26, 2005, the Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, and the United States Attorney's Office formed a task force to investigate alleged voting irregularities during the November 2004 elections. The purpose of the task force was to determine whether evidence of criminal fraud existed in the irregularities and, if evidence of fraud was found, to pursue criminal prosecutions.

The task force has made the following specific determinations based on evidence examined to date:

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

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

- \* persons with the same name and date of birth recorded as voting more than once;
- \* persons who live outside Milwaukee, but who used non-existent City addresses to register and vote in the City;
- \* persons who registered and voted with identities and addresses that cannot in any way be linked to a real person;
- \* persons listed as voting under a name and identity of a person known to be deceased; and
- \* persons whose identities were used to vote, but who in subsequent interviews told task force investigators that they did not, in fact, vote in the City of Milwaukee.

The investigation found persons who were paid money to obtain registrations allegedly falsified approximately 65 names on registration forms, allegedly to obtain more money for each name submitted. There is no evidence gathered to date that votes were cast under these specific false names. Also found were more than 200 felons who were not eligible to vote in the 2004 election, but who are recorded as having done so.

An additional finding of the task force was that the number of votes cast far exceeds the total number of recorded voters. The day after the 2004 election, the City of Milwaukee reported the total number of votes as 277,344. In late November an additional 191 previously uncounted absentee ballots were added, for a total of 277,535 votes cast. Still later, an additional 30 ballots were added, bringing the total number of counted votes to 277,565. City records, however, have been unable to match this total to a similar number of names of voters who cast ballots – either at the polls (under a prior registration or same day registration) or cast absentee ballots. At present, the records show a total of 272,956 voter names – for a discrepancy of 4,609. This part of the investigation was hampered by widespread record keeping errors with respect to recording the number of voters.

In the 2004 election, same-day registrations were accepted in which the card had incomplete information that would help establish identity. For example: 48 original cards for persons listed as voting had no name; 548 had no address; 28 did not have signatures; and another 23 cards had illegible information. These were part of approximately 1,300 same-day registrations for which votes were cast, but which election officials could not authenticate as proper voters within the City. Included in this 1,300 were 141 same-day registrants from addresses outside the City of Milwaukee, but who voted within the City of Milwaukee. In several instances, the voter explicitly listed municipality names other than Milwaukee on the registration cards.

Another record keeping procedure hampering the investigation appears to be the post-election misfiling or loss of original green registration cards that were considered duplicates, but that in fact corresponded to additional votes. These cards were used to record votes, but approximately 100 cards of interest to investigators can no longer be located. In addition, other original green registration cards continue to be found.

## **The New Poll Tax: Republican-Sponsored Ballot-Security Measures are Being Used to Keep Minorities from Voting**

By Laughlin McDonald

McDonald argues that “the discriminatory use of so-called ‘ballot security’ programs” has been a reoccurring scandal since the passage of the Voting Rights Act of 1965. These programs are deceptively presented as preventing voter fraud and thereby furthering good government. However, McDonald states “but far too often they [the ballot security programs] are actually designed to suppress minority voting -- and for nakedly partisan purposes.”

McDonald blames the federal government as well as the states for use of suspect ballot security programs. He cites the implementation of the U.S. Department of Justice’s in "Voting Integrity Initiative" in South Dakota as the worst example of a joint federal-state effort to prevent voter fraud. Alleged voter fraud only in counties with significant Native American populations was targeted. South Dakota Attorney General Mark Barnett “working with the FBI, announced plans to send state and federal agents to question almost 2,000 new Native-American registrants, many of whom were participating in the political process for the first time.” However, statistics show that these efforts only served to increase Native American voter participation. Native Americans “were targeted based on fraud allegations that proved to be grossly exaggerated; at the end of the investigation, only one Native American was even charged with a voting-rules violation.”

McDonald cites several other ballot security efforts that were really disguised attempts at minority voter suppression:

In Pine Bluff, Ark., Democrats accused Republican poll watchers of driving away voters in predominantly black precincts by taking photos of them and demanding identification during pre-election day balloting. Democrats in Michigan charged that a plan by Republicans to station hundreds of "spotters" at heavily Democratic precincts was an effort to intimidate black voters and suppress Democratic turnout. In South Carolina, a lawsuit filed the day before the election alleged that officials in Beaufort County had adopted a new and unauthorized policy allowing them to challenge voters who gave rural route or box numbers for their registration address. According to the complaint, a disproportionate number of those affected by the new rule would be African-American voters who lived in the rural areas of the county.

McDonald is also critical of the Help America Vote Act (HAVA). He states that HAVA “contains other provisions that may enhance the opportunities for harassment and intimidation of minorities through ballot-security programs.” McDonald specifically attacks the photo ID requirement for anyone who registered by mail but has not previously voted. McDonald argues that the ID requirement will suppress minority voting because minorities are less likely than non-minorities to have a photo ID, a photo ID is expensive to obtain and all the alternatives to photo ID present similar obstacles to minority voters. He also argues that there is no evidence that photo ID will combat voter

fraud but it only really provides “another opportunity for aggressive poll officials to single out minority voters and interrogate them.”

McDonald lists some classic past ballot security efforts by the Republicans that have been abused: the 1981 gubernatorial election anti-fraud initiative leading to the well known consent decree prohibiting the Republicans from repeating this, a similar Republican effort in Louisiana in 1986 in Senator John Breaux’s race which again resulted in prohibition by a state court judge, and a similar effort by Republicans in Senator Jesse Helms 1990 reelection. This time the Department of Justice sued the Republican Party and Helm’s reelection committee, resulting in another consent decree prohibiting future ballot security programs without court approval.

McDonald indicates that the crux of the problem is lax enforcement of federal voters rights laws. He states, “there is no record of the purveyors of any ballot-security program being criminally prosecuted by federal authorities for interfering with the right to vote.” The only positive case law McDonald cited was a decision by the United States Court of Appeals for the Eighth Circuit that affirmed “an award of damages ranging from \$500 to \$2,000, payable by individual poll officials to each of seven black voters who had been unlawfully challenged, harassed, denied assistance in voting or purged from the rolls in the town of Crawfordsville [Arkansas].”

McDonald concludes by stating that Congress and the states should adopt “nondiscriminatory, evenly applied measures to ensure the integrity of the ballot.”

**MEASURING PERCEPTIONS OF ELECTION THREATS: SURVEY DATA  
FROM VOTERS AND ELITES**

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For an election to be meaningful, it must be seen as being fair. The public, the candidates, and the political parties all must have confidence in the outcome. Electoral irregularities—either intentional election fraud or unintentional problems in the election that result in an inaccurate (and thus sometimes in the eyes of the losing side, fraudulent) outcome—clearly can effect confidence in the outcome of an election.<sup>1</sup> In the United States, since the 2000 election there have been concerns raised regarding intentional and unintentional fraud.<sup>2</sup> The ongoing debate about the security of electronic voting technologies reflects one aspect of this debate. Concerns have also been raised about fraud in absentee voting, early voting, precinct voting, and voting by military personnel and overseas civilians (“UOCAVA” voters), that are all unrelated to the type of voting technologies used.<sup>3</sup> Moreover, there have been convictions in New Hampshire related to jamming political party “get-out-the-vote” telephone banks in the 2002 gubernatorial election.<sup>4</sup>

There have been numerous claims in recent years that the public does not have confidence that their vote will be counted accurately. This claim was central to the report of the

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<sup>1</sup> See R. Michael Alvarez, Thad E. Hall and Morgan Llewellyn, “Are Americans Confident Their Ballots Are Counted?” Caltech/MIT Voting Technology Project Working Paper 49, 2006; Richard L. Hasen, “Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown,” *Washington & Lee Law Review*, 62, (2005), p. 937 for further discussion of voter confidence in the American electoral process.

<sup>2</sup> For examples of this literature, see Tracy Campbell, *Deliver the Vote*, (New York: Carrol & Graf, 2005); John Fund, *Stealing Elections*, (New York: Encounter Books, 2004); Andrew Gumbel, *Steal This Vote*, (New York: Nation Books, 2005).

<sup>3</sup> Caltech/MIT Voting Technology Project, “Voting: What Is, What Could Be,” 2001, <http://vote.caltech.edu>.

<sup>4</sup> As recently reported in the *Boston Globe*: “The episode began with a political dirty trick engineered by New Hampshire Republicans on Nov. 5, 2002. Republican John E. Sununu, then a House member, was locked in a tight Senate race against Democrat Jeanne Shaheen, then the governor, in a contest some observers thought could determine control of the Senate. In an effort to disrupt Democrats' get-out-the-vote efforts, officials with the state Republican Party hired a telemarketing company to tie up the hot lines that had been set up by Democrats and a firefighters' union to help get voters to the polls. For about 90 minutes, computer-dialed calls tied up the hotlines, until the scheme was halted by state Republican officials who grew concerned about its legality. Sununu won the race by about 20,000 votes on a day in which Republicans swept the major races in New Hampshire and much of the nation. The case has yielded three convictions so far, including those of the RNC's New England regional political director for the 2002 elections, James Tobin, and the then-executive director of the state Republican Party, Charles McGee. The third person convicted was Allen Raymond, a former Virginia telemarketing executive who was hired by the New Hampshire Republicans.” Rick Klein, *Boston Globe*, April 13, 2006, [http://www.boston.com/news/nation/articles/2006/04/13/white\\_house\\_pressed\\_on\\_nh\\_tactic](http://www.boston.com/news/nation/articles/2006/04/13/white_house_pressed_on_nh_tactic).

“Carter-Baker” Commission’s report on election reform.<sup>5</sup> The commission’s work was predicted on the idea that the public lacks confidence in election outcomes and that this confidence can be restored only through the implementation of specific reforms. However, public data on this issue presents a mixed message. For example, data from recent surveys studied by Alvarez, Hall and Llewellyn indicate that roughly 9 of 10 voters report being confident that their ballots will be counted as intended. However, these authors also find that confidence among African American voters has dropped considerably between the 2000 and 2004 elections, as around 16% reported a lack of confidence after the 2000 elections, but over 30% expressed a lack of confidence in the 2004 election cycle.<sup>6</sup>

In this chapter, we explore the issue of confidence and fraud in elections. Since before the 2004 presidential election, we have been conducting periodic national sample public opinion polls to assess the perceptions of Americans about the electoral system. We have asked questions specifically about the potential problems associated with electronic voting systems in three successive surveys. More recently, we have asked respondents in a national probability sample about their perceptions of general security threats to the electoral process. We also conducted a pilot survey in 2005 that sought to obtain detailed threat assessment data from the “elite” population: election administrators, academics, policymakers, and advocates. In this paper we present data from these surveys, which provide important information on the perceptions of Americans about the security of their electoral system. Before we do so, we consider the potential threats and risks associated with the fair conduct of elections and provide the results of a small elite survey that considers the threats and risks associated with the voting process. The

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<sup>5</sup> Commission on Federal Election Reform, 2005. “Building Confidence in U.S. Elections.” <http://www.american.edu/ia/cfer>.

<sup>6</sup> See Alvarez et al, “Are Americans Confident Their Ballots Are Counted?” and Hasen “Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown.”

potential for fraud is predicated on specific threats coming to fruition. We consider the potential problems that can arise in elections and the likelihood that they will occur, and we also examine the methodological question of whether a survey-based approach can elicit useful data for threat assessment analyses.

## **Elections as a Threat-Probability Environment**

We often discuss risks in our daily lives. What are the risks of getting cancer or of being in an accident or of being eaten by a shark while swimming in the ocean? In order to understand these risks you have to understand four facets of risk. First, what is the threat you are concerned about encountering (e.g., being eaten by a shark)? Second, what is the level of disruption the threat would cause (e.g., being eaten by a shark could kill you, a very high level of life disruption!)? Third, what is the likelihood of being eaten by a shark (It is lower than the risk of being crushed by a pig)? Fourth, how easy is it to mitigate the risk (e.g., by not going into the ocean in areas where there are known sharks)? We can write this as an equation:

$$\text{Risk} = \text{Threat (Disruption + Likelihood)} - \text{Mitigation}$$

As this equation shows, all threats do not manifest themselves equally as risks. Some threats may not produce very high levels of disruption. Some threats may be problematic but be very unlikely to occur. Some threats may be problematic but be easy to mitigate. However, just as all threats are not equal when considered as risks, the calculation of the equation above will vary across different individuals who make the calculation. This is especially true in areas where there are different types of people involved in the evaluation process. When the Food and Drug Administration had a panel of medical experts consider the need to remove certain Cox-II

inhibitors, such as Vioxx, from the market, there was a difference of opinion between clinicians who treat patients and researchers who study risk.<sup>7</sup> The clinicians understood the threat, the disruption problem, but calculated the likelihood and mitigation differently than the researchers. The clinicians thought they could effectively mitigate the risk, thus lowering the likelihood of a problem arising, through aggressive monitoring of patients. The risk researchers examined the aggregate data and had a different calculation of risk.

The issue of risk analysis varies across issue areas and the willingness to tolerate risk varies across these areas as well. For the public and for policy makers alike, the media often plays a critical role in framing our understanding of risk.<sup>8</sup> One framework for understanding how risk is interpreted examines the social amplification and attenuation of risk.<sup>9</sup> This framework has multiple components: a personal component (how the risk is perceived to affect the individual), an institutional component, and a social aspect, all of which affect how risks are interpreted and addressed.<sup>10</sup> “Risk analysis, then, requires an approach that is capable of illuminating risk in its fully complexity, is sensitive to the social settings in which risk occurs, and also recognizes that social interactions may either amplify or attenuate the signals to society about the risk.”<sup>11</sup>

Risk analysis is made difficult on an individual level by the fact that most individuals do not experience certain risks directly. Instead, an individual’s perceptions of risk are understood and “experienced” through the media. The media’s framing of an issue, the attention given, the tone of the coverage, the overall amount of information provided, and the symbolism used to

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<sup>7</sup> See the website that the FDA has established regarding the Arthritis Drugs Advisory Committee’s work, <http://www.fda.gov/ohrms/dockets/ac/cder05.html#ArthritisDrugs%20>.

<sup>8</sup> See Marc Siegel, *False Alarm*, (New York, Wiley, 2005).

<sup>9</sup> See Nick Pidgeon, Roger Kasperson and Paul Slovic, *The Social Amplification of Risk*, (Cambridge: Cambridge University Press, 2003).

<sup>10</sup> Roger E. Kasperson and Jeanne X. Kasperson, “The Social Amplification and Attenuation of Risk,” *Annals of the American Academy of Political and Social Science*, 545 (1996), p. 95-105.

<sup>11</sup> Kasperson and Kasperson, “The Social Amplification and Attenuation of Risk.”

characterize the risk, shape how the public perceives a given risk. Additionally, all media are not created equally in how they discuss risks. There are obvious differences in how one might expect mass media—television, radio, and print newspapers—to cover risk compared to the Internet or specialized professional publications. However, even in the mass media, there are differences in how risks are studied and discussed in news stories versus opinion stories or opinion talk shows. Finally, the actual likelihood of a risk being serious can be inversely related to the amount of media coverage the risk receives. For example, the risk of dying from radiation exposure via the sun is much higher than the risk of dying from radiation exposure from an accident at a nuclear power plant, but the latter has received more attention, historically, than the former. Similarly, the coverage of West Nile Virus and the flu have been inversely related to the number of deaths they cause.

## **Measuring Risk Assessments in Survey Research**

As far as we know, there is no existing literature on the use of survey approaches for collecting information on the assessments of a population regarding threats or risks to the electoral system. We are aware of literatures, especially regarding threat assessments of violence and violent behavior, where interview research has been employed in part to develop risk models.<sup>12</sup> Additionally there are a number of projects that aim to probe the expectations of target populations regarding propensities to engage in other types of risky behavior, for example, the likelihood that teenagers will engage in behaviors that present health risks.<sup>13</sup> But while survey-

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<sup>12</sup> Randy Borum, Robert Fein, Bryan Vossekuil and John Berglund, "Threat Assessment: Defining An Approach for Evaluating Risk of Targeted Violence," *Behavioral Sciences and the Law*, 17 (1999), p. 323-337; Marisa Reddy, Randy Borum, John Berglund, Bryan Vossekuil, Robert Fein, and William Modzeleski, "Evaluating Risk for Targeted Violence in Schools: Comparing Risk Assessment, Threat Assessment, and Other Approaches." *Psychology in the Schools*, 38 (2001), p. 157-172.

<sup>13</sup> One long-standing project in this area is the "Youth Risk Behavior Surveillance System" (YRBSS), that uses surveys of teen-aged children every two years, with 2005. h national, state, and local samples, to collect data on health risk behaviors. See <http://www.cdc.gov/HealthyYouth/yrbs/overview.htm> for details.

based methods for studying expectations of future events and behavior are used in some areas of social and policy research, we are not aware of their use in developing risk or threat assessment in the field of election administration.

Partly, this is due to the lack of research on election administration.<sup>14</sup> But that there is little research in the social sciences on survey measurement of threats to the electoral or political process is most likely due to a skepticism in the social science community about how individuals think about probabilities and expectations and whether the survey environment is one where they can provide accurate assessments of probabilities and expectations. On one hand, there is work in social science like that of Tversky and Kahneman that shows with experimental data that subjects use shortcuts to process information and develop expectations, thus implying that individuals may not be well-suited to form expectations or probability assessments about events like the possibility of threats to election systems in a way consistent with notions of rational expectations. On the other hand, there is research in political behavior that shows that survey respondents are poor predictors of the likelihood of candidate victories in elections, and that the process of expectation formation in the election setting is influenced by how much the respondent likes the candidate and not just information on how well they are doing in the race. And last, as recently reviewed by Manski, the economics profession has until very recently been reluctant to turn to survey methodologies to study economic expectations.<sup>15</sup>

Following in the path of recent work like Manski's and his collaborative work with Dominitz, we have experimented with different survey-based approaches, using different

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<sup>14</sup> R. Michael Alvarez, and Thad E. Hall, "Controlling Democracy: The Principal-agent Problems in Election Administration," *Policy Studies Journal*, forthcoming.

<sup>15</sup> Paul R. Abramson, John H. Aldrich, Phil Paolino, and David W. Rohde, "Sophisticated Voting in the 1988 Presidential Primaries," *American Political Science Review*, 86 (1992), p. 55-69; Larry M. Bartels, "Expectations and Preferences in Presidential Nominating Campaigns," *American Political Science Review*, 79 (1985), p. 804-815. Larry M. Bartels, *Presidential Primaries and the Dynamics of Public Choice*. (Princeton: Princeton University Press, 1988); Charles F. Manski, "Measuring Expectations." *Econometrica*, 72 (2004), 1329-1376; Amos Tversky, and Daniel Kahneman, "Judgment under Uncertainty: Heuristics and Biases." *Science*, 185 (1974), 1124-1131.

populations and sampling strategies, of gathering data from survey respondents that might be used in threat assessment analysis for election administration. In the remainder of this paper we discuss two of these experiments, the first seeking to gather data on the likelihood of election system threats from well-informed and highly-knowledgeable populations, election officials, academics, policymakers, and election reform advocates. In the second experiment we tested a question on assessment of election system risks in a national probability telephone sample. Below we present data from the two different methods, and then in our conclusion we provide some tentative evaluations as to the utility of the survey method for developing threat assessments, and discuss some future research directions.<sup>16</sup>

### **Risk Assessments in Elections: Elite Perceptions**

Working in conjunction with the Caltech/MIT Voting Technology Project, *electionline.org*, and the University of Utah's Center for Public Policy and Administration, we conducted an elite survey that examined potential risks to the conduct of a fair election. The complete survey instrument is shown at the end of this paper. This survey extensively examined a wide array of potential threats, ranging from outright types of election fraud, to tampering with the electoral process and unintentional problems:

- Illegal or double voting;
- Coercion or disrupting election;
- Voter registration;
- Problems with precinct voting;

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<sup>16</sup> Jeff Dominitz, and Charles F. Manski, "Using Expectations Data to Study Subjective Income Expectations." *Journal of the American Statistical Association*, 92 (1997), p. 855-867; Jeff Dominitz and Charles F. Manski, "Perceptions of Economic Uncertainty: Evidence from the Survey of Economic Expectations" *Public Opinion Quarterly*, 61 (1997), 261-287.

- Problems with early voting (in-person and absentee); and
- Problems with post-election ballot processing.

For each type of threat, the respondent was asked to score on a scale from one (1) to ten (10), with one being a low score and ten being a high score, the following:

1. What level of disruption would the event cause to an election?
2. The likelihood the threat would occur in the 2005 elections (if any)?
3. What is the likelihood the event could occur in the 2006 elections?
4. How would you rate the ease of mitigating against the threat?

This calculus requires a respondent to think about risk comprehensively. For each type of threat we identified, we required respondents to think through the components of the risk in a way that allowed its overall potential magnitude to be determined. The survey also asked additional questions, including an overall assessment of the risk threat presented by six types of substantive problems, in an effort to assess what the overall threat profile might be for the existing elections process.

To implement this survey, we posted it (in “fillable” PDF format) on a number of websites that are frequented by academic researchers, election officials, policymakers, and election reform advocates.<sup>17</sup> Notices of the survey’s availability were sent out, and electionline.org profiled this project in their newsletter. We advertised the survey in a number of conference or workshop presentations, and had paper copies available for potential respondents. In the end, we received only twenty-three complete survey responses; the poor response rate appears due to the complexity and length of the survey, to difficulties some had with the

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<sup>17</sup> The websites used were the Caltech/MIT Voting Technology Project’s website (<http://votingtechnologyproject.org>), our weblog (<http://electionupdates.caltech.edu>), Electionline ([electionline.org](http://electionline.org)), and the University of Utah’s Center for Public Policy and Administration (<http://www.cppa.utah.edu>).